

**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

**CASE NUMBER: 45997/21**

In the matter between:

**THE DEMOCRATIC ALLIANCE**

Applicant

And

**THE NATIONAL COMMISSIONER OF  
CORRECTIONAL SERVICES**

First Respondent

**THE MEDICAL PAROLE ADVISORY BOARD**

Second Respondent

**JACOB GEDLEYIHLEKISA ZUMA**

Third Respondent

**THE SECRETARY OF THE JUDICIAL COMMISSION  
OF INQUIRY INTO ALLEGATIONS OF THE STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE  
PUBLIC SECTOR, INCLUDING ORGANS OF STATE**

Fourth Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL  
SERVICES**

Fifth Respondent

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**THE FIRST RESPONDENT'S OPPOSING AFFIDAVIT**

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I, the undersigned,

**ARTHUR FRASER**

hereby declare under oath as follows:

1. I am a major male, the Former National Commissioner of Correctional Services whose contract came to an end in September 2021. The National Commissioner of Correctional Services' offices are situated at Poyntons Building, Cnr WF Nkomo and Sophie De Bruyn Streets, West Block, Pretoria, Gauteng Province.
2. The facts deposed to herein, are within my personal knowledge, save where otherwise stated, and are true and correct.
3. In so far as I make allegations pertaining to legal principles I have done so on the advice of the National Commissioner of Correctional Services' ("the First Respondent") legal representatives, and I have accepted that the advice is in accordance with the prevailing legal principles.
4. I am duly authorised to depose to this affidavit by virtue of the fact that, although my contract has now come to an end *on* 26 September 2021, when the decision that the Applicants seek to impugn was taken, I was the National Commissioner at the time and I took the decision on behalf of the Office of the National Commissioner of Correctional Services.

**A) Introduction**



5. The Democratic Alliance (“the Applicant”) brought an urgent application, seeking, amongst others, relief that the decision of the First Respondent to place the Third Respondent on medical parole be declared unlawful, reviewed and set aside, also that the court should substitute the parole decision with a decision rejecting the Third Respondent’s application for medical parole and further directing that the Third Respondent should be returned to the custody of the Department of the Correctional Services to serve out the remainder of his sentence of imprisonment.
  
6. There are two further applications that have been filed with this Honourable Court where the Applicant is the Afriforum NPC and the other Applicant is the Helen Suzman Foundation. Both applications together with the one filed by the Democratic Alliance, seek similar or the same relief and the parties have therefore agreed that all three applications will be heard on the same day by the same judge. All three applications are opposed.
  
7. Due to the extent in the volume of the papers, the complexity and the importance of the matter, the First Respondent will commence with an introductory portion before dealing with the allegations made in the affidavit filed by the Applicants. The court is then implored to read any further averments contained in this affidavit together with the introductory portion thereof and any allegations that are contrary to what is contained in the introductory portion should be deemed to be denied.

**B) Urgency**

8. I contend that the Applicant's application is not urgent and if there is any urgency it is self-created. The Third Respondent is serving a 15 months sentence despite him having been placed on medical parole. The fact the Third Respondent's term of incarceration would end in October 2022, one year from now, does not assist the Applicant's assertion that the matter is urgent.
  
9. The allegation by the Applicant that rectifying ongoing unlawful conduct by the state is inherently urgent is misplaced and bad in law. No conduct on the part of the National Commissioner has been declared unlawful and therefore the Applicant cannot claim to be rectifying such conduct and also use such an imagined action as the basis for urgency. Should the above Honourable Court find that the placement of the Third Respondent on medical parole is unlawful and/or illegal and falls to be reviewed and set aside, whether it is now in October 2021 or July 2022, there is still remedy in that the First Respondent could be ordered to recall the decision. The Applicant's reasons for urgency do not afford the Applicant any form of legal basis to approach this court and be assisted on an urgent basis.

### **C) Non-Joinder of the South African Medical Health Services**

10. The Applicant, being a political party and the official opposition party in Parliament should reasonably know that the South African Medical Health Services (SAMHS) is responsible for medical needs of current and former Presidents of the Republic of South Africa. The Applicant should also know

that given the security regime concerning current and former Presidents of the Republic of South Africa, their medical records are classified. The Applicant failed to join or cite a party that is relevant and have an interest in the proceedings where the Applicant should have known that the SAMHS is the custodian of the medical records sought in this application.

11. This non-joinder is fatal to the Applicant's case as being the main opposition party in Parliament, knowing how the government of the Republic of South Africa and the medical treatment of its Presidents are conducted, should have been in a better position to know that SAMHS is the custodian of the medical records that they are seeking. The Applicant should have taken steps, like any other litigant who needs his case to be ventilated with all the information before court to join SAMHS and seek or compel it to produce those records. The Applicant's failure to take action against the SAMHS shows *mala fide* on the Applicant's part and should be frowned upon.

12. The Applicant is fully aware that for the office of the National Commissioner to engage with the Department of Defence as the custodians of the medical records in question, in terms of the Intergovernmental Relations Framework Act 13 of 2005, would take time, something that the Acting National Commissioner did not have on his side. Intervention of both the Minister of Defence and Minister of Justice and Correctional Services, and also taking into consideration that this matter was brought on an urgent basis and therefore there was not enough time for meaningful engagement between the two Ministries, the Applicant knew that eventually the office of the National Commissioner would not be able to produce those records timely and hence

the Applicant's persistence to hold the National Commissioner responsible and seek a cost order against the National Commissioner in his personal capacity.

13.I reiterate that the non-joinder of SAMHS by the Applicant, who should have known better that the medical records of a Former State President are classified and in the custodianship of SAMHS is fatal to the Applicant's case. I submit that based on these points alone that is urgency and the non-joinder, the Applicant's application should fail.

#### **D) The Factual Matrix of this Case**

14.The Third Respondent was sentenced by the Constitutional Court on the 29<sup>th</sup> June 2021 to serve fifteen months imprisonment for contempt of court. On the 07<sup>th</sup> July 2021, the Third Respondent handed himself over to the Department of Correctional Services at their Estcourt facility. The order by the Constitutional Court is attached to the Applicant's founding affidavit as "FA8". The Third Respondent started his fifteen months sentence on the 08<sup>th</sup> July 2021 at around 01h45. The Third Respondent was processed like any other offender who is admitted to a Correctional Facility. The officers at the Estcourt Correctional Centre orientated the Third Respondent on the rules and regulations of the Correctional Centre, which include:

14.1. An explanation of the sentence imposed and how he was going to serve it;

- 14.2. Daily complaints and requests would be taken by the Head of the Correctional Centre ("HCC") or delegate;
  - 14.3. He would be attended to by the Case Management Committee in respect of his security classification and privileges;
  - 14.4. Housing, which would be at the hospital;
  - 14.5. Stipulated time of unlock and lockup (sleeping and waking up time);
  - 14.6. The Third Respondent was further informed that he would be responsible for the upkeep of his cell (cleaning and make his bed);
  - 14.7. The Third Respondent was issued with two pairs of offender uniform and toiletries;
15. Upon admission the Third Respondent underwent:
- 15.1. A medical and security assessment. The medical assessment was done in collaboration with the SAMHS which is a division within the Department of Defence and Military Veterans ("the Department of Defence") which is assigned to exclusively provide medical care, needs and services to both past and present Presidents of the Republic of South Africa;
  - 15.2. A COVID-19 screening; and
  - 15.3. Isolation in line with the DCS' COVID-19 protocol.

16. It should be borne in mind that the Third Respondent still retained his presidential privilege and thus the SAMHS continued to provide his medical health services. It should also be borne in mind that all medical records of everyone in the Republic of South Africa are confidential as between a doctor and patient, but in this case in particular, because the medical needs of current and former Presidents are dealt with by the SAMHS, they become classified as top secret. This then means that they are not accessible to members of the public or any other person based on the need-to-know principle and the requisite security clearance requirement.
17. On the 19<sup>th</sup> and 20<sup>th</sup> July 2021, the Third Respondent attended a virtual court hearing in relation to the criminal case against him that was heard at the Pietermaritzburg High Court.
18. On the 21<sup>st</sup> July 2021, the Third Respondent submitted an application for compassionate leave to attend his brother's funeral. The application for compassionate leave was approved consistent with policy prescripts. Accordingly, the Third Respondent was released in the early hours of the 22<sup>nd</sup> July 2021 and returned the same day.
19. The Third Respondent's general health condition started deteriorating around the 23<sup>rd</sup> July 2021 as reported by DCS officials and noted with concern by the acting Regional Commissioner. On the 24<sup>th</sup> July 2021, the SAMHS medical team attended to the reported concerns about the Third Respondent's medical condition.

20. On the 28<sup>th</sup> July 2021, Mr Zuma was examined by the medical team from SAMHS at Escourt Facility whereafter they provided a medical report that he be referred to an outside hospital.
21. It is important to note that as early as 09<sup>th</sup> July 2021 SAMHS had requested permission from the DCS for a SAMHS Medic to conduct daily assessments on the Third Respondent. The request was acceded to.
22. On the 5<sup>th</sup> August 2021 a further medical assessment was conducted on the Third Respondent by the SAMHS and their medical report recommended that the Third Respondent be transferred to a tertiary medical facility as a matter of urgency.
23. The Third Respondent was subsequently transferred to a specialist Hospital in Pretoria on the 05<sup>th</sup> August 2021.
24. It is also important to bear in mind that all offenders, when admitted to an external hospital, are provided with custodial security services based on their risk profiles. The transfer of the Third Respondent to a specialist hospital was done with due regard for his security risk profile and concomitant security detail was deployed.
25. While in hospital, the Third Respondent's attending physicians prepared a report and a request for the Third Respondent to be placed on medical parole. The complete application for placement on medical parole including the consent form by the Third Respondent were submitted to the DCS All the submitted documents were marked confidential and declared classified

the submitted documents were marked confidential and declared classified by SAMHS based on the relevant security protocols. As stated above, SAMHS are the custodians of the medical records in question and only they can make a decision on the classification regime relating to access.

26. In terms of section 75(7)(a) of the Correctional Services Act 111 of 1998, (CSA) as amended, read together with section 79 and Regulation 29A of the CSA, the National Commissioner must make a decision whether or not to approve an application for medical parole of a sentenced offender serving a sentence of 24 months or less.

27. and investigation of the health condition of the Third Respondent, and provide a report The Third Respondent's application to be placed on medical parole was referred to the the Medical Parole Advisory Board ("MPAB"), who in turn directed Dr LJ Mphatswe ("Dr Mphatswe"), a member of the MPAB, to conduct a medical assessment to the MPAB with a recommendation on whether or not the third Respondent should be placed on medical parole.

27.1. Dr Mphatswe submitted his report dated 23 August 2021 to the MPAB for their consideration, together with the Third Respondent's application to be placed on medical parole. It should be noted that the report compiled by Dr Mphatswe recommended that the Third Respondent be released on medical parole with immediate effect because of the clinical picture that presents unpredictable health conditions. A redacted version of the report compiled by Dr Mphatswe is included in the record that was filed in terms of Rule 53 and marked as annexure "AF1".



27.2.The MPAB held its first sitting to consider the Third Respondent's application, on 26 August 2021 and did not recommend the application on the basis that they did not have sufficient information to reach a decision.

27.3.The MPAB reconvened on 2 September 2021 after receipt of additional specialist medical reports that the MPAB had requested. Having received all the information requested, including the report by its own member, Dr Mphatswe, the MPAB once again did not recommend the Third Respondent's application to be placed on medical parole. The reason cited for not recommending the placement of the Third Respondent on medical parole was that:

*"...his treatment has been optimised and all conditions have been brought under control".*

28.What was quite significant and surprising about the statement is that the Third Respondent was, at that time, in a specialized hospital where his condition had stabilized and had been brought under control because he was under the care of doctors in the hospital for a period of one month.

29.The MPAB did not take into consideration if the Third Respondent's health condition would be optimised and stabilized once he would be returned to Estcourt Correctional Centre. It should also be borne in mind that the hospital in the Estcourt Correctional Centre does not have the requisite equipment to take care of the Third Respondent's health needs hence he was transferred to a specialized tertiary hospital external to the Correctional Services.

30. A committee that is appointed by the Minister and made up of medical practitioners, appointed Dr Mphatswe to the Third Respondent and provide the MPAB with a report for consideration whether the Third Respondent should be placed on medical parole or not. The MPAB met on the 26<sup>th</sup> August 2021 to consider the report submitted by Dr Mphatswe and on the same day took a decision that they do not recommend that the Third Respondent be placed on medical parole. This decision was made known to the Third Respondent on the same date. The reasons for the refusal to place the Third Respondent on medical parole are clear in the attached report dated the 26<sup>th</sup> August 2021. It should be noted that the report compiled by Dr Mphatswe who is a member of the MPAB and who was delegated by the MPAB to investigate the medical condition of the Third Respondent and recommend whether the Third Respondent should be placed on medical parole or not, recommended that the Third Respondent be released on medical parole with immediate effect because of the clinical picture that presents unpredictable health conditions. A redacted version of the report compiled by Dr Mphatswe is included in the record that was filed in terms of Rule 53 and marked as annexure "AF1".

31. On the 02<sup>nd</sup> September 2021, the MPAB met again and considered the application by the Third Respondent to be placed on medical parole. A decision by the MPAB refusing to place the Third Respondent under medical parole was taken and it is dated the 02<sup>nd</sup> September 2021. The reasons for the refusal to place the Third Respondent under medical parole was:

*"his treatment has been optimised and all conditions have been brought under control".*

32. What was quite significant and surprising about the statement is that the Third Respondent was, at that time, in a hospital where his condition has stabilized and has been brought under control because he was under the care of doctors in the hospital. The MPAB did not take into consideration how the Third Respondent's health condition will be once he is placed back into a jail cell. It should also be borne in mind that the hospital in the Estcourt Correctional Centre does not have the requisite equipment to take care of the Third Respondent's health needs hence he was transferred to a tertiary hospital outside the Correctional Services.

33. On the 28<sup>th</sup> July 2021, the Third Respondent's medical team applied for the Third Respondent to be considered for medical parole. The application was considered and a decision was taken by the National Commissioner in accordance with the provisions set out in section 75(7)(a) of the CSA, as amended, read together with section 79 and Regulation 29A of the CSA on the 05<sup>th</sup> September 2021 to place the Third Respondent on medical parole.

34. It is this decision that the Applicants seek to review and set aside and further request that the court should substitute the decision by denying the medical parole and ordering that the Third Respondent be returned to the Correctional Services Centre.

35. The reasons for the placement of the Third Respondent on medical parole have been provided as part of the record filed in terms of Rule 53. The Third

Respondent was in hospital for a period starting from the 05<sup>th</sup> August 2021 up and until his discharge on the 8<sup>th</sup> September 2021. The Third Respondent was taken to a residence in Waterkloof where he was under the care of his wife, MaNgema where Doctors and Medics attended to his medical needs and provided medical support and supervision.

36. Approximately a week later, the Third Respondent returned to his home in Nkandla, where a similar arrangement was put in place.

37. It should be noted that the Third Respondent required a Medic to be with him twenty-four hours a day, a situation that was not possible in any DCS facility having regard that only sentenced offenders or remand detainees are housed in DCS facilities. Therefore, the Medic could not be allowed to spend twenty-four hours with the Third Respondent as the Medic did not fall under either is based on those circumstances that I decided to exercise my authority, which was previously delegated to the HCC in Estcourt and deal with the application for parole as submitted by the Third Respondent category of people that could be accommodated in a Correctional Facility.

### **E) Considerations Leading to the Decision to Place the Third Respondent on Medical Parole**

#### **The Delegations**

38. As the National Commissioner, I am empowered to delegate the authority in terms of section 75(7)(a) to Heads of Correctional Centres as promulgated in Government Gazette no.43834 dated 23 October 2020 in terms of section 97(3) of Correctional Services Act 111 of 1998, CSA The gazette dealing

with the regulations and authorizing the National Commissioner to delegate certain functions to the HCCs has been attached to the record and also to the Applicant's supplementary affidavit marked as **DA27**.

39. In my decision to place the Third Respondent on medical parole, I explain that I exercised my powers in terms of the CSA. There are a number of reasons to be considered as to why I had to handle this situation myself and they are as follows:

39.1. As set out in detail above, the primary consideration for my decision was the state of health of the Third Respondent and the medical reports submitted in that regard;

39.2. The Third Respondent is a Former Head of State in the Republic of South Africa and since the advent of democracy, that is 1994 (and even prior thereto), there has never been a situation where a former Head of State has been incarcerated, and we will all agree that this was an unprecedented situation;

39.3. Furthermore, I considered the fact that the Estcourt Correctional Centre could not risk the life of an inmate being fully aware that it has no capacity to render the required health care services;

39.4. The aforementioned could have had dire consequences had the DCS acted recklessly and or negligently;

39.5. The latter could have ignited events similar to that of July 2021.

39.6. Having regard for the aforementioned and knowing that the Head of Estcourt Correctional Centre is at the level of an Assistant Director, it is within this context that I decided to exercise my authority in terms of the CSA and deal with the application for medical parole as submitted on behalf of the Third Respondent.

39.7. Taking into consideration the events that occurred during the month of July 2021 and specifically around the period when the Third Respondent was incarcerated, there was public unrests and destruction of property as well as the ongoing heightened public interest in any matter that related to the Third Respondent. As the then National Commissioner, I instructed that all matters surrounding the incarceration and care of the Third Respondent where decisions are required, that such should be done in consultation with myself as the National Commissioner.

40. It is based on those circumstances that I decided to exercise my authority, which was previously delegated to the HCC in Estcourt and deal with the application for parole as submitted by the Third Respondent. This decision has nothing to do with any perceived relationship that the Applicants might think I have with the Third Respondent. Yes, I served under his presidency but that is not a reason to not follow the law when dealing with his application or any other matter relating to his incarceration.

**41. F) The Enabling Provisions of the Act**

The Constitution of the Republic of South Africa, 1996

42. In this instance, the First Respondent will rely on the provisions of the Constitution of the Republic of South Africa, 1996 ("the Constitution") sections 9(1), 10, 12(1)(e), (2)(b) and (c), 14 and 27. These provisions are contained in Chapter 2 which makes provisions for the Bill of Rights.

42.1. Section 9(1)

*"(1) everyone is equal before the law and has the right to equal protection and benefit of the law.";*

42.2. Section 10

*"everyone has inherent dignity and the right to have their dignity respected and protected.";*

42.3. Section 12 (1)(e)

*"everyone has the right to freedom and security of the person, which includes the right- ....*

*(e) not to be treated or punished in a cruel, inhumane or degrading way.";*

42.4. Section 12(2)(b)

*"everyone has the right to bodily and psychological integrity, which includes the right - ...*

*(b) to security in and control over their body;*

*(c) not to be subjected to medical or scientific experiments without their informed consent.”;*

42.5. Section 14

*“everyone has the right to privacy....”;* and

42.6. Section 27(1)

*“everyone has the right to have access to –*

*(a) healthcare services, .....*”

Correctional Services Act 111 of 1998

43. Sections 73 to 82 in **Chapter VII** deal with the release from Correctional Centres and placement under correctional supervision and on day parole and parole. In particular sections 73(4) provides as follows:

*“in accordance with the provisions of this Chapter a sentenced offender may be placed under correctional supervision, day parole, parole or medical parole before expiration of his/her term of incarceration.”*

44. Section 73(6)(aA) provides as follows:

*“subject to the provisions of paragraph b, an offender serving a determinate sentence or cumulative sentences of not more than 24 months may not be placed on parole or day parole until such offender has served either the*





*stipulated non-parole period or if no non-parole period was stipulated, a quarter of the sentence.*

Section 75 of the Act

45. Section 75 of the Act makes provision for the powers, function and duties of correctional supervision and parole boards. Subsection 7 of the Act provides as follows:

*“despite subsections (1) to (6), the National Commissioner may –*

*(a) place under correctional supervision or day parole, or grant parole or medical parole to, a sentence offender serving a sentence of incarceration for 24 months or less and prescribe conditions in terms of section 52; or*

*(b) ....*

46. Section 79 of the Act provides for specifically medical parole. It provides as follows:

*“(1) any sentenced offender may be considered for placement on medical parole, by the National Commissioner, the Correctional Supervision and Parole Board or the Minister, as the case may be, if –*

*(a) such offender is suffering from a terminal disease or condition or if such offender is rendered physically incapacitated as a result of injury, disease or illness so as to severely limit daily activity or inmate self-care;*

*(b) the risk of reoffending is low; and*

*(c) there are appropriate arrangements for the inmate's supervision, care and treatment within the community to which the inmate is to be released."*

### The Delegations

47. The delegations are provided for in government gazette number 43834 of 23 October 2020. A copy of the delegations is included in the record and also to the Applicant's supplementary affidavit marked by the Applicant as **DA27**. The powers conferred on the National Commissioner in terms of section 75(7)(a) and (b) can be delegated to the HCC. The National Commissioner has the powers and authority to delegate and to exercise his powers in terms of the CSA. . This, is submitted, put to rest the Applicant's questioning of the powers of the National Commissioner to either delegate or exercise his powers in terms of the CSA.

### The Medical Parole Policy and Procedure

48. This policy was approved on the 07<sup>th</sup> February 2012 and signed by the then Minister of the Department of Correctional Services, Mrs Nosiviwe Mapisa-Nqakula. In the definition section, a number of terms have been defined and I will quote only those that are relevant to this matter:

- 48.1. Activities of daily living: This is defined as the ability of the ill patient to perform usual activities or ordinary tasks independently for example, bathing, eating, walking to the bathroom and exercising;
- 48.2. Functional incapacity: This is defined as a state in which an individual is unable to carry out activities based on his/her abilities;

48.3. Terminal illness: This is defined as an infection or disease which is considered ultimately fatal or incurable. Usually, a patient is considered to have a terminal illness if he/she seems likely to die despite diagnosis and treatment, although it is possible for people with a terminal illness to live for years before succumbing to the medical condition.

49. Clause 3 of the policy provides as follows in the first unnumbered paragraph:

*“all offenders and remand detainees have a right to adequate healthcare services as obligated by the Constitution of the Republic of South Africa. In terms of the Correctional Services Act, (Act 111 of 1998), the department must provide primary healthcare services and refer patients to external healthcare facilities for secondary and tertiary levels of healthcare.”*

50. At page 8 of the policy, the third unnumbered paragraph provides as follows:

*“the continued incarceration of terminally ill offenders and remand detainees have a huge impact on the already limited resources with regards to the provision of primary healthcare and related services.”*

51. Clause 6 of the policy outlines the policy objectives, clause 7 gives the policy principles, clause 8 deals with policy implementation, clause 9 policy monitoring, clause 10 policy evaluation while clause 11 deals with policy review. The whole of this policy is attached to this affidavit and marked as “AF2”.

The Minimum Information Security Standards (“the MISS”)

52. This policy deals with the classification of documents and it is the same policy that guides the SAMHS on the handling of the sensitive, confidential and classified documents within its custodianship. I attach hereto a copy of MISS and mark it as “AF3”.

53. Chapter 2 of the MISS deals with definitions and the different levels of classification and explain what the implications of those different levels of classification are. Specifically on page 8 at paragraph 3.4.4 the MISS deals with documents that are classified as top secret. It is my submission that the Former President’s medical records reside within a classification regime that is top secret and as can be seen from the definition, tests and the explanation of what top secret classification means, it is clear that the documents contain sensitive information which is in the national interest, under the control of the state, exempted from disclosure and must enjoy protection against compromise.

54. On page 21, at Chapter 4, the MISS deals with the document security and I wish to draw the court’s attention to specifically the contents of paragraph 2 on page 24 which provides as follows:

*“2. Access to Classified Information*

*The general rules and prescriptions as to whom may have access to or inspect classified matters are as follows:*

2.1 A person who has an appropriate security clearance or who is by way of exception authorized thereto by the head of the institution or his/her delegate (see Chapter 5, paragraph 3.6, 10.2 and 10.3), with due regard being paid to the need-to-know principle.

2.2 Persons who must necessarily have access to that classified information in the execution of their duties (the need-to-know-principle) **on condition that a suitable clearance has been issued or authorization has been granted, as explained in Chapter 4, paragraph 2.1.**"

55. Clause 3 also on page 24 gives guidance on the handling of classified documents. At page 45 paragraph 11.3 deals with the management of files and I would like to draw the court's attention in particular to paragraph 11.3.10 which provides that:

*"only authorized persons may be allowed access to classified files. Internal policy should dictate who may authorize such access, subject to the-need-to-know-principle."*

56. Paragraph 12 on page 46 deals with the removal of classified documents from the premises. Any individual who has access to classified documents and who intends to reveal such files to any third party, has to take an oath as prescribed in Appendix B contained in the MISS starting from page 75.

57. Because of my level of security clearance then, which was the highest level of security clearance, I was allowed to have sight of the classified medical records of the Former President on a need-to-know basis although I was not allowed to make and keep copies of those medical records.

The Intelligence Services Act 65 of 2002 Read Together with the National Strategic Intelligence Act 39 of 1994, as Amended

58. Both these Acts deal with classified information that is in the custodianship of the state through the State Security Agency and the same provisions are mirrored in Chapter 6 of the Defence Act 42 of 2002. The SAMHS which is a division of the Department of Defence, is governed by the same Defence Act and should comply with Chapter 6 of the Defence Act. SAMHS could therefore not act outside of the ambit of Chapter 6 which deals with the Defence Intelligence, especially regard being had to the fact that the medical records of the Former State President reside within and managed within a top-secret classification regime. The MISS would also be applicable to the SAMHS.

59. It is my contention that although I have given an undertaking that I will file the complete record as required by Rule 53, I am also hamstrung by the provisions of the MISS, the Defence Act and the two National Intelligence Acts which prohibit me from disclosing the information that I had sight of from the medical records and also the fact that I do not have copies of those records which are in the custody of SAMHS and thus further complicated by the fact that the Third Respondent has refused consent for the disclosure of those medical records.

60. The failure by the Applicant to cite SAMHS as a necessary party to these proceedings has also contributed to the failure on my part to file a complete record. I contend that the filing of a partial record with redacted portions was

not done to undermine the authority of this court or to hamper the proper adjudication of the application before this Honorable Court.

**I) Responding to Specific Allegations in the Founding Affidavit**

61. I now proceed to deal with the specific allegations as contained in the Applicant's founding affidavit. I reiterate that the failure to deal with any specific allegation in the Applicant's founding affidavit should not be read as having admitted the allegations but those allegations should be taken as denied by the First Respondent.

**62. AD Paragraphs 1, 2, 3 and 4 thereof:**

62.1. Save to admit the identity of the Applicant, the remainder of the allegations contained in these paragraphs are denied;

62.2. I further deny that the Applicant can rely on information that is said to be in the public domain which includes newspaper articles and media statements and ask this Honourable Court not to accept this type of evidence. Newspaper articles specifically are opinions of individual journalist and cannot be relied upon as evidence in a court of law.

**63. AD Paragraphs 5, 6, 7, 8, 9 and 10 thereof:**

63.1. Save to admit that the 29<sup>th</sup> June 2021, the 07<sup>th</sup> July 2021, the 05<sup>th</sup> September 2021 are the correct dates in which certain events occurred, I deny and reject the dramatization and sensationalisation of

the events as they unfolded after the pronouncement by the Constitutional Court on the sentencing of the Third Respondent;

63.2. I specifically deny that the decision to place the Third Respondent on medical parole falls to be reviewed and set aside based on the reasons advanced by the Applicant and I further deny that the medical parole decision may be unlawful for other reasons as well;

63.3. I further deny that the effect of the medical parole decision in respect of the Third Respondent is to evade the Constitutional Court's decision to imprison him. The Applicant seems to conveniently overlook the fact that the Third Respondent was incarcerated, processed in a Correctional Services Centre like any other inmate and he qualified to be considered for medical parole like any other inmate within a Correctional Services Centre;

63.4. I further submit that once the Constitutional Court pronounced on the sentence of the Third Respondent, the Court became *functus officio* and cannot interfere with the functioning and administration of the Department of Correctional Services. The principle of separation of powers is still very much alive in the South African legal system and cannot be overlooked even in this case;

63.5. The Applicant, at paragraphs 9 and 10, brings emotions and over-exaggerate the crime with which the Third Respondent was found guilty of. It should not be forgotten that the Third Respondent was incarcerated for contempt of court and sentenced to 15 months



imprisonment. This crime can hardly be described as egregious which simply means outstandingly bad or shocking;

63.6. I also submit that the Third Respondent's political standing had nothing to do with his placement on medical parole.

64. AD Paragraphs 12, 13 and 14 thereof:

The contents of these paragraphs are admitted.

65. AD Paragraph 15 thereof:

The contents of this paragraph are irrelevant to these proceedings. It is submitted that the Applicant is trying to paint a picture that borders on defaming my dignity and good name.

66. AD Paragraphs 16 to 25 thereof:

70.1 Save to admit the identity of the First to Fifth Respondents, the remainder of the allegations contained in these paragraphs are irrelevant to these proceedings.

70.2 The First Respondent denies that the Applicant has make out a case for a cost order against the Commissioner.

67. AD Paragraphs 26, 27 and 28 thereof:

67.1. The contents of these paragraphs are admitted as far as they give the correct provisions of the quoted Act. However, it is submitted that the

Applicant has misdirected itself by relying or basing its case on section 79 of the Correctional Services Act without looking at the other sections of the relevant Act. The relevant provisions have been dealt with in the introductory part of this affidavit and the court is directed specifically where the provisions of the Correctional Services Act have been dealt with from section 73 right up to section 79;

67.2. The Applicant has quoted only section 79 of the Act and sections 29A and 29B of the regulations that it was under the impression would bolster its case if the Applicant was to rely solely on that section. It is submitted that the Applicant is wrong in its reliance on section 79 solely. The Applicant is encouraged to read what I have submitted in the introductory part and the relevant sections I have relied on.

68. AD Paragraphs 29 to 37 thereof:

I reiterate that the reliance by the Applicant on section 79 and reading it in isolation is misplaced and does not assist the Applicant's case at all. Section 79 should be read with all other relevant sections, starting from section 73, and more particularly section 75. In any event, my decision falls within compliance with section 79(1) as can be seen from the affidavit filed in response to the Helen Susman Foundation.

69. AD Paragraphs 38 to 47 thereof:

I submit that the allegations contained in this paragraph are not relevant to these proceedings as the Constitutional Court has already pronounced its sentence in relation to the contempt of court

proceedings that were argued before it. It is therefore not relevant to rehash the proceedings and the arguments that were made in court.

70. AD Paragraphs 48 to 53 thereof:

I have no personal knowledge of the activities of the Third Respondent outside the Correctional Services Centre and I can therefore not plead to the allegations contained in these paragraphs.

71. AD Paragraph 54 to 56 thereof:

The contents of these paragraphs are admitted. I further plead that the Third Respondent is entitled to apply for compassionate leave like any other inmate incarcerated in any Correctional Services Centre throughout the Republic of South Africa.

72. AD Paragraphs 57 to 61 thereof:

72.1. The record as filed in terms of Rule 53 is clear where the Third Respondent was during the period from the 22<sup>nd</sup> July 2021 and the 06<sup>th</sup> August 2021. It is clear from the record, and it has already been set out in the introductory part of this affidavit, that the Third Respondent was granted compassionate leave for the 22<sup>nd</sup> July 2021 and came back later that afternoon on the 22<sup>nd</sup> July 2021. It is also not a secret that the Third Respondent was admitted to the hospital wing of the Estcourt Correctional Facility;

72.2.

72.3. I admit the content of paragraph 58 as far as it relates to the statement as given by the Department's spokesperson;

72.4. I cannot plead to a statement issued by the Jacob G Zuma Foundation and especially a statement that was published in social media and not in any court proceedings or an affidavit. It remains hearsay and I do not even know the motive behind the tweeting of such information.

72.5. I admit the allegations contained in paragraph 60 as far as it quotes correctly the statement issued by the DCS on the 15<sup>th</sup> August 2021;

72.6. I reiterate that the events that took place from the day that the Third Respondent was admitted to the Estcourt Correctional Services Centre up and until the 05<sup>th</sup> September 2021 when it was announced that he has been granted medical parole are adequately outlined in the introductory part of this affidavit.

73. AD Paragraph 62 to 66 thereof:

73.1. I reiterate that the Applicant's reliance on only section 79 of the CSA is seriously misplaced and does not assist the Applicant's case and the relief that the Applicant seek the court to grant;

73.2. It is not a secret that the MPAB did not recommend that the Third Respondent be placed on medical parole. The process followed and the recommendations of the MPAB have all been dealt with in the introductory part of this affidavit. As indicated earlier in this affidavit, I will not plead to any newspaper articles as that is hearsay evidence

and there are no confirmatory affidavits by the authors of those articles and I also reiterate that this is someone's opinion and I will therefore not plead thereto and I also place on record that any hearsay evidence that is placed before the court and that I had not pleaded to, should be deemed as denied;

73.3. The notion that the Applicant wants to bring to this Honourable Court that I overrode the MPAB's recommendation is denied and dismissed for being an untruth. I reiterate that I took the decision in line with the discretion and the authority conferred on me by the Correctional Services Act.

74. AD Paragraphs 67 to 69 thereof:

74.1. I admit that I gave an interview to Mr. Vuyo Mvoko on SABC's Watchdog program but deny that in granting the Third Respondent medical parole, I overrode the recommendations of the MPAB. I have already explained how and why I took the decision to place the Third Respondent on medical parole.

74.2. I deny that at any time during the interview I admitted to have overridden the decision of the MPAB. All I said in the interview and which is also clear from the quoted passages by the Applicant, and specifically on page 29 from line 17 downwards, that I rescinded (for lack of a better word) the original delegation and I exercised my powers in terms of the CSA. I had further indicated that I had provided reasons for the decision taken.

74.3. For the remainder of the allegations contained in these paragraphs, I plead in line with the information that I have already given in the form of the record and the introductory part of the affidavit. Any allegations made in response to the above that is not in consistent with what is contained in the record and in the introductory parts of this answering affidavit should be deemed to be denied.

75. AD Paragraph 70 thereof:

75.1. I reiterate that the answers to most of the questions posed in this paragraph are contained in the record that was filed and the explanation given in the introductory part of this answering affidavit;

75.2. It is also worth mentioning that the MPAB described the Third Respondent's condition as stable and based on that finding the MPAB deemed it fit not to recommend the Third Respondent for medical parole. What is important and that needs to be noted is that at that stage, the Third Respondent was still in hospital and his condition was stabilized while he was under the care of the doctors in a High Care hospital ward. The decision that Third Respondent's condition has been stabilized did not give any further clarity that the Third Respondent's condition will remain stabilized in a Correctional Facility, outside a hospital ward;

75.3. I reiterate that the Third Respondent, the same as any other citizen of the Republic of South Africa, has the right to his medical records being maintained as private. The fact that he is an inmate who is still serving

a sentence does not take away those rights to confidentiality and privacy. It should also be borne in mind that the medical records of the Third Respondent, being a Former State President of the Republic of South Africa, is in the custodianship of SAMHS. This fact has already been explained in the introductory part of this answering affidavit;

75.4. The Applicant is called upon to appraise this Honourable Court of any authority that allows for any citizen of the Republic of South Africa to have their personal medical record being made public without their consent.

76. AD Paragraphs 71 to 76 thereof:

The allegations contained in these paragraphs are denied. It is submitted that the Applicant failed to make out a case under the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") and further that the Applicant relied on a single provision of the CSA without reading the CSA and regulations as a whole.

77. AD Paragraphs 77 and 78 thereof:

77.1. I have already pleaded and made submissions on the confidentiality of medical records and I reiterate what I submitted earlier in this answering affidavit;

77.2. I deny that I should be compelled to make public the Third Respondent's medical reports for reasons already stated in this answering affidavit;

77.3. Although I have stated that Third Respondent satisfied sections 79(1)(a) of the CSA , that is not the only section that I relied on when making my decision;

77.4. I cannot plead to the utterances of the Third Respondent or his foundation and which statements were made outside the ambit of the Department of Correctional Services. I therefore deny any knowledge of those statements or utterances and I put the Applicant to the proof thereof;

77.5. I do not have any knowledge that the Third Respondent refused to permit the NPA's doctors to examine him to determine if he is healthy enough to stand trial for corruption. I plead that the issue of the trial for corruption is not before this court and it is not relevant to these proceedings.

78. AD Paragraphs 79 to 85 thereof:

78.1. I plead that the allegations pertaining to Mr Schabir Shaik are not relevant to these proceedings and Mr Shaik is not before court. I therefore deny the allegations made in relation to Mr Shaik as I do not have any of that information and knowledge in my personal capacity;

78.2. I further challenge the Applicant to prove his medical knowledge and medical qualifications for the Applicant to boldly declare that the Third Respondent is not illegible for medical parole and that he is not sufficiently ill to warrant the granting of medical parole without the Applicant having examined and diagnosed the extent of the Third





Respondent's medical condition. I reiterate that I deny the allegations contained in these paragraphs.

79. AD Paragraphs 86, 87 and 88 thereof:

I have already dealt with the issue of urgency at the beginning of this answering affidavit.

80. AD Paragraphs 89 thereof:

80.1. I have already given an explanation and reasons why the record is as it is. It should be noted that while the DCS had embarked on a process of trying to engage the Department of Defence in line with the Intergovernmental Cooperation Framework to request SAMHS to make available the medical records, the Applicant and in this instance all three Applicants before this Honourable Court, decided that they will proceed with the record as it is. Blame cannot now be put at my doorstep because the Applicants took a decision in the face of the incomplete record while the DCS was trying to negotiate with the Department of Defence in order for them to release the record;

80.2. I deny that the Applicant is authorized to demand the type of documentation and reports including confidential and classified information as the Applicant is doing in this paragraph. I have already explained the protocols and attached the relevant policies that regulate the handling of such information;

80.3. I further deny the relevance of paragraph 89.14;

80.4. I deny that I am precluded from objecting to disclosing some of the record as disclosure of classified documents carries a sanction of imprisonment and/or fine as can be gleaned from the MISS Policy and related legislation.

81. AD Paragraphs 91 to 94 thereof

81.1. I plead that I have already explained the whereabouts of the medical records of the Third Respondent and also that they are not in my possession but they are in the possession of SAMHS;

81.2. I reiterate that the Applicant is relying on the wrong provision and therefore the Applicant's insistence that the medical records of the Third Respondent should be produced even though the Applicant admits that the medical records of any person are confidential is a serious misdirection and it is misplaced. I have already explained the circumstances around those records;

81.3. I also deny the allegation that the Third Respondent's consent to the full disclosure of his medical information in his application for medical parole extends to and includes parties to any subsequent review of the medical parole decision. I challenge the Applicant to produce authority to this effect to the above Honourable Court;

81.4. I deny the fact that the Third Respondent as an inmate strips him of any rights as enshrined in the Constitution, which rights include the right to privacy and the right to his dignity. I reiterate that there is a patient-doctor confidentiality that may not be bridged without the Third

Respondent's consent. I also reiterate that the Third Respondent had made it clear in a letter dated 27 September 2021 that he withholds consent for his medical records to be made public. It is his constitutional right and I cannot violate that, especially in the face of the fact that those medical records are classified documents. I have already stated the consequences of accessing the classified documents without the necessary permission;

81.5. I reiterate that the proceedings that unfolded before the Constitutional Court are irrelevant to this application as the Constitutional Court has already ruled in the matter that was before it. The Applicants are trying to sensationalise the proceedings in the Constitutional Court and trying to rehash the case that was heard by the Constitutional Court. The issues of the State Capture Commission are not relevant to these proceedings and therefore I am unable to plead thereto because the court has pronounced and I ask that my failure to plead thereto should be deemed as a denial;

81.6. I am advised, which advice I accept, that it is not settled law that confidentiality is no defence to the full provision of a Rule 53 record;

81.7. The Applicant cannot be allowed to employ tyrannizing tactics in the language used in an affidavit where the Applicant "warns" the First Respondent that should he fail to timeously disclose the Rule 53 record in full then the Applicant will seek a punitive cost order against him. It is trite that the issue of cost cannot be used to threaten a litigant or even worse, in this instance, to force a litigant to engage in unlawful activities

of disclosing a record that is subject to confidentiality and classification protocols without the necessary permission in the fear of having a cost order against him;

81.8. I may have committed to provide the full record, which I am obligated to do in terms of the law but in the same breath, I am not allowed to disclose classified and confidential information. In relation to confidential information, I needed the consent of the Third Respondent which was explicitly denied and in relation to the classified documentation I needed the corporation of SAMHS which was also withheld. I cannot, for fear of having a cost order granted against me, go and commit an illegal and unlawful act in order to save my skin. It should also be borne in mind that the Applicant decided to go ahead with the review application on the face of the record that was filed.

## 82. AD Remedy

82.1. I deny that substitution is the appropriate remedy and I also do not understand why the Applicant says a correct decision is a foregone conclusion. This statement creates the impression that the Applicant brought this application when already the Applicant knows the outcome of this application. If that is the case, it would be a travesty of justice;

82.2. I deny that I am not authorized to grant medical parole and that only the MPAB is allowed to grant medical parole. The Applicant is deliberately misleading the above Honourable Court with its assertion that only section 79 is applicable in this situation. I reiterate that the

Applicant chose to ignore all the relevant sections and latched on one section that promotes their case, which I still reiterate it is misrepresenting the CSA as a whole.

Wherefore I pray for an order dismissing the Applicant's application with costs, such costs to include the employ of three counsel.

I now proceed to deal with the Applicant's Supplementary affidavit.

Applicant's 1st Supplementary Affidavit (dated 14 October 2021)

83. AD Paragraphs 1 to 4 thereof:

The contents of these paragraphs are noted.

84. AD Paragraph 6 thereof:

I have already dealt with the issue of punitive costs in the body of this answering affidavit. I reiterate what I have said earlier.

85. AD Paragraphs 7 to 9 thereof:

The contents of these paragraphs are noted.

86. AD Paragraphs 10 to 13 thereof:

86.1. Save to admit that I filed the non-controversial part of the record, the

remainder of the allegations contained in these paragraphs are denied;

86.2. The Applicant correctly describes the Third Respondent's medical information as confidential but goes further in the same breath to blame me for not disclosing such confidential medical records. It should also be borne in mind that the Third Respondent has, through his legal representatives, written a letter that the Applicant has attached to its supplementary affidavit and marked as **DA5**, and I must also mention that it forms part of the record, wherein the Third Respondent unequivocally withheld consent that I can disclose the Third Respondent's medical records.

86.3. I also refer the Applicant to the provisions of the Defence Act, the National Strategic Intelligence Act and the MISS which deals with the classification of information and I reiterate that I should not be forced to do anything illegal trying to comply with the demands of the Applicant. I am advised that not even the courts can force a litigant to do anything illegal by way of a court order. I am informed that further argument in this regard will be submitted to this Honourable Court during the hearing of this case.

87. AD Paragraph 14 thereof:

87.1. The Third Respondent will plead to this paragraph as I do not have personal knowledge of same.

88. AD Paragraphs 15 to 17 thereof:

88.1. I wish to refer the Applicant to the provisions of the MISS which deals with classified documents as explained herein before;

88.2. The allegations that are not consistent with what I have already submitted in the introductory portion of this answering affidavit are denied. I categorically deny that I value the wishes of Mr Zuma over my obligations to comply with the rule of law. I have already given an explanation of why I could not disclose the confidential and classified information as the information is in the custodianship of SAMHS;

88.3. The Applicant was informed during the first case management meeting that the records are in the custodianship of SAMHS but failed to join SAMHS when they amended or supplemented their papers. The issue of the non-joinder is already dealt with in the points *in limine*.

89. AD Paragraphs 18 to 29 thereof:

89.1. The Applicant is rehashing mostly the allegations that were made in the founding affidavit. I have already dealt with the allegations and any allegation that has not been dealt with in the responses to the founding affidavit should be deemed as denied;

89.2. The Applicant seems to overlook the fact that I had made an undertaking that I will file the full record. I know and understand my obligations as the then National Commissioner that I should comply with court rules and therefore it was never my intention to withhold any part of the record. It was only while I was busy compiling the record and requesting such records from SAMHS that I was informed that the record in their custody was subject to classification and classification

protocols. I have already attached to this affidavit a copy of the MISS which will give guidance on how classified documents are handled;

89.3. I have also indicated, through my legal representatives in the case management meeting that I am trying to engage the Minister of Defence, with the view of getting the documents. The Applicant cannot in all fairness and good faith now blame me that I did not take necessary steps to try and get the classified documents from the Department of Defence;

89.4. It should also be borne in mind that the letter attached to the Applicant's supplementary affidavit and marked as **DA5** also put me on terms that the Third Respondent wanted an undertaking from my office not to disclose his medical records;

89.5. If one has regard to the two letters that were written on my behalf, one dated the 22<sup>nd</sup> September 2021 and the next one dated 23<sup>rd</sup> September 2021, it is clear that I was busy compiling the record, bearing in mind that some of the records were in the custody of the officials in Estcourt Correctional Centre and I had to request those, others were in the custodianship of SAMHS and others were in my office. It was only when I was collating all this information that I was informed of the classification of those documents. The Applicant is invited to read the provisions of MISS which I have explained why I do not have the classified medical records in my position. I have already explained my security clearance level at that time which allowed me to have sight of those documents.



90. AD Paragraph 30 thereof:

90.1. The contents of this paragraph are admitted. I further plead that none of the parties received any response from the then Acting DJP on our request for a meeting. The parties then individually took steps to secure a meeting with the DJP which meeting was scheduled on the 30<sup>th</sup> September 2021.

91. AD Paragraphs 31 to 39 thereof:

91.1. I admit the exchange of letters between the parties;

91.2. I also wish to state that on behalf of the First Respondent, the legal representatives agreed in principle with the proposed confidentiality regime by the Applicant parties;

91.3. I can state on record that my office and the legal representatives did not consult the Third Respondent or his legal representatives in the compilation of the record or before it was circulated. The legal representatives of the Third Respondent received the record the same way as all the other parties. The insinuation that the record may have been influenced by the Third Respondent and/or his legal representatives is misplaced;

91.4. I reiterate that the Applicant took a conscious decision to go ahead with this application on the limited record that was filed. It was also submitted on my behalf by my legal representatives that the limited record prejudices my opposition of the application more than it gives an

advantage to the Applicants. But being a representative of a government department, I could not stand in the way of the Applicants once they have decided to go ahead with the application given the limited record they have received. I admit the version of the events that took place during the case management meeting on the 08<sup>th</sup> October 2021 as far as they depict the correct picture.

92. AD Paragraphs 40 to 42 thereof:

92.1. The allegations contained in these paragraphs are denied;

92.2. The Applicant blames me for setting a dangerous precedent without taking all the circumstances into account. We have a situation where the medical records of both current and former Heads of State are in the custodianship of SAMHS and are subject to a top-secret classification regime. The Applicant, in its application, is trying to force me to act in an illegal manner and disclose, if possible, the classified record which is contrary to what the law says. I am advised that further argument will be advanced on this point at the hearing of this application;

92.3. The Applicants also overlook the fact that they have other avenues of seeking or forcing the disclosure of this information via the rules of court. I have already dealt with the non-joinder of the SAMHS as an interested party who has in its possession the records that are being sought by the Applicants.

93. AD Paragraphs 42 to 70 thereof:

93.1. I admit the allegations wherein the Applicant quotes the information contained in the record as filed on behalf of the National Commissioner and I deny any other further allegation that may not be consistent with what has already been stated in this answering affidavit. It is also submitted that the Applicant should read carefully the policy on parole, which explains that every inmate is assessed and their profile prepared within 72 hours of being admitted to a Correctional Centre and the inmate's medical condition(s) are then recorded. It is understandable that the SAMHS recommended that the Third Respondent should be sent to a tertiary hospital for assessment as they have been providing medical and health needs to the Third Respondent.

94. AD Paragraphs 71 to 73 thereof:

94.1. Save to correct that when I took the decision on the 05<sup>th</sup> September 2021, the Third Respondent was in hospital and therefore the reference to the release of the Third Respondent to his residence meant that he would be released from hospital to his home. It is common practice that before an offender is released on medical parole, the conditions of where the parolee will be released to are investigated and someone should sign the release form and give an undertaking that they will care for the parolee. It does not necessarily mean that it should be a medical official although in this regard the Third Respondent was released into the care of his wife but under the medical supervision of SAMHS.

94.2. I also need to make it clear that there are different types of serving a community corrections sentence with different conditions, for example,

parole, day parole, medical parole and correctional supervision. Under all these types of community corrections, an offender is still serving a sentence that was pronounced by a court.

94.3. I uttered the words that this is a unique moment within the history of the Department of Correctional Services and it is true because in the democratic era of South Africa (and even prior thereto), we have never had a former Head of State incarcerated. This was a first for the DCS, and we had to, amongst others, seek legal advice on how to deal with the former Head of State's incarceration and also to investigate the issues surrounding his presidential privilege for us to determine who is going to be responsible for his healthcare.

95. AD The Second Conclusion Paragraph 74 to 76 thereof:

95.1. The contents of these paragraphs are denied. The hospital wing in Estcourt Correctional Centre remains part of the facility and has similar features to a cell. The only time that the Third Respondent left the Estcourt Correctional facility was on two occasions, one on the 22<sup>nd</sup> July 2021 when he was afforded compassionate leave, something that is available to all inmates and secondly on the 05<sup>th</sup> August 2021 when he was transferred to a tertiary hospital. It should also be noted that even while he was in hospital from the 05<sup>th</sup> August 2021, he was remained in the custody of DCS and still serving his sentence. He was not free to go wherever he liked and he is still not free to go wherever he likes or to do whatever he wants to do. For him to leave his magisterial district he needs permission from the DCS as part of his medical parole conditions.

96. AD Paragraphs 79 to 82 thereof:

96.1. I deny the contents of these paragraphs. I reiterate that the Applicant is harping on the provisions of section 79(1) of the CSA without reading the other provisions of the CSA and not having considered the parole policy.

97. AD Paragraphs 83 to 85 thereof:

97.1. I deny the allegations made in these paragraphs. It is the responsibility of the SAMHS to provide the requisite medical care and the DCS has been given the assurance that this would be done. The Third Respondent was therefore not sent further away from tertiary medical care. The Applicant decided to read selectively because on the 05<sup>th</sup> September 2021 when the Third Respondent was placed on medical parole, he was still in hospital.

98. AD Paragraphs 86 and 87 thereof:

98.1. I have already dealt with the dates of admission and discharge of the Third Respondent in paragraphs 27 to 29 herein above.

99. AD Paragraphs 88 and 89 thereof:

99.1. Save to admit that the Third Respondent should receive the requisite medical care the same as all other inmates, the remainder of the allegations in these paragraphs are denied.

100. AD Paragraphs 90 to 93 thereof:

100.1. I reiterate that in terms of the provisions of section 75 of the CSA, I have the authority to grant medical parole without the recommendations of the MPAB. I deny every other allegation contained in this affidavit that is not consistent with what I have submitted in the introductory part of this answering affidavit.

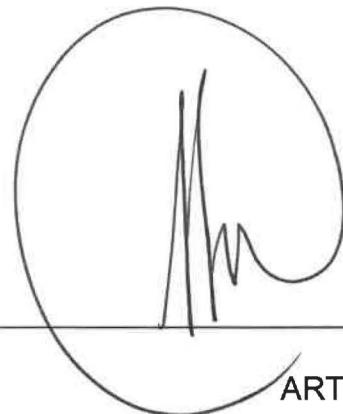
101. AD Paragraph 94 and 95 thereof:

101.1. I deny the allegations contained in these paragraphs. I refer the Applicant to my introductory part where I dealt with the enabling provisions of the CSA and the reasons for granting parole to the Third Respondent.

102. AD Paragraphs 96 to 100 thereof:


102.1. I have already dealt with the allegations made by the Applicant in relation to the relief sought and in particular dealt with the issue of substitution and costs.

WHEREFORE I still persist that the Applicant failed to make out a case for the relief sought and this application should be dismissed with costs, such costs to include the employ of three (3) counsel.

A handwritten signature in black ink, consisting of a large, stylized loop on the left and several vertical and horizontal strokes on the right, all contained within a large, thin circular outline.

ARTHUR FRASER

SIGNED and sworn to before me at PRETORIA on the 26<sup>th</sup> day of OCTOBER 2021, the deponent having acknowledged that he/she knows and understands the contents of this affidavit and all the provisions of Act 16 of 1963 and the Regulations promulgated in terms thereof concerning the taking of the oath having been complied with in my presence and within the area for which I have been appointed as Commissioner of Oaths.

  
\_\_\_\_\_

COMMISSIONER OF OATHS

Capacity:

Full names:

Physical address:

**MAROTHI MASHIFANE INC ATTORNEYS**  
Marothi Mashifane  
Commissioner of oaths : Practising Attorney  
Olivetti House 806 Floor 8, 241 Sophie De Bruyn Street, Pretoria  
Tel: 012 3211512 Fax: 086 431 7635  
Sign:  Date: 26/10/2021





**correctional services**

Department:  
Correctional Services  
REPUBLIC OF SOUTH AFRICA

<b>Patient Name</b>	Mr. Jacob Gedleyihlekisa Zuma
<b>Registration Number</b>	221 673 598
<b>Date of Birth</b>	1942/04/12
<b>Date of Initial Examination</b>	13 August 2021
<b>Date of Re-Assessment</b>	17 August 2021
<b>Correctional Centre</b>	Estcourt (Pretoria Heart Hospital).
<b>Region</b>	KZN
<b>MPAB Member</b>	Dr. LJ Mphatswe

**SUMMARY**

The Applicant in the matter is 79 years old Mr. JG Zuma the former President of the Republic of South Africa. His medical and Specialist team has submitted a detailed specialists report with supporting documents from the treating Specialists'. I wish to request MPAB Members to read the Specialists reports in detail and familiarize themselves with the contents. My approach with regards to the Specialists reports is to provide salient points, but the Board must be directed by the details in the Specialists reports. In the event I have experienced typographical error. I request that the Board consider remedial work on this report as with progress through the reading to avoid unnecessary and unintended contradictions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On the first day of the assessment the following were present who constitute the treating team from the military health services.

- 1).George Moloisi (OECF) Paramedic

MA





**correctional services**

Department:  
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- 2).Dr Z.K Motene Medical Officer
- 3).Dr M.Z Mdutywa Medical Officer

On the second visit the Head of Surgery, representative of the treating Physician, the Paramedic and Dr Motene the Medical Officer

In the main the applicant is a high-profile figure, a former President of the Republic. He is of old age

[REDACTED]

**Salient points from Specialists Reports:**

[REDACTED]

A second assessment was conducted on the 17/08/2021 [REDACTED]

MA (M)



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**MEDICAL CONDITION APPLIED FOR UNDER SECTION 79 OF ACT 111 OF 1998 AS AMENDED**

[REDACTED]

**MEDICAL/CLINICAL HISTORY**

[REDACTED]

MA (M)



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[REDACTED]

**Current Admission:**

[REDACTED]

[REDACTED]

The facility does not cope with the nature of the demand not withstanding his position in society. His treatment currently is taken through the support services of his security detail and medical personnel. Further to the latter there is general concern about the correctional facility's ability to assist with easy access to other health services in the event of an unexpected sudden health incident.

**CLINICAL ASSESSMENT**

Weight:	[REDACTED]
HGT:	[REDACTED]
Length:	
Urine:	

MA



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BP:	
HB:	

<b>General Condition</b>	[REDACTED]
<b>CVS</b>	[REDACTED]
<b>Respiratory</b>	[REDACTED]
<b>Abdomen</b>	[REDACTED]
<b>CNS</b>	[REDACTED]
<b>Musculoskeletal</b>	[REDACTED]
<b>Genital-Urinal</b>	[REDACTED]
<b>Medication</b>	[REDACTED]

MA



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**SPECIAL INVESTIGATIONS**

<b>Pathology</b>	[REDACTED]
<b>Radiology</b>	[REDACTED]

**REPORTS**

<b>Specialist Reports</b>	[REDACTED]
<b>Occupational Reports</b>	[REDACTED]
<b>Physiotherapy Reports</b>	[REDACTED]
<b>Nursing Report</b>	[REDACTED]
<b>Photos (With patients signed consent)</b>	[REDACTED]
<b>Other</b>	[REDACTED]

**CONCLUSIONS**

Mr JG Zuma is 79 years of age [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(M)  
MA



**correctional services**

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[REDACTED]

**RECOMMENDATION / REVIEW DATE**

The Applicant being Mr JG Zuma, 79 years of age present as stated herein above a complex medical condition which predispose him to unpredictable medical fallouts or events of high-risk clinical picture. He is of old age and generally looks unwell and lethargic. The total outlook of his complex medical conditions and associated factors in an environment limited to support his optimum care is of extreme concern. More worrisome is the unpredictability of his plausible life threatening cardiac and neurological events. The risk for potential surgery has become in my assessment a personal one albeit a potentially development of a malignant condition arising from a high grade ileocecal and colon lesion exists. In the main and primarily in summation of the total clinical assessment motivated by high risk factors. I wish to recommend that the applicant be released on Medical Parole with immediate effect, because his clinical picture presents unpredictable health conditions constituting a continuum of clinical conditions. Sufficient evidence has also arisen from the detailed clinical reports submitted by the treating Specialists to support the above stated recommendation.

Report Prepared: Dr L.J Mphatswe



**correctional services**

Department:  
Correctional Services  
REPUBLIC OF SOUTH AFRICA

MPAB MEMBER

23/08/2021.

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# ANNEXURE "AF2"



DEPARTMENT OF CORRECTIONAL SERVICES

## Medical Parole Policy and Procedure



**correctional services**

Department:  
Correctional Services  
REPUBLIC OF SOUTH AFRICA

  
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## 1. Executive summary.

The department incarcerates inmates who suffer from various terminal illnesses which are progressive and with poor prognosis. Some of these inmates die whilst incarcerated.

The department has limited capacity to provide the required care (palliative care) to this category of offenders and remand detainees. The continued incarceration of terminally ill offenders and remand detainees has an impact on the already limited resources with regard to the provision of health care and related services.

A number of challenges were experienced in the implementation of the current legislation, policies and procedures on the release of offenders on medical grounds and the main challenges included the following:

- Limited understanding and interpretation, by the various stakeholders involved in this process;
- Inconsistent implementation by the role-players in the different Management Areas, for example at what stage of illness should the process for considering an offender for placement on medical parole be initiated; and
- Expectations from the medical practitioners who assess the offenders and recommend consideration for placement on medical parole to indicate their life expectancies and capacity of recommitting a crime.

A need was therefore identified to review the current legislation and develop new policy in order to provide a framework within which all releases on medical parole would be managed.

In terms of the Correctional Matters Amendment Act, (Act No 5 of 2011) Section 79 (3)(a), the Minister must establish a Medical Parole Advisory Board to provide an independent medical report to the Correctional Services Parole Board, National Commissioner or Minister in the consideration for medical parole. This act also makes provision for the management of terminally ill and severely incapacitated remand detainees.

The main purpose of this policy is to provide standardized guidelines on the management of the offenders who are eligible for medical parole based on medical evidence and remand detainees who are terminally ill and severely incapacitated.

## 2. Definition of Terms.

**Assessment:** the process of evaluation of the disease or condition based on the patient's subjective report of the symptoms and course of the illness or condition and the examiners' objective findings, including results from laboratory tests, physical examination, medical history from other medical professionals.

**Activities of daily living:** Ability of the ill patient to perform usual activities or ordinary tasks independently for example bathing, eating, walking to the bathroom and exercising.

**Compassionate release:** A legal system that grants offenders early release from sentences on special grounds such as terminal illness.

**Correctional Medical Officers:** Those Medical Practitioners rendering services on behalf of Correctional Services as defined in section 1 of the Correctional Services Act, 1998.

**Correctional health facility:** a facility where primary health care services are provided and this includes primary health care clinic and in-patient facility.

**Debilitating illness:** any condition in which there is a major irreversible morbidity for example AIDS, Alzheimer's disease and cancer.

**Functional incapacity:** a state in which an individual is unable to carry out activities based on his or her abilities.

**Karnofsky Score:** a performance measure for rating the ability of a person to perform usual activities, evaluating a patient's progress after a therapeutic procedure, and determining a patient's suitability for therapy. It is used most commonly in the prognosis of cancer therapy.

**Medical parole:** The placement or release of an offender that is suffering from a condition of which the prognosis indicates a condition listed in Regulation 29A (5), of the Correctional Services Regulations, 2004, promulgated by the Government Notice No. R914 of July 2004 as amended, subject to compliance with the provision of section 79 of the Correctional Service Act.1998.

**Medical Report:** a detailed report that has been compiled by any health care professional (including specialists) on the condition of an offender- patient has applied for medical parole.

**Mental or intellectual incapacity:** Inability of a person to look after her or his own health, safety or welfare or to manage her or his own affairs as a result of any damage to or any illness, disorder, imperfect, impairment or deterioration of the brain or mind (i.e. brain damage or neurological disease).

**Palliative care:** An approach that improves the quality of life of patients and their families facing problems associated with life threatening illnesses, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other physical, psychological and spiritual symptoms.

**Self Care:** Decisions and actions that an individual can take to cope with a health problem or to improve his or her health. Examples of self-care behaviors include seeking information, exercising, seeing a health care provider on a regular basis, getting more rest, lifestyle changes, complying to prescribed diets and making decisions to act.

**Terminal illness:** A terminal illness is an infection or disease which is considered ultimately fatal or incurable. Usually a patient is considered to have a terminal illness if he or she seems likely to die despite diagnosis and treatment, although it is possible for people with a terminal illness to live for years before succumbing to the medical condition.

### 3. Background

All offenders and remand detainees have a right to adequate health care services as obligated by the Constitution of the Republic of South Africa. In terms of the Correctional Services Act, (Act 111 of 1998), the department must provide primary health care services and refer patients to external health care facilities for secondary and tertiary levels of health care.

A number of offenders and remand detainees are suffering from various terminal illnesses with poor prognosis which are progressive and non-reversible. Some offenders suffer from medical conditions which are related to aging and are progressive in nature. Only a small number of these offenders are considered for placement on medical grounds and released before they can die whilst others die whilst incarcerated.

Seriously ill offenders and remand detainees can be categorized into those with:

- a terminal illness with poor prognosis;
- Alzheimer's and related dementia; and
- a serious, progressive and non-reversible illness with poor prognosis, which has profound functional and cognitive impairments.

For the past five years (2006- 2010), two hundred and thirty three (233) offenders were diagnosed with terminal illnesses. Out of those offenders, two hundred and thirty one

(231) were recommended for consideration to be placed out on medical parole by the different parole boards which only approved one hundred and twenty seven (127) whilst thirty six (36) died whilst still awaiting the decision of the parole boards.

Due to the nature of various illnesses most offenders and remand detainees were referred to external health facilities and discharged from these facilities with recommendations that palliative care must be provided. Patients with terminal illnesses are provided with palliative care, which provides pain relief and other measures designed to make the end stages of terminal illness as comfortable as possible. The department has limited capacity to provide palliative care to this category of offenders and remand detainees. Where possible the department would facilitate the provisioning of palliative care in collaboration with external service providers whilst processing the release on medical grounds, or withdrawal of the charges against remand detainees by the Department of Justice.

The continued incarceration of terminally ill offenders and remand detainees has a huge impact on the already limited resources with regard to the provision of primary health care and related services.

Some of the challenges that are experienced in the implementation of placement on medical grounds includes inconsistent understanding and implementation of the procedures; laborious approval processes, reluctance by some families to take care of their respective terminally ill offenders who have been released on medical grounds to mention a few.

Medical practitioners were expected to indicate life expectancy and the possibility of re-committing a crime when recommending for placement on medical grounds. Predicting how long patients will live is difficult when offenders suffer from conditions like dementia, advanced liver, heart and lung diseases. For some patients with cancer and other diseases, life expectancy and functional abilities can be unpredictable, with declines occurring only in the last weeks of life.

In instances where requests for placement on medical parole were not submitted on time, eligible offenders would die before their applications could be completed. If submitted on time, terminally ill offenders could live longer.

Legislation did not make provision for medical parole of terminally ill remand detainees since they are not yet sentenced. Based on the medical condition of the remand detainee, medical reports would be submitted with recommendations to the courts to consider withdrawing the cases or granting of bail.

A need was identified to review legislation and develop new policy and procedures in order to provide a framework within which all releases on medical parole will be managed and to standardize implementation.

#### **4. Policy Mandates**

The Correctional Matters Amendment Act, (Act 5 of 2011) Section 49E and the Amendment of the Correctional Services Regulations, 2004 Section 26G makes provision for the management of terminally ill or severely incapacitated remand detainees.

The Correctional Services Act, (Act 111 of 1998), section 79 as amended states that, *"any offender may be considered for placement on medical parole, by the National Commissioner, the Correctional Supervision and the Parole Board or the Minister."*

The Amendment of the Correctional Services Regulations, 2004 Section 29A and 29B which makes provision for the granting of medical parole to a terminally ill or severely incapacitated offender and the establishment of a Medical Parole Advisory Board, respectively.

## 5. Policy Statement

Inconsistent interpretation and implementation of procedures on the placement on medical grounds which varied from one Region to the other, resulted in some of the offenders would succumb to their health conditions before the release processes were finalized.

The Medical Parole Policy is intended at identifying and facilitating the identification of offenders and remand detainees who place a huge resource burden on the department to be considered for release based on their health conditions before completion of their sentences. This policy also intends to extend the legal capacity to initiate the medical parole application process.

Health care professionals shall not be asked to assess and provide opinion on the risk of recommitting crime but solely address the medical status and prognosis of the offender or remand detainee. Risk assessment is the responsibility of Corrections or the Criminal Justice System.

## 6. Policy Objectives

The implementation of the Medical Parole Policy will be guided by the following objectives:

- To provide guidelines on the management of the offenders who are eligible for medical parole based on medical evidence;
- To standardize the procedures and processes for the implementation of medical parole in all correctional centers;
- To reduce the number of inevitable deaths of terminally ill offenders and remand detainees inside the correctional centers;
- To provide guidelines on the management of terminally ill and severely incapacitated remand detainees.

## 7. Policy Principles

- All staff, offenders, remand detainees and stakeholders shall be provided with information on the medical parole process.
- Any eligible offender shall be considered for placement / release on medical parole.
- Medical parole shall only be considered after the completion of the prescribed areas in the approved medical parole application form.
- All medical parole applications shall be subject to review by the Medical Parole Advisory Board (MPAB).
- A discharge plan shall be developed and implemented for each terminally ill offender who is identified as eligible for medical parole to ensure continuity of care.
- All terminally ill offenders shall be properly transported, accompanied and handed over to the family/next of kin / admitting institution on release.
- The Head of a Remand Detention facility or Correctional Centre shall refer a terminally ill or severely incapacitated remand detainee to the court for a decision.

## 8. Policy Implementation

The Accounting Officer, through delegated authority, shall ensure and take responsibility for the overall implementation of this policy and its procedures.

Regional Commissioners and Area Commissioners shall be responsible for the coordination, implementation and monitoring of this policy in their management areas to ensure:

- Compliance with principles and objectives of the policy;
- Capacity and resources for the implementation of the policy; and,
- Establishment of supporting structures.

Regional Commissioners and Area Commissioners shall be responsible for distribution of this policy to all the relevant stakeholders.

Area Commissioners shall be responsible for the implementation of this policy and its procedures.

## 9. Policy Monitoring

The policy will be monitored as follows:

- Through the analysis of regional monitoring reports, inspection and audit reports as well as observations during support visits;
- National Head Office shall be responsible for developing mechanisms to monitor the implementation of the policy at operational level;
- Regional Commissioners and Area Commissioners shall be responsible for monitoring compliance with the policy; and
- Information on medical parole shall be submitted through the prescribed communication channels to Head Office.

## 10. Policy Evaluation

This policy shall be evaluated annually to assess its efficiency and effectiveness.

The evaluation of the effectiveness of the policy shall be done through the analysis of regional reports, inspection and audit reports generated during policy monitoring processes and/or whenever there are changes to the applicable legislation.

Policy evaluation will focus on:

- Strengthening existing health services;
- Expanding the services to cover all offenders and remand detainees; and
- The impact of the service on the health of offenders, and its efficiency, effectiveness and relevance.

## 11. Policy Review

This policy shall be reviewed continuously to determine the extent of application, identify gaps (if any), assess the impact, and to ensure compliance with other policy frameworks including domestic legislation, international laws and other human rights provisions.

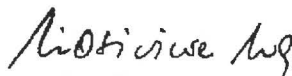
## 12. Legal Implications

This Policy should be a legal document aimed at assisting the Department of Correctional Services in managing the release of terminally ill offenders and remand detainees on medical grounds. It should also be a guiding and binding document to all health care professionals as well as custodial officials actively involved in non-nursing duties.

## 13. Financial Implications

The financial implications of this policy will arise out of the need for human resources, capacity development, equipment, facilities, services and programmes in order to implement, monitor and evaluate the policy.

## 14. Policy Approval



Minister: Department of Correctional Services

Date of Approval: 7 February 2012

## 15. Medical Parole Procedures

Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
1. All staff, offenders, remand detainees and stakeholders shall be provided with information on the medical parole process.	All staff especially those involved in Correctional and Rehabilitation Programmes must be orientated and briefed during parades and meetings on the medical parole process.	Professional nurses.  Head of Correctional Centre.	Area Commissioner.	Monthly.	Orientation of relevant staff on the medical parole process.  Recording in the diaries of those delegated for these responsibilities	Monthly.
	Offenders and remand detainees must be provided with information on the medical parole process during admission and on orientation to the Correctional Centre.	Professional nurse.  Correctional Programmes staff. Rehabilitation staff.	Area Commissioner.	On admission  Monthly.	Provision of information on medical parole to offenders and remand detainees as prescribed.	Monthly.
	Information must be shared and made available in various forms to the next of kin of offenders and remand detainees and all relevant stakeholders.	Head of Correctional Centre.  Professional nurse.  Correctional Programmes staff.  Rehabilitation staff.	Area Commissioner.	Monthly.	Information shared and made available to next of kin of offenders and remand detainees and all relevant stakeholders.	Monthly.

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
2. Any eligible offender shall be considered for placement / release on medical parole.	<p>Identification of an offender as eligible for possible medical parole is done on admission or during incarceration if diagnosed with one or more of the following medical conditions:</p> <p>(a) Infectious conditions -</p> <ul style="list-style-type: none"> <li>• World Health Organization Stage IV of Acquired immune deficiency syndrome despite good compliance and optimal treatment with anti retroviral therapy;</li> <li>• Severe cerebral malaria;</li> <li>• Methicilin resistance staphylococcus aurias despite optimal treatment;</li> <li>• MDR or XDR tuberculosis despite optimal treatment; or</li> </ul> <p>(b) Non-Infectious conditions</p> <ul style="list-style-type: none"> <li>• Malignant cancer stage IV with metastasis being inoperable or with both radiotherapy and chemotherapy failure;</li> <li>• Ischaemic heart disease with more than two ischaemic events in a period of one year with proven cardiac enzyme abnormalities;</li> </ul>	Health care professionals. Next of kin. Legal representative.	Area Commissioner.	Per incident.	Identification of offenders for possible medical parole.	Per incident.

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
	<ul style="list-style-type: none"> <li>Chronic obstructive airway disease grade III to IV dyspnoea;</li> <li>Cor-pulmonale;</li> <li>Cardiac disease with multiple organ failure;</li> <li>Diabetes mellitus with end organ failure;</li> <li>Pancytopenia;</li> <li>End stage renal failure;</li> <li>Liver cirrhosis with evidence of liver failure;</li> <li>Space occupying lesion in the brain;</li> <li>Severe head injury with altered level of consciousness;</li> <li>Multisystem organ failure;</li> <li>Chronic inflammatory Demyelinating Polyradiculoneuropathy;</li> <li>Neurological sequelae of infectious diseases with a Karnofsky score of 30 percent and less;</li> <li>Tetanus;</li> <li>Dementia, and</li> </ul>					

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
	<ul style="list-style-type: none"> <li>Severe disabling rheumatoid arthritis, and whether such condition constitutes a terminal disease or condition or the offender is rendered physically incapacitated as result of injury, disease or illness.</li> </ul> <p>Initiation of the medical parole application process must be recorded in the offender's health file.</p>					
	An informed written consent [G16(j)] is obtained from the offender to disclose his/her health status to any other relevant person for the purposes of placement / release on medical parole.	Professional nurse.	Operational Manager.	Per case.	Obtaining of informed consent from the offender.	Per case.

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
3. Medical parole shall only be considered after the completion of the prescribed areas in the approved medical parole application form (Annexure A).	Medical parole application forms must be made available and accessible to the terminally ill offender / legal applicant.	Professional nurse	Operational Manager.	Per incident.	Availability and accessibility of medical parole application forms.	Per incident.
	Completion of the medical application form will be as follows: • <b>Section A:</b> Offender, health professional nurse or legal applicant.	Offender. Health professional. Legal applicant. Offender.	Area Commissioner.	Per incident.	Correct completion of medical parole application process.	Per incident.
	Granting of consent to disclose health condition to the person assisting in completion of the application form and to undergo periodic medical examination by a medical practitioner if required.	Professional nurse.	Operational Manager.	Per incident.	Granting of consent to disclose health condition and to undergo periodic medical examination by a medical practitioner if required. Witnessing of section A in the application form.	Per incident.
	Section A of the application form must at all times be witnessed.					
	• <b>Section B :</b> Details of applicant if different from section A.	Health professional. Health professional. Legal applicant.	Operational Manager.	Per incident.	Accurate completion of section B.	Per incident.
	• <b>Section C :</b> Comprehensive medical report of the offender by utilizing the Karnofsky Score where applicable.		Operational Manager.	Per incident.	Accurate completion of section C.	Per incident.

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
	<p><b>The Karnofsky Performance Status</b> (KPS) is a standard way of measuring the ability of cancer patients to perform ordinary tasks. The Karnofsky Performance scores range from 0 to 100. A higher score means the patient is better able to carry out daily activities. The KPS may be used to determine a patient's prognosis and to measure changes in a patient's condition.</p> <p><b>KARNOFSKY SCORING</b> The Karnofsky score runs from 100 to 0, where 100 is "perfect" health and 0, is death.</p> <ul style="list-style-type: none"> <li>• 100% - normal, no complaints, no signs of disease</li> <li>• 90% - capable of normal activity, few symptoms or signs of disease</li> <li>• 80% - normal capacity with some difficulty, some symptoms or signs</li> <li>• 70% - caring for self, not capable of normal activity of work</li> </ul>					

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
	<ul style="list-style-type: none"> <li>• 60% - requiring some help, can take care of most personal requirements</li> <li>• 50% - requires help often, requires frequent medical care</li> <li>• 40% - disabled, requires special care and help</li> <li>• 30% - severely disabled, hospital admission indicated but no risk or death</li> <li>• 20% - very ill, urgently requiring admission, requires supportive measures or treatment</li> <li>• 10% - moribund, rapidly progressive fatal disease progress</li> <li>• 0% - death</li> </ul>					
	<ul style="list-style-type: none"> <li>• <b>Section D :</b> Details of offence, sentences and rehabilitation underwent by the offender.</li> </ul>	Case management Committee.	Head of Correctional Centre.	Per incident.	Accurate completion of section D.	Per incident.
	<ul style="list-style-type: none"> <li>• <b>Section E :</b> Arrangements for offender's supervision, care and treatment.</li> </ul>	Case Management Committee.  Community Corrections.	Head of Correctional Centre.	Per incident.	Accurate completion of section E.	Per incident.

MEDICAL PAROLE

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
	Completed medical parole application forms and all other relevant medical reports are forwarded to the Case Management Committee for consolidation with other Corrections' reports within two days of completion.	Professional nurse.	Operational Manager.	Per incident.	Consolidation of health reports and submission to the Case Management Committee.	Monthly.
	Keeping of a register for all medical parole applications forwarded to the Case Management Committee and feedback received.  The register must have the following information: <ul style="list-style-type: none"> <li>• Date;</li> <li>• Initials and Surname;</li> <li>• Registration number;</li> <li>• Date application form completed by the applicant;</li> <li>• Date application form completed by the medical practitioner;</li> <li>• Date health reports submitted to the Case Management Committee;</li> <li>• Signature;</li> <li>• Date feedback received on outcome of the application;</li> <li>• Outcome of application (approved/not approved).</li> <li>• Signature.</li> </ul>	Professional nurse.	Operational Manager.	Per incident.	Availability of a register for all medical parole applications forwarded to the Case Management Committee.	Monthly.

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
	Completed medical parole application forms together with recommendations of the Case Management Committee from the Management Area must be forwarded to the Regional Medical Parole Advisory Board (MPAB). Secretariat within two working days of completion.	Case Management Committee	Area Commissioner.	Per incident.	Consolidation of medical and Corrections reports from the Management Area and submission to the Regional MPAB Secretariat.	Per incident.
	Keeping of a register for all medical parole applications documents received from Management Areas and forwarded to the MPAB Secretariat at Head Office.  The register must contain the following information: <ul style="list-style-type: none"> <li>• Date;</li> <li>• Management Area;</li> <li>• Initials and Surname;</li> <li>• Registration number;</li> <li>• Date document/s received from the Management Area;</li> <li>• Date documents forwarded to the MPAB Secretariat at Head Office.</li> </ul>	Regional Medical Parole Advisory Board (MPAB). Secretariat.	Regional Coordinator Health Services.		Keeping of a register for medical parole applications documents received from the Management Areas and forwarded to Head Office.	


Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
	<ul style="list-style-type: none"> <li>Signature;</li> <li>Date feedback received on outcome of the application;</li> <li>Outcome of application (approved/not approved).</li> <li>Signature.</li> </ul>					
	Checking of all documents from Management Areas to determine completeness and forward them to the MPAB secretariat at Head Office within two days.	MPAB secretariat at Regional Office.	Regional Coordinator Health Services.	Per received documents.	Checking of all documents from Management Areas to determine completeness, and forwarding them to the MPAB secretariat at Head office.	Monthly.
	Compilation and submission of monthly statistics to the Regional Coordinator Health Services on processed medical parole applications.	Medical Parole Advisory Board (MPAB) secretariat at Regional Office.	Regional Coordinator Health Services.	Per received documents.	Compilation and submission of monthly statistics.	Monthly.
4. All medical parole applications shall be subject to review by the Medical Parole Advisory Board (MPAB).	Board sittings will take place at least once a month at a place determined by the chairperson or his delegate to assess or review all medical parole applications.	Medical Parole Advisory Board (MPAB).	Correctional Supervision and Parole Board.  National Commissioner.  Minister.	Monthly	Sitting of the MPAB.	Monthly.

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
	Applications for medical parole must be prioritized in order of emergency to avoid delays in finalizing deserving cases.	Medical Parole Advisory Board (MPAB).	Correctional Supervision and Parole Board.  National Commissioner.  Minister.	Monthly	Prioritization of medical parole applications.	Monthly
	The Medical Parole Advisory Board (MPAB) may convene more than once a month as determined by the needs for the assessment of medical parole applications.	Medical Parole Advisory Board (MPAB).	Correctional Supervision and Parole Board.  National Commissioner.  Minister.	When necessary	-	-
	Where the Board is unable to convene physically or at a central venue, other appropriate means can be utilized to assess or review applications for medical parole.	Medical Parole Advisory Board (MPAB).	Correctional Supervision and Parole Board.  National Commissioner.  Minister.	When necessary.	-	-
	Any offender applying for medical parole may be examined by where practically possible, a member of the Medical Parole Advisory Board (MPAB) from the Region wherein he/she is appointed.	Medical Parole Advisory Board (MPAB).	Correctional Supervision and Parole Board.  National Commissioner.  Minister.	When necessary	Examination of an offender who has applied for medical parole by a member of the Medical Parole Advisory Board (MPAB) from the Region wherein he/she is appointed.	

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
	Review medical reports, discuss each application and take a decision to recommend or not recommend medical parole by voting.	Medical Parole Advisory Board (MPAB).	Correctional Supervision and Parole Board.  National Commissioner.  Minister.			
	A decision will be based on the majority vote of full five (5) members (minimum members per sitting) of the Medical Parole Advisory Board (MPAB).					
	When additional medical information or expert medical opinion is required, the offender may be referred for further consultation to a relevant specialist. The referral procedure will be as prescribed in the Health Procedures after one the members of the Medical Parole Advisory Board (MPAB). has issued a referral letter.	Medical Parole Advisory Board (MPAB).	Correctional Supervision and Parole Board. National Commissioner. Minister.	Per case.	Compliance to referral process in the Health Procedures.	Monthly.
	Compile and submit recommendations to the Correctional Supervision and Parole Board, National Commissioner or Minister depending on the case.	Medical Parole Advisory Board (MPAB).	Correctional Supervision and Parole Board. National Commissioner. Minister.	Monthly.	Compilation and submission of recommendations to the relevant authority.	Monthly.
	An offender placed on medical parole may be requested to undergo periodical medical examinations by the Medical Parole Advisory Board (MPAB).	Medical Parole Advisory Board (MPAB).	Correctional Supervision and Parole Board. National Commissioner. Minister.			

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
5. A discharge plan shall be developed and implemented for each terminally ill offender who is identified as eligible for medical parole to ensure continuity of care.	Development of a Discharge Plan in consultation with the offender which will address at least the following:	Professional nurse.	Operational Manager.	Per incident.	Developed Discharged Plan.	Monthly.
	• Identification of proper /relevant health care facilities in the community for after care of offenders placed on medical parole.	Professional nurse.	Operational Manager.	Per incident.	Identified proper /relevant health care facilities in the community for after care purposes.	Monthly.
	• An interview must be conducted to determine if the next of kin / admitting institution will be able to care for the offender on placement / release. Information must be provided on the expected care should the offender be released.	Professional nurse.	Operational Manager.	Per incident.	Interview conducted to determine if the next of kin / admitting institution.	Monthly.
	• A written consent form is obtained and signed by the family or any other person (as agreed with the offender) to take care of the released terminally ill offender [G16(k)];	Professional nurse.	Operational Manager.	Per incident.	Developed Discharge Plan for a terminally ill offender.  Written consent form is obtained and signed by the family.	Per incident.


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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
	<ul style="list-style-type: none"> <li>Confirmation of the physical address of next of kin or institution which will be responsible for taking care of the offender after placement / release.</li> </ul>	Community Corrections.	Head of Correctional Centre.	Per incident.	Confirmation of physical address of next of kin.	Per incident.
	<ul style="list-style-type: none"> <li>Arranging of an appointment with a health facility nearer to where the offender will be cared for. The date must be recorded in the health file and referral letter.</li> </ul>	Professional nurse.	Operational Manager.	Per incident	Follow up appointment made and recorded.	Per incident
	<ul style="list-style-type: none"> <li>Completion of a referral letter for further treatment and care to be provided to the offender after placement / release.</li> </ul>	Professional nurse.	Operational Manager.	Per incident	Referral letter completed prior to placement / release.	Per incident
	<ul style="list-style-type: none"> <li>Arrangement of suitable transportation for the released offender to be taken to where she/he will be cared for and to the nearest correctional health facility for periodical medical examination if recommended by the Medical Parole Advisory Board (MPAB).</li> </ul>	Professional nurse. Community Corrections.	Operational Manager. Head of Correctional Centre.	Per incident	Suitable transportation arranged.	Per incident

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
6. All terminally ill offenders shall be properly transported, accompanied and handed over to the family/next of kin / admitting institution on release.	Notification of the family/next of kin / admitting institution on approval of the application for placement / release on medical grounds and recording in the health file.	Professional nurse	Operational manager	Per incident	Family/next of kin / admitting institution notified.	Per incident
	A month's supply of medication and other relevant supplies should be issued to the offender/next of kin/receiving person at the admitting institution on placement / release.	Professional nurse	Operational Manager.	Per incident.	The issuing of a month's supply of medication and other relevant medical supplies on placement / release.	Per incident.
	This must be acknowledged in the health file.				Acknowledgement in the health file.	
	Suitable mode of transport must always be utilized for the released offender on release or for transportation to the nearest correctional health facility for periodical medical examination as recommended by the Medical Parole Advisory Board (MPAB).	Professional Nurse	Operational Manager.			
		Community Corrections.	Head of Correctional Centre.			
All offenders released on medical grounds must at all times be accompanied and handed over to the family/next of kin or admitting institution's personnel.	Professional / Enrolled nurse.	Operational Manager.		Per incident	Accompanying and handing over of the released offender.	Per incident
The condition on handing over must be recorded and witnessed in the health file by the person receiving the offender.	Professional / Enrolled nurse.	Operational Manager.		Per incident	Recording of the offender's health condition on handing over to the family / next of kin / admitting institution.	Per incident

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Principle	Activity	Responsibility	Delegated Authority	Frequency	Control Activity	Frequency
7. The Head of a Remand Detention facility or Correctional Centre shall refer a terminally ill or severely incapacitated remand detainee to the court for a decision.	Identification of any remand detainee suffering from a terminal disease or medical condition as listed in section 2 above, who is physically incapacitated as a result of an injury, limiting his or her daily self care activities.	Medical practitioner.	Head of Remand Detention facility of Correctional Centre.	Per incident.	Identification of terminally ill or physically incapacitated Remand Detainee.	Per incident.
	Identification of appropriate facilities for the supervision, care and treatment of the remand in the community to which he/she will be released.	Professional nurse.	Head of Remand Detention facility of Correctional Centre.	Per incident.		Per incident.
	Lodge an application in writing to the Clerk of the Court containing the following: <ul style="list-style-type: none"> <li>Sworn statement or affirmation about the medical condition/health status of the remand detainee; and</li> <li>Written certificate by the Director of Public Prosecution concerned of a prosecutor authorized to issue such a certificate whether the application is opposed or not.</li> </ul> Notification of the remand detainee's legal representative if any about the application.	Head of Remand Detention facility of Correctional Centre.	Area Commissioner.	Per incident.		Per incident.

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Principle

Activity

Responsibility

Delegated  
Authority

Frequency

Control Activity

Frequency

Should the application be approved, contents of section 5 and 6 above shall apply.

Approved by:

Minister of Department of Correctional Services:  
Mapisa-Nqakula N. (Ms)

Date: 7 February 2012

# ANNEXURE "AF3"

**MINIMUM**

**INFORMATION SECURITY**

**STANDARDS**

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### **CABINET APPROVAL**

On 4 December 1996 Cabinet approved the Minimum Information Security Standards document as national information security policy

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## PREFACE

The world and especially South Africa has changed dramatically during the last few years, with profound implications for our society, our government, the South African Police Service, the Defence and Intelligence Communities. Our understanding of the range of issues that impact on national security is evolving. Economic and environmental issues are of increasing concern and compete with traditional political and military issues for resources and attention.

The Republic of South Africa has to serve and protect its own interests just like every other sovereign state in the modern world. The National Intelligence Agency (NIA) has a statutory responsibility to protect the interests of the State through counter-intelligence measures. (National Strategic Intelligence Act 39 of 1994) Counter-intelligence embodies two distinctive dimensions, namely security (the defensive) and counter espionage (the offensive dimension).

With these imperatives in mind, NIA in conjunction with the other members of the intelligence community have focused their attention on the process used to formulate and implement information security policies on a national basis. The processes being used to formulate policies and deliver information security services must be sufficiently flexible to facilitate change.

- \* Our need for secrecy and therefore information security measures in a democratic and open society with transparency in its governmental administration according to the policy proposals regarding the intended Open Democracy Act have been taken into account.
- \* Our security standards and procedures must result in the fair and equitable treatment of those upon whom we rely to guard the nation's security. (Interim Constitution have been taken into account).

  
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- \* Our security policies must realistically match the threats against the country and its people.
- \* Our security policies, practices, and procedures must provide the needed information security in a cost effective way that will benefit the socio- economic development of the country.

With these aspects in mind the Minimum Information Security Standard (MISS) was compiled as an official government policy document on information security, which must be maintained by all institutions who handle sensitive/ classified material of the Republic. This will ensure that the national interests are protected.

Any comments or recommendations in respect of this policy must please be forwarded in writing to the Chairperson of the Functional Security Committee of NICOC.

All amendments to this policy will be issued by the National Intelligence Agency being the department nationally responsible for counter-intelligence. Government departments, institutions, parastatals and private companies will be responsible for the distribution of such amendments within their own organisations.

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# CHAPTER 1

## INTRODUCTION

1. The need for secrecy and therefore security measures in a democratic and open society, with transparency in its governmental administration, is currently the subject of much debate, and will continue to be for a long time.
2. However, the issue need not be controversial, since the intended Open Democracy Act (not yet promulgated at the time of going to press) itself will acknowledge the need for protection of sensitive information, and therefore, will provide for justified exemption from disclosure of such information.
3. Although exemptions will have to be restricted to the minimum (according to the policy proposals regarding the intended Open Democracy Act), that category of information which will be exempted, as such needs protection. The mere fact that information is exempted from disclosure in terms of the Open Democracy Act, does not provide it with sufficient protection. Such information will always be much sought after by certain interest groups or even individuals, with sufficient access to espionage expertise, and highly sophisticated technological backing. The extent of espionage against the new South Africa should never be under estimated - it has actually escalated alarmingly during the past few years.
4. Where information is exempted from disclosure, it implies that security measures will apply in full. This document is aimed at exactly that need: providing the necessary procedures and measures to protect **such** information. It is clear that security procedures do not concern **all** information and are therefore not contrary to transparency, but indeed necessary for responsible governance.
5. The procedures and measures taken up in this volume are based on general security principles. It should, however, be remembered that in drawing up security directives it was not possible for the National Intelligence Agency (NIA) to take into account the particular circumstances and operations of each of the institutions where classified information is handled. Institutions should therefore compile their own rules of procedure to fit their own circumstances and operations. In the development of an own effective information



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security system, institutions should use this volume as a minimum standard on which to base it.

6. As stated above, this document lays down a minimum standard for the handling of classified information in all institutions, so that various institutions may send classified information to one another in the knowledge that the risk of compromising such information has been eliminated.
7. An effective security system, based on certain principles, is characterised by the following features:
  - 7.1 Security prescriptions must be simple, comprehensible and capable of being carried out in practice.
  - 7.2 Security prescriptions should not needlessly interfere with the actions of the individual. If this happens, the goodwill of the individual, which is essential for effective security, can be repressed. This can also lead to individuals treating security measures with disrespect.
  - 7.3 In addition to what has been mentioned above, it is necessary to strive for a reconciliation between the requirements of sound administration with those of effective security.
  - 7.4 It is necessary to constantly guard against both the overclassification and the underclassification of information. Misuse of classifications can result in the system being treated with contempt. The consequence will be carelessness with respect to the security system.
8. The security advisers of the National Intelligence Agency (NIA) are, in accordance with the responsibilities assigned to them (see Annexure A), constantly available to assist institutions in drawing up their own procedural directions. The security advisers may be contacted at the following address:

The Director-General  
National Intelligence Agency  
Private Bag X87  
Pretoria  
0001

(Attention: Information Security)

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Telephone number: (012) 317-5911

9. Although every effort has been made to take into consideration different and new perspectives on security issues, this document is by no means final. To reach finality on all matters would have meant that authorising and distributing this document would have had to be postponed indefinitely, while it is being awaited urgently by all institutions. Matters that still need to be ironed out, e.g. criteria for the different security classifications, definitions of new terms and concepts related to the security field, etc, will receive attention after this volume has been issued and will be contained in a revised edition at a later stage.
  
10. This document replaces the former **Guidelines for the Protection of Classified Information** (SP 2/8/1) of March 1988.

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## CHAPTER 2

### DEFINITIONS

#### 1. ACCESS CONTROL

The process by which access to a particular area is controlled or restricted to authorised personnel only. This is synonymous with controlled access. See the Control of Access to Public Premises and Vehicles Act (Act 53 of 1985) as amended.

#### 2. AUTHOR

The head of an institution, or the person acting on his behalf, who prepares, generates, or initially classifies a document or has it classified.

#### 3. CLASSIFICATION

3.1 All official matters **requiring the application of security measures** (exempted from disclosure) must be classified "Restricted", "Confidential", "Secret" or "Top Secret".

3.2 Upgrading, downgrading and regrading of documents may take place and will involve changing the classification in accordance with the system prescribed (see Chapter 4, paragraph 1.4).

3.3 To avoid confusion, it is essential for all bodies/institutions to maintain uniformity with respect to the classification system, and to assign to documents the same rating in accordance with the degree of security warranted by the contents and nature of the documents. The security classifications as defined below should therefore be applied by all institutions. By "document" is meant those matters as set forth in the definitions section of the Protection of Information Act (Act 84 of 1982).

3.4 The classifications mentioned above are described below.

**Note: Security measures are not intended and should not be applied to cover up maladministration, corruption, criminal actions, etc, or to protect individuals/officials involved in such cases. The following descriptions should be understood accordingly:**

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### 3.4.1 **Restricted**

**Definition:** RESTRICTED is that classification allocated to all information that may be used by malicious/opposing/hostile elements to hamper activities or inconvenience an institution or an individual.

**Test:** Intelligence/information must be classified as RESTRICTED when the compromise thereof could hamper or cause an inconvenience to the individual or institution.

**Explanation:** RESTRICTED is used when the compromise of information can cause inconvenience to a person or institution, but cannot hold a threat of damage. However, compromise of such information can frustrate everyday activities.

### 3.4.2 **Confidential**

**Definition:** The classification CONFIDENTIAL should be limited to information that may be used by malicious/opposing/hostile elements to harm the objectives and functions of an individual and/or institution.

**Test:** Intelligence/information must be classified CONFIDENTIAL when compromise thereof can lead to:

- the frustration of the effective functioning of information or operational systems;
- undue damage to the integrity and/or reputation of individuals;
  
- the disruption of ordered administration within an institution; and
  
- adverse effect on the non-operational relations between institutions.

**Explanation:** CONFIDENTIAL is used when compromise of information results in:

- undue damage to the integrity of a person or institution, but not entailing a threat of serious damage. The compromise of such information, however, can frustrate everyday functions, lead to an inconvenience and bring about wasting of funds;



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- the inhibition of systems, the periodical disruption of administration (eg logistical problems, delayed personnel administration, financial relapses, etc) that inconvenience the institution, but can be overcome; and
- the orderly, routine co-operation between institutions and/or individuals being harmed or delayed, but not bringing functions to a halt.

### 3.4.3 **Secret**

**Definition:** SECRET is the classification given to information that may be used by malicious/opposing/hostile elements to disrupt the objectives and functions of an institution and/or state.

**Test:** Intelligence/information must be classified as SECRET when the compromise thereof:

- can disrupt the effective execution of information or operational planning and/or plans;
- can disrupt the effective functioning of an institution;
- can damage operational relations between institutions and diplomatic relations between states;
- can endanger a person's life.

**Explanation:** SECRET is used when the compromise of information:

- can result in the disruption of the planning and fulfilling of tasks, ie the objectives of a state or institution in such a way that it cannot properly fulfil its normal functions; and
- can disrupt the operational co-operation between institutions in such a way that it threatens the functioning of one or more of these institutions.

### 3.4.4 **Top Secret**

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**Definition:** TOP SECRET is the classification given to information that can be used by malicious/opposing/hostile elements to neutralise the objectives and functions of institutions and/or state.

**Test:** Intelligence/information must be classified TOP SECRET when the compromise thereof:

- can disrupt the effective execution of information or operational planning and/or plans;
- can seriously damage operational relations between institutions;
- can lead to the discontinuation of diplomatic relations between states; and
- can result in the declaration of war.

**Explanation :** TOP SECRET is used when the compromise of information results in :

- the functions of a state and/or institution being brought to a halt by disciplinary measures, sanctions, boycotts or mass action;
- the severing of relations between states; and
- a declaration of war.

#### 4. **CLASSIFIED INFORMATION**

Sensitive information which in the national interest, is held by, is produced in, or is under the control of the State, or which concerns the State and which must by reasons of its sensitive nature, be exempted from disclosure and must enjoy protection against compromise.

#### 5. **CLASSIFY/RECLASSIFY**

The grading/arrangement or regrading/re-arrangement of a document, in accordance with its sensitivity or in compliance with a security requirement.

#### 6. **COMMUNICATION SECURITY**



That condition created by the conscious provision and application of security measures for the protection of classified communication.

7. **COMPROMISE**

The unauthorised disclosure/exposure or loss of sensitive or classified information, or exposure of sensitive operations, people or places, whether by design or through negligence.

8. **COMPUTER SECURITY**

That condition created in a computer environment by the conscious provision and application of security measures. This includes information concerning the procedure for the procurement and protection of equipment.

Everything that could influence the following is considered to be relevant to computer security:

- The confidentiality of data (an individual may have access only to that data to which he/she is supposed to).
- The integrity of data (data must not be tampered with and nobody may pose as another - e.g. in the electronic mail environment, etc).
- The availability of systems.

9. **CONTINGENCY PLANNING**

The prior planning of any action that has the purpose to prevent, and/or combat, or counteract the effect and results of an emergency situation where lives, property or information are threatened. This includes compiling, approving and distributing a formal, written plan, and the practise thereof, in order to identify and rectify gaps in the plan, and to familiarise personnel and co-ordinators with the plan.

10. **CONTROLLING BODY**

The body which in terms of the rationalisation agreement, is responsible for controlling the security position within its sphere of responsibility.

11. **COPYING / DUPLICATING / REPRODUCING**

  
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The making of a copy of any document, whether by copying it out by hand, by photographic means or by any other means.

12. **DECLARATION OF SECRECY**

An undertaking given by a person who will have, has or has had access to classified information, that he/she will treat such information as secret (see Appendix B).

13. **DELEGATE**

A delegate is a person who is granted certain powers/authorities or functions in order to represent a higher authority in performing a specific task.

14. **DELEGATION**

Delegation is the transfer of authority, powers or functions from one person/institution to another.

Delegation takes place in order to effect division of labour since it is physically impossible for a person/institution/body himself/herself to exercise all the powers/authorities assigned to him/her.

Delegatus delegare non potest - A delegate cannot delegate.

15. **DESTRUCTION OF CLASSIFIED MATERIAL**

The doing away with/expunging or destroying of classified documents.

16. **DISPATCHING CLASSIFIED DOCUMENTS**

The transfer of classified documents, in any manner whatever or by any channel whatever, from one point to another.

17. **DOCUMENT SECURITY**

That condition which is created by the conscious provision and application of security measures in order to protect classified documents.

18. **DOCUMENT**

In terms of the Protection of Information Act (Act 84 of 1982) a document is:



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- any note or writing, whether produced by hand or by printing, typewriting or any other similar process;
- any copy, plan, picture, sketch or photographic or other representation of any place or article;
- any disc, tape, card, perforated roll or other device in or on which sound or any signal has been recorded for reproduction.

19. **EMPLOYER INSTITUTION**

The institution, whether a public, parastatal or private undertaking (where applicable), that employs any worker, official or officer who actually has, or may probably have, access to classified matters.

20. **ESPIONAGE**

The methods by which states, organisations and individuals, attempt to obtain classified information to which they are not entitled.

21. **HEAD OF AN INSTITUTION**

The person who is serving as the head of an institution, whether defined by law or otherwise, including the official acting in his place.

22. **INFORMATION SECURITY**

That condition created by the conscious provision and application of a system of document, personnel, physical, computer and communication security measures to protect sensitive information.

23. **INSTITUTION**

Institution means any department of State, body or organisation that is subject to the Public Service Act or any other law or any private undertaking that handles information classifiable by virtue of national interest.

24. **NEED-TO-KNOW PRINCIPLE**

The furnishing of only that classified information or part thereof that will enable a person/s to carry out his/her task.

25. **PERSONNEL CONFIDENTIAL**

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A handling instruction indicated on personnel documents. Although these documents are to be handled in the same way as "restricted" documents, this is not a security classification. Should information regarding a personnel member be more sensitive than justified by the terms "Personnel confidential" or "Restricted" it should be classified according to regulations.

26. **PERSONNEL SECURITY**

Personnel security is that condition created by the conscious provision and application of security measures in order to ensure that any person who gains access to classified information does have the necessary security clearance, and conducts him/herself in a manner not endangering him/her or the information to compromise. This could include mechanisms to effectively manage / solve personnel grievances.

27. **PHYSICAL SECURITY**

That condition which is created by the conscious provision and application of physical security measures for the protection of persons, property and information.

28. **PROTECTION OF PERSONS**

The physical protection of identified important persons against violence and insults, as well as the protection of information in the possession of such persons against unauthorised exposure or disclosure to malicious/opposing/hostile elements or persons.

29. **RECEIPT OF CLASSIFIED DOCUMENTS**

The receipt and documenting or taking on record of classified documents.

30. **SCREENING/ VETTING INSTITUTIONS**

Screening institutions are those institutions (the SA Police Service, the National Intelligence Agency, South African Secret Service or the SA National Defence Force) that, in terms of the rationalisation agreement, are responsible for the security screening/vetting of persons within their jurisdictions.

31. **SECURITY**

That condition free of risk or danger to lives, property and information created by the conscious provision and application of protective security measures. Not to be confused with national security (i.e. peace, stability, development and progress), which is a far broader concept that encompasses not only absence of threats, risk or danger, but also the basic principles and core values associated with and essential to the quality of life.

  
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freedom, justice, prosperity and development. (Quoted from the White Paper on Intelligence.)

### **PROTECTIVE SECURITY**

Much narrower concept than National Security, although very much a part/element of the latter. This concept deals with the provisioning and maintaining of measures to protect lives, property and information and as such could include : vetting, security investigations, guarding, document, personnel, physical and IT security.

### 32. **SECURITY AREA**

Any area to which the general public is not freely admitted and to which only authorised persons are admitted.

### 33. **SECURITY AUDIT**

That part of security control undertaken to:

- determine the general standard of information security and to make recommendations where shortcomings are identified;
- evaluate the effectiveness and application of security policy/ standards/ procedures and to make recommendations for improvement where necessary;
- provide expert advice with regard to security problems experienced; and
- encourage a high standard of security awareness.

### 34. **SECURITY CLEARANCE**

An official document indicating the degree of security competence of a person.

### 35. **SECURITY COMPETENCE**

This is a person's ability to act in such a manner that he does not cause classified information or material to fall into unauthorised hands, thereby harming or endangering the security or interests of the State. Security competence is normally measured against the following criteria: susceptibility to extortion or blackmail, amenability to bribes and susceptibility to being compromised due to compromising behaviour, and loyalty to the state / institution.

  
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**36. SECURITY LOCK**

A lock with at least six levers or five checks of which the tumblers are not springy (eg Chubb, Abloy and Real).

**37. SECURITY MEASURES**

All actions, measures and means employed to achieve and ensure a condition of security commensurate with the prevailing threat.

**38. SECURITY SCREENING/VETTING**

The systematic process of investigation followed in determining a person's security competence.

**39. STORAGE**

The safekeeping of classified documents in appropriate (prescribed) lockable containers, strongrooms, record rooms and reinforced rooms.

**40. TRANSMISSION SECURITY**

Transmission security is a part of communication security and entails the safeguarding and secure use of systems linked to one another for the sake of communication.

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## CHAPTER 3

### THE PROVISION AND APPLICATION OF SECURITY MEASURES

#### 1. RESPONSIBILITIES OF THE HEAD OF AN INSTITUTION

- 1.1 The head of every institution bears overall responsibility for the provision and maintenance of security in his/her institution, under all circumstances.
- 1.2 Apart from the ordinary or customary powers of delegation to senior officers or employees, it is necessary to prepare a clearly formulated policy signed by the head of the institution with regard to security in order to maintain information security and to ensure physical security. This security function must be delegated in writing to a fit and proper officer/employee and provision shall be made for the effective administration and practice of security.
- 1.3 The policy shall set forth in unambiguous terms the powers, responsibilities and duties of the security staff, and must require all personnel to submit to security measures. Security being an integral part of the management function, the composition of the security component must be such that the line of authority does not obstruct access to top management.

#### 2. RESPONSIBILITIES OF THE HEAD OF THE SECURITY COMPONENT

- 2.1 The functional execution of security policy as the primary function of the chief security officer shall place emphasis on, inter alia, the following responsibilities:
- the recruitment and appointment of fit and proper persons as operational security officers;
  - the training of and the exercise of control over the security personnel;
  - the effective managing / administration of all spheres of security, which includes
    - \* planning

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- \* organising
- \* financing
- \* staffing
- \* guiding and directing
- \* controlling/checking.

2.2 The effective practice of security will include:

- raising security consciousness;
- drawing up rules of procedure;
- the updating of relevant knowledge through self-study, attending symposia, etc;
- training personnel to know, understand and apply security procedures and measures;
- constant liaison, co-operation and co-ordination with, and reporting to, the controlling institutions;
- reporting of all breaches or alleged breaches of security, or behaviour posing a security risk, to the appropriate institutions; and
- compliance with security directives, as issued by the controlling institution.

2.3 In order to ensure that information security is undertaken on a sound basis throughout, the head of the security component must have direct access to the head of the institution and/or a seat in management meetings in as far as functional matters and policy are concerned. Following on this, "Security" should be a fixed item on the agenda.

### 3. **OPERATIONAL SECURITY PERSONNEL**

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The function of such personnel is to carry out policy and rules of procedure with regard to security, as laid down by the head of the institution (see Chapter 3, paragraph 1.2).

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## CHAPTER 4

### DOCUMENT SECURITY

These prescriptions apply to documents classified Confidential, Secret and Top Secret.

#### 1. CLASSIFICATION AND RECLASSIFICATION OF DOCUMENTS

- 1.1 All bodies/institutions/organisations have at their disposal intelligence/information that is to some extent sensitive in nature and obviously requires security measures. The degree of sensitivity determines the level of protection, which implies that information must be graded or classified according to it. Every classification necessitates certain security measures with respect to the protection of sensitive information which will be known as classified information (refer to Chapter 2, paragraph 6).
- 1.2 The responsibility for the gradings and regradings of document classifications rests with the institution where the documents have their origin. This function rests with the author or head of the institution or his delegate(s).
- 1.3 The classifications assigned to documents shall be strictly observed and may not be changed without the consent of the head of the institution or his delegate.
- 1.4 Where applicable, the author of a classified document shall indicate thereon whether it may be reclassified after a certain period or upon the occurrence of a particular event. **This option is to be applied consistently upon the award of a classification higher than Restricted.**
- 1.4.1 Should the author of a document on which there is no embargo, reclassify such document, he must inform all addressees of the new classification.
- 1.4.2 The receiver of a classified document who is of the opinion that the document concerned must be reclassified, must obtain oral or written authorisation from the author, the head of the institution or his delegate(s). Such authorisation must be indicated on the relevant document when it is reclassified.

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- 1.5 The classification of a document or file will be determined by the highest-graded information it contains. The same classification as that of the original must be assigned to extracts from classified documents, unless the author consents to a lower classification.
- 1.6 Every document must be classified on its own merit (in accordance with its own contents) and in accordance with the origin of its contents, and not in accordance with its connection with or reference to some other classified document; provided that where the mere existence of a document referred to is in itself information that calls for a **higher** security classification than the document containing the reference, the **latter document** must be classified accordingly.
- 1.7 The author of a document must guard against the underclassification, overclassification or unnecessary classification of documents. The head of an institution or his/her delegate must on a regular basis test classifications of documents generated in his/her institution against the criteria applicable to the relevant classification (see Chapter 2, paragraph 3).
- 1.8 When a document is classified, the classification assigned to it must be indicated clearly on the document in the following way:
- 1.8.1 **Documents and bound volumes**
- The classification of loose and not permanently bound documents and bound volumes (books, publications, pamphlets) and other documents that are securely and permanently bound is typed/printed or stamped at the top and the bottom (preferably in the middle) of every page (including the cover).
- 1.8.2 **Copies, tracings, photographs, drawings, sketches, etc**
- 1.8.2.1 Security classifications shall be indicated on such documents by means of rubber stamps or other suitable means. The exact position of the mark may vary, depending on the nature of the document, so that essential details shall not be obscured by the stamp. An effort must, however, be made to mark the document as clearly as possible, so that the mark will immediately attract attention.
- 1.8.2.2 Tracings or blueprints shall be marked in such a way that the security classification is visible on all copies. Where this is not possible, rubber stamps should be used to mark all the copies.





- 1.8.3 **Rolled or folded documents.** Apart from being marked as prescribed on the face, a document such as this shall also be marked in such a way that the security classification will be clearly visible when the document is folded or rolled up.
- 1.8.4 **Tape recordings and documents on which no marks can be made.** Where, as in the case of tape recordings, certain photographs and negatives, it is physically impossible to place clear classification marks on a document itself; the document should be placed in a suitable box, envelope or other container and, if necessary, sealed. The nature and classification of the contents clearly marked on the outside of the container.
- 1.8.5 **Files.** A clear distinguishing mark, the significance of which is known to those who deal with the file concerned, should be placed on both the front and the back cover of Secret or Top Secret files.

Note: For an explanation of the classifications, see Chapter 2, Definitions.

## 2. **ACCESS TO CLASSIFIED INFORMATION**

The general rules and prescriptions as to who may have access to or inspect classified matters are as follows:

- 2.1 A person who has an appropriate security clearance or who is by way of exception authorised thereto by the head of the institution or his/her delegate (see Chapter 5, paragraphs 3.6, 10.2 and 10.3), with due regard being paid to the need-to-know principle.
- 2.2 Persons who must necessarily have access to that classified information in the execution of their duties (the need-to-know principle) - **on condition that a suitable clearance has been issued or authorisation has been granted, as explained in Chapter 4, paragraph 2.1.**
- 2.3 Persons such as stand-in typists/secretaries and personnel at smaller centres who in general do not have access to classified material and who do not have a relevant security clearance, but are expected to have access to this information on an ad-hoc basis owing to the circumstances, on condition that the prescribed oath/declaration of secrecy was taken.

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### 3. HANDLING OF CLASSIFIED DOCUMENTS

- 3.1 All classified documents must be stored in accordance with instructions while not in use (see Chapter 4, paragraph 10).
- 3.2 All incoming classified documents, including official, classified post marked "Personal" must be received and noted in a register by persons with the appropriate clearance. The object of such registration is to enable total control over such documents. This provision does not apply to documents bearing a classification of Restricted.
- 3.2.1 Officials who usually receive the incoming post of an institution (eg registration officers) must hand the unopened inner envelope of incoming classified correspondence to the appropriate official(s) who is/are authorised to open correspondence in a certain category. The latter is/are responsible for entering the correspondence concerned in the prescribed register.
- 3.3 All classified documents that are dispatched, made available or distributed, must be subjected to record keeping in order to ensure control thereof. This provision does not apply to documents that are classified as Restricted.
- 3.3.1 Measures must be taken to ensure that classified documents are not physically taken from one institution to another and/or informally handed to a member of another institution during a contact visit, in this way evading prescriptions for the registration of incoming and outgoing post.
- 3.3.2 The various institutions may draw up standard registers in which the particulars of classified postal material are to be entered. Registers for the particulars of postal material classified as Secret and Top Secret are to be classified accordingly. The registers must include the following particulars:
- 3.3.2.1 **Particulars of incoming post:** Serial number of the entry; Date of receipt; From whom received; Registered postal material and reference number; Classification (C/S/TS); Subject/heading; Disposal: File number, Recipient (signature); Further dispatch (serial number of the entry for outgoing mail in the register); Destruction (date and signature).
- 3.3.2.2 **Particulars of outgoing post:** Serial number of the entry; Date of dispatch; Reference number and date of the document; Classification; Subject/heading; Dispatched/addressed

to; Nature of dispatch (courier, by hand, registered post, facsimile, by computer); Registered number of postal material; Signature of the recipient (courier, registration, person dispatching); Receipt number; Date when receipt was obtained.

- 3.4 When Secret and Top Secret documents are distributed, dispatched or made available, they must be accompanied by a receipt voucher signed by the addressee, the receipt of which must again be controlled by the sender. The receipt voucher is classified only if the subject/heading of the document itself is classified, in which case the classification must agree with that of the document.
- 3.5 All Secret and Top Secret documents must be given copy numbers and an indication must be given of the number of copies produced, eg Copy 1 of 7 copies. The copy number should appear on the first page of each document, in the upper right-hand corner. (See paragraph 14 for the procedure to be followed when copies are made of classified documents.)
- 3.6 A serial number must be allocated to every document filed in a **classified file** as is indexed on a page attached to the inside of the file cover, together with the name/heading of the document concerned.

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#### 4. TRANSMITTING DOCUMENTS BY MEANS OF FACSIMILE

- 4.1 When classified documents are transmitted by means of facsimile, **only** facsimile machines equipped with encryption as prescribed by Communication Security Policy/Instructions must be used.
- 4.2 Classified reports may only be handled by a suitably cleared operator.
- 4.3 The Cryptographic equipment and facsimile machines must be kept in a room that is manned **at all times while it is unlocked or in use** by a suitably cleared, trained and appointed official, while care has to be taken that reports received through this apparatus are not accessible to unauthorised persons. The Cryptographic equipment must be handled in accordance with Communication Security Policy/Instructions.
- 4.4 A record must be kept of the transmission and receipt of classified documents.
- 4.5 After receiving a message, receipt must be acknowledged immediately. The recipient shall ensure receipt of **all pages**.
- 4.6 The recipient or the communication centre of the recipient, upon receiving the document, must ensure that it has been received clearly, accurately and in full. Thereafter, he/she shall immediately transmit an acknowledgement of receipt to the sender.
- 4.7 The recipient shall, on his/her copy, note the copy number as indicated on the distribution list.
- 4.8 Effective control must be exercised over "open" facsimile machines to ensure that these are **not** used for the transmission of classified documents.

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## 5. TRANSMITTING DOCUMENTS BY COMPUTER

- 5.1 Encryption as prescribed shall be applied with respect to the computerised transmission of classified documents.
- 5.2 A record shall be kept of the classified documents transmitted and received, provided that the recipient of documents must always acknowledge receipt of classified documents. It must also be remembered that all magnetic media must be regarded as documents and handled as such.
- 5.3 Such documents must be supplied with copy numbers (see Chapter 4, paragraph 3.5).

## 6. DISPATCHING CLASSIFIED DOCUMENTS BY COURIER

- 6.1 All classified documents (sealed according to prescription - see Chapter 4 paragraph 8) must be noted in a register indicating the title/description of the document and the date and time of dispatch, and must be handed over against the signature of the courier.
- 6.2 A courier must convey classified documents in a safe locked container. It is recommended that where possible, the container should have a combination lock.
- 6.2.1 Secret and top secret documents (and where necessary also sensitive confidential documents) should be delivered locally only by hand (ie by a courier. The following shall be adhered to:
- Couriers must have at least a Confidential security clearance).
  - Where possible the courier must be accompanied by a second person.
  - All classified material must be conveyed under safe conditions, that is preferably in an attache case with a code or combination lock (particularly if the courier is not accompanied by a second person).
  - The courier must obtain an appropriate receipt for the material.
  - On the return of the courier the receipts for classified deliveries must be checked by a responsible officer.

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- 6.2.2 Control must be exercised over the time taken by the courier to deliver the documents. Upon receipt, the recipient of such documents must check that the documents have not been compromised.
- 6.2.3 Couriers must be able to identify themselves when fetching or dispatching post.
- 6.2.4 Cryptographic equipment must be handled according to Communication Security Policy/Instructions.

## 7. **DISPATCHING CLASSIFIED DOCUMENTS BY MAIL**

- 7.1 Classified documents in the Secret and Top Secret categories that cannot be dispatched by courier may, as an exception, be mailed on provision that it be sent by registered mail and then only with the express permission of the head of the institution or his delegate.

## 8. **SEALING OF CLASSIFIED DOCUMENTS BEFORE DISPATCH**

- 8.1 Classified documents that are dispatched (excluding by facsimile and computer) must be sealed and handled in the following way:
- 8.1.1 A receipt to be signed by the addressee and returned to the sender, must be attached to the document and placed in the inside envelope. This does not apply to "Restricted" documents.
- 8.1.2 Classified documents must always be dispatched in a double envelope/cover, ie in an envelope placed within another (excluding "Restricted" documents). The following process shall be followed:
- The seams of the inside envelope must be properly sealed with paper seals, counter signed and with the name of the office of origin clearly stamped on them. If paper seals are used for this purpose, they must be attached with passport glue (seals that can be re-used are not suitable for this purpose).
  - Thereafter wide translucent tape must be put on the seams, covering the seals and the stamps.

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- The reference number of the document, name and address of the addressee and other special instructions for dealing with the document must appear clearly on the front of the inside envelope.
- The security classification of the document must be indicated clearly on the front and the back of the envelope by means of a rubber stamp.

**Alternative method for sealing postal material in bulk:** The inside envelope can be sealed without seals, stamps, tape, reference number and classification by means of a mechanical process of vacuum packaging in plastic. Some of the requirements in this case are:

- A sticker on the envelope bearing the following particulars: reference number of the document, name, address and special handling instructions
- The plastic packaging must be of good quality (ie it may not tear).
- Changeable stamps of the relevant institution must be imprinted on the plastic packaging. For this purpose the ink must not be able to be removed from the plastic.
- Dispatch of such documents may **only** take place by courier. The delivery time must be controlled strictly and consistently.

**Remark:** Before implementing this alternative, the National Intelligence Agency must be contacted in order that the relevant institution may be advised on the maintaining of security standards.

8.1.2.2 The outer envelope should bear only the name and address of the addressee and the name and address of the sender. Under no circumstances should there be an indication of the nature or classification of the contents, since this could attract undesirable attention to the document.

8.1.3 Persons who normally receive incoming post in an office (such as the registry officers) must make sure that they know who is authorised to open incoming classified correspondence in each particular category and must hand the inner envelope unopened to the authorised officer(s) concerned.

  
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## 9. BULK CONVEYANCE OF CLASSIFIED DOCUMENTS

9.1 **Note.** When classified documents have to be conveyed in bulk by road, rail or air, the appropriate precautions must be taken for the protection thereof.

### 9.2 The bulk conveyance of classified documents by train

9.2.1 The transportation of official documents to and from Cape Town at the beginning and end of the Parliamentary Session should comply with the following minimum requirements:

9.2.1.1 Documents must be packed in steel trunks and the locks of the trunks must be of an acceptable quality. Departments/ministries must apply proper key control at all times, even when the locks are not in use.

9.2.1.2 Each trunk/cabinet must be bound with at least two steel hoops (of the packing type) as an additional precaution to prevent the trunk/cabinet from being opened or opened accidentally during transport as a result of handling.

9.2.1.3 Trunks must not be marked with a mark indicating whether the contents are classified or not; each should merely bear a number to facilitate record-keeping.

9.2.1.4 A list must be kept of the contents of each trunk/cabinet opposite the number allocated to the trunk/cabinet.

9.2.1.5 Departments must co-ordinate the transportation arrangements for their trunks/cabinets of documents with their own ministries. Where more than one department is accommodated in the same building, there can be interdepartmental co-ordination with regard to transportation arrangements (also see Chapter 4, paragraph 9.2.1.12).

9.2.1.6 Departments must make arrangements in good time with Spoornet for trailers/containers (ie a lockable trailer on its own wheels/a lockable container) in which to load the trunks/cabinets.

9.2.1.7 After the trunks have been packed, locked and bound, the record of the numbers of the trunks and their contents, as well as the keys to the locks, must be given to responsible officer (eg the Parliamentary Officer), who will personally take the records and the keys with him to Cape Town or Pretoria as the case may be.

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- 9.2.1.8 The trunks/cabinets must then be carried out of the building and packed directly into the trailer/container, after which the trailer/container is sealed in the presence of the officer concerned. Care should be taken not to stack trunks/cabinets on the sidewalk to wait for the trailer/container.
- 9.2.1.9 The responsible officer must further ensure that he is present when the trunks/cabinets arrive at their destination, so that the seals of the trailer/container can be broken in his presence and trunks/cabinets (still locked and bound) can be checked.
- 9.2.1.10 When trunks/cabinets are not in use, proper control must be exercised over the locks and their keys. If possible they should be kept, sealed in envelopes, in a safe or strongroom.
- 9.2.1.11 Where departments have the capacity of their own for the transportation of documents between Cape Town and Pretoria, the documents must still be packed as prescribed above and the same control measures with regard to trunks/cabinets must be instituted.
- 9.2.1.12 Arrangements for the transportation of classified documents under accompaniment between Pretoria and Cape Town before and after the Parliamentary sessions can be co-ordinated with the National Intelligence Agency.

### 9.3 **Diplomatic bags**

- 9.3.1 Classified and unclassified documents to be dispatched to RSA missions abroad or departmental representatives there must be sent to the Department of Foreign Affairs for dispatch, whether in diplomatic or airfreight bags. Unclassified documents are normally dispatched by freight bag, while Confidential, Secret and Top Secret material must be dispatched by diplomatic bag.
- 9.3.1.1 The diplomatic bag is classified as a Category A bag, and is therefore opened and handled differently from the freight bag for security reasons. Both types of bag are sent to missions abroad by scheduled flights (usually once a week but in some cases only every second week) and departments must therefore hand such postal items in to the relevant division of Foreign Affairs on or before the dispatch date, making use of a courier. A signature must be obtained acknowledging receipt of classified material.

  
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- 9.3.1.2 In view of the substantial difference between the airfreight rates for the different types of bag, classified and unclassified documents destined for RSA missions abroad must be carefully separated beforehand by authorised officers in the dispatch offices of departments and made up into two (2) separate envelopes or packages. More than one classified document may be placed in each envelope for each individual mission (except in the case of cryptographic material) and it is therefore not necessary for Secret and Top Secret documents to be sealed individually in double envelopes as indicated in Chapter 4, paragraph 9.3.1.4 below. Cryptographic material must still be dispatched in accordance with the Communication Security Policy/Instructions. Strict precautions must, however, be taken to ensure that classified documents under cover of an unclassified letter are not erroneously placed in the envelope intended for the freight bag.
- 9.3.1.3 All confidential, secret and top secret documents for a particular mission must, as far as possible be placed in a single envelope by authorised officers of departments. A schedule recording the titles, reference numbers and dates of all the classified postal items for the mission concerned, must be made out in triplicate. The original plus one copy should be sealed in the envelope with the classified documents in the prescribed way. The third copy of the schedule is kept for record purposes, while the second copy, which is sealed into the envelope, is signed by the representative of the department concerned at the mission and returned to the department by the next returning freight bag as a receipt for the classified documents. In the case of non-sensitive documents, ie those that are sent by freight bag, a schedule is not required.
- 9.3.1.4 The envelope containing the classified material must be stamped clearly on the front and the back in the upper right-hand corner with the letters "DIP", (about 4cm x 4cm in size). The other envelope containing the non-classified items must be stamped "FV" in the same way and with the letters of the same size. For the rest only the name of the mission (eg: The SA Embassy, London; or, The Consulate-General, New York) the name of the addressee or the post occupied by him (eg: The Counsellor [Trade]), and the reference number, if any, should appear on the outside of the envelope. The envelope may also bear the address stamp of the sender department.
- 9.3.1.5 No private or personal items such as gifts, or foodstuffs or bank notes may be dispatched in the diplomatic bags, whether to an officer at a mission abroad or in the RSA. The Vienna Convention also provides that only official material may be dispatched in the bags concerned. In order to ensure that this provision is complied with, the Department of



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Foreign Affairs may therefore, where it is considered necessary, examine the contents to ensure that the mentioned provisions are complied with.

- 9.3.1.6 Diplomatic bags must be conveyed to and from airports by an authorised, security-cleared officer. Where circumstances require this, two officers should be detailed for the task. In the case of RSA missions abroad, one of these may be a locally recruited person. While the bags are in the vehicle it may not under normal circumstances (with due regard to the ordinary traffic regulations) stop along the way for any reason, nor may the bags be left unguarded in the vehicle.
- 9.3.1.7 An officer travelling abroad must not take secret or top secret documents with him, unless it will be possible for the documents to remain continuously under his personal supervision, he has a courier's letter with him and he has the consent of the head of his department, who may delegate the giving of approval to the chief security officer or other senior officer(s). Officers requiring classified documents abroad should, when at all possible, arrange in advance for the documents to be dispatched by diplomatic bags as described above.
- 9.3.1.8 **Conveyance of diplomatic and freight bags to and from airports**
- 9.3.1.8.1 Unless approval has been obtained for a different procedure the bags concerned must be conveyed to and from airports by car by at least two persons from the mission. One of these persons must be a transferred officer at the mission while the second may be a locally recruited staff member. The services of the latter may only be used in a supporting capacity, eg to drive the car and carry the bags. Locally recruited members may not, however, be permitted to sign for the bags.
- 9.3.1.8.2 While the bags are in the vehicle it may not under normal circumstances, with due regard to the ordinary traffic regulations, stop along the way for any reason, nor may the bags be left unguarded in the vehicle.
- 9.3.1.8.3 The officer receiving the incoming bags at the airport must satisfy himself that the bags are correctly addressed, that the consignment is complete, that the seals are unbroken and that the bag has not been tampered with in some way or other. Any irregularities in this regard must be investigated immediately and reported to Head Office, Department of Foreign Affairs, by telex or facsimile for the attention of Diplomatic Bags.

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9.3.1.8.4 The diplomatic postal service to and from airports concerned remains the joint responsibility of attached divisions (departments) of a mission. Therefore the attached personnel components concerned should undertake trips to the airport on a rotation basis to deliver or fetch diplomatic bags.

9.3.1.8.5 The head of the mission is responsible for, inter alia, the efficient functioning of the mission and therefore also for the handling of diplomatic bags. Accordingly it is his prerogative to make suitable arrangements, at his discretion and in consultation with heads of divisions, for the transportation of the diplomatic bags to and from airports.

9.3.1.8.6 The following applies in terms of the procedures for week-end/after hours duty at a mission by officers of attached departments:

- Where only one officer of another department has been attached to a mission, diplomatic bag duty during normal office hours will be the exclusive responsibility of officers of the Department of Foreign Affairs, and week-end and after-hours duty (including diplomatic bag duty) will be the responsibility of officers of all attached departments.
- Where more than one officer of another department has been attached to a mission, officers of all departments will be responsible for week-end/after-hours duty as for diplomatic bag duty during and outside normal office hours.
- The Standing Committee (ie representatives of all departments at the mission) will be responsible for drawing up a duty roster which will be binding on all officers at the mission. Only the Standing Committee will have the power to make changes to such a duty roster.

9.3.1.9 The Department of Foreign Affairs will from time to time extend/amend instructions regarding the handling of diplomatic bags.

## 10. **STORAGE OF CLASSIFIED DOCUMENTS**

10.1 Classified documents that are not in immediate use must be locked away in a safe storage place (see par 10.4.2).

  
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- 10.2 The doors of all offices in which classified documents are kept must at least be fitted with security locks.
- 10.2.1 There must be proper control over access to and effective control over movement within any building or part of a building in which classified information is handled. The identification of visitors, the issue of visitors' cards or temporary permits, the escorting of visitors, the provision of identity cards for officers/employees working in the building/offices and the use of related documents and registers for this purpose are prerequisites for effective control over access to and within a building or part of a building.
- 10.2.2 Effective control must be instituted over access to security areas in a building such as cryptographic and computer centres, the registry (where secret and top secret documents and files are kept) and other areas identified as sensitive. An access register must be instituted and kept up to date for all persons/officers not normally working in these areas.
- 10.3 Where necessary (depending on the sensitivity of the classified material kept or dealt with in a particular room or division) doors, windows, fanlights, passages, stairs, etc, giving access to the room or division should be equipped with locks, bolts, iron bars or metal blinds of adequate strength, as the case may be. In some cases it may be sufficient to equip one room in a building in this way to serve as registry or storeroom for classified material.
- 10.4 Apart from taking the precautions mentioned above, all the doors of any room in which classified secret or top secret material is dealt with or handled must be fitted with security locks (see Chapter 2: Definitions) and must be locked when it is vacated, even for a short period, by the person(s) using the room.
- 10.4.1 If the officer(s) leave the room for a longer period, eg during the lunch hour, all classified secret and top secret material must be locked away in a safe or metal cabinet which is of adequate strength and equipped with a security lock.
- 10.4.2 When classified documents are not in use, it must be stored in the following way:
- **Restricted:** Normal filing cabinet.
  - **Confidential:** Reinforced filing cabinet.
  - **Secret:** Strongroom or reinforced filing cabinet.
  - **Top Secret:** Strongroom, safe or walk-in safe.

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- 10.5 The keys to any building, part of a building, room, strongroom, safe, cabinet or any other place where classified material is kept must be looked after with the utmost care and **effective key control must be instituted. The keeping of the necessary key registers and the safe custody of duplicate keys and control over such keys must be strictly adhered to.**
- 10.6 The keys to safes and strongrooms must be kept in safe custody in accordance with Chapter 23, paragraphs 23.3.6, 23.3.10, 23.3.12 and 23.3.14 of the Provisioning Administration Manual and other relevant directions.
- 10.7 If a strongroom or safe is fitted with a combination lock, the combination must, apart from being reset when it is purchased, **be changed at least once every three months**, or on the following occasions:
- When it is suspected that it has been compromised.
  - On resumption of duty after a continuous period of absence, whether on vacation leave or for official reasons, if the combination had necessarily to be made known to some other person for use during the period concerned.
  - When a new user takes over.
- 10.7.1 Combinations may be compromised by:
- unauthorised persons noting the combination through observation when the lock is opened;
  - failure to set the combination in accordance with the manufacturer's specifications;
  - failure to change the combination after a reasonable period.
- 10.7.2 Precautions must therefore be taken by the authorised user to ensure that no other unauthorised person is present when the new combination is set or the lock is opened. When a combination is reset, the following rules should be adhered to :
- The figures making up a specific combination should not be used more than once in succession, even if they are in a different order.



- Avoid the use of numbers with some personal significance, eg age, date of birth, telephone numbers, street addresses and numbers of safes, etc. Also avoid the figures zero (0), five (5), ten (10) and multiples of the last two. High and low numbers should preferably be used alternately. (eg 68-13-57-11)
- Only the user may set a combination lock.

- 10.7.3 Knowledge of a combination should be restricted to the minimum number of persons desirable on the grounds of operational requirements, eg in the case of a communal safe.
- 10.7.4 After the combination has been reset, the new combination must be handed to the Head of Security or other person designated for the purpose in a sealed envelope for safe custody, so that he can complete the combination lock register.
- 10.8 As far as safe and strongroom keys and the combinations of cryptographic centres are concerned, the requirements contained in the Communication Security Instructions must be complied with.
- 10.9 Access to any controlled building, part of a building or room where classified information is handled/stored outside normal office hours should be prohibited to all persons who do not work there. Repairs to and the cleaning of such premises must take place in the presence **and under supervision** of the persons who work there. Persons who have to gain access to a building after hours must be duly authorised accordingly by the Head of the Institution or his delegate. The Head of Security must take appropriate steps to arrange access and record keeping.

## 11. REGISTRIES AND FILES

### 11.1 Central Registries for Receiving of Incoming Mail and Dispatching of Outgoing Mail

- 11.1.1 An effective registry is the core of effective document control and of document security. One registry in an institution should be the central/main registry where **all** incoming mail must be received, opened and from where it must be distributed internally. This receiving and distributing must be recorded in the relevant registers (whether electronic or hard copy).

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- 11.1.1.1 Internal distribution should be reflected in registers for incoming and outgoing mail, that should be kept at all other registries or offices where internal mail are received. These registers should contain the following particulars:

**Particulars of incoming post:** Serial number of the entry; Date of receipt; From whom received; Registered postal material and reference number; Classification (C/S/TS); Subject/heading; Disposal: File number, Recipient (signature); Further dispatch (serial number of the entry for outgoing mail in the register); Destruction (date and signature).

**Particulars of outgoing post:** Serial number of the entry; Date of dispatch; Reference number and date of the document; Classification; Subject/heading; Dispatched/addressed to; Nature of dispatch (courier, by hand, registered post, facsimile, by computer); Registered number of postal material; Signature of the recipient (courier, registration, person dispatching); Receipt number; Date when receipt was obtained.

- 11.1.1.2 Apart from being registered, a system of route cards, or similar, should be implemented to ensure that a document can be traced at any time.
- 11.1.2 Outgoing mail should be forwarded to the central registry from where it will be dispatched. This forwarding and dispatching must be subject to the control measures as described in the MISS/elsewhere.

## 11.2 **Access to Registries**

Access to registries should be controlled. No unauthorized person (any person that has no direct line functional responsibility inside the registry) must be allowed inside.

## 11.3 **Management of Files**

- 11.3.1 Files should be opened according to the actual need when the need arises, and not just because the filing system provides for the existence of such a file.
- 11.3.2 The particulars appearing on the file should be at least: the name/topic of the file, the file number, the classification, and who are/is authorized to have access to that file.

  
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- 11.3.3 A register should be kept of all files opened/in existence. As and when a file is opened, the particulars must be entered in the register. This register must indicate the number of volumes in existence for any given file number.
- 11.3.4 A file must be classified according to the highest level of classification of the documents it contains.
- 11.3.5 The classification mark must be affixed on the file as described elsewhere/in the MISS.
- 11.3.6 Classified files must be stored in facilities as prescribed for classified documents.
- 11.3.7 All documents filed in a file must be given a serial or index number, in the sequence as it is filed, but preferably in chronological order. An index page must be fixed in the file, on which should be recorded the index/serial numbers of the documents on that file, as well as the topic/heading of each document.
- 11.3.8 A subfile must be opened for each file and kept inside the main file. It should have the same particulars as the main file. When the main file is drawn and taken out of the registry (which should **not** be common practice), an indication must be made on the subfile to whom the main file has been issued, and when. The subfile should remain in the registry and all documents that should be filed on the main file must be placed on this until the main file has been returned.
- 11.3.9 No file must be allowed to remain outside the registry for more than one working day - all files must be returned to the registry before closure on the same working day. Exceptions can be allowed, **provided** that storage facilities in the relevant office are on standard (as prescribed) and that the return of the file is followed up on a **daily** basis by the head of the registry.
- 11.3.10 **Only** authorized persons may be allowed access to classified files. Internal policy should dictate who may authorize such access, subject to the need-to-know principle.

## 12. REMOVAL OF CLASSIFIED DOCUMENTS FROM PREMISES

- 12.1 The removal of classified documents from office buildings shall be prohibited as far as possible.

  
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12.2 Classified material (with the exception of "Restricted" documents) may not be taken home without the written approval of the Head of the Institution or his delegate; a list of the documents to be removed must be handed to the person in control of record keeping. (The form in Appendix C can be adjusted to suit this purpose.) Persons may take classified documents home only if they have proper lock-up facilities (see Chapter 4, paragraph 10.1), in other words, if a person has no such facilities, the documents may not be kept at such a person's home for the purpose of work after hours.

12.3 Classified documents taken out of a building with a view to utilisation at meetings or appointments must be removed in a lockable security attache case. Furthermore, all guidelines included in Chapter 4, paragraph 10 apply in this regard.

### 13. THE TYPING OF CLASSIFIED DOCUMENTS

13.1 Classified documents may be typed only by persons having the appropriate security clearance. Such typing must be done in a manner that will ensure that the information is not divulged to unauthorised persons.

13.2 Drafts of classified documents, typewriter ribbons, and copies and floppy disks must at all times be treated as classified documents.

13.3 In this regard also see the **Manual for Computer Security**.

### 14. DESTRUCTION OF CLASSIFIED DOCUMENTS

14.1 In terms of the Archives Act, 1962, all documents received or created in a government office during the conduct of affairs of such office are subject to the Act, except where they are excluded, due to their very nature or the prescriptions of some or other Act of Parliament. It should be a point of departure that all state documentation is subject to the Archives Act, unless justifiably excluded along the above-mentioned lines. It should be noted that no document is to be excluded merely because it is classified. Heads of Departments will have to decide, after consultation with their legal advisers as well as the Director: State Archives whether the document(s) concerned is/are of such a nature that there is a legitimate demand for secrecy that goes beyond the degree of safekeeping by the State Archives.

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- 14.2 Where destruction has been properly authorised, it should take place by burning or some other approved method, eg by means of a shredder (in the latter case - preferably a cross-cut machine), in which case the strips may be no wider than 1,5 mm. The officer who has destroyed the documents must give a certificate of destruction of the documents concerned to the head of the institution or his delegate.
- 14.2 The process of destruction must be such that reconstitution of the documents destroyed is impossible.
- 14.3 If the necessary precautions are not instituted, access to waste-paper baskets is probably one of the easiest ways for unauthorised persons to obtain sensitive information. Special attention should therefore be given by all those concerned to the disposal of drafts, notes, used carbon paper, typewriter ribbons, etc, that may contain information. Such waste must be stored separately under lock and key and must be periodically collected by an officer(s) specially designated for this purpose and destroyed by means of burning or shredding.
- 14.4 In terms of the procedure for the destruction of classified documents from other departments/institutions, a destruction certificate must be supplied to the author.

## 15. **MAKING PHOTOCOPIES OF CLASSIFIED DOCUMENTS**

- 15.1 All mechanical/electronic reproduction appliances should be properly controlled to prevent the unauthorised or uncontrolled copying of classified documents. This apparatus must therefore either be centralised or distributed and be under the direct control of an authorised and aptly cleared officer.
- 15.2 The relevant institution/body must keep a record of all the reproductions of classified documents at its disposal. The register must contain the following particulars: Date, Person requesting copies/reproduction, Classification, File reference, Heading/nature of documents, Purpose of the copies, Number of copies, Meter reading before and after copying.
- 15.3 Oral or written authorisation for the copying of secret and/or top secret documents by the author, head of the institution or his delegate(s) is required for the copying of secret and/or top secret documents. Such authorisation must be indicated on the original document.



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- 15.4 Copies of all secret and top secret documents must receive a copy number and be registered in the same way as the original document. The number of copies of such documents must be restricted to a minimum, and copies of appendices and addenda must be numbered in accordance with the relevant classified document. All addressees/departments, individuals concerned and the corresponding copy numbers must be written in the file and record copy. Alternatively a distribution list can be attached to all copies of the relevant document concerned, indicating the addressees and the applicable copy number.
- 15.5 No copies or duplicates may be made of the documents of The National Intelligence Coordinating Committee (NICOC). Only NICOC may make available additional copies on request.

16. **THE HANDLING OF RESTRICTED DOCUMENTS**

- 16.1 Documents classified as "**Restricted**" are deemed to be restricted to only the relevant institution.
- 16.2 Precaution must therefore be taken to prevent unauthorised persons from gaining insight into **Restricted** documents.

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**17. CONTINGENCY PLANNING**

- 17.1 The contingency plan of an institution must provide for the destruction, storage and/or moving of classified/sensitive documents in the event of an emergency in order to prevent the risk of being compromised.



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## CHAPTER 5

### PERSONNEL SECURITY: GUIDELINES WITH RESPECT TO SECURITY VETTING

#### 1. INTRODUCTION

- 1.1 Security vetting is the systematic process of investigation followed in determining a person's security competence.
- 1.2 The degree of security clearance given to a person is determined by the content of and/or access to classified information entailed by the post already occupied/to be occupied by the person.
- 1.3 A clearance issued in respect of a person is merely an indication of how the person can be utilised, and does not confer any rights on such a person.
- 1.4 A declaration of secrecy should be made on an official form by an applicant to any government post, before he/she is appointed or during the appointing process.
- 1.5 Political appointees (Director Generals, Ambassadors, etc) will not be vetted, unless the President so requests or the relevant contract so provides. From the lowest level up to Deputy Director General all staff members and any other individuals who should have access to classified information, must be subjected to security vetting.
- 1.6 A security clearance gives access to classified information in accordance with the level of security clearance, subject to the need-to-know principle.

#### 2. VETTING CRITERIA

- 2.1 Vetting/screening criteria need to be adjusted continuously owing to the development in the political field and changes in the social and socio-economic fields. On a macro level, screening criteria must be adjusted to the norms and values of the community of which the person is a part. However, on the micro level, screening criteria must provide for the unique nature of individuals and organisations. The overall picture of an individual's security competence (which is the result of individual differences and the individual's

  
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unique way of handling situations) has to play a determining role in a vetting recommendation/decision.

2.2 Aspects such as gender, religion, race and political affiliation do not serve as criteria in the consideration of a security clearance, but actions and aspects adversely affecting the person's vulnerability to blackmail or bribery or subversion and his loyalty to the State or the institution do. This also includes compromising behaviour.

### 3. **SECURITY SCREENING IN RESPECT OF IMMIGRANTS AND PERSONS WITH MORE THAN ONE CITIZENSHIP**

3.1 **Confidential Clearance.** A confidential clearance may be considered in respect of an immigrant who has been resident in the RSA for ten consecutive years of which at least those five years preceding the clearance were spent as a South African citizen. He/she must provide sufficient proof that any former citizenship has been relinquished.

3.2 **Secret Clearance.** A secret clearance is only considered in respect of an immigrant who has been resident in the RSA for fifteen consecutive years of which at least those ten years preceding the clearance were spent as a South African citizen, also on the condition that the person has relinquished his/her former citizenship.

3.3 **Top Secret Clearance.** After an immigrant has been resident in the RSA for a period of twenty consecutive years (of which fifteen years were spent as a South African citizen), a top secret clearance may be considered, on the condition that such a person has relinquished his/her former citizenship. Every case will be dealt with on merit owing to the unique nature of each situation. This means that not all immigrants who comply with the requirements will automatically qualify for a top secret clearance.

3.4 **Dual Citizenship.** Each application for a security clearance in respect of persons with dual citizenship must be assessed on the merits of each individual case.

3.5 **Persons without valid Identification Documents.** No clearance can be issued in the following cases:

3.5.1 Any person who is not in possession of a valid identification document or residence permit for the RSA.

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3.5.2 Naturalised RSA citizens who have not applied for a new identification document after naturalisation, since the document that was issued before naturalisation expires on naturalisation.

3.6 **Employing Immigrants who do not meet Clearance Requirements.** If on account of his/her indispensable expertise, it is considered essential to employ an immigrant while he/she does not satisfy the clearance requirements as laid out above and he/she is to be utilised in a post, the work of which is classified, the vetting authority will be unable to make a positive recommendation with regard to the issue of a security clearance in respect of such a person, but can merely institute an investigation to determine whether such an immigrant is suitable from a security point of view for the post concerned. In such an event the head of the employing institution may authorise that the immigrant be used in the post (see Chapter 5, paragraph 10.2), on the condition that the employing institution must

- submit a certificate to the National Intelligence Agency and the responsible screening institution in which the absolute necessity of employing such immigrant is set forth and it is also declared that no **RSA citizen** with the same expertise is available or can be recruited in the RSA and, in cases where an immigrant from a state formerly seen as controversial has been employed, that an immigrant from a **non-controversial country** could not be obtained;
- provide the responsible screening institution with a description of and an indication of the sensitivity of the responsibilities attached to the post to be occupied by the immigrant;
- declare that it accepts full responsibility for compliance with the security requirements connected with the employment of such immigrant;
- ensure that no classified information or material that is not needed for the performance of his duties comes into the possession of the incumbent of the post; and
- reconsider the authorisation every year and relate in writing to both the National Intelligence Agency and the responsible screening authority any incident which could pose a threat to security or any incidence which may bring his/her security competence into question.

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3.6.1 **Take note:** When the person concerned changes his/her posting, the authorisation is automatically terminated.

3.7 In respect of immigrants already employed in sensitive positions and in whose case the conditions laid out in Chapter 5, paragraph 3.6 above have not yet been complied with, the employing institution must immediately give effect to those conditions as set out in paragraph 3.6.

#### 4. **SCREENING / VETTING OF PERSONS WHO HAVE LIVED/WORKED ABROAD FOR LONG PERIODS**

4.1 Where a security clearance is required for an RSA citizen who has resided/studied/worked abroad for a long period (excluding transferred public servants or students) and who applies to a government or semi-government institution or a national key point for employment, such a person is temporarily not eligible for any grade of security clearance. Applications for clearance can, however, be considered after a period, as set out hereunder, on condition that the applicant did not give up RSA citizenship or accepted dual citizenship during the period of absence:

4.1.1 A Confidential clearance after one year back in the RSA. Such a person can be appointed on condition that a re-application is submitted after one year. On appointment, the subject thus completes and submits all relevant forms for a security clearance. The requesting authority will then be informed as to whether or not there is any negative information on the subject. The subject is also to undertake, in writing, that he/she will resign should the issuing of a security clearance be refused after one year. If such an undertaking is not specifically included in the service contract, a written undertaking to this extent, under signature of the subject, must accompany the application for a security clearance.

4.1.2 A Secret clearance after three years back in the RSA.

4.1.3 A Top Secret clearance after five years back in the RSA.

#### 5. **SECURITY SCREENINGS : CONTRACTORS SUPPLYING SERVICES TO GOVERNMENT DEPARTMENTS OR OTHER GOVERNMENT INSTITUTIONS**

  
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5.1 The onus is on the department/institution concerned in each case to indicate expressly in documents sent to the State Tender Board or private contractors whether there are security implications that should be taken into account in advance when they perform their duties for the department/institution involved. If there are such implications, reasons must be given for the inclusion of a clause in the tender document indicating the degree of clearance required, as well as a clause to ensure the maintenance of security during the performance of the contract. The clause could read as follows:

"Acceptance of this tender is subject to the condition that both the contracting firm and its personnel providing the service must be cleared by the appropriate authorities to the level of **CONFIDENTIAL/SECRET/TOP SECRET**. Obtaining a positive recommendation is the responsibility of the contracting firm concerned. If the principal contractor appoints a subcontractor, the same provisions and measures will apply to the subcontractor.

Acceptance of the tender is also subject to the condition that the contractor will implement all such security measures as the safe performance of the contract may require."

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5.2 The security responsibilities of the contractor will be determined by the department/institution concerned.

## 6. **PROCEDURE FOR REQUESTING SECURITY SCREENINGS**

6.1 Requests for security screening and re-screening must be submitted to the appropriate screening authority on the prescribed form (see Appendix D) accompanied by a set of clear fingerprints.

6.2 The requesting institution should provide the screening authority with a post description of the employee concerned and an indication of the access he/she has/will have and with all other facts that may influence the issue of a clearance.

## 7. **PERIOD OF VALIDITY OF SECURITY CLEARANCES**

7.1 The head of an institution or his/her delegate must ensure that an officer in respect of whom a security clearance of Secret or Top Secret has been issued, is rescreened every five (5) years and every ten years in respect of a Confidential clearance.

7.1.1 Enquiries will be done with the supervisor every five (5) years with respect to the security competence of an official who has received a Confidential clearance.

7.1.2 This arrangement does not preclude rescreening before a period of five years has lapsed in the case of occupational change or where something prejudicial has been established about an officer which may affect his or her security competence. Personnel in ultra sensitive posts should be cleared every three years.

## 8. **TRANSFERABILITY OF CLEARANCES**

8.1 A security clearance issued in respect of an officer while he/she is attached to a particular institution is not automatically transferable to another institution, for example when the officer is transferred. When an officer changes his employer, the responsibility for deciding whether an applicant's existing clearance will be accepted or whether the rescreening of such an officer will be requested in the prescribed way rests with the new employer.

  
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- 8.2 However, for the purpose of meetings and other co-operative functions clearances are transferable. The employing institution is responsible for informing the chairman of such a meeting in writing as to the level and period of validity of the clearances of the representatives involved.

## 9. RESPONSIBILITIES OF THE SCREENING AUTHORITY

- 9.1 The screening authority will investigate and advise on the security competence of a person on the basis of prescribed guidelines.
- 9.2 After the investigation the screening authority will merely make a recommendation regarding the security competence of the person concerned to the head of the requesting institution, and this should in no way be seen as a final testimonial as far as the utilisation of the person is concerned.

## 10. RESPONSIBILITIES OF THE HEAD OF THE REQUESTING INSTITUTION

- 10.1 The head of an institution or his delegate must make a decision and issue a clearance after receiving the recommendation made by the screening institution, and in accordance with circumstances/information at his/her disposal.
- 10.2 Notwithstanding a negative recommendation from the screening authority, for whatever reason, the head of the institution may still, after careful consideration and with full responsibility, use the person concerned in a post where he/she has access to classified matters if he/she is of the opinion that the use of the person is essential in the interest of the RSA or his/her institution, on the understanding that a person satisfying the clearance requirements is not available.
- 10.3 When **any** person is utilised without a clearance, the responsible screening institution and the National Intelligence Agency must be furnished every year with a certificate regarding such person's security conduct (see Chapter 5, paragraph 3.6). Any conduct entailing a security risk must be reported immediately to the screening authority concerned (also see Chapter 9: Breaches of Security).

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10.4 Heads of institutions whose officers attend meetings where classified matters are discussed must inform the chairperson of such a meeting in writing of the level of security clearance of such officers. It is the responsibility of the chairperson to satisfy himself/herself regarding the security clearance of all those present at the meeting.

10.5 Further, it is also the responsibility of the head of the institution or his/her delegate to

- ensure that there is continuous supervision of persons in respect of whom security clearances have been issued;
- present security awareness programmes for his/her employees and to warn staff members not to supply personal particulars of colleagues/officers to unauthorised persons;
- ensure that persons dealing with classified matters sign the prescribed declaration of secrecy (see Appendix B, a draft declaration that can be modified to suit the requirements in each particular case);
- pertinently bring to the attention of the officers working with classified matters any other legislation, regulation and/or orders that entail secrecy and/or the protection of activities, installations, etc, of any particular institution.
- to point out to employees dealing with classified matters when they resign or leave the service that they will continue to be the target of foreign intelligence services and that they remain subject to the declaration of secrecy.
- to ensure that all classified documents in the possession of the person concerned are returned when such person resigns or leaves the service; and
- to ensure that no information comes into the possession of an individual that is not essential for the performance of his or her duties.

## 11. OFFICERS TRAVELLING ABROAD

11.1 In the event where an official with a clearance travels abroad, the head of the institution employing the official or his/her delegate must keep a thorough record of such visits.

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- 11.2 When officials are travelling abroad they must be on their guard against any attempt by a foreign intelligence service to recruit them. If a person is approached, he or she must, immediately on returning, report the fact to the head of the institution or his/her delegate for transmission to the responsible screening authority and the National Intelligence Agency. While travelling, officials should maintain a low profile and be careful not to place themselves in compromising situations.

## 12. **PROTECTION OF EXECUTIVE OFFICIALS**

- 12.1 Since executive officials are constantly the target of enemies of the State, the necessary precautions should be taken to protect these officials against threats of blackmail or violence. Such threats should be reported to the NIA or the SAPS or the SANDF (MI), as the case may be. The necessary precautionary and protective measures must be undertaken by the various institutions to ensure the safety of the officials concerned. More particulars in this regard may be obtained from the National Intelligence Agency.

## 13. **STATUTORY AND OTHER PROVISIONS FOR THE PROTECTION OF INFORMATION**

- 13.1 The attention of all persons dealing with classified matters should be drawn specifically to the provisions of the Protection of Information Act (No 84 of 1982) as amended.
- 13.2 Any other legislation, regulations and/or directives relating to secrecy and/or the safeguarding of the activities, installations, etc of a particular institution must also be specifically brought to the attention of officers dealing with classified matters.

  
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## CHAPTER 6

### COMMUNICATION SECURITY

1. Policy/ standards in the computer/ communications security field will be more frequently updated (because of technological advances) than policy in the other security fields. As the computer/ communications security policy is currently being updated and integrated in order to reflect the amalgamation of the previous Computer Security Task Group and the Joint Communications Security Council, computer/ communications security policy will be separately promulgated. The computer and communications security policy is however regarded as part of the Minimum Information Security Standard.
2. The authority to promulgate computer and communications policy is hereby delegated to the Chairman of the Functional Security Committee of the National Intelligence Coordinating Committee (NICOC) after :
  - the Chairman has ensured that it is integrated and in line with policy regarding other security disciplines;
  - legal principles were taken into account.
3. Communication security may be described as a condition that is created by the deliberate application of measures to safeguard sensitive communication, whatever form it may take.
4. Communication may be divided into two main categories:
  - 4.1 Communication taking place with the aid of communications equipment, telex equipment, computer equipment, radio and facsimile equipment and the telephone. The Communications Security Policy serves as the minimum communication security standard.
  - 4.2 Communication taking place without communications equipment, ie mainly personal communication.
5. In terms of Communications Security Policy classified information may be transmitted only under the following conditions:



- 5.1 Via acceptable and approved apparatus.
- 5.2 The necessary encryption, as prescribed, must be present.
6. Personal communication of a sensitive or classified nature must necessarily be subject to strict self discipline on the part of the communicator. In this regard the following guidelines apply:
- 6.1 the need-to-know principle.
- 6.2 such conversation should take place in such a way that sensitive information/intelligence does not come into the possession of unauthorised persons or persons who happen to overhear;
- 6.3 places such as offices, conference rooms etc, where sensitive or classified matters are discussed on a regular basis should be subject to
- proper and effective access control (eg outside maintenance personnel and cleaners);
  - regular electronic surveillance counter measures (sweeping). (In this regard the National Intelligence Agency can be contacted in the case of government departments, parastatals and private institutions. The SASS, SANDF and the SAPS are responsible for electronic surveillance counter measures with regard to their own environments).
7. The Chief Directorate Security of NIA or SACSA may be approached for further advice and guidance in respect of communication security needs.

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## CHAPTER 7

### COMPUTER SECURITY

1. Policy/ standards in the computer/ communications security field will be more frequently updated (because of technological advances) than policy in the other security fields. As the computer/ communications security policy is currently being updated and integrated in order to reflect the amalgamation of the previous Computer Security Task Group and the Joint Communications Security Council, computer/ communications security policy will be promulgated separate from this issue of the MISS. The computer and communications security policy will however be regarded as part of the Minimum Information Security Standard (MISS).
2. The authority to promulgate computer and communications policy is hereby delegated to the Chairman of the Functional Security Committee of the National Intelligence Coordinating Committee (NICOC) after :
  - the Chairman has ensured that it is integrated and in line with policy regarding other security disciplines;
  - legal principles were taken into account.
3. In the light of the increasing dependence on and the proliferation of computers in the administration of the country in general, and also of the extent to which classified information is processed by means of computers, security has become essential in this area.
4. All computer storage media (usually magnetic or optical), are documents in terms of the definition in the Protection of Information Act (Act 84 of 1982). These documents, when containing classified information, must be handled according to the document security standards as described in Chapter 4.
5. It is the responsibility of the head of the institution or his delegate to ensure that all personnel concerned with computers receive the necessary security training. In addition, the security awareness of all personnel using computers must receive regular attention.



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6. Against this background the following measures must be implemented:
  - essential backup of computer systems and data;
  - physical security measures as prescribed;
  - computer security responsibilities should be clearly established;
  - the allocation and use of passwords as prescribed.
7. Where use is made of computer communications and data is transmitted through an unprotected area, the transmission should be protected in accordance with Communication Security Policy/Instructions.
8. All breaches of security in the computer environment must be reported as soon as possible in accordance with Chapter 9 of this document.
9. In cases of uncertainty regarding the implementation or appropriateness of security measures in the computer environment, the Chief Directorate Security of the NIA should be consulted.

  
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## CHAPTER 8

### PHYSICAL SECURITY MEASURES

**Remark:** The SA Police Service acts as advisor in terms of physical security measures (see Appendix A).

#### 1. ACCESS CONTROL

- 1.1 A system of security measures is essential to create an optimal information security environment. Such system naturally is as efficient as its weakest link/element. In this regard access control and movement control are the links or elements that are prerequisites for an effective security system.
- 1.2 Access control is multidimensional. The **different levels or degrees** thereof must be developed and applied according to the degree of safeguarding required. Factors such as the sensitivity of information handled and the degree in which zoning (placement and isolation of certain regions) is/can be implemented play a role in determining these levels/degrees.
- 1.2.1 The different levels/degrees of access control can vary from the mere locking of offices, with the accompanying access restriction (where effective key control will inevitably play a vital role) to large-scale access control to a building or part of a building where security officials identify, control and conditionally allow visitors access.
- 1.3 Heads of institutions are responsible for the enforcement of the provisions of the Control of Access to Public Premises and Vehicles Act (Act 53 of 1985) for the purpose of safeguarding buildings or premises occupied or used by or under the control of government departments.



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- 1.3.1 Compliance with the provision of Section 2(2), under which the furnishing of information, the furnishing of identification, declarations concerning hazardous objects and the contents of any suitcase, briefcase, handbag, bag, etc, the subjection of persons or objects to electronic examination and the handing over of any object for examination or custody may be required as a prerequisite for effective access control. The searching of persons under Section 2(2)(g) may take place only if the Minister of Safety and Security or his/her delegate (the Commissioner of the SA Police Service) gives authority for this by notice in the Government Gazette.
- 1.4 In cases where different government departments occupy or use or control different parts of the same building or where different government departments occupy or use or control different parts of the same building together with other institutions, consensus between the heads of departments and the heads of other institutions is a prerequisite for the uniform application of the provisions of the Control of Access to Public Premises and Vehicles Act. Where government departments or other institutions apply the provisions of the Act, notices should be displayed to inform members of the public who wish to gain access in a reasonable manner that the Act is being applied.
- 1.5 Effective access control should be applied to areas where photocopiers, printers, facsimile machines, etc are used. These equipment should also be under constant supervision to ensure that no unauthorised transmission of classified documents take place, or unauthorised copies are made.

## 2. **KEY CONTROL AND COMBINATION LOCKS**

- 2.1 Effective key control, including control over duplicate keys, must be accompanied by the keeping of effective records in order to ensure that the keys to a building and safes or strongrooms or other safe storage places in which classified information is kept are dealt with in a safe manner. Where storage places are equipped with combination locks, the combinations must be used, kept and changed in accordance with the prescribed procedures (see Chapter 4, paragraphs 10.7 and 10.8).

  
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### 3. **MAINTENANCE SERVICES, REPAIRS AND THE CLEANING OF BUILDINGS/OFFICES**

- 3.1 Occupiers of buildings/offices where classified or sensitive matters are dealt with must always be present when artisans, technicians or cleaners are performing their duties. Special care should be taken on such occasions to ensure that they do not gain access to classified matters.

### 4. **CONTINGENCY PLANNING**

- 4.1 Institutions must make provisions for contingency planning (see Chapter 2 "Definitions") aimed at preventing and/or combating any disaster or emergency. The contingency plan must be geared for saving lives, safeguarding property and information and ensuring that activities can continue with as little disruption as possible.
- 4.2 These aims can be achieved only through well-organised action in which all the available means and manpower are used in a co-ordinated and effective way to put preventative and/or control measures into operation, and through regular practise of the contingency plan.



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## CHAPTER 9

### BREACHES OF SECURITY

1. Heads of security or those tasked with the security responsibility of an institution must report all instances of a breach of security, or failure to comply with security measures, or conduct constituting a security risk, as soon as possible to the Chief Directorate Security of the National Intelligence Agency, and where appropriate to the SAPS (Crime Prevention Unit) or the SANDF (MI) (see Appendix A). Where official encryption is concerned, a security breach must also be reported to the South African Communication Security Agency (SACSA).
2. When a breach of security occurs, the existing channels must be used to report it. It is the responsibility of the head of the institution to ensure that all breaches of security are reported.
3. Breaches of security must at all times be dealt with using the highest degree of confidentiality in order to protect the officer concerned and prevent him or her from being unnecessarily done an injustice to.

  
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**DIVISION OF RESPONSIBILITIES WITH RESPECT TO THE PRACTICE OF  
PROTECTIVE SECURITY IN THE RSA**

**Note : This appendix serve only to reflect the situation regarding the division of responsibilities, as agreed upon and approved elsewhere and in other documentation. This appendix therefore has no legal standing and is subject to alteration whenever the original agreements are amended.**

**NATIONAL INTELLIGENCE AGENCY**

- Responsible for its own physical and information security
- Advises, co-ordinates, audits and exercises control with regard to information security in the public, parastatal and private environment in South Africa (excluding SASS, SAPS and SANDF responsibilities).
- Advises, co-ordinates and exercises control with regard to physical security within NIA and as far as it relates to information security, also in the public, parastatal and private environment
- Carries out security screening of NIA personnel as well as screening investigations abroad if necessary
- Advises, co-ordinates and exercises control with regard to technological security abroad

**SA SECRET SERVICE**

- Responsible for its own physical and information security
- Advises, co-ordinates and exercises control with regard to physical, personnel and document security abroad (excluding SAPS and SANDF responsibilities)
- Advises and exercises control with regard to physical security at missions abroad
- Carries out security screening of SASS personnel as well as security interviews and screening investigations abroad at the request of NIA

  
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**SA POLICE SERVICE**

- Responsible for its own physical and information security
- Advises, co-ordinates and controls physical security in South Africa, excluding the NIA, SASS and the SANDF, with the aim of preventing crime
- Security screenings in respect of the government and parastatal environment, excluding NIA, SASS and SANDF personnel
- VIP protection in South Africa.

**SA NATIONAL DEFENCE FORCE**

- Responsible for its own physical and information security and that of Armscor
- Carries out security screening of its own personnel and those of the Armscor family.
- Administers the National Key Points Act
- Facilitates the South African Communication Security Agency

A handwritten letter 'N' enclosed within a hand-drawn circle.

Handwritten letters 'MA' in a bold, blocky font.



OATH OF SECRECY

I, .....

(full name)

solemnly declare that

- 1. I have taken note of the provisions of the Protection of Information Act (Act 84 of 1982) and in particular of the provisions of section 4 of the Act;
- 2. I understand that I shall be guilty of an offence if I reveal any information which I have at my disposal by virtue of my office and concerning which I know or should reasonably know that the security or other interests of the Republic require that it be kept secret from any person other than a person
  - to whom I may lawfully reveal it; or
  - to whom it is my duty to reveal it in the interests of the Republic; or
  - to whom I am authorised by the Head of the Department or by an officer authorised by him to reveal it;
- 3. I understand that the said provisions and instructions shall apply not only during my term of office but also after the termination of my services with the Department; and
- 4. I am fully aware of the serious consequences that may follow any breach or contravention of the said provisions and instructions.

(Signature) .....

(Place) .....

(Date) .....


WITNESSES 1. ....

  
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2. ....

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APPENDIX C

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APPENDIX D

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**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

**CASE NUMBER: 45997/21**

In the matter between:

**THE DEMOCRATIC ALLIANCE**

Applicant

And

**THE NATIONAL COMMISSIONER OF  
CORRECTIONAL SERVICES**

First Respondent

**THE MEDICAL PAROLE ADVISORY BOARD**

Second Respondent

**JACOB GEDLEYIHLEKISA ZUMA**

Third Respondent

**THE SECRETARY OF THE JUDICIAL COMMISSION  
OF INQUIRY INTO ALLEGATIONS OF THE STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE  
PUBLIC SECTOR, INCLUDING ORGANS OF STATE**

Fourth Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL  
SERVICES**

Fifth Respondent

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## THE ACTING NATIONAL COMMISSIONER'S AFFIDAVIT

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I, the undersigned,

**MAKGOTHI SAMUEL THOBAKGALE**

Do hereby make under oath and state that:

1. I am an adult male person and Acting National Commissioner of Correctional Services situated at number 124 WF Nkomo Street, Poyntons Building, Pretoria, Gauteng Province. I was appointed Acting National Commissioner from the 26<sup>th</sup> September 2021 by the Minister of Justice and Correctional Services.
2. The facts deposed to herein are within my personal knowledge save where otherwise stated, and are true and correct.
3. In so far as I make allegations pertaining to legal principles I have done so on the advice of the legal representatives of the National Commissioner of Correctional Services ("the National Commissioner") and I have accepted that the advice is in accordance with the prevailing legal principles.
4. I am duly authorised to depose to this affidavit by virtue of the fact that I now hold the position of the National Commissioner.
5. I have read the affidavit deposed to by Mr Arthur Fraser, my predecessor, and I agree with the contents thereof especially those allegations that relate to the Department of Correctional Services ("the Department") and myself.

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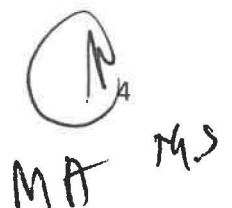
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6. I was appointed to act in the position of the National Commissioner when the deponent to the main affidavit left the Department. By the time I came into office, this matter had already been issued by the Registrar of the above Honourable Court and my predecessor had already given instructions for the matter to be opposed. The Former National Commissioner had already consulted with the legal team, which legal team would include the Director of Legal Services of the Department and myself at a later stage.
7. I also confirm that the legal team still has a mandate to oppose this application and to rely on the information received from the Former National Commissioner. As can be seen from the Former National Commissioner's affidavit, the impugned decision was taken by the Former National Commissioner acting so not in his personal capacity, but on behalf of the Office of the National Commissioner. As a successor in title, I take full responsibility for the said decision as it was taken on behalf of my office.
8. The purpose of this application is not to deal with the issues in the Applicant's application, as most of those issues, fall outside my personal knowledge. I will only deal with the issues that happened while I was the Acting National Commissioner, alternatively deal with those issues as advised by the First Respondent's legal team.
9. I will now proceed to deal with the issue of substitution. The Applicant, amongst others, seeks an order substituting the decision of the National Commissioner for that of this Honourable Court. As already indicated, there is information that is in the hands of the South African Military Health Service ("SAMHS") within the Department of Defence. It will therefore not make sense for the court that

has an incomplete record before it to be expected to substitute a decision of a functionary and pronounce on the parole application of the Third Respondent.

10. I submit that if the court is of the view that the matter should be reviewed and set aside (which is still denied) then the court should rather remit the matter back to the Office of the National Commissioner to deal with it *de novo*. I am advised that substitution happens only in exceptional circumstances. I submit that in this matter there is nothing exceptional. The medical parole was granted in line with the prevailing laws but if the court is against the granting of the medical parole to the Third Respondent, then the matter should be remitted back to me for reconsideration.
  
11. The Applicant also seeks personal cost orders against the Former National Commissioner. Firstly, it needs to be pointed out that the Former National Commissioner took the decision while he was in the Office of the National Commissioner and he took it while he was still employed by the Department and duly executing duties and functions of the National Commissioner. If there are any costs that need to be mulcted against any of the Respondents (which is not conceded), it should be the Office of the National Commissioner and nothing personal. The issue of functionaries being saddled with huge legal costs has a potential to discourage functionaries from taking decisions as whenever they think of taking a decision the first thing that comes to mind is personal costs. I submit that Mr Fraser should not suffer and have a personal cost order pronounced against him when he was doing what was right in terms of the prevailing laws of the country in relation to Correctional Services.

A handwritten signature consisting of a circle containing the letters 'M' and 'A', with 'M.S.' written below it.



12. The Applicant, has, on the afternoon of the 21<sup>st</sup> October 2021 filed a second supplementary affidavit and purports to seek leave from this court for the admission of the said affidavit. Although I intend to oppose the admission of the second supplementary affidavit at the hearing of this application, I will nevertheless deal briefly with the allegations made in the affidavit.

13. **AD Paragraphs 1 and 2 thereof:**

13.1 Save to admit the identity of the deponent on behalf of the Applicant, the remainder of the allegations made in these paragraphs are denied.

14. **AD Paragraph 3 thereof:**

14.1 The allegations in this paragraph are noted.

15. **AD Paragraphs 4 thereof:**

15.1 The allegations in this paragraph are noted.

15.2 The Applicant seems to expect that I should report every movement, action and answer to every utterances made by the Third Respondent. I submit that is not how things are done. I cannot account for every action that the Third Respondent takes.

5 

MA M.S

15.2.1 As far as I know, the Third Respondent has not been banned from attending church or gagged from addressing people who may have come to pray with him or to enquire after his health.

15.3 It also seems as if the Applicant will file a further affidavit every time the Third Respondent opens his mouth or steps outside his house.

16. **AD Paragraphs 5 to 7 thereof:**

16.1 Save to admit that the Department's spokesperson confirmed that the Third Respondent requested permission to leave his residence and permission was granted, this request being in line with the Third Respondent's parole conditions, the remainder of the allegations contained in these paragraphs are noted.

16.2 Furthermore, the Third Respondent will deal with the allegations pertaining to him, I cannot deal with them as I do not have personal knowledge thereof.

17. **AD Paragraphs 8 and 9 thereof:**

17.1 I will not respond to newspaper articles and will also not respond on behalf of the Jacob G Zuma Foundation. The Applicant should have cited the foundation if there was any responses/answers that the Applicant



MA M.S

seeks from the foundation. I do not have personal knowledge of these allegations and I can therefore not plead thereto.

18. **AD Paragraph 10 thereof:**

18.1 I deny the allegations contained in these paragraphs.

18.2 I request the Applicant to back-up its allegations that the Third Respondent does not behave like a terminally ill someone and invite the Applicant to also inform the court how a terminally ill person behaves.

18.3 All parolees are subject to conditions and can make an application to leave their magisterial district which can either be granted or denied.

18.4 I deny that the Department is permitting the Third Respondent to behave as if he had never been convicted of contempt and sentenced to imprisonment.

18.5 I strongly deny that the decision to grant the Third Respondent parole was based on ulterior motives, which are unknown to me, and bias.

19. **AD Paragraph 11 thereof:**

19.1 I am informed by the Acting Regional Commissioner, whose confirmatory affidavit is attached hereto, that the Third Respondent requested permission to travel to Durban and it was granted.



MA-M.S

20. **AD Paragraph 12 thereof:**

20.1 I deny that the filing of the second supplementary affidavit by the Applicant is justified and I further submit that the contents of this affidavit are not relevant to these proceedings.

20.2 I also deny that the Respondents will not suffer any prejudice should this affidavit be admitted. The Applicant ignores the fact that the Respondents are faced with three (3) different applications, although they are based on the same cause of action, one cannot avoid responding to each application individually. The Respondents are already dealing with six affidavits and the filing of further affidavits puts a lot of pressure on both the Respondents and the legal team.

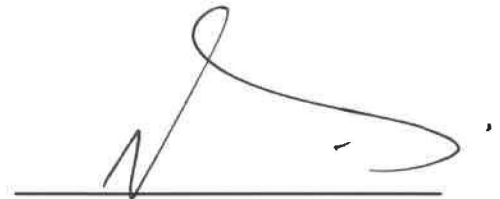
20.3 I am also advised that the Uniform Rules of Court allow for a specific number of affidavits to be filed for a good reason. The Applicant cannot be allowed to litigate in a never ending stream of affidavits, notwithstanding the fact that there was a directive issued on the conduct of this matter. The Applicant does not have authority to dictate to the Respondents or their legal team on whether they have enough time to deal with further affidavits or not.

20.4 As already mentioned, it seems as if the Applicant has abrogated unto itself the authority to be informed/consulted on any action taken by the Department, especially in relation to the Third Respondent. This state

MA <sup>12</sup> M.S

of affairs that the Applicant wants to create cannot be allowed, and I deny that I have to report to the Applicant every minute that the Third Respondent does anything.

**WHEREFORE** it is my submission that the Applicant has failed to make out a case for the relief sought in the notice of motion and the application should be dismissed with costs, such costs to include the employ of three (3) counsel.



**DEPONENT**

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit that he has no objection in the making of the prescribed oath and that he considers this oath to be binding on his conscience. I also certify that this affidavit was signed in my presence at \_\_\_\_\_ on this the \_\_\_\_\_ day of **October 2021** and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.

COMMISSIONER OF OATHS:

FULL NAME

STREET ADDRESS:

CAPACITY:

AREA:



MA

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NUMBER: 45997/21**

In the matter between:

**THE DEMOCRATIC ALLIANCE**

Applicant

And

**THE NATIONAL COMMISSIONER OF  
CORRECTIONAL SERVICES**

First Respondent

**THE MEDICAL PAROLE ADVISORY BOARD**

Second Respondent

**JACOB GEDLEYIHLEKISA ZUMA**

Third Respondent

**THE SECRETARY OF THE JUDICIAL COMMISSION  
OF INQUIRY INTO ALLEGATIONS OF THE STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE  
PUBLIC SECTOR, INCLUDING ORGANS OF STATE**

Fourth Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL  
SERVICES**

Fifth Respondent

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**CONFIRMATORY AFFIDAVIT**

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I, the undersigned

**TSANDZEKA KENNETH MTHOMBENI**

Do hereby declare the following under oath and state that:

T.k.m. CP

(K)  
MA

1. I am an adult male employed by the Department of Correctional Services as the Acting Regional Commissioner with offices situated at No 4 College Road, Pietermaritzburg, KwaZulu-Natal Province.
2. The contents of this Confirmatory Affidavit fall within my personal knowledge and are to the best of my belief and knowledge both true and correct.
3. I have read the Supporting Affidavit that has been deposed to by the Head of the Estcourt Correctional Centre, **Ms Nompumelelo Precious Radebe** and confirm the contents thereof insofar as it relates to me as well as the Third Respondent, Mr Zuma, and the deterioration of his health condition whilst he was incarcerated at the Estcourt Correctional Centre.




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**DEPONENT: TK MTHOMBENI**

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit that he has no objection in the making of the prescribed oath and that he considers this oath to be binding on his conscience. I also certify that this affidavit was signed in my presence at Prestbury on this the 26 day of **October 2021** and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.

COMMISSIONER OF OATHS: ~~B. M. Mthombeni~~ <sup>12/02/2021</sup> ~~PRESTBURY~~

FULL NAME Gugu Precious Biyase

STREET ADDRESS: 106 Zwartkop Road

CAPACITY: Constable

AREA: Prestbury

2

SOUTH AFRICAN POLICE
DETECTIVE SERVICES
2021 -10- 26
PRESTBURY SAPS
KWAZULU-NATAL



MA

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 45997/21

In the matter between

**THE DEMOCRATIC ALLIANCE**

Applicant

And

**THE NATIONAL COMMISSIONER OF  
CORRECTIONAL SERVICES**

First Respondent

**THE MEDICAL PAROLE ADVISORY BOARD**

Second Respondent

**JACOB GEDLEYIHLEKISA ZUMA**

Third Respondent

**THE SECRETARY OF THE JUDICIAL COMMISSION  
OF INQUIRY INTO ALLEGATIONS OF THE STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE  
PUBLIC SECTOR, INCLUDING ORGANS OF STATE**

Fourth Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL  
SERVICES**

Fifth Respondent

---

SUPPORTING AFFIDAVIT

---

I, the undersigned

**NOMPUMELELO PRECIOUS RADEBE**

Do hereby declare the following under oath and state that:

NPR

CP

(N)

MA



1. I am an adult female employed by the Department of Correctional Services as the Head of the Escourt Correctional Centre which is situated at No 2 Macfalae Street, Estcourt, KwaZulu-Natal Province.
2. The contents of this Supporting Affidavit fall within my personal knowledge and are to the best of my belief and knowledge both true and correct.
3. I have read the Answering Affidavit that has been deposed to by the former National Commissioner of Correctional Services, **Mr Arthur Fraser** and confirm the contents thereof insofar as it relates to me and the Third Respondent, Mr Zuma, including his incarceration at the Estcourt Correctional Centre.
4. Furthermore, I wish to bring the following to the attention of the above Honourable Court:
  - 4.1. Mr Zuma was admitted at the Estcourt Correctional Centre on the 08<sup>th</sup> of July 2021. During the admission, he was orientated on the rules and regulations of the Correctional Centre, which amongst others, include the following:
    - 4.1.1. Explanation of the sentence imposed and how he was going to serve it;
    - 4.1.2. Daily complaints and requests which are taken by the Head of the Correctional Centre ("Head of the Centre") or her delegate on a daily basis;
    - 4.1.3. He would be attended to by the Case Management Committee in respect of security classification and privileges;
    - 4.1.4. His accommodation, which would be at the Hospital Section;
    - 4.1.5. Stipulated time of the unlocking of the cells and lock-up (sleeping and waking up time). Mr Zuma was further informed that he will have to make up his bed and clean his cell;

NPR

UP

(R)

MA

- 4.1.6 He was issued with two pairs of offender uniform and toiletries.
- 4.1.7 Immediate medical assessment in collaboration with the South African Military Health Service ('SAMHS') and
- 4.1.8 COVID-19 screening

5 Mr Zuma indicated that he was well versed with the rules and regulations that govern correctional facilities as he had previously been imprisoned

6 On the 9<sup>th</sup> of July 2021, after considering the results of the medical assessment that was conducted on 8 July 2021, the SAMHS submitted a request to the Head of the Centre requesting that one of the Medics be granted permission to monitor Mr Zuma on daily basis for the purposes of medical assistance. Such a request was approved by the Acting Regional Commissioner, Mr Kenneth Mthombeni.

7 On the 10<sup>th</sup> of July 2021, I noticed that Mr Zuma does not make-up his bed nor clean his cell as expected. I escalated the matter to the Acting Area Commissioner under whose jurisdiction the Estcourt Correctional Centre falls, who then reported the matter to the Regional Head of Corrections within the Province. The Regional Head: Corrections engaged Mr Zuma on the registered concerns, particularly, his failure to make-up his bed and cleaning of the cell. Mr Zuma indicated that he was not feeling well and that he often feels weak and unable to make-up his bed or clean his cell. Emanating from the engagement with Mr Zuma, the Regional Head: Corrections guided the nursing staff to assist in making up the bed and the cleaning of the cell and that they should monitor Mr Zuma's health condition on a daily basis.


8 On the 21<sup>st</sup> of July 2021, the Operational Manager Nursing registered several concerns on the physical state of Mr Zuma to me which included the drastic change of complexion, reddish eyes, loss of weight, challenges with his mobility, insomnia, inability or incapacity to execute his core responsibilities and swelling of feet. This was very concerning.

NPR UP

(M)  
MA

9. Having personally noted the above, I reported these concerns to the Acting Area Commissioner on the 21<sup>st</sup> of July 2021. The Acting Area Commissioner discussed the concerns that I had raised with her in respect of the physical state of Mr Zuma with the Regional Head: Corrections. On the 21<sup>st</sup> of July 2021, the Regional Head: Corrections had a telephonic consultation with the medical team from SAMHS to apprise them of the concerns in relation to the deterioration of Mr Zuma's state of health.
10. On the 23<sup>rd</sup> of July 2021, the Acting Regional Commissioner visited the Correctional Centre and noted with concern the state of Mr Zuma. He looked drained and didn't stand up as he would usually do. On the 24<sup>th</sup> of July 2021, SAMHS Medical team attended to the reported concerns.
11. On the 28<sup>th</sup> of July 2021, Mr Zuma was examined by the Medical team from SAMHS at the Escourt Facility, whereafter they handed over a Medical report that he be referred to an outside hospital.
12. On the 5<sup>th</sup> of August 2021, the Acting Regional Commissioner, Acting Deputy Regional Commissioner, Acting Area Commissioner and I visited the National Commissioner to brief him about the worrisome physical state of Mr Zuma. On the same date, the National Commissioner advised that he received a call from a doctor (SAMHS) who indicated that they will have to move Mr Zuma to an external hospital for urgent medical procedures to be conducted.
13. Mr Zuma was subsequently transferred to the Pretoria Heart Hospital on the 5<sup>th</sup> of August 2021. It should be noted that according to SAMHS the condition of Mr Zuma required that he be under care of a Medic on a 24 hours basis, a situation that was not possible at the facility as the Correctional Centre can only accommodate inmates overnight. Therefore, the Medic could not be

allowed to spend twenty four hours with Mr Zuma as the Medic could not be accommodated in the correctional facility.



**DEPONENT: NP RADEBE**

I certify that the Deponent acknowledged that she knows and understands the contents of this affidavit that she has no objection in the making of the prescribed oath and that she considers this oath to be binding on her conscience. I also certify that this affidavit was signed in my presence at Prestbury on this the 26 day of **October 2021** and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.

COMMISSIONER OF OATHS: 

FULL NAME Gugu Precious Bhuase

STREET ADDRESS: 106 Zwartkop Road

CAPACITY: Constable

AREA: Prestbury



  
MA

**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

**CASE NUMBER: 45997/21**

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Applicant

And

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**JACOB GEDLEYIHLEKISA ZUMA**

Third Respondent

**THE SECRETARY OF THE JUDICIAL COMMISSION  
OF INQUIRY INTO ALLEGATIONS OF THE STATE  
CAPTURE, CORRUPTION AND FRAUD IN THE  
PUBLIC SECTOR, INCLUDING ORGANS OF STATE**

Fourth Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL  
SERVICES**

Fifth Respondent

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**CONFIRMATORY AFFIDAVIT**

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I, the undersigned,

**LT GEN (DR) Z.W.S. DABULA**

do hereby state under oath and say:

1.

1.1 I am an adult male, Medical Doctor, in the employ of the South African Military Health Service ("the SAMHS") and hold the rank of Lieutenant General, situated at SAMHS HQ (Full Address) SAMHS HQ Unit, Kasteel Park, Conner Nossob and Jochemus Ave, Erasmuskloof, Pretoria.

1.2 I am duly authorised to depose to this confirmatory affidavit. The facts deposed to herein are within my personal knowledge, save where otherwise stated, and are true and correct.

2.

I have read the affidavit deposed to by the Former National Commissioner of Correctional Services, Mr Arthur Fraser and I confirm the contents thereto as far as they relate to SAMHS.

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**DEPONENT**

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit that he has no objection in the making of the prescribed oath and that he considers this oath to be binding on his conscience. I also certify that this affidavit was signed in my presence at \_\_\_\_\_ on this the \_\_\_\_\_ day of **October 2021** and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.

**COMMISSIONER OF OATHS:**

**FULL NAME**

**STREET ADDRESS:**

**CAPACITY:**

**AREA:**