No. R. 2122
20 December 1996

REGULATIONS IN TERMS OF SECTION 40 OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, 1995 (ACT No. 34 OF 1995): LIMITED WITNESS PROTECTION PROGRAMME

The President has under section 40, read with section 35, of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995), in consultation with the Minister of Justice and the Minister of Finance, made the regulations in the Schedule.

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CHAPTER I
GENERAL PROVISIONS

Definitions
1. In these regulations any word or expression to which a meaning has been assigned in the Act shall bear that meaning and, unless the context otherwise indicates-
   "chief executive officer" means the person appointed as such in terms of
Application and authorisation for protection

2. (1) Any person referred to in sections 11 (e) and 35 (5) of the Act shall apply on a form in the form of Form A in the Annexure hereto for protection for himself, herself, any member of his or her family or household, or any dependant of his or hers or of any such member.

(2) Any member of the family or household of a person referred to in subregulation (1) or any dependant of such member or person on whose behalf an application for protection is made in terms of subregulation (1) or, where such member or dependant is a minor, his or her parent or guardian, shall give authorisation on a form in the form of Form B in the Annexure hereto for protection before he or she is protected.

Powers, duties and functions of the witness protector

3. (1) The witness protector shall exercise the powers and perform the functions and duties which are conferred upon, assigned to or imposed upon him or her by these regulations.

(2) The witness protector acting in consultation with the chief executive officer-
   (a) shall select premises as places of safety for the accommodation of protected persons and shall, for this purpose, be entitled to enter into an agreement with any person, body or the State; and
   (b) may build or erect or cause to be built or erected on any such premises temporary structures to be used as places of safety.

(3) The witness protector may appoint one or more security officers for each place of safety where a protected person is accommodated: Provided that if more than three security officers are appointed for any one place of safety, the consent of the chief investigator shall be obtained.

(4) The witness protector may authorise the transfer of a protected person from one place of safety to another.

(5) The witness protector may, in consultation with the chief investigator, the Minister and the Minister of Foreign Affairs, have a protected person protected outside the borders of the Republic if he or she deems it necessary for the safety of the protected person concerned and he or she may for this purpose enter into negotiations with any foreign government.

(6) The witness protector may, for the purposes of protecting protected persons in terms of these regulations request assistance from any programme which affords protection to witnesses under any other Act and may render assistance to any such programme.

Security officers

4. Subject to the provisions of regulation 6, security officers shall ensure that-
   (a) a protected person is exposed to the public as little as possible;
   (b) all necessary measures are taken to ensure a protected person's safety;
   (c) all necessary measures are taken to protect a protected person against unlawful attacks and intimidation and the disclosure of his or her identity;
   (d) a protected person is visited daily and any complaint or request by him or her receives attention;
   (e) measures are taken for the safekeeping of all moneys, property and valuables in the possession of a protected person, if the latter so requests and if it is deemed necessary or desirable;
   (f) an ill or injured protected person is visited as often as is necessary by a medical officer designated by the Commission and that any protected person who alleges that he or she is ill or injured is examined and treated by such medical officer and that the orders of the medical officer in relation to such protected person are complied with;
   (g) a protected person is examined and treated in accordance with paragraph 4;
(f) by a private medical practitioner if so requested by the protected person and if he or she is able to pay the costs of such examination and treatment and accepts full liability for the payment of such costs;

(h) a protected person is interviewed as close to his or her discharge as possible;

(i) a protected person's physical and mental needs are satisfied as far as possible;

(j) any matter which a protected person wishes to bring to the attention of the witness protector is conveyed to him or her forthwith; and

(k) any legal process to be served on the protected person is received and that the witness protector is notified of any such process.

Prohibition of disclosure of certain information

5. No person shall furnish any person with any information having the effect that-

(a) the identity of any person who applied for protection or who gave authorisation thereto or who is or was protected and of any person who is involved with the protection of a protected person; or

(b) the place where a person is protected, is disclosed, except with the permission of the witness protector or for the official purposes of the Commission.

Expenses In connection with witness protection programme

6. Any expense incurred in connection with the programme shall be authorized by the chief executive officer.

CHAPTER II

PLACING UNDER WITNESS PROTECTION

Placing under witness protection

7. (1) The witness protector may at each office of the Commission, appoint a person or persons to act as security officers in order to receive applications for protection from persons qualifying for protection in terms of the Act and these regulations.

(2) Upon receipt of an application referred to in subregulation (1) the security officer shall request the applicant to complete forms A or B, or both, as the case may be.

(3) The security officer may, for the purposes of a full evaluation and for a limited period, cause an applicant to be accommodated in a place of safety designated by the witness protector, subject to conditions prescribed by the witness protector and set out in an Annexure to form A or B.

(4) The security officer shall immediately inform the witness protector or the person designated by him or her of the fact that an applicant is being accommodated as contemplated in subregulation (3).

(5) The witness protector shall make arrangements for a full evaluation to be made of the veracity of the applicant's evidence, the nature of the threat and the applicant's personal circumstances: Provided that unless the circumstances demand otherwise, such evaluation shall only be made with the assistance of a department or institution of State.

(6) After an evaluation referred to in subregulation (5) the witness protector shall make a recommendation to the chief investigator regarding the continued protection of the applicant.

(7) Further protection may be granted to the applicant on such conditions as the witness protector in consultation with the chief investigator may determine.

(8) The witness protector shall enter into a written agreement with the protected person which shall embody the conditions and rights accorded to that person.

(9) Any person needing protection under the programme may be required to undergo a security screening and each such person shall be requested to furnish an undertaking to that effect.

(10) A protected person shall be required to answer fully all questions put to him or her concerning the security screening referred to in subregulation (9) and, if necessary, make available any documentation or any object which may be relevant to the screening.

(11) A protected person may be required to submit his or her fingerprints.

(12) The security screening referred to in subregulation (9) shall be arranged by the witness protector.

Duration of protection

8. (1) Protection may be granted to the protected person prior to, during and after giving evidence at any hearing of the Commission.

(2) In the event of protection being granted after the protected person has testified, such protection shall be for a period of fixed duration as determined by the witness protector in consultation with the chief investigator, which duration may be reviewed by them as the need arises.
(3) If the witness protector and the chief investigator are of the opinion that the permanent relocation of a protected person is necessary, they shall report such fact to the Minister or a person designated by him or her.

(4) The relocation contemplated in subregulation (3) shall be dealt with by the Department of Justice in accordance with the provisions governing the witness protection programme referred to in section 185A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), administered by that Department.

Search, seizure and orders

9. (1) A protected person may be searched if the security officer deems it necessary: Provided that any search of a protected person shall be conducted with strict regard to decency and order and that a man shall be searched by a man only and a woman shall be searched by a woman only.

(2) Where an object in the possession of the protected person which, in the opinion of the security officer, is not in the interest of the protected person's safety or the safety of any other person or in the interest of good order in the place where the protected person is being protected, may be seized by such officer and, upon seizure, shall be noted in a register and taken into safe-keeping.

(3) A security officer may give such orders to a protected person as he or she may deem reasonable and necessary in the circumstances in order to achieve efficient security or such orders as may contribute to the safety of the security officer, the protected person or any other person.

(4) The protected person may make representations to the witness protector if he or she feels aggrieved at any actions taken in terms of this regulation by the security officer.

Access to protected person

10. (1) Subject to subregulations (3) and (5), no person except a judge of the Supreme Court, an officer in the service of the Commission or any other person who is authorised by the witness protector or a legal practitioner and a medical practitioner at the request of a protected person shall have access to such protected person.

(2) Service of any legal process on a protected person shall be effected on an official of the Commission and at an office of the Commission designated by the witness protector.

(3) A protected person's family shall have access to such person, except where the security officer has reason to believe that such access will endanger the life of the protected person or any other person connected with the programme.

(4) A protected person may appeal to the witness protector if he or she feels aggrieved at a security officer's decision in terms of subregulation (3).

(5) The security officer may, if a protected person wishes to receive a visit from a person other than a family member and unless the witness protector has in general or in a particular case ordered otherwise and subject to his or her instructions give permission to any such person to visit the protected person for any special or general purpose.

(6) A legal practitioner, private medical practitioner, family member or person contemplated in subregulation (5) shall prior to the visit furnish the security officer with a written undertaking not to disclose the identity of the protected person, his or her whereabouts and other details concerning the programme to any person other than someone referred to in subregulation (1).

(7) The witness protector or a security officer may require, if he or she deems it necessary, that any person contemplated in subregulation (6) undergo a security screening prior to the visit, that proof of identity be produced and that any object which is not in the interests of the safety of the protected person or any other person connected with the programme be handed over to the security officer for safekeeping during the visit.

Support services available to protected persons

11. (1) A protected person may, for the period during which he or she is under protection, be paid an allowance of R10,00 per day if he or she is unemployed: Provided that a minor shall not be entitled to such an allowance if his or her parent or guardian is also a protected person.

(2) Subject to the production of satisfactory proof that a protected person has forfeited income, including any bonus or medical aid or pension fund contribution, by reason of him or her being or having been under protection, the witness protector may-

(a) direct that an allowance equal to the actual amount of the income so forfeited, less any daily allowance paid to the protected person, be paid to him or her; and

(b) notwithstanding the provisions of paragraph (a), authorise the payment of an allowance for the payment of school fees, school uniforms and books for a protected person or his or her dependants.
(3) Any expenses incurred by the Commission in providing a witness with medical services or in the purchase of clothing in terms of subregulation (4) may be deducted from any allowance payable to the witness in terms of this regulation, other than the allowance referred to in subregulation (1).

(4) A protected person may be provided with suitable clothing and other necessary requirements up to a maximum amount of R400 if, in the opinion of the witness protector, he or she has unserviceable clothing or no clothing and is not able to purchase suitable clothing or other necessary requirements from his or her own funds, including the allowances referred to in subregulations (1) and (2). Provided that if the witness protector is satisfied that the said amount is insufficient, he or she may obtain authorisation for the payment of a higher amount from the chief executive officer or the person appointed by him or her.

(5) The Commission shall not be liable for a protected person's debts incurred prior to his or her being granted protection.

(6) The witness protector may, in consultation with the chief executive officer or the person appointed by him or her, authorise the removal, transportation and storage of a protected person's furniture and other belongings and the payment of any reasonable costs in connection therewith, and such property shall be deemed to be under the control of the security officer of the place of safety where the protected person is accommodated.

(7) The witness protector may provide each security officer with a cash float in order to cover any incidental expenses which may be incurred in respect of a protected person during the performance of such security officer's duties, and receipts for any such expenses shall be retained.

(8) If the witness protector considers it in the interests of a protected person, he or she shall arrange for such protected person to receive psychological or psychiatric counselling and the services of a social worker, and the witness protector may enter into an agreement with any person or organisation to supply such services.

(9) In the event of a private person supplying any of the services referred to in subregulation (8) the chief executive officer or the person appointed by him or her shall determine the remuneration and allowance payable for such services.

(10) The witness protector may, in consultation with the chief executive officer, authorise the continuation of any service or financial allowance referred to in this regulation for a reasonable period after a protected person has been discharged from the programme.

(11) If the circumstances make it necessary for a protected person to be placed in a rehabilitation programme, the provisions of subregulations (8), (9) and (10) shall apply mutatis mutandis to such rehabilitation programme.

Discharge from protection

12. (1) A protected person shall remain under protection until-

(a) he or she or, if he or she is a minor, his or her parent or guardian, has completed and signed a waiver of protection in the form of Form C in the Annexure hereto and has submitted it to the person in charge of the place of safety; or

(b) the witness protector, in consultation with the chief investigator, is of the view that protection is no longer required and the protected person is advised in writing accordingly.

(2) The witness protector may take into account breaches of security, disruptive behaviour or anti-social behaviour of the protected person when taking a decision referred to in paragraph (b) of subregulation (1).

Disposal of private property of protected person

13. (1) The private property of a protected person which is in the possession of or under the control of the security officer in charge of the place of safety shall-

(a) be handed to the protected person on discharge; or

(b) be handed to the protected person's spouse, child or next-of-kin if the protected person has absconded and cannot be traced within 60 days or has died.

(2) If a protected person's spouse, child or next-of-kin cannot be traced within six months or is unwilling to take possession of the property referred to in subregulation (1), the property shall be sold by auction and the proceeds of the auction shall be paid into the account referred to in section 46 (4) of the Act.

(3) The chief executive officer may give permission for the amount which has been deposited in the account as contemplated in subregulation (2) or a part thereof to be paid to the protected person or his or her spouse, child or next-of-kin when such a person is traced.
Offences and penalties

14. Any-
   (a) protected person who refuses or fails to comply with an order under
       these regulations;
   (b) person who contravenes any provision of these regulations; or
   (c) person who gains or causes access or attempts to gain or to cause access
       to a person under protection contrary to the provisions of these
       regulations,
   shall be guilty of an offence and liable on conviction to a fine, or to
   imprisonment for a period not exceeding six months.

CHAPTER IV

Status of protected persons after dissolution of Commission

15. All protected persons still under protection upon the date of the
dissolution of the Commission shall be further protected under the witness
protection programme of the Department of Justice contemplated in section 185A

ANNEXURE

FORM A
APPLICATION FOR PROTECTION
PLEASE NOTE!
FORM A CANNOT BE REPRODUCED.
PLEASE CONTACT SABINET ONLINE FOR A PHOTOCOPY!

FORM B
PERMISSION OF RELATIVE FOR PROTECTION
PLEASE NOTE!
FORM B CANNOT BE REPRODUCED.
PLEASE CONTACT SABINET ONLINE FOR A PHOTOCOPY!

FORM C
WAIVER OF PROTECTION
PLEASE NOTE!
FORM C CANNOT BE REPRODUCED.
PLEASE CONTACT SABINET ONLINE FOR A PHOTOCOPY!