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YECISKEI**

**REPUBLIC OF
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DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 105

It is hereby notified that the Chairman of the Council of State has assented to the following decree which is hereby published for general information:-

PRE-TRIAL JUDICIAL INVESTIGATION OF ABUSIVE OFFENCES DECREE, 1990

DECREE No. 46 OF 1990

COUNCIL OF STATE — REPUBLIC OF CISKEI

PRE-TRIAL JUDICIAL INVESTIGATION OF ABUSIVE OFFENCES DECREE, 1990

DECREE

To provide for an extraordinary pre-trial judicial investigation into certain offences, to provide for the evidence to be preserved for the purposes of any subsequent trial and to provide for matters incidental thereto.

(English text signed by the Chairman of the Council of State. Assented to on 18 December 1990.)

BE IT DECREED by the Council of State of the Republic of Ciskei, as follows:-

1. Definitions. - In this decree, unless the context indicates otherwise -

"abusive offence" means any criminal offence of violence or of a sexual or indecent nature committed against or in connection with a child or any criminal offence of a sexual or indecent nature committed against or in connection with a female person;

"child" means any person whether male or female under the age of 17 or reputedly or allegedly or apparently under the age of 17;

"complainant" means any child or other person against or in respect of whom any abusive offence has or is suspected or alleged or reported to have been committed and includes any parent or guardian of any such child;

"first possible opportunity" means the first possible opportunity, irrespective of normal office, court or working hours, and "as soon as possible" has a corresponding meaning;

"investigation Magistrate" means any Magistrate appointed as an investigation Magistrate by the Director-General of the Department of Justice for purposes of this decree;

"offence" means any abusive offence which has, or is alleged or suspected to have, been committed;

"offender" means any person who has, or is alleged or suspected to have, committed an abusive offence;

"police official" means any member of the Ciskeian Police;

"witness" means any person (other than a complainant on or in respect of whom an abusive offence has, or is alleged or suspected to have been committed) who is able and competent to give evidence concerning such offence.

2. General. - (1) The officer in charge of every police station shall, at all times, keep and maintain a register showing the name, address and telephone number (if any) of every Magistrate who is required to perform the duties of an investigating Magistrate in his area at any given time.

(2) Subject to the provisions of this decree, an investigating Magistrate may require the attendance before him as a witness, for purposes of giving effect to the provisions of this decree, of any person who is likely to give material or relevant information of any offence, whether or not it is known by whom the offence was committed.

(3) The provisions of sections 162 to 165 inclusive, section 179 (1) (b), sections 187, 188 (1) and 189 and section 191 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) shall apply *mutatis mutandis* to any proceedings under this decree and such proceedings shall, for the purposes of the aforementioned section, be deemed to be judicial proceedings.

3. Duties of police official in relation to offences. - (1) A police official to whom an abusive offence is reported or who knows or suspects that such offence has been committed or who is investigating any such offence shall -

(a) ensure that any person, who requires immediate medical attention or examination as a result of such offence, receives such attention or examination forthwith;

(b) as soon as possible and in the most expeditious manner, inform an investigating Magistrate of the occurrence;

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(c) then or at any time thereafter before the investigating Magistrate examines any witness as contemplated in section 4, inform the investigating Magistrate —

- (i) of the alleged nature, time and place of commission of the offence;
- (ii) when and in what circumstances and by whom the offence was reported to him or he otherwise came to know or to suspect that the offence had been committed; and
- (iii) the identity and other particulars of the complainant and of any witnesses; and
- (iv) the identity and any other particulars of the offender; and

(d) do all things necessary to assist the investigating Magistrate in procuring the attendance before him of the persons concerned for the purpose of giving effect to the provisions of this decree.

(2) No such police official as aforesaid shall —

(a) take or cause to be taken a statement in writing from the complainant or any offender at any time before the investigating Magistrate has made his report to the Attorney-General in terms of section 9 in respect of that offence;

(b) take or cause to be taken a statement in writing from any witness at any such time as aforesaid, unless he has first been requested to do so by the investigating Magistrate in terms of section 6 (3);

(c) disclose to any person other than the investigating Magistrate or any other police official any information or evidence regarding the offence which has otherwise been conveyed to him by any complainant, witness or offender; or

(d) allow or suffer the complainant to be in the presence or company of the offender at any time before the investigating Magistrate has examined the complainant and the offender as contemplated in sections 4 and 5.

(3) Any police official who contravenes any provision of subsection (2) shall be guilty of an offence and liable on conviction to the punishments prescribed in section 29 (1) of the Police Act, 1983 (Act No. 32 of 1983).

4. Investigation proceedings. - (1) Whenever an investigating Magistrate is informed of the commission or suspected commission of an offence, the investigating Magistrate shall —

(a) as soon as possible make himself available at a venue to be determined by him where it is convenient to examine the complainant as a witness in private and request a police official to bring the complainant (and, if the complainant is a child of tender years, its parent or guardian who is not an offender) to that venue;

(b) before so examining the complainant, commit to writing in the record of proceedings —

- (i) the information referred to in section 3 (1) (c) if such information has not previously been recorded; and
- (ii) his observations regarding the physical, mental and emotional state of the complainant;

(c) interview the complainant in private with no other person present and take from the complainant a statement regarding the alleged offence; provided that, if the Magistrate is of the view that the physical or emotional condition of the complainant is such as to render the taking of a statement impossible or inadvisable, he shall be able to defer the taking thereof to such other time and place as may be advisable and provided further that, if the complainant is, in the opinion of the Magistrate, a child of tender years and it appears to the Magistrate that such child is not willing to co-operate adequately, the Magistrate may permit a parent or guardian of the child to be present during the interview but shall not allow such parent or guardian in any way to coerce the child or to influence the child in respect of the contents of the statement being taken.

(2) The statement taken from a complainant shall be recorded in the language in which it is given except where such language is not an official language, in which event a competent and sworn interpreter may be permitted to be present to translate the complainant's testimony.

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(3) Nothing in the foregoing provisions of this section contained shall be construed as prohibiting the investigating Magistrate from questioning the complainant in order to obtain accurate and meaningful information of the offence but he shall not, in any way, harass or exercise undue pressure on the complainant for that purpose.

(4) If, in the opinion of the investigating Magistrate, medical examination, attention or treatment is needed by a complainant who is to give, is giving or has given a statement as hereinbefore contemplated, he shall instruct the police official concerned to arrange accordingly and such police official shall carry out such instruction.

5. Appearance of offender. - (1) As soon as possible after the investigating Magistrate has complied with the provisions of section 4, the police official shall cause the offender to be brought before such Magistrate in private for the purposes contemplated in this section.

(2) Subject to the provisions of this section, the investigating magistrate —

(a) shall, before questioning the offender, note his observations regarding the physical, mental and emotional state of the offender;

(b) shall inform him of the allegations made against him and, subject to the law relating to privilege, require him to state everything he knows about the offence; and

(c) may, subject to the aforesaid law, require him to answer any question which, in the opinion of the investigating Magistrate, may assist such Magistrate in his investigation.

(3) The investigating Magistrate may adjourn the proceedings from time to time and, when the offender again so appears before him, require him to answer any further questions which such Magistrate may deem necessary in order to achieve a fair and thorough investigation of the offence: Provided that it shall not at any time be competent for the Magistrate to cross-examine the offender in any manner calculated to destroy his credibility.

(4) The provisions of subsections (1)(c), (2) and (3) of section 4 shall apply *mutatis mutandis* to any examination conducted under this section and any statements made by an offender shall be read over to him by the investigating Magistrate and, if he adheres to such statement, he shall be required to append his signature thereto.

(5) (a) Nothing provided for in this decree shall derogate from the rights of an arrested person to be brought before a lower court as provided for in section 50 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(b) No court shall be entitled to release any person arrested for an abusive offence on bail or warning before the investigation Magistrate shall have been informed of any application for such release and the State shall have been afforded an opportunity to consult him in regard thereto.

6. Other evidence of offence. - (1) After the investigating Magistrate has, in relation to his investigation, complied with the foregoing provisions of this decree, he shall request the police official concerned to bring before him all other persons who ought to be examined as witnesses in order to complete the investigation.

(2) Such police official shall thereupon bring each such witness before such Magistrate at a convenient time and place until the Magistrate is satisfied that his investigation is complete.

(3) Notwithstanding the foregoing provisions of this decree, it shall be competent for the investigating Magistrate to request the police official to interview and to take statements from any witnesses other than the complainant or the offender if, in his opinion, the investigation will be hampered or delayed by his adopting the procedure contemplated in subsection (1), provided that any such statement shall not be received as evidence at the trial of the offender as provided for in section 11 (2).

7. Defence witnesses. - (1) An offender may, at any stage of any proceedings under this decree, request the investigating Magistrate to examine as a witness any person specified by him who is competent and compellable to give evidence in his defence and the investigating Magistrate shall make every reasonable effort to give effect to such request.

(2) The provisions of section 6 (3) shall not apply in respect of the taking of statements from such witnesses.

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8. No legal representation allowed at investigation. - Notwithstanding anything to the contrary in the Criminal Procedure Act, 1977 or in any other law contained, no person shall be entitled to the assistance of a legal adviser at any time during his examination by an investigation Magistrate under this decree.

9. Investigating Magistrate to submit report on investigation to Attorney-General -

(1) At the conclusion of his investigation the investigating Magistrate shall submit a report to the Attorney-General, which report shall include -

- (a) the entire record prepared by the investigating Magistrate in terms of this decree;
- (b) all documentary exhibits and a list of any other exhibits;
- (c) any statements taken by a police official in terms of section 6 (3); and
- (d) any comments or other observation that he may deem relevant.

(2) After the receipt of such report the Attorney-General or his representative may take a statement from any witness in relation to the offence or may request any police official to do so: Provided that no such statement may be taken from the offender.

10. Attorney-general may arraign the offender for trial or decline to prosecute. -

(1) After considering the report submitted to him under section 9 (1), the Attorney-General may -

- (a) arraign the offender for trial before any court having jurisdiction; or
- (b) decline to prosecute the offender.

(2) The Attorney-General shall cause the investigating Magistrate to be advised of his decision.

(3) If the Attorney-General declines to prosecute the offender, the investigating Magistrate shall, forthwith, cause the offender to be advised accordingly and, if he is in custody, order his release.

(4) Any offender who is arraigned for trial in terms of subsection (1) (a) may, at the time of such arraignment before the court, inspect the record of proceedings compiled by the investigating Magistrate and shall be furnished with a copy thereof free of charge before being asked to plead.

11. Procedure where accused arraigned for trial. - (1) Where an offender is arraigned for trial, the investigating Magistrate or any other Magistrate of that district shall advise the offender (hereinafter referred to as the accused) of the decision of the Attorney-General and commit the accused for trial in the court in which he is to be arraigned and the case shall thereafter be dealt with in all respects as with a summary trial in that court.

(2) The record prepared by the investigating Magistrate shall, upon production in the court in which the accused is to be arraigned together with an affidavit by the investigating Magistrate verifying the correctness of such record, be received as evidence in, and form part of the record of the trial of the accused in that court.

(3) Nothing in this section contained shall -

- (a) prohibit or prevent the prosecution or the accused from presenting any evidence on any aspect of the charge against the accused or the court from hearing any evidence; or
- (b) prohibit or prevent the prosecutor or the accused or the court from calling any witness, whose evidence was admitted by the investigating Magistrate at his investigation, for examination or cross-examination as the case may be;
- (c) oblige the accused to give evidence at the trial; or
- (d) prevent the court from coming to any conclusion contrary to any of the observations of the investigating Magistrate in his report to the Attorney-General.

(4) No investigating Magistrate shall preside at any trial arising from his investigation of any offence under this decree.

12. Concealment of offence. - Any person -

- (a) who has knowledge of the commission against a child of any abusive offence, or
- (b) who reasonably suspects that such an offence has been committed, or

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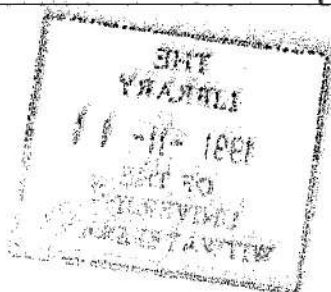
(c) to whom the commission of any such offence has been reported, and

(d) who fails at the first possible opportunity to report such knowledge, suspicion or intelligence to a police official or magistrate,

shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

13. Short title and commencement. - This decree shall be called the Pre-trial Judicial Investigation of Abusive Offences Decree, 1990 and shall come into operation on a date to be fixed by the Head of State by proclamation in the *Gazette*.

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