
PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 26 OF 2019**by the****PRESIDENT of the REPUBLIC of SOUTH AFRICA****SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT**

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

AND WHEREAS the Department or the State suffered losses that may be recovered;

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

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

- (a) serious maladministration in connection with the affairs of the Department or the IDT;
- (b) improper or unlawful conduct by the employees or officials of the Department or the IDT;
- (c) unlawful appropriation or expenditure of public money or property;
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
- (e) intentional or negligent loss of public money or damage to public property;

- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the Department or the IDT; or
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof, which took place between 22 October 2007 and the date of publication of this Proclamation or which took place prior to 22 October 2007 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the Department or the State, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Johannesburg this 7th day of June Two thousand and nineteen.

CM Ramaphosa
President

By Order of the President-in-Cabinet:

TM Masutha
Minister of the Cabinet

SCHEDULE

1. Maladministration and/or irregular, improper or unlawful conduct in connection with the affairs of the Department or the IDT in relation to—

- (a) the construction of the Limpopo High Court, Mpumalanga High Court, the Plettenberg Bay Magistrate's Court, the Booysens Magistrate's Court, the Richards Bay Magistrate's Court, the Goodwood Magistrate's Court, the Simunye Magistrate's Court and the Tsineng Periodical Court;
- (b) the acquisition of land for the Mpumalanga High Court;
- (c) the number of court rooms which were built during the construction of the Plettenberg Bay Magistrate's Court;
- (d) the procurement and provision of—
 - (i) court room furniture; or
 - (ii) goods or services; or
- (e) contract and performance management, including any failure to act or to act timeously against professional consultants, agents, contractors, suppliers or service providers for any non-performance, poor performance, defective performance or late performance in respect of goods, works or services delivered, performed or rendered in terms of paragraph (a), (b) or (c),

in terms of the "Construction of New Courts Programme" of the Department and any related unauthorised, irregular or fruitless and wasteful expenditure which the Department or the State incurred or may incur as a result thereof, including the causes of such —

- (i) maladministration and/or irregular, improper or unlawful conduct; and
- (ii) unauthorised, irregular or fruitless and wasteful expenditure.

2. Any non-performance, poor performance, defective performance or late performance by the IDT, or professional consultants, agents, contractors, suppliers or service providers appointed by the IDT, in respect of goods, works or services delivered, performed or rendered in terms of paragraph 1(a), (b), (c) or (d) of this Schedule and any losses or damages which the Department or the State suffered or may suffer as result thereof.

3. The acquisition of land for the Mpumalanga High Court in a manner that was—

- (a) not fair, equitable, transparent, competitive or cost-effective;

- (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, circulars, practice notes or instructions issued by the National Treasury; or
- (c) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Department or the IDT,
and any related unauthorised, irregular or fruitless and wasteful expenditure which the Department or the State incurred as a result thereof.

4. Any unlawful, improper or irregular conduct by—
- (a) the Department, the IDT, their officials, employees or agents or any other person relating to the allegations set out in paragraphs 1 to 3 of this Schedule;
or
 - (b) the contractors, suppliers or service providers, their directors, employees, contractors, sub-contractors or agents appointed by the IDT relating to the allegations set out in paragraph 2 of this Schedule.

PROKLAMASIE NO. R. 26 VAN 2019
van die
PRESIDENT van die REPUBLIEK van SUID-AFRIKA

**WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE,
1996 (WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENT-
HEDE NA BESTAANDE SPESIALE ONDERSOEKEENHEID EN SPESIALE
TRIBUNAAAL**

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleenthede van die Departement van Justisie en Staatkundige Ontwikkeling (hierna na verwys as "die Departement") en die Onafhanklike Ontwikkelings Trust (hierna na verwys as "die OT");

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

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

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

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Departement of die OT;
- (b) onbehoorlike of onregmatige optrede deur die werknemers of beamptes van die Departement of die OT;
- (c) onregmatige bewilliging of besteding van publieke geld of eiendom;
- (d) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling,

transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;

- (e) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;
- (f) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op voornoemde misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), en welke misdrywe gepleeg is in verband met die sake van die Departement of die OT; of
- (g) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belange van die publiek of enige kategorie daarvan veroorsaak het of kan veroorsaak,

wat plaasgevind het tussen 22 Oktober 2007 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 22 Oktober 2007 of na die datum van publikasie van hierdie Proklamasie, wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae of wat dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om al die werksaamhede en bevoegdhede wat deur die Wet aan die gemelde Spesiale Ondersoekeenheid toegewys of opgedra is, uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, insluitend die verhaal van enige verliese wat deur die Departement of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 7 dag van Junie Twee duisend-en-negentien.

CM Ramaphosa

President

Op las van die President-in-Kabinet:

TM Masutha

Minister van die Kabinet

BYLAE

1. Wanadministrasie en/of onreëlmatige, onbehoorlike of onwettige optrede ten opsigte van die aangeleenthede van die Departement of die OT in verband met—

- (a) die konstruksie van die Limpopo Hooggeregshof, Mpumalanga Hooggeregshof, die Plettenbergbaai Landdroshof, die Booyens Landdroshof, die Richardsbaai Landdroshof, die Goodwood Landdroshof, die Simunye Landdroshof en die Tsineng Periodieke Hof;
- (b) die verkryging van grond vir die Mpumalanga Hooggeregshof;
- (c) die aantal hofsale wat tydens die konstruksie van die Plettenbergbaai Landdroshof gebou is;
- (d) die aanskaffing en verskaffing van—
 - (i) hof meublement; of
 - (ii) goedere of dienste; of
- (e) kontrak en prestasiebestuur, insluitende enige versuim om op te tree of om betyds op te tree teen professionele konsultante, agente, kontrakteurs, verskaffers of diensverskaffers vir enige wanprestasie, onder-prestasie, defektiewe prestasie of laat prestasie ten opsigte van goedere, werke of dienste gelewer, uitgevoer of verrig ingevolge paragraaf (a), (b) of (c),

ingevolge die “Construction of New Courts Programme” van die Departement en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilte uitgawes wat die Departement of die Staat aangegaan het of mag aangaan as gevolg daarvan, insluitende die oorsake van sodanige—

- (i) wanadministrasie en/of onreëlmatige, onbehoorlike of onwettige optrede; en
- (ii) ongemagtigde, onreëlmatige of vrugtelose en verspilte uitgawes.

2. Enige wanprestasie, onder-prestasie, defektiewe prestasie of laat prestasie deur die OT, of professionele konsultante, agente, kontrakteurs, verskaffers of diensverskaffers wat deur die OT aangestel is, ten opsigte van goedere, werke of dienste gelewer, uitgevoer of verrig ingevolge paragraaf 1(a), (b), (c) of (d) van hierdie Bylae en enige verliese of skade wat die Departement of die Staat gely het of mag ly as gevolg daarvan.

3. Die aanskaffing van grond vir die Mpumalanga Hooggeregshof op 'n wyse

wat—

- (a) nie regverdig, billik, deursigtig, mededingend of koste-effektief was nie; of
- (b) strydig was met toepaslike—
 - (i) wetgewing;
 - (ii) handleidings, riglyne, omsendskrywes, praktyknotas of instruksies wat deur die Nasionale Tesourie uitgevaardig is; of
- (c) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Departement of die OT van toepassing is, en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat die Departement of die Staat opgedoen het as gevolg daarvan.

4. Enige onwettige, onbehoorlike of onreëlmatige optrede deur—

- (a) die Departement, die OT, die se beampptes, werknemers of agente of enige ander persoon ten opsigte van die bewerings uiteengesit in paragrawe 1 tot 3 van hierdie Bylae; of
- (b) die kontrakteurs, verskaffers of diensverskaffers, die se direkteure, werknemers, kontrakteurs, sub-kontrakteurs of agente wat deur die OT aangestel is ten opsigte van die bewerings uiteengesit in paragraaf 2 van hierdie Bylae.