
PROCLAMATIONS • PROKLAMASIES

PROCLAMATION 172 OF 2024

**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: O.R. TAMBO DISTRICT MUNICIPALITY

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 O.R. Tambo District Municipality (“the Municipality”);

AND WHEREAS the Municipality 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 Municipality, 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 the 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 Municipality;
- (b) improper or unlawful conduct by employees of the Municipality;
- (c) unlawful appropriation or expenditure of public money;
- (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 Municipality; 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 1 January 2018 and the date of publication of this Proclamation or which took place prior to 1 January 2018 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 Municipality, 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 6th day of May Two thousand and twenty four.

MC Ramaphosa

President

By Order of the President-in-Cabinet:

RO Lamola**Minister of the Cabinet****SCHEDULE**

1. Serious maladministration in connection with the affairs of the Municipality, including the causes of such maladministration, arising from the procurement of, or contracting for goods, works or services in relation to—

- (a) the construction of the Signal Hill Reservoir and the appointment of Amatola Water Board (“Amatola”) in 2019 and an alleged irregular payment made to Amatola in 2020;
- (b) the construction of the Mqanduli Bulk Water Scheme and the appointment of Gcinasonke Engineers (“Gcinasonke”) and an alleged irregular payment made to Gcinasonke in 2019;
- (c) the construction of the Mqanduli Bulk Water Scheme and the appointment of Khwalo’s Construction (“Khwalo”) and an alleged irregular payment made to Khwalo in 2019;
- (d) the supply and installation of a pump at Mhlontlo Cluster 1 and the appointment of Valotone 94 CC and Phoenix Tanks (Pty) Ltd in 2019 and an alleged irregular payment made to the service providers in 2019; and
- (e) the electrification of the Mthatha Dam and Highbury, and the construction of the Thornbill Clear Water Pump Station, and the alleged irregularities regarding payment of Amatola for these projects in 2018 and 2019,

by or on behalf of the Municipality and payments made in respect thereof in a manner that was—

- (i) not fair, competitive, transparent, equitable or cost-effective; or
- (ii) contrary to applicable—
 - (aa) legislation;
 - (bb) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury; or
 - (cc) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the Municipality,

and any related losses or unauthorised, irregular or fruitless and wasteful expenditure incurred by the Municipality or the State as a result thereof.

2. Any irregular, improper or unlawful conduct by—

- (a) employees or officials of the Municipality; or
- (b) any other person or entity,

in relation to the allegations set out in paragraph 1 of this Schedule.

PROKLAMASIE 172 VAN 2024**van die
PRESIDENT van die REPUBLIEK VAN SUID-AFRIKA****WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996 (WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA BESTAANDE SPESIALE ONDERSOEKEENHEID: O. R. TAMBO DISTRIK MUNISIPALITEIT**

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 O. R. Tambo Distriks Munisipaliteit ("die Munisipaliteit");

EN AANGESIEN die Munisipaliteit 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 Munisipaliteit, vir ondersoek na die Spesiale Ondersoekeenhede 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 Ondersoekeenhede is om soos beoog in gemelde Wet, ondersoek te doen na enige beweerde—

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Munisipaliteit;
- (b) onbehoorlike of onregmatige optrede deur beamptes of werknemers van die Munisipaliteit;
- (c) onregmatige bewilliging of besteding van publieke geld;
- (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 Munisipaliteit; 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 1 Januarie 2018 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2018 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 Ondersoekeenhede 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 Munisipaliteit gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 6^{de} dag van Mei Twee duisend-en-vier-en-twintig.

MC Ramaphosa
President

Op las van die President-in-Kabinet:

RO Lamola
Minister van die Kabinet

BYLAE

1. Ernstige wanadministrasie in verband met die aangeleentede van die Munisipaliteit, insluitend die oorsake van sodanige wanadministrasie, voortspruitend uit die verkryging van, of kontraktering vir, goedere, werke of dienste in verband met—

- (a) die konstruksie van die Sein Heuwel Reservoir en die aanstelling van Amatola Waterraad (“Amatola”) in 2019 en ‘n beweerde onreëlmatige betaling aan Amatola gemaak;
- (b) die konstruksie van die Mqanduli Massa Waterskema en die aanstelling van Gcinasonke Ingeneurs (“Gcinasonke”) en ‘n beweerde onreëlmatige betaling aan Gcinasonke in 2019 gemaak;
- (c) die konstruksie van die Mqanduli Massa Waterskema en die aanstelling van Khwalo’s Konstruksie (“Khwalo”) en ‘n beweerde onreëlmatige betaling aan Khwalo in 2019 gemaak;
- (d) die voorsiening en installing van ‘n pomp by Mhlontlo Cluster 1 en die aanstelling van Valotone 94 CC en Phoenix Tanks Beperk in 2019 en ‘n beweerde onreëlmatige betaling in 2019 aan die diensverskaffers gemaak; en
- (e) die elektrisifisering van die Mthatha Dam en “Highbury”, en die konstruksie van die Thornbill Suiwer Water Pompstasie, en die beweerde onreëlmatighede aangaande die betaling van Amatola vir gemelde projekte in 2018 en 2019,

deur of namens die Munisipaliteit en betalings in verband daarmee gemaak op ‘n wyse wat—

- (i) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie; of
- (ii) strydig was met toepaslike—
 - (aa) wetgewing;
 - (bb) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie of betrokke Provinsiale Tesourie uitgevaardig is; of
 - (cc) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Munisipaliteit van toepassing is,

en enige verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verspilte uitgawes wat deur die Munisipaliteit of die Staat aangegaan is.

2. Enige onreëlmatige, onbehoorlike of onwettige optrede deur—

- (a) beamptes of werknemers van die Munisipaliteit; of
 - (b) enige ander persoon of entiteit,
- ten opsigte van die bewerings uiteengesit in paragraaf 1 van hierdie Bylae.