

PROCLAMATION NO. R. 38 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 South African Heritage Resources Agency (hereinafter referred to as “the SAHRA”);

AND WHEREAS the SAHRA or the State may have 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 SAHRA, 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 SAHRA;
- (b) improper or unlawful conduct by board members, officials or employees of the SAHRA;
- (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 SAHRA; 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 2013 and the date of publication of this Proclamation or which took place prior to 1 January 2013 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 SAHRA 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 13th 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. The procurement of, or contracting for services by or on behalf of the SAHRA and payments made in respect thereof in a manner that was—

- (a) not fair, equitable, transparent, competitive or cost-effective;
- (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or
 - (iii) manuals, policies, procedures, prescripts; instructions or practices of, or applicable to the SAHRA,

in relation to improvements that were carried out in respect of the—

- (aa) Delville Wood National Memorial and Museum;
- (bb) OR Tambo House (London);
- (cc) OR Tambo Bust (Cuba);
- (dd) grave of Rev. Zachariah Mahabane;
- (ee) grave of Dr James Moroka;
- (ff) grave of Steve Biko;
- (gg) grave of Robert Sobukwe;
- (hh) Josias Madzunye gravesite memorial;
- (ii) Manche Masemola gravesite memorial; or
- (jj) Kgosi Mampuru II statue,

heritage sites and any related unauthorised, irregular or fruitless and wasteful expenditure which the SAHRA or the State incurred as a result thereof.

2. Maladministration in connection with the affairs of the SAHRA in relation to the improvements that were carried out in respect of the heritage sites referred to in paragraph 1 of this Schedule, including—

- (a) the causes of such maladministration; and
- (b) any losses or prejudice which the SAHRA or the State has suffered as a result thereof.

3. Any irregular, improper or unlawful conduct by—

- (a) the SAHRA, its officials, employees or agents;
- (b) the contractors, suppliers or service providers concerned or their agents; or
- (c) any other person or entity,

in relation to the allegations set out in paragraphs 1 and 2 of this Schedule.

PROKLAMASIE NO. R. 38 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 AANGELEENTHEDE NA
BESTAANDE SPESIALE ONDERSOEKEENHEID**

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 aangeleentheid van die Suid-Afrikaanse Erfenis Hulpbronagentskap (hierna na verwys as "die SAHRA");

EN AANGESIEN die SAHRA 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 aangeleentheid in die Bylae vermeld ten opsigte van die SAHRA, 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 aangeleentheid, 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 aangeleentheid van die SAHRA;
- (b) onbehoorlike of onregmatige optrede deur raadslede, beamptes of werknemers van die SAHRA;
- (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 SAHRA; 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 2013 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2013 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 SAHRA of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 13 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. Die verkryging van, of kontraktering vir dienste deur of namens die SAHRA, en betalings wat in verband daarmee gemaak is op 'n wyse wat—

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

met betrekking tot verbeterings wat aangebring is ten opsigte van die—

- (aa) Delville Wood Nasionale Gedenkteken en Museum;
- (bb) OR Tambo Huis (Londen);
- (cc) OR Tambo Borsbeeld (Kuba);
- (dd) graf van Eerw. Zachariah Mahabane;
- (ee) graf van Dr James Moroka;
- (ff) graf van Steve Biko;
- (gg) graf van Robert Sobukwe;
- (hh) Josias Madzunye graf gedenteken;
- (ii) Manche Masemola graf gedenkteken; of
- (jj) Kgosi Mampuru II standbeeld,

erfenisterreine en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilte uitgawes wat deur die SAHRA of die Staat aangegaan was as gevolg daarvan.

2. Wanadministrasie met betrekking to die aangeleenthede van SAHRA wat verband hou met die verbeterings wat aangebring is by die erfenisterreine soos verwys na in paragraaf 1 van hierdie Bylae, insluitend—

- (a) die oorsake van sodanige wanadministrasie; en
- (b) enige verliese of nadeel wat SAHRA of die Staat gelei het as gevolg daarvan.

3. Enige onreëlmatige, onbehoorlike of onwettige optrede deur—

- (a) die SAHRA, beamptes, werknemers of agente daarvan;
- (b) die betrokke kontrakteurs, verskaffers of diensverskaffers, of hul agente; of
- (c) enige ander persoon of entiteit,

ten opsigte van die bewerings uiteengesit in paragraaf 1 en 2 van hierdie Bylae.