
PROCLAMATION NOTICES • PROKLAMASIE KENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 20

14 May 2021

**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 East London Industrial Development Zone, situated in the Eastern Cape Province (hereinafter referred to as “the ELIDZ”);

AND WHEREAS the ELIDZ 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 ELIDZ, 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 ELIDZ;

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- (b) improper or unlawful conduct by officials or employees of the ELIDZ;
- (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 ELIDZ; 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 2011 and the date of publication of this Proclamation or which took place prior to 1 January 2011 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 ELIDZ 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 22nd day of April Two thousand and twenty-one.

CM Ramaphosa

President

By Order of the President-in-Cabinet:

RO Lamola

Minister of the Cabinet

SCHEDULE

1. Irregularities, malpractices or maladministration in the affairs the ELIDZ in relation to the—

- (a) management of the Infrastructure Maintenance and Renewals Fund (“IMRF”) and the appropriation of the funds of the IMRF;
- (b) management or appropriation of funds received from the Department of Trade and Industry;
- (c) appropriation of funds earmarked for the IMRF for other purposes;
- (d) settlement that was paid to a former Chief Financial Officer of the ELIDZ;
- (e) keeping of proper financial records of all assets, liabilities, income, expenses and any other financial transactions related to the ELIDZ;
- (f) manipulation of the financial records of the ELIDZ relating to the—
 - (i) capital appreciation of, or income generated by, investment property;
 - (ii) expenditure, including fruitless and wasteful expenditure, incurred by the ELIDZ; or
 - (iii) financial position of the ELIDZ;
- (g) approval of variation orders that exceed the allowable percentage of the original contract price in respect of the following contracts:
 - (i) MST Projects in 2012 and 2013; and
 - (ii) Social Housing Development Project for a future residential complex in Zone 1B of the ELIDZ between 2012 and 2015;
- (h) failure to recover the full amount that was due and owing in terms of a loan agreement entered into between the ELIDZ and a service provider and/or to account for amount that was loaned to, or recovered from, the service provider in question;
- (i) business transactions that were concluded by the ELIDZ and which were not viable or in the best interests of the ELIDZ;
- (j) mismanagement of the finances, assets or liabilities of the ELIDZ;
- (k) disposal of state land;
- (l) payment of excessive fees, salaries and bonuses to the ELIDZ Board and executive staff members, despite severe financial constraints in the 2013/2014 and 2014/2015 financial years; or
- (m) acquisition of immovable property, including—
 - (i) the causes of such irregularities, malpractices or maladministration; and

- (ii) any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the ELIDZ or the State as a result of such irregularities, malpractices or maladministration.

2. The procurement by ELIDZ of the Alexander Golf Course, three properties situated at Berlin, property at Fort Jackson and four properties at Bridger Farm and payments made in relation thereto—

(a) in a manner that was—

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

(ii) contrary to—

(aa) applicable legislation;

(bb) applicable manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the applicable Provincial Treasury; or

(cc) manuals, guidelines, codes, policies, procedures, instructions or practices of, or applicable to the ELIDZ; or

(b) which was conducted or facilitated by the unlawful, irregular or improper intervention of—

(i) employees or officials of the ELIDZ; or

(ii) any other person or entity,

to corruptly or unduly benefit themselves or any other person or entity,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the ELIDZ or the State.

3. The procurement of, or contracting for—

(a) three 40MVA transformers for the Kemba Substation in terms of Actom Contract Z6/E1/TRF/03/11;

(b) feasibility studies and tests in respect of a Biofuel site in the Berlin area; and

(c) one 20MVA transformer for a Biofuel site in the Berlin area,

by ELIDZ and payments made in relation thereto—

(i) in a manner that was—

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

(bb) contrary to—

(aaa) applicable legislation;

(bbb) applicable manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the

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applicable Provincial Treasury; or
(ccc) manuals, guidelines, codes, policies, procedures, instructions or practices of, or applicable to the ELIDZ; or
(ii) which was conducted or facilitated by the unlawful, irregular or improper intervention of—
(aa) employees or officials of the ELIDZ; or
(bb) any other person or entity,
to corruptly or unduly benefit themselves or any other person or entity,
and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the ELIDZ or the State.

4. Any improper or unlawful conduct by—
(a) officials or employees of the ELIDZ; or
(b) any other person or entity,
in relation to the allegations set out in paragraphs 1 to 3 of this Schedule.

DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

NO. R. 20

14 Mei 2021

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 Ondersoekeenheide en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as “die Wet”), gemaak is in verband met die aangeleenthede van die Oos-Londen Nywerheidsontwikkeling Sone, geleë in die Oos-Kaap Provinsie (hierna na verwys as “die OLNOS”);

EN AANGESIEN die OLNOS 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 OLNOS, 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 OLNOS;
- (b) onbehoorlike of onregmatige optrede deur beamptes of werknemers van die

OLNOS;

- (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 OLNOS; 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 2011 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2011 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 Ondersoekkeenheid 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 OLNOS of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Johannesburg op hede die 22ste dag van April Twee duisend-een-en-twintig.

CM Ramaphosa

President

Op las van die President-in-Kabinet

RO Lamola

Minister van die Kabinet

BYLAE

1. Onreëlmaticghede, wanpraktyke of wanadministrasie in die sake van die OLNOS ten opsigte van die—
- (a) bestuur van die “Infrastructure Maintenance and Renewals” Fonds (“IMRF”) en die toekenning van die fondse van die IMRF;
 - (b) bestuur of toekenning van fondse ontvang van die Departement van Handel en Nywerheid;
 - (c) toekenning van fondse geoormerk aan die IMRF vir ander doeleindes;
 - (d) skikking betaal aan ‘n voormalige Hoof-Finansiële Beampte van die OLNOS;
 - (e) hou van behoorlike finansiële rekords van alle bates, laste, inkomste, uitgawes en enige ander finansiële rekords van toepassing op die OLNOS;
 - (f) manipulasie van die finansiële rekords van die OLNOS ten opsigte van die—
 - (i) kapitale waardevermeerdering van, of inkomste gegenereer deur, beleggingseiendom;
 - (ii) besteding, insluitend vrugtelose en verspilde uitgawes, deur die OLNOS aangegaan; of
 - (iii) OLNOS se finansiële posisie;
 - (g) goedkeuring van variasieopdragte wat die toelaatbare persentasie van die oorspronklike kontraksprys oorskry ten opsigte van die volgende kontrakte:
 - (i) MST Projekte in 2012 en 2013; en
 - (ii) Gemeenskapsbehuising Ontwikkelingsprojek vir ‘n toekomstige residensiële kompleks in Sone 1B van die OLNOS, tussen 2012 en 2015;
 - (h) versuim om die volle bedrag wat betaalbaar en opeisbaar was ingevolge ‘n leningsooreenkoms aangegaan tussen die OLNOS en ‘n diensverskaffer en/of om rekenskap te gaan van die bedrag wat geleen is aan, of gevorder is van, die betrokke diensverskaffer;
 - (i) besigheidstransaksies wat aangegaan is deur die OLNOS en wat nie lewensvatbaar was of in die beste belang van die OLNOS was nie;
 - (j) wanbestuur van die finansies, bates of laste van die OLNOS;
 - (k) vervreemding van staatsgrond;
 - (l) betaling van buitensporige fooie, salarisse en bonusse aan die OLNOS Raad en uitvoerende personeellede, ten spyte van ernstige finansiële beperkings in die 2013/2014 en 2014/2015 finansiële jare; of

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(j) verkryging van onroerende eiendom, insluitend—

- (i) die oorsake van sodanige onreëlmatighede, wanpraktyke of wanadministrasie, en
- (ii) enige verbandhoudende ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die OLNOS of die Staat aangegaan is as 'n gevolg van sodanige onreëlmatighede, wanpraktyke of wanadministrasie.

2. Die verkryging deur OLNOS van die Alexander Golfbaan, drie eiendomme geleë te Berlin, eiendom te Fort Jackson en vier eiendomme te Bridger Farm en betalings gemaak ten opsigte daarvan—

(a) op 'n wyse wat—

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

(b) wat gedoen of gefasiliteer was deur die onwettige, onbehoorlike of onreëlmatige tussenkoms van—

- (i) werknemers of beampptes van die OLNOS; of
- (ii) enige ander persoon of entiteit, om hulself of enige ander persoon of entiteit op 'n korrupte of onbehoorlike wyse te bevoordeel,

en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die OLNOS of die Staat aangegaan is.

3. Die aanskaffing van, of kontraktering vir—

- (a) drie 40MVA transformators vir die Kemba Substasie ingevolge Actom Kontrak Z6/E1/TRF/03/11;
- (b) lewensvatbaarheidstudies en toetse ten opsigte van 'n Biobrandstof perseel in die Berlin gebied; en
- (c) een 20MVA transformator vir 'n Biobrandstof perseel in die Berlin gebied,

deur OLNOS en betalings gemaak ten opsigte daarvan—

- (i) op 'n wyse wat—
 - (aa) nie billik, mededingend, deursigtig, billik of koste-effektief was nie;
 - (bb) strydig was met—
 - (aaa) toepaslike wetgewing;
 - (bbb) toepaslike handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie of die plaaslike Provinsiale Tesourie uitgevaardig is; of
 - (ccc) handleidings, riglyne, kodes, beleid, prosedures, instruksies of praktyke van, of wat op die OLNOS van toepassings is; of
- (ii) wat gedoen of gefasiliteer is deur die onwettige, onbehoorlike of onreëlmatige tussenkoms van—
 - (aa) werknemers of beamptes van die OLNOS; of
 - (bb) enige ander persoon of entiteit, om hulself of enige ander persoon of entiteit op 'n korrupte of onbehoorlike wyse te bevoordeel,

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

4. Enige onwettige of onbehoorlike optrede deur—

- (a) beamptes of werknemers van die OLNOS; of
- (b) enige ander persoon of entiteit,

ten opsigte van die bewerings uiteengesit in paragrawe 1 tot 3 van hierdie Bylae.

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