

PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 8 OF 2017

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 Mopani District Municipality (hereinafter referred to as "the District Municipality"), which is situated in the Limpopo Province;

AND WHEREAS the District Municipality, the relevant local municipalities that fall within the area of the District Municipality 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 District 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 District Municipality;
- (b) improper or unlawful conduct by councillors, officers or employees of the District Municipality;
- (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 District 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 2010 and the date of publication of this Proclamation or which took place prior to 1 January 2010 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 District Municipality, the relevant local municipalities that fall within the area of the District Municipality 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 Pretoria this Ninth day of December Two thousand and sixteen.

**J G Zuma
President**

By Order of the President-in-Cabinet:

**T M Masutha
Minister of the Cabinet**

SCHEDULE

1. The procurement of, or contracting for goods, works or services by or on behalf of the District Municipality and payments made in respect thereof in a manner that was—

- (a) not fair, competitive, transparent, equitable or cost-effective;
- (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury;
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the District Municipality; or
- (c) conducted by or facilitated through the improper conduct of—
 - (i) councillors, officials or employees of the District Municipality (hereinafter collectively referred to as "the personnel of the District Municipality"); or
 - (ii) contractors, suppliers or service providers of the District Municipality or any other person or entity,

to corruptly or unduly benefit themselves or any other person or entity, and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the District Municipality, the local municipalities that fall within the area of the District Municipality or the State in relation the supply, construction or commissioning of Ventilated Improved Pit toilets (hereinafter referred to as "VIP toilets"), which goods, works or services were procured in terms of the Greater Giyani Municipality - MDM 2014-004 Tender and the Greater Tzaneen Municipality or the greater area of the Tzaneen Municipality - MDM 2014-005 Tender (hereinafter referred to as "the Tenders").

2. Maladministration in the affairs of the District Municipality and any losses or prejudice suffered by the District Municipality, the local municipalities that fall within the area of the District Municipality or the State as a result of such maladministration in relation to—

- (a) the supply, construction or commissioning of VIP toilets, which goods, works or services were procured in terms of the Tenders;
- (b) the failure or refusal by the District Municipality to refund erroneous or premature payments amounting to R304 101 000, which were received by the District Municipality from the National Treasury or the national transferring officer (Department of Cooperative Governance and Traditional Affairs);
- (c) the establishment or regular maintenance of a vendor database or masterfile;
- (d) approximately R 210.4 million that the District Municipality was required to return to National Treasury, when the District Municipality did not spend the money during the 2012/2013 financial year in respect of the Municipal Infrastructure Grant and Water Services Operating Grant; and
- (e) the failure or refusal by the District Municipality to address issues raised by, or implement recommendations of the Auditor-General of South Africa as set out in the Annual Audit Report relating to the District Municipality for the 2013/2014 financial year,
including the causes of such maladministration and related unauthorised, irregular or fruitless and wasteful expenditure incurred by the District Municipality, the local municipalities that fall within the area of the District Municipality or the State.

3. Any undisclosed or unauthorised interests which the personnel of the District Municipality or their family members may have had in contractors, suppliers or service providers bidding for work or doing business with the District Municipality or to whom contracts were awarded by the District Municipality, contrary to applicable—

- (a) legislation;
- (b) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury; or
- (c) manuals, codes, guidelines, policies, procedures, prescripts, instructions, contracts of employment, conditions of service or practices of or applicable to the District Municipality or the personnel of the District Municipality,

and the extent of any actual or potential benefits derived directly or indirectly by the personnel of the District Municipality or their family members from such undisclosed or unauthorised interests.

4. Losses or prejudice actually or potentially suffered by the District Municipality, the local municipalities that fall within the area of the District Municipality or the State as a result of payments made to the applicable contractors, suppliers or service providers—

- (a) despite non-performance, uncertified, incomplete or poor quality of performance or defective performance; or
- (b) for goods not supplied or works or services not rendered,
in relation to the allegations set out in paragraphs 1 to 3 of this Schedule.

5. Any improper or unlawful conduct by the personnel of the District Municipality or the applicable contractors, suppliers or service providers or any other person or entity, in relation to the allegations set out in paragraphs 1 to 4 of this Schedule.

PROKLAMASIE NO. R. 8 VAN 2017

**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 Ondersoekeenheid en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleenthede van die Mopani Distriksmunisipaliteit (hierna na verwys as "die Distriksmunisipaliteit");

EN AANGESIEN die Distriksmunisipaliteit, die relevante plaaslike munisipaliteite wat binne die area van die Distriksmunisipaliteit geleë is 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 Distriksmunisipaliteit, 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 Distriksmunisipaliteit;
- (b) onbehoorlike of onregmatige optrede deur raadslede, beampies of werknemers van die Distriksmunisipaliteit;
- (c) onregmatige bewilliging of besteding van publieke geld of eiendom;
- (d) onwettige, onreëlmataige 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 Bedrywigheude, 2004 (Wet No. 12 van 2004), en welke misdrywe gepleeg is in verband met die sake van die Distriksmunisipaliteit; of
- (g) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belang van die publiek of enige kategorie daarvan veroorsaak het of kan veroorsaak,

wat plaasgevind het tussen 1 Januarie 2010 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2010 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 Distriksmunisipaliteit of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Negende dag van Desember Twee duisend-en-sestien.

J G Zuma
President

Op las van die President-in-Kabinet:

T M Masutha
Minister van die Kabinet

BYLAE

1. Die aanskaffing van, of kontraktering vir goedere, werke of dienste deur of namens die Distriksmunisipaliteit en betalings wat in verband daarmee gemaak is op 'n wyse wat—

- (a) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie; of
- (b)strydig was met toepaslike —
 - (i) wetgewing;
 - (ii) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie of relevante Plaaslike Tesourie uitgevaardig is; of
 - (iii) handleidings, beleid, procedures, voorskrifte, instruksies of praktyke van, of wat op die Distriksmunisipaliteit van toepassing is; of
- (c) gedoen of gefasiliteer was deur die onbehoorlike optrede van—
 - (i) raadslede, beampies of werknelers van die Distriksmunisipaliteit (hierna na gesamentlik na verwys as "die personeel van die Distriksmunisipaliteit"); of
 - (ii) kontrakteurs, verskaffers of diensverskaffers van die Distriksmunisipaliteit of 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, onreëlmataige of vrugtelose en verspilde uitgawes wat deur die Distriksmunisipaliteit, die plaaslike munisipaliteite wat binne die area van die Distriksmunisipaliteit geleë is of die Staat in verband met die verskaffing, oprigting of ingebuikneming van Ventilering Verbeterde Puttoilette (hierna na verwys as "VVP toilette"), aangegaan was, welke goedere, werke of dienste aangeskaf was ingevolge die "Greater Giyani Municipality - MDM 2014-004" Tender en die "Greater Tzaneen Municipality or the greater area of the Tzaneen Municipality - MDM 2014-005" Tender (hierna na verwys as "die Tenders").

2. Wanadministrasie in die aangeleenthede van die Distriksmunisipaliteit en enige verliese of nadeel wat deur die Distriksmunisipaliteit, die plaaslike munisipaliteite wat binne die area van die Distriksmunisipaliteit geleë is of die Staat gely is as gevolg van sodanige wanadministrasie ten opsigte van—

- (a) die verskaffing, oprigting of ingebruikneming van die VVP toilette, welke goedere, werke of dienste aangeskaf ingevolge die Tenders;
- (b) die versuum of weiering deur die Distriksmunisipaliteit om foutiewe of voortydige betalings ten bedrae van R304 101 000, wat deur die Distriksmunisipaliteit vanaf die Nasionale Tesourie of die "national transferring officer" (Departement van Koöperatiewe Regering en Tradisionele Sake) ontvang is, terug te betaal;
- (c) die totstandbringing of gereelde hersiening van 'n verkopersdatabasis of meesterlêer;
- (d) ongeveer R210.4 miljoen wat die Distriksmunisipaliteit aan die Nasionale Tesourie moes terughandig, toe die Distriksmunisipaliteit nie die geld gedurende die 2012/2013 finansiële jaar ten opsigte van die "Municipal Infrastructure Grant and Water Services Operating Grant" bestee het nie; en
- (e) die versuum of weiering deur die Distriksmunisipaliteit om aangeleenthede wat geopper was, of om aanbevelings van die Ouditeur-Generaal van Suid-Afrika soos uiteengesit in die Jaarlikse Ouditeursverslag ten opsigte van die Distriksmunisipaliteit vir die 2013/2014 finansiële jaar, aan te spreek of te implementeer,

insluitende die oorsake van die wanadministrasie en verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Distriksmunisipaliteit, die plaaslike munisipaliteite wat binne die area van die Distriksmunisipaliteit geleë is of die Staat aangegaan is.

3. Enige ongeopenbaarde of ongemagtigde belang wat die personeel van die Distriksmunisipaliteit of hulle familielede mag gehad het in kontrakteurs, verskaffers of diensverskaffers wat vir werk getender het of besigheid met die Distriksmunisipaliteit gedoen het of aan wie konakte toegeken is deur die Distriksmunisipaliteit, strydig met toepaslike —

- (a) wetgewing;
- (b) handleidings, riglyne, praktyknotas, omsend skrywes of instruksies wat deur die Nasionale Tesourie of relevante Plaaslike Tesourie uitgevaardig is; of
- (c) handleidings, kodes, riglyne, beleid, procedures, voorskrifte, instruksies of dienskonakte diensvoorwaardes of praktyke van of van toepassing op die Distriksmunisipaliteit of die personeel van die Distriksmunisipaliteit,

en die omvang van enige werklike of potensiële voordele wat direk of indirek verkry is deur die personeel van die Distriksmunisipaliteit of hulle familielede van sodanige ongeopenbaarde of ongemagtigde belang.

4. Verliese of nadeel wat werklik of potensieel gely is deur die Distriksmunisipaliteit, die plaaslike munisipaliteite wat binne die area van die Distriksmunisipaliteit geleë is of die Staat as gevolg van betalings wat gemaak is aan die betrokke kontrakteurs, verskaffers of diensverskaffers —

- (a) ten spyte van nie-prestasie, ongesertifiseerde, onvolledige of swak gehalte prestasie of gebreklike prestasie; of
- (b) vir goedere nie gelewer of dienste wat nie verskaf was nie, ten opsigte van die bewerings uiteengesit in paragrawe 1 tot 3 van die Bylae.

5. Enige onbehoorlike of onregmatige optrede deur die personeel van die Distriksmunisipaliteit of die betrokke kontrakteurs, verskaffers of diensverskaffers of enige ander persoon of entiteit, ten opsigte van die bewerings uiteengesit in paragrawe 1 to 4 van hierdie Bylae.