

PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. 3 OF 2018

by the

President of the Republic of South Africa**JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS
OF STATE**

In terms of section 84(2)(f) of the Constitution of the Republic of South Africa of 1996, I hereby appoint a Commission of Inquiry to investigate allegations of state capture, corruption and fraud in the Public Sector including organs of state with the terms of reference in the Schedule attached hereto and appoint Honourable Mr Justice Raymond Mnyamezeli Mlungisi Zondo, Deputy Chief Justice of the Republic of South Africa, as its Chairperson.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria
on this the 23rd day of January Two Thousand and Eighteen.

**President**

By Order of the President-in-Cabinet:

**Minister of the Cabinet**

SCHEDULE

TERMS OF REFERENCE

OF THE

**JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO THE ALLEGATIONS
OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

A Judicial Commission of Inquiry (“the Commission”) is hereby appointed in terms of Section 84(2)(f) of the Constitution of the Republic of South Africa, 1996. The Commission is appointed to investigate matters of public and national interest concerning allegations of state capture, corruption, and fraud.

1. The Commission shall inquire into, make findings, report on and make recommendations concerning the following, guided by the Public Protector’s state of capture report, the Constitution, relevant legislation, policies, and guidelines, as well as the order of the North Gauteng High Court of 14 December 2017 under case number 91139/2016: -
 - 1.1. whether, and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive (including Deputy Ministers), office bearers and/or functionaries employed by or office bearers of any state institution or organ of state or directors of the boards of SOE’s. In particular,

the commission must investigate the veracity of allegations that former Deputy Minister of Finance, Mr Mcebisi Jonas and Ms Mentor were offered Cabinet positions by the Gupta family;

1.2. whether the President had any role in the alleged offers of Cabinet positions to Mr Mcebisi Jonas and Ms Mentor by the Gupta family as alleged;

1.3. whether the appointment of any member of the National Executive, functionary and /or office bearer was disclosed to the Gupta family or any other unauthorised person before such appointments were formally made and/or announced, and if so,

whether the President or any member of the National Executive is responsible for such conduct;

1.4. whether the President or any member of the present or previous members of his National Executive (including Deputy Ministers) or public official or employee of any state owned entities (SOEs) breached or violated the Constitution or any relevant ethical code or legislation by facilitating the unlawful awarding of tenders by SOE's or any organ of state to benefit the Gupta family or any other family, individual or corporate entity doing business with government or any organ of state;

- 1.5. the nature and extent of corruption, if any, in the awarding of contracts, tenders to companies, business entities or organizations by public entities listed under Schedule 2 of the Public Finance Management Act No. 1 of 1999 as amended.
- 1.6. whether there were any irregularities, undue enrichment, corruption and undue influence in the awarding of contracts, mining licenses, government advertising in the New Age Newspaper and any other governmental services in the business dealings of the Gupta family with government departments and SOE's;
- 1.7. whether any member of the National Executive and including Deputy Ministers, unlawfully or corruptly or improperly intervened in the matter of the closing of banking facilities for Gupta owned companies;
- 1.8. whether any advisers in the Ministry of Finance were appointed without proper procedures. In particular, and as alleged in the complaint to the Public Protector, whether two senior advisers who were appointed by Minister Des Van Rooyen to the National Treasury were so appointed without following proper procedures;
- 1.9. the nature and extent of corruption, if any, in the awarding of contracts and tenders to companies, business entities or organizations by Government Departments, agencies and entities. In

particular, whether any member of the National Executive (including the President), public official, functionary of any organ of state influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest;

2. These Terms of Reference may be added to, varied or amended from time to time.
3. All organs of State will be required to cooperate fully with the Commission.
4. The Commissions Act, 1947 (Act No. 8 of 1947) shall apply to the Commission, subject to such amendments and exemptions as may be specified by proclamation from time to time.
5. The Commission shall submit its report and recommendations to the President within 180 days of the commencement of the Commission.
6. Regulations shall be made, after consultations with the presiding judge, in terms of the Commissions Act, 1947 and shall apply to the Commission in order to enable the Commission to conduct its work meaningfully and effectively and to facilitate the gathering of evidence by conferring on the Commission powers as necessary, including the power to enter and search premises, secure the attendance of witnesses and compel the production of documents.
7. The Commission shall where appropriate, refer any matter for prosecution, further investigation or the convening of a separate enquiry to the appropriate

law enforcement agency, government department or regulator regarding the conduct of a certain person/s.

8. Regulations contemplated above shall also make provision for the resourcing and employment of staff of the Commission.

PROKLAMASIE NO. 3 VAN 2018

deur die

President van die Republiek van Suid-Afrika

**GEREGTERLIKE KOMMISSIE VAN ONDERSOEK TEN EINDE ONDERSOEK NA
BEWERINGS VAN STAATSKAPING, KORRUPSIE EN BEDROG IN DIE
OPENBARE SEKTOR MET INBEGRIIP VAN STAATSORGANE, IN TE STEL**

1. Ingevolge artikel 84(2)(f) van die Grondwet van die Republiek van Suid-Afrika, 1996 stel ek hierby 'n Kommissie van Onderzoek aan ten einde ondersoek in te stel na bewerings van staatskaping, korrupsie en bedrog in die Openbare Sektor, met inbegrip van staatsorgane, met die opdrag in die Bylae en stel ek hierby die Agbare Regter Raymon Mnyamezeli Mlungisi Zondo as Voorsitter, aan.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hierdie 23ste dag van Januarie 2018.

President

By Las van die President-in-Kabinet:

Minister van die Kabinet

BYLAE
OPDRAG VAN DIE
GEREGTERLIKE KOMMISSIE VAN ONDERSOEK TEN EINDE ONDERSOEK NA
BEWERINGS VAN STAATSKAPING, KORRUPSIE EN BEDROG IN DIE
OPENBARE SEKTOR, MET INBGERIP VAN STAATSORGANE, IN TE STEL

'n Geregterlike Kommissie van Onderzoek ("die Kommissie") word hierby ingevolge artikel 84(2)(f) van die Grondwet van die Republiek van Suid-Afrika, 1996, aangestel. Die Kommissie word aangestel ten einde aangeleenthede van openbare en nasionale belang met betrekking tot bewerings van staatskaping, korrupsie en bedrog, te ondersoek.

1. Die Kommissie moet ondersoek instel na, bevindings maak, verslag doen oor en aanbevelings maak met betrekking tot die volgende, met inagneming van die Openbare Beskermer se verslag oor staatskaping, die Grondwet, toepaslike wetgewing, beleid en riglyne, sowel as die bevel van die Noord-Gauteng Hoë Hof van 14 Desember 2017 onder Saak Nr. 91139/2016: -
 - 1.1 of, en die mate waartoe en deur wie, pogings aangewend was deur enige vorm van aansporing of vir enige voordeel van watter aard ookal, om lede van die Nasionale Uitvoerende Gesag (met inbegrip van Adjunk-ministers), ampsdraers en/of funksionaris wat in diens is, of enige ampsdraers van enige staatsentiteit of staatsorgaan of direkteure van die rade van Staatsbeheerde Ondernemings, te beïnvloed. Die

Kommissie moet in besonder die geloofwaardigheid van bewerings ondersoek dat voormalige Adjunk-minister van Finansies, mnr Mcebisi Jonas, en me Mentor Kabinetsposisies deur die Gupta-familie aangebied was;

1.2 of die President enige rol gespeel het in die beweerde aanbod van Kabinetsposisies aan mnr Mcebisi Jonas en me Mentor deur die Gupta-familie, soos beweer;

1.3 of die aanstelling van enige lid van die Nasionale Uitvoerende Gesag, funksionaris en/of ampsdraer aan die Gupta-familie of aan enige ander ongemagtigde persoon geopenbaar is voordat sodanige aanstellings formeel gemaak of bekendgemaak is, en indien wel,

of die President of enige ander lid van die Nasionale Uitvoerende Gesag vir sodanige gedrag verantwoordelik is;

1.4 of die President of enige lid van die huidige or voormalige lede van sy Nasionale Uitvoerende Gesag (met inbegrip van Adjunk-ministers) of enige openbare beampte of werknemer van enige Staatsbeheerde Ondernemings die Grondwet of enige toepaslike gedragskode of wetgewing oortree of geskend het deur die onwettige toekenning van tenders deur Staatsbeheerde Ondernemings of enige staatsorgaan te fasiliteer, tot voordeel van die Gupta-familie of enige ander familie,

individu of korporatiewe entiteit wat besigheid met die regering of enige staatsorgaan, doen;

- 1.5 die aard en omvang van korrupsie, indien enige, in die toekenning van kontrakte, en tenders aan maatskappye, besigheidsentiteite of organisasies deur openbare entiteite wat kragtens Bylae 2 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), soos gewysig, gelys is.
- 1.6 of daar enige onreëlmatighede, onbehoorlike verryking, korrupsie of onbehoorlike beïnvloeding was by die toekenning van kontrakte, mynlisensies, regeringsadvertering in die *New Age* koerant en enige ander regeringsdienste in die besigheidshandeling van die Gupta-familie met Staatsdepartemente en Staatsbeheerde Ondernemings;
- 1.7 of enige lid van die Nasionale Uitvoerende Gesag, met inbegrip van Adjunk-ministers, onwettiglik of op 'n korrupte of onbehoorlike wyse in die sluiting van die bankgeriewe vir Gupta maatskappye, ingegryp het;
- 1.8 of enige adviseurs in die Ministerie van Finansies sonder die nakoming van behoorlike prosedures aangestel is, en in besonder of, en soos beweer in die klagte aan die Openbare Beskermer, twee senior adviseurs wat deur Minister Des van Rooyen .by die Nasionale Tesourie aangestel is, aldus sonder die nakoming van behoorlike prosedures aangestel is;

- 1.9 die aard en omvang van korrupsie, indien enige, by die toekenning van kontrakte en tenders aan maatskappye, besigheidsentiteite of organisasies deur Staatsdepartemente, agentskappe en entiteite, en in besonder of enige lid van die Nasionale Uitvoerende Gesag (met inbegrip van die President), openbare beampte, funksionaris of enige staatsorgaan die toekenning van tenders beïnvloed het ten einde hulself, hulle families of entiteite waarby hulle 'n persoonlike belang gehad het, te bevoordeel;
2. Hierdie Opdrag kan, van tyd tot tyd, aangevul, verander of gewysig word.
 3. Alle Staatsorgane moet ten volle met die Kommissie saamwerk.
 4. Die Kommissiewet, 1947 (Wet No. 8 van 1947) is op die Kommissie van toepassing, behoudens sodanige wysigings en vrystellings as wat, van tyd tot tyd, deur proklamasie gespesifiseer mag word.
 5. Die Kommissie moet sy verslag en aanbevelings binne 180 dae vanaf die aanvang die Kommissie, aan die President voorlê.
 6. Regulasies moet, na oorleg met die voorsittende regter, ingevolge die Kommissiewet, 1947 gemaak word, wat op die Kommissie van toepassing is, ten einde die Kommissie in staat te stel om sy werk behoorlik en effektief te kan doen en om die insamel van getuienis te vergemaklik deur om op die Kommissie die bevoegdhede op te lê as wat nodig mag wees, met inbegrip

van die bevoegdheid om persele te betree en deursoek, die bywoning van getuies te verseker en die voorlegging van dokumente te vereis.

7. Die Kommissie moet, waar toepaslik, enige aangeleentheid vir vervolging, verdere ondersoek of vir die byeenroeping van 'n afsonderlike ondersoek, verwys, na die toepaslike wetstoepassingsagenskap, Staatsdepartement of reguleerder met betrekking tot die gedrag van 'n sekere persoon of persone.
8. Bogemelde regulasies moet ook vir hulpmiddele en die indiensneming van personeel van die Kommissie voorsiening maak.