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### **Zondo commission final report – NPA should probe Zwane for FS housing mess, says Zondo**

The Free State housing “debacle” of 2010, as it has been described by the state capture commission, is the result of poor monitoring of government projects by elected political leaders, and an indictment on the ANC for failing to monitor and hold their elected leadership accountable.

Former MEC of human settlements Mosebenzi Zwane should never have been appointed to a position of this profile as he showed no intention of understanding his role, and his political principal at the time – then premier Ace Magashule – is also guilty of not taking steps to hold him accountable.

These are some of the conclusions made in the fourth report of the commission chaired by Chief Justice Raymond Zondo. He further recommends criminal investigations against key role players in the project, including Zwane and the head of department (HOD) at the time, Mpho Gift Mokoena.

The province was allocated an amount of R1.4-billion by the National Department of Human Settlements (DHS) for the 2010/11 financial year, in order to build low-cost houses across its municipal districts. The funds were meant to be used within the financial year, and while the provincial department of human settlements was to roll out the programme, it would inform the DHS of project milestones as they were completed. By October 2010, only 10% of the allocated funds had been spent, and no houses had been built.

As the deadline for accounting for the expenditure towards the project loomed at the end of 2010 – with the implication that the DHS would take away the funding if the money was not spent – the provincial department resorted to an unlawful scheme meant to spend the funds to avoid this reallocation, ending up with an unauthorised spending of over R500-million.

The commission heard that the “expenditure recovery plan” was devised around October 2010, at the insistence of Zwane, who chaired meetings with department officials to advance it. Through the discussions of the plan, an advance payment system (APS) was further developed and agreed on, allegedly at Zwane’s proposal, for advanced payments to be made to suppliers identified by the department to provide material required to expedite the building of houses. All this to avoid forfeiting the allocated funds to the DHS as per the Division of Revenue Act (Dora), which allows the national government to withdraw funding in cases where allocations are not spent within a prescribed period. The practicality of the plan was of concern because of the difficulty of executing the building process during the holiday period of December – usually referred to as a “builders’ holiday” across the sector.

The commission found that lack of competent leadership, professional conduct, and savvy reading of the situation led to the loss of public funds, despite the existence of regulations, such as Dora, to prevent this loss.

### **Failure to conduct open tender process**

Mokoena conceded before the commission that although the department had instituted an open tender process in April 2010, following public announcements by Magashule in February that year that the province would build “bigger and better” RDP houses, it was abandoned in July after its validity period expired.

There were various different versions in the evidence before the commission of how the final list of contractors appointed by the department came to be. Although a database of existing contractors was kept, Mokoena claimed that Zwane imposed additional contractors, demanding that they be added to the database. The commission found that some of the contractors that benefited in the scheme had not been part of the original bidding process. While some of them were defendants in the court process that the department later applied for to recover funds spent irregularly, not all were put on this list.

Zondo found that by allowing the tender process to fail, department officials including Mokoena failed in their duties. “The MEC and the officials within the department appeared incapable of taking the decision to publicly extend the validity of the period of the tenders or of the tenders themselves, of informing the national department and the minister of the situation and seeking agreement for an extension of the time period within which funds allocated to the Free State department could be expended. The MEC and the HOD and all officials appear to have been taken by surprise by the announcement of the premier and then flummoxed by the response of the contractors.”

When initially confronted with the expectations of the department stemming from Magashule’s pronouncements of bigger, better houses, contractors who were initially appointed in the tender process expressed their reluctance to proceed with the planned project if their remuneration from the adapted specifications would not change. The impasse that emerged from this situation then stalled negotiations, leading to the department’s tender process expiring before consensus was sought.

### **The unlawful APS**

Zwane defended the advance payment system, writes Zondo, despite being questioned by the commission on its lawfulness. This he claimed was a process used by other government institutions prior to the housing project, and the research he commissioned prior to implementing this proved this. But Zondo disagrees, finding that the research report Zwane alluded to, compiled by the deputy director-general in the department of local government, Mmuso Tsoametsi, did not explore the legalities of advanced payments and could not have concluded that it was correct.

In fact, Zondo adds, the six department officials who ended up being charged for their part in the project, including payments to suppliers, were punished on the basis of having relied on Tsoametsi’s document, despite it having flaws.

“That Mr Zwane should ever have been selected to serve in the position of MEC in a provincial department of such importance is both surprising and unfortunate. When he gave his evidence one could just tell that he had no real intention of understanding his role, learning his duties, becoming informed of the full nature of his responsibilities. He was unashamed of his ignorance and brazen in his determination to allocate full responsibilities to those educated persons by whom he believed himself to be surrounded.”

Zwane, together with department officials, presented the APS to the DHS as if to include legitimate project milestones, whereas it was all a plan to pay suppliers ahead of any work being done. In order to implement this, the department developed tri-partite agreements between itself, suppliers to be paid, and the contractors appointed to build. Through the agreements, contractors could cede the acquisition of material from suppliers to the department, which would have already paid the suppliers.

For their misrepresentation to DHS, Zondo recommends that Zwane and Mokoena be investigated further for fraud.

Although the provincial department eventually built houses, adds Zondo, the people of the Free State were robbed of a fair procurement process that government officials would normally be trusted with.

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