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

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**CHAIRPERSON'S DIRECTIVE IN TERMS OF REGULATION 10(6) OF THE  
REGULATIONS OF THE COMMISSION**

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**TO : Ms Linda Mabaso**

**ADDRESS : 292 Bryanston Drive**

**Bryanston**

**Johannesburg**

**TEL : 0827010830**

**EMAIL : lindam@tafororganisation.org**

By virtue of the powers vested in me in my capacity as Chairperson of the abovementioned Commission by Regulation 10(6)\* of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, I hereby direct you, **Ms Linda Mabaso**, to:

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\* Regulation 10(6) of the Regulations of the Commission reads: "For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person."

1. deliver to the Secretary of the Commission at the above address on or before **20 August 2021** an affidavit or affirmed declaration in which you:
  - (a) state the period during which you were a member of the Board of Directors of Transnet;
  - (b) state the period during which you were the Chairperson of the Board of Directors of Transnet;
  - (c) confirm that the Board of Transnet did not advertise the vacant position of Group Chief Executive Officer of Transnet either externally or internally before it recommended Mr Siyabonga Gama for appointment to that position early in 2016;
  - (d) give reasons why your Board did not advertise the position of Group Chief Executive Officer of Transnet early in 2016 externally and internally so as to allow a transparent, fair and competitive process for the filling of that position as the Board was obliged to;
  - (e) state whether you and your Board knew that you were obliged to follow a fair, transparent and competitive process before filling that position;
  - (f) give reasons why the fact that Mr Siyabonga Gama's delegated authority was going to expire at the end of March 2016 was regarded by you and your Board as justification for not advertising the position externally and internally since it was within your Board's authority to extend Mr Gama's delegation and there would have been no difficulty in extending it;

- (g) state whether you and your Board did extend Mr Siyabonga Gama's delegated authority beyond the end of March 2016 and, if so, to what date, given the fact that he was only appointed as Transnet's Group Chief Executive Officer sometime in mid-April 2016;
- (h) state whether you and your Board were aware that in 2010 Mr Siyabonga Gama had been dismissed from Transnet (as CEO of TFR) after he had been found guilty of three serious acts of misconduct and what those serious acts of misconduct were;
- (i) state whether you and your Board were aware of the terms and conditions of Mr Gama's reinstatement as CEO of TFR in February/April 2011 in terms of the settlement agreement relating to the dismissal dispute between Mr Gama and Transnet;
- (j) state whether you and your Board were aware that the Chairperson of Mr Siyabonga Gama's disciplinary inquiry, Advocate Antrobus SC, had found that each one of the three acts of misconduct of which Mr Gama had been found guilty was, on its own, serious enough to warrant Mr Gama's dismissal;
- (k) state whether you and your Board were aware that, before he was reinstated, Mr Gama had admitted that he had been correctly found guilty of the three serious acts of misconduct by the Chairperson of the disciplinary hearing;
- (l) state whether you and your Board were aware of the nature of the three serious acts of misconduct of which Mr Gama had been found guilty;
- (m) state whether you and your Board were aware that Mr Gama had been a candidate for the position of Group Chief Executive Officer of Transnet early

in 2011 and had not made it to the top three candidates who were recommended by the Transnet Board for consideration for appointment as Group CEO and that one of the internal candidates, Mr Silinga, had scored higher points in the interview than Mr Gama and had been selected by the Board as one of the top three candidates that the Board recommended to the Minister;

- (n) give reasons why you and your Board did not invite Mr Silinga to compete with Mr Siyabonga Gama for the position of Group CEO of Transnet, given that he had previously scored higher points than Mr Gama for the same position;
- (o) state why you and your Board should not be criticised for not having done a proper background check on Mr Gama before you and your Board recommended him for the position of Group CEO of Transnet if the position is that you and your Board were not aware of any of the facts referred to above;
- (p) state whether Mr Jacob Zuma, as President or any Minister or Deputy Minister or their advisor or advisors or their representative ever discussed with you or your Board or any member of the Board the appointment of Mr Gama as Group CEO of Transnet or gave advice, suggestion or instruction that Mr Gama be appointed as Group CEO of Transnet. If you or any member of your Board ever had such a discussion with or was ever advised or asked or instructed by Jacob Zuma or any Minister or Deputy Minister or their representative, please indicate the identity of such a member of the Board and name of the Minister, Deputy Minister or representative;
- (q) state whether your Board complied with the requirement of the “Guidelines for the appointment of a Chief Executive Officer for a State Owned Enterprise” (Guidelines), that:

- (i) if a Board of Directors believed that the guideline or part thereof did “not lend itself to implementation or application to address its requirements and [sought] to depart from such application, the Board must notify the Minister in writing of any such departure, providing reasons for any such departure.”
- (ii) the Board of Directors was required to have endeavoured to commence and complete its recruitment and appointment process at least 3 months prior to the departure of the incumbent CEO (i.e. Mr Brian Molefe);
- (iii) your Board of Directors was required to disclose to the Shareholder Minister the recruitment process to be used by the Board in identifying the candidates;
- (iv) the Board of Directors was required to submit a description of the key specifications of the position and its selection criteria to the Minister of Public Enterprises for consideration.
- (v) during the assessment of the candidates, the Board was required to “verify and confirm that all shortlisted candidates” had no conflict of interests and would be able to fully execute and carry out the duties of a CEO.
- (vi) the Board, through its Governance and Nominations Committee, was required to submit a minimum of 3 shortlisted candidates and their preferred candidate to the

Shareholder Minister for further assessment and, when necessary, interview by the Minister.

- (r) give reasons why you and your Board gave the Minister of Public Enterprises only Mr Gama's name for consideration for appointment as Group CEO of Transnet in circumstances where the guidelines for the recruitment of SOE's CEO's required your Board to give the Minister more than one names and that your Board was required to indicate its preferred candidate;
- (s) state whether your Board complied with clause 16.1 of Transnet's Memorandum of Incorporation which required the Board to identify, nominate and evaluate potential candidates for appointment as the Group Chief Executive in accordance with the Guidelines (clause 16.1).;
- (t) state whether the shareholder Minister complied with clause 16.2 of the Company's Memorandum of Incorporation which required the Shareholder Minister to appoint the Group Chief Executive from a shortlist of candidates provided by the Board in accordance with the Guidelines;
- (u) state whether you admit that you and your Board did not comply with any one of the requirements contained in the Guidelines as stated above and the requirements of Transnet's Memorandum of Incorporation as set out above;
- (v) explain why you and your Board did not comply with the requirements of the Guidelines and of Transnet's Memorandum of Incorporation in so far as these two instruments required the Board to follow the processes prescribed by those instruments.

2. If you would like assistance from the Commission in order to prepare the affidavit or affirmed declaration, you must, within five days (excluding weekends and public holidays) of receipt of this directive, contact, or, communicate with, the Secretary or Acting Secretary of the Commission and indicate that you would like such assistance in which case the Commission will provide someone to assist you with the preparation of the affidavit or affirmed declaration. In such\* a case you will not pay anything for such assistance. In this regard, please contact Ms Rushaan Lewis ([rushaanl@commissionsc.org.za](mailto:rushaanl@commissionsc.org.za)).
3. If, in order to prepare the affidavit or affirmed declaration, you do not need any assistance from the Commission, you must, with or without the assistance of a lawyer of your own choice, prepare the affidavit or affirmed declaration and have it delivered to the Secretary of the Commission on or before the date given above for the delivery of the affidavit. If you make use of a lawyer of your own choice to assist you to prepare such affidavit or affirmed declaration, the Commission will not be responsible for the payment of your lawyer's fees or costs.
4. This directive is issued for the purpose of pursuing the investigation of the Commission.
5. Your attention is drawn to Regulations 8(2), 11(3)(a) and (b) and 12(2)(c), (d) and (e) of the Regulations of the Commission, as amended. Regulation 8(2) reads:  
  
"8 (1) ...  
  
(2) A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947)."

Regulation 11(3)(a) and (b) reads:

- “11 (1) ...
- (2) ...
- (3) No person shall without the written permission of the Chairperson—
- (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
  - (b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.”

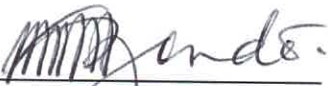
Regulation 12(2)(c), (d) and (e) reads:

- “12 (1) ...
- (2) Any person who
- (a) ...
  - (b) ...
  - (c) . . . wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10(1) or (2);
  - (d) refuses or fails, without sufficient cause, to submit, within a period fixed by the Chairperson or at all, an affidavit or affirmed declaration pursuant to a directive issued by the Chairperson under regulation 10(6); or
  - (e) contravenes a provision of regulation 11, is guilty of an offence and liable on conviction -
    - (i) in the case of an offence referred to in paragraph (a), (c),

(d) or (e), to a fine, or to imprisonment for a period not exceeding 12 months; or

- (ii) in the case of an offence referred to in paragraph (b), to a fine, or to imprisonment for a period not exceeding six months.”

SIGNED IN JOHANNESBURG ON THIS 4<sup>th</sup> DAY OF AUGUST 2021.



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**JUSTICE RMM ZONDO**  
**ACTING CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA**

**and**

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