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

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

TO : MR MALUSI GIGABA

**ADDRESS : 308 Derrick Avenue
Waterkloof Ridge
Pretoria**

TEL : 082 888 8617

EMAIL : nkanyezi.gigaba@gmail.com

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, **Mr Malusi Gigaba**, to:

* 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 by **4 January 2021** to the Secretary or Acting Secretary of the Commission at the address given above an affidavit or affirmed declaration in which:
 - 1.1 you state whether you admit or deny the allegations made about, or, against, you in the attached affidavit (including annexures) of **Witness 3 dated 14 September 2020** which was submitted to the Commission for the purpose of its investigations. Your attention is drawn to paragraphs 9 to 26, 67 to 70 and 72.3 of the affidavit;
 - 1.2 you state, if you deny or dispute any allegation or statement made about, or, against, you in the affidavit, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in this affidavit which refer, or, relate, to you.
 - 1.3 you specifically address, in addition to the allegations in the aforementioned affidavit (and annexures), your involvement in the following:
 - 1.3.1 findings made in the **Fundudzi Report** that you compromised the procurement process of the 95 locomotives by signing the Locomotive Supply Agreement between Transnet and China South Rail (“CSR”) on 22 October 2012 as a witness. Your attention is drawn in particular to paragraphs 1.1.12 and 5.5.18.92 of the report;
 - 1.3.2 findings made in the **Fundudzi Report** on Transnet’s acquisition of 100 locomotives that you approved the application by the Transnet Board to increase the ETC of the contract with CSR from R3.8 billion to R4.8 billion, in terms of section 54 of the PFMA, knowing that you were relying on incomplete documentation

submitted by the Chairman of the Board, Mr Mafika Mkwanazi. Your attention is drawn in particular to paragraph 5.6.19 of the report;

1.3.3 findings made in the **Fundudzi Report** and the **MNS Report** on Transnet's acquisition of 1064 locomotives, *inter alia*:

- (a) that you acted outside of your authority in advising Transnet to continue to procure the locomotives as if the exemption of the Preferential Procurement Policy Framework Act (PPPFA) was in place before the Finance Minister granted full exemption. Your attention is drawn in particular to paragraph 1.3.3 and paragraph 5.9.7.14 to 5.9.7.20 of the Fundudzi Report;
- (b) on 23 July 2012, Transnet issued a RFP in respect of the 1064 locomotives. The RFP criteria deviated from the minimum thresholds for local content production as prescribed by Treasury. According to the MNS Report, on 7 December 2012 you advised Transnet that you will engage the Minister of Finance about this Treasury Instruction and instructed Transnet to proceed as if Transnet could decide its own criteria as per the PPPFA exemption. However, MNS found that you did not have the authority to override the Treasury Instruction, and thus that the deviation in the RFP was unlawful. Your attention is drawn in particular to section 2.1 of the MNS Report.

- 1.3.4 allegations by **Ms Barbara Hogan** (“Ms Hogan”) that when you became Minister of Public Enterprises, you declined any handover meetings with Ms Hogan;
- 1.3.5 allegations that when you became Minister of Public Enterprises, you overhauled **Transnet’s Board of Directors**, which *inter alia*:
- (a) was in disregard of a decision taken at the Transnet AGM in July 2010 to reappoint all non-executive directors;
 - (b) was to place Gupta associates in strategic positions. This in circumstances where you played a role in appointing Mr Iqbal Sharma and Mr Mafika Mkwanaazi who have been implicated in State Capture; and
 - (c) resulted in the removal of the only railway specialist, Mr Vijay Raman, who would have sat on the Transnet Board.
- 1.3.6 allegations of your involvement in irregularities relating to the appointment of **Mr Brian Molefe** as GCE of Transnet in February 2011, including your lack of engagement with Board members who demonstrated their dissatisfaction;
- 1.3.7 allegations that you attempted to remove **Mr Mafika Mkwanaazi** as Chairperson of the Board in May and June 2011, in order to appoint Mr Iqbal Sharma as Chairperson, despite knowledge of his close ties to the Gupta family;

1.3.8 the details of **international trips** that coincided with trips by members of the Gupta family and their associates, *inter alia*:

(a) a return trip to Hong Kong between 25 July to 7 August 2010.

The following individuals were in Hong Kong during the same period: Ayanda Dlodlo, Baleka Mbete, Bathabile Olive Dlamini, Siphiwe Nyanda, Vusi Vivian Mvelase, Nosiviwe Noluthando Mapisa Nqakula, Arti Gupta, Rajesh Kumar Gupta, Khulubuse Clive Zuma, Michael Andrew Thomas Hulley, and Edward Muziwoxolo Zuma;

(b) a return trip to Dubai, UAE between 23 and 31 October 2014.

The following individuals were in Dubai during the same period: Akash Garg, Ashok Narayan, Sanjay Grover, Gezinhliziyo Vincent Zuma, Salim Aziz Essa, Iqbal Meer Sharma, Mohamed Noor Kapdi, and Rajesh Naithani;

(c) a return trip to Dubai, UAE between 28 and 30 November

2015. The following individuals were in Dubai during the same period: Xenia Verbeek, Hamza Farooqui, Soo Young Jeon, Ashok Narayan, Rajesh Naithani, Aidan Essa, Zeenat Osmany, Surya Kant Singhala, Angelo Agrizzi, Gavin Joseph Watson, Stefan Nell, Erika Lamprecht, Aman Kant Singhala, Arti Gupta, Kamal Kant Singhala, Maleatlana Joel Raphela, Ronica Ragavan / Govender, Shubhangi Gupta, Varun Gupta, and Mosebenzi Joseph Zwane; and

- (d) a return trip to Beijing, China between 1 to 6 September 2017.

The following individuals were in Beijing during the same period: Jianbao Chen, Zhong Ying Potgieter, Nomvula Paula Mokonyane, Sheila Glodinah Mazibuko, Elias Sekgobelo Magashule, Sphilile Malcolm Mabaso, Mbana Peter Thabethe, and Michael Andrew Thomas Hulley.

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 Mr Clarence Benjamin (clarenceb@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 or Acting 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 30th DAY OF NOVEMBER 2020.


JUSTICE RMM ZONDO
DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

and

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