



PC Min 25/4/18

**TERMS OF REFERENCE FOR OVERSIGHT INQUIRY INTO ALLEGED  
GOVERNANCE FAILURES AND MALADMINISTRATION ISSUES WITHIN  
THE DEPARTMENT OF MINERAL RESOURCES**

**A. BACKGROUND**

1. On 14 October 2016, the then Public Protector, Adv. Thuli Madonsela released the "State of Capture" Report ("the Report").
2. The report contained a number of prima facie findings that point to possible governance failures and maladministration within the Department of Mineral Resources ("DMR"). These include, inter alia, information relating to issues of conflict of interest by the previous Minister of the DMR, Hon Mosebenzi Zwane.

**B. RULES OF THE NATIONAL ASSEMBLY**

3. National Assembly Rule 227(1) (b) (i) provides that a portfolio committee must maintain oversight of the exercise within its portfolio of national executive authority, including the implementation of legislation.
4. Assembly Rule 227(1)(c) strengthens the oversight mandate of a portfolio committee by providing that a portfolio committee, may, *inter alia*: "monitor, investigate, enquire into and make recommendations concerning any such executive organ of state (falling within its mandate) including the legislative programme, budget, rationalization, restructuring, functioning, organization, structure, staff and policies of such organ of state."
5. Accordingly, the rules empower the Portfolio Committee on Mineral Resources ("the Committee") to initiate an inquiry into alleged governance failures and maladministration issues within the DMR.

### **C. THE INQUIRY**

6. The Committee held a meeting on 21 February 2018 to continue with questions to Hon. Zwane on allegations against him pertaining to state capture. Hon. Zwane tendered an apology and did not attend the meeting.
7. The Committee agreed that the allegations of state capture are serious and warrant further consideration. The Committee therefore resolved to institute an inquiry to further and more fully consider the matter, in line with the mandate of Parliament, as articulated in section 55 of the Constitution read with rule 167 of the National Assembly.

### **D. TERMS OF REFERENCE**

8. The Committee will inquire, into alleged governance failures and maladministration issues within the DMR.
9. The enquiry will take the form of question and answer sessions during which Hon. Zwane, as previous Minister of the DMR, as well as any other relevant persons will be required to testify before the Committee.
10. The inquiry will focus, inter alia, on the following issues and matters related thereto-
  - a) the role of Hon.Zwane and the DMR in facilitating the sale of all Glencore assets;
  - b) alleged non-compliance with the Public Finance Management Act, 1999 resulting in fruitless and wasteful expenditure relating to travel arrangements made by the DMR for Hon. Zwane;
  - c) alleged breach by Hon. Zwane of section 96 (2) of the Constitution and section 2 of the Executive Members Ethics Act, 1998 (Act 82 of 1998) as regards conflict of interest;

- d) the handling of Mining Rehabilitation Funds by the DMR and alleged non-compliance in respect thereof with the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) ("MPRDA"), the National Environmental Management Act, 1998 (Act 107 of 1998) ("NEMA") and the Income Tax Act, 1962 (Act 58 of 1962); and
- e) whether the appointment and dismissal of officials in DMR were subject to any external undue influence.

## **E. PROCEDURE**

- 11. The Committee shall conduct the inquiry as follows, –
  - a. witnesses identified by the Committee shall be subpoenaed to attend at a designated time and place as provided for in section 14(2)(b) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act No. 4 of 2004);
  - b. witnesses will be afforded the opportunity to make written submissions for consideration but such submissions shall not, unless with the approval of the Committee, absolve a witness from attending the inquiry in person and answering questions put to them;
  - c. witnesses will be permitted to be accompanied by legal representatives but such representatives shall not answer questions on behalf of a witness;
  - d. witnesses will not be allowed to cross-examine other witnesses but must, be afforded an opportunity to make representations on the draft Committee report before it is adopted and tabled in the National Assembly;
  - e. the principle of natural justice shall apply to proceedings of the inquiry.
- 12. After deliberating on the issues, but before the Committee tables its report in the National Assembly, witnesses will be given a further opportunity to make

representations on the Committee's draft report including its findings and recommendations, to the extent that they are affected by it. The Committee must first consider any representations before proceeding to adopt its report.

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