

EMBARGOED FOR PUBLICATION ON SUNDAY 15 MAY 2016

STATEMENT BY FORMER DIRECTORS GENERAL

A call for the establishment of a Public Inquiry into 'state capture'

Introduction

A group of former Directors General (DG's)) felt compelled to address the recent developments that are having a negative impact on the capacity of the state to provide quality services and eroding public confidence in public institutions.

We had the rare honour in history to not only work administratively to dismantle apartheid but also in crafting a new legal framework, passed by our parliament and entrenched in our constitutional framework. Through these measures, democratic institutions were established. Our initiative to speak as former Accounting Officers today is driven by our shared commitment to our constitutional democracy. This is not a party-political initiative and we don't consider the matters we are raising to be party political in nature.

As former Directors General (DG's), we brought a collective commitment to serve and dismantle the apartheid state machinery and replaced it with democratic institutions that were informed by democratic values, social justice, fundamental human rights and a deep desire to improve the quality of life of all South Africans.

Our concerns:

We, the undersigned, 27 former Directors Generals in the South African Government who served in government since 1994, are concerned about developments in the country which are undermining confidence in state institutions. We believe that strong institutions serving all South Africans are vital to a healthy and vibrant democracy.

As former DG's we are concerned about reports that public officials, including heads of state owned entities, are being pressurised by private interests to wilfully break procurement rules and the rules pertaining to transparent, fair and competency-based appointments. In particular, we express concern at recent revelations of alleged 'state capture' by the Gupta family, their apparent influence over political and administrative appointments, and their alleged involvement in the irregular facilitation, securing and issuing of government tenders and contracts.

A number of alleged corrupt practices that have been brought to the public's attention that are tantamount to breaking laws such as the Constitution, PFMA, the Preferential Procurement Policy Framework and public service regulations.

These developments have the potential to undermine our democratic state, have compromised the state's ability to accelerate service delivery, are breeding a culture of corruption, compromise the culture of service delivery and the ethos of 'Batho Pele'.

Further, we express our concern at the effect of the recent Constitutional Court judgement on the Nkandla matter, and its effect on our government's ability to focus resources and efforts on delivering services to our people, growing the economy and achieving our transformation and developmental goals.

Call for action

We therefore call for the establishment of an Independent Public Inquiry in terms of Section 4(1) (a) of the Promotion of Administrative Justice Act. The Inquiry must include representatives of Chapter 9 institution such as the Public Protector and Auditor General and Chapter 10 institutions such as the Public Service Commission,

as well as accountants, retired judges, advocates and experts on international financial flows. We call on the Inquiry to broaden its focus to include all spheres of government and state owned enterprises.

This inquiry should investigate all senior political and administrative officials who may, in their dealings with the Guptas and associated companies, have contravened the Constitution, the PFMA and the Public Service Act as amended. We recommend that this Commission be established within three months and give a public progress report within six months.

We believe that there is adequate provision in existing statutes to mitigate corrupt practices and ensure good governance. However, in our view the reported allegations of Gupta involvement in Ministerial appointments, manipulation of awarding of tenders, appointment of Gupta nominated individuals to strategic positions, show possible legislative breach. These include but are not limited to:

- Section 91(2) of the Constitution;
- Section 96 (1) and (2a, b, and c) and Schedule 2 of the Constitution;
- Chapter 10 of the Constitution, Section 195(1);
- Chapter 10, section 195(4) of the Constitution;
- Section 64 of the PFMA Act.

We note and welcome the initiatives of the Minister of Finance and the National Treasury to investigate existing contracts involving the Guptas. We call upon the Auditor General and Chief Procurement Officer to further investigate all government tenders and contracts awarded to Gupta associated companies with a view to assessing their compliance with the PFMA Act and Regulations and the Preferential Procurement Policy Framework Act of 2000 and Regulations.

We call upon the Public Service Commission to investigate all irregular or appointments of public servants in critical positions of Directors General, Ministerial Chiefs of Staff, Heads of Procurement Units, Members of Bid Specification Committees, Bid Evaluation Committees and Bid Adjudication Committees. Key appointments in State Owned Enterprises should also form part of the scope of this investigation.

We also call upon the National Treasury to initiate an investigation into the possible involvement of the Guptas and associated companies in illicit financial flows out of South Africa and recommend the appointment of an independent research institution to assist in this investigation.

We call upon the Minister of the Public Service and Administration to create an enabling environment to allow all public servants to act in terms of the existing prescripts and to freely come forward to provide information to the Public Inquiry as well as to report any breaches of the relevant legislation, regulations and codes of conduct.

In this regard, we have submitted a memorandum to Ministers of Finance and Public Service and Administration (DPSA) that was signed by 27 former Directors General. The signed Memorandum is attached to this media statement.

We have initiated a consultative process with key stakeholders that we believe can help to ensure that the Inquiry is assisted to achieve the goal of uncovering incidents of corruption and other forms of illegal activities.

We will be requesting a meeting with the Ministers of Finance and Public Service and Administration, the Forum of South African Directors general (FOSAD), the Public

Service Commission (PSC) and other stakeholders in the coming week to discuss the their role in the establishment of the Inquiry.

We believe that post-1994 state was built through the sweat and blood of thousands of South Africans, and many paid the ultimate price. Remaining silent amounts to betraying the trust bestowed upon all South Africans by the millions who fought for democracy and the demise of apartheid.

Unless these challenges are attended to urgently, our country may be plunged into a crises of governance and lead to the collapse of public services in general, at the expense of delivering quality services to our communities.

ANNEXURE "A"

A VOICE OF REASON

'SAVE THE SOUL OF THE PUBLIC SERVICE FROM STATE CAPTURE'

22 April 2016

Addressed to:

Minister of Finance, Minister Pravin Gordhan, MP

Minister of Public Service and Administration, Minister Ngaoko Ramatlhodi, MP

Cc: The President of the Republic of South Africa

The Deputy President of the Republic of South Africa

We, the undersigned, are former Directors General in the post-apartheid South African government, with a prior history in the liberation struggle where we served as cadres of Umkhonto we-Sizwe, officials of the African National Congress (ANC), Azanian People's Organisation (AZAPO), the Pan Africanist Congress (PAC), and various organisations of the Mass Democratic Movement.

We were privileged, honoured and challenged to serve in various capacities at the inception of the new democratic government, in particular as Directors General from 1994. We served in our individual capacities as public servants, for periods ranging between 3 years to 15 years each in single or multiple departments. We played a role in the early efforts to transform the South African State into a more effective organ to achieve the aspirations and transformatory goals of the liberation struggle and the new democratic government to ensure a better life for our people and to address the inequities and injustices of the past.

In pursuit of the above, we believe we upheld the principles of the Constitution, and were guided primarily by the founding legislation for public sector management - the Public Service and Administration of 1994 as amended and the Public Finance Management Act (Act 1 of 1999) .

We submit this memorandum to express our collective concern at recent revelations of state capture by the Gupta family, their apparent influence over political and administrative appointments, and their involvement in the irregular facilitation, securing and issuing of government tenders and contracts. We also express our concern at the effect of the recent Constitutional Court judgement in the Nkandla matter on the legitimacy of the State and its ability to focus resources and efforts on delivering services to our people, growing the economy and achieving our transformatory and developmental goals.

Whilst noting the the initiative undertaken by the ANC to conduct an internal inquiry we as former accounting officers believe that, to the extent that the issues raised are of an administrative nature, there are adequate provisions within the PFMA and PSA that make it obligatory for these allegations to be addressed.

We therefore call for the establishment of an Independent Public Inquiry in terms of Section 4(1)(a) of the Promotion of Administrative Justice Act to include representatives of Chapter 9 institution such as the Public Protector and Auditor General and the Chapter 10 institution - the Public Service Commission, as well as accountants, retired judges, advocates and experts on international financial flows. This inquiry should investigate all senior political and administrative officials who may, in their dealings with the Guptas and associated companies, have contravened the Constitution, the PFMA

and the Public Service Act as amended. We strongly recommend that this Commission be established within three months and give a public progress report within six months.

We believe that there is adequate provision in existing statutes to mitigate corruptive practices and ensure good governance. However, in our view the reported allegations of Gupta involvement in Ministerial appointments, manipulation of awarding of tenders, appointment of Gupta nominated individuals to strategic positions, show possible legislative breach. These include but are not limited to:

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We call upon the Public Service Commission to investigate all irregular or suspicious appointments of public servants in critical positions of Directors General, Ministerial Chiefs of Staff, Heads of Procurement Units, Members of Bid Specification Committees, Bid Evaluation Committees and Bid Adjudication Committees.

We also call upon the National Treasury to initiate an investigation into the possible involvement of the Guptas and associated companies in illicit financial flows out of South Africa and recommend the appointment of an independent research institution to assist in this investigation.

We call upon the Minister of the Public Service and Administration to create an enabling environment to allow all public servants to act in terms of the existing prescripts and to freely come forward to provide information to the Public Inquiry as well as to report any breaches of the relevant legislation, regulations and codes of conduct.

SIGNED BY:

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