



**FW de Klerk**  
FOUNDATION

## **FW DE KLERK FOUNDATION ANNOUNCES PARTICIPATION IN LITIGATION**

The FW de Klerk Foundation announces its participation as co-applicant, with Quaker Peace Centre and AfriForum, in the action against the President of South Africa, the Deputy President and the Government of South Africa. This loose coalition represents a diverse cross-section of South Africans, who are united in seeking the return of constitutional values and the Rule of Law in all matters concerning the State.

The main thrust of the application is to seek a declaratory order from the Constitutional Court that, due to the possibility of being conflicted, the President is unable to act in the appointment of a judicial commission of inquiry into state capture. This conflict of interest is a point that the President has previously admitted before the Constitutional Court in the *Nkandla* matter. The President here admitted that he failed to appoint a commission of inquiry due to his being a person of interest in spending for non-security upgrades at his private residence. In addition, section 96(2)(b) of the Constitution states specifically that members of the Cabinet (which includes the President) may not act in any way that “expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests”.

The application also seeks an order to compel the Deputy President to appoint a commission of inquiry under his powers conferred by section 90(1) of the Constitution, in the event that the President is “otherwise unable to fulfil (his) duties”. This commission should investigate allegations of state capture and/or a silent coup in South Africa and report to the Deputy President on its findings and recommendations. The Government of the Republic of South Africa is also requested to afford the commission of inquiry all such logistical support and resources as the chairman of the commission may reasonably request.

### **WHY ARE WE JOINING THIS LITIGATION?**

The Foundation is dedicated to upholding the Constitution and its values, with the Rule of Law being one such foundational value. It is vital that the highest office of the land be held to the dictates of the Constitution, as the current violations of the nation’s laws create contempt for the Rule of Law. At a time when ratings agencies have made unfavourable pronouncements over the nation’s investment climate, it is vital that the Rule of Law be seen to reign supreme. The recent announcement that South Africa’s economy is in technical recession is, in part, no doubt influenced by the shadow state enabled by state capture, whose very existence works to undermine the democratic State.

The Foundation is of the view that the Executive and the National Assembly have failed in their oversight functions, hence the recourse to the Courts in order to arrest the growing governance decay which appears to have gripped the State.

The Constitution obliges the State and its head to respect, protect and promote the Constitution, while the Courts have a duty to pronounce on all conduct and laws that are unconstitutional. The capture of the State, to which all South Africans are witness, is a



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subversion of the will of ordinary South Africans. It flies in the face of the constitutional imperative to improve the quality of life of all citizens, and free the potential of each person.

**ISSUED BY THE FW DE KLERK FOUNDATION**  
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**For comment:**

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