



WITNESS STATEMENT OF YASMIN MASITHELA

- 1 At the time that the events transpired that I describe in this statement, I was the Head of Compliance for Absa Bank Ltd ("Absa") and duly appointed in terms of section 60A of the Banks Act 94 of 1990 (as amended) ("the Banks Act"), read together with Regulation 47 of the Banks Act.
- 2 The facts contained in this statement are both true and correct, and within my personal knowledge, unless the context provides otherwise. Where I make submissions of law, I do so on the advice of my legal representatives.
- 3 The purpose of this witness statement is to deal with the facts within Absa's knowledge regarding clause 1.7 of the terms of reference for this Commission. The clause provides that this Commission is to enquire into:

"whether any member of the National Executive and including Deputy Ministers, unlawfully or corruptly or improperly intervened in the matter of the closing of banking facilities for Gupta owned companies".

The attempts to persuade the Minister of Finance to intervene

- 4 As is now public knowledge and appears from the matter of *Minister of Finance v Oakbay Investments (Pty) Ltd and Others* 2018 (3) SA 515 (GP):



- 4.1 In December 2015, Absa gave notice of its intention to close the bank accounts of various Oakbay companies and related parties;
 - 4.2 In February 2016, Absa closed the bank accounts concerned; and
 - 4.3 In April 2016, the Oakbay companies made various attempts to have the then Minister of Finance, Minister Gordhan, intervene in the closure of these bank accounts.
- 5 Absa was deeply concerned by the Oakbay companies' efforts to persuade the Minister of Finance to intervene in relation to the closure of the bank accounts.
- 6 If the Minister of Finance had acceded to these requests, the consequences would have been significant:
 - 6.1 As the courts have now confirmed, the Minister's conduct would have been unlawful and *ultra vires* his powers;
 - 6.2 The intervention would have greatly undermined confidence in the banking sector and raised the spectre of state intervention in private commercial relationships, arbitrarily and at the instance of a select group of companies or persons;
 - 6.3 This would have been a dangerous precedent for the banking industry as a whole, would have been contrary to the public interest and would have created real risks for the confidentiality of the relationship between banks and clients;

A handwritten signature in blue ink, located at the bottom right of the page.



- 6.4 Such intervention would also have compromised Absa's contractual relationship as a correspondent bank with its international clearing banks.

The meeting with the ANC NEC

- 7 On 20 April 2016, and at the request of the NEC, a meeting was held between representatives of Absa and representatives of the NEC at Albert Luthuli House.
- 8 The Absa team was led by its Chief Executive Officer, Ms Ramos, and I was part of the delegation.
- 9 The NEC delegation was led by Mr Gwede Mantashe and included Mr Enoch Godongwana, Ms Jessie Duarte, and Mr Krish Naidoo, amongst others.
- 10 Absa's understanding was that the stated purpose of the meeting was to discuss whether the NEC's investigation into state capture had triggered any account closures by Absa.
- 11 At the commencement of the meeting, Ms Ramos emphasised that Absa was legally precluded from discussing any past, present or future clients' confidential information and as such would not discuss any specific clients.



- 12 During the meeting, the NEC confirmed that the purpose for the meeting was not to discuss client or customer details but get an understanding of the following issues:
- 12.1 The judgment in *Bredenkamp and Others v Standard Bank of SA Ltd* 2010 (4) SA 468 (SCA) and the consistency of the application of the principles of the judgment;
- 12.2 The effects of the account closures on other companies and businesses; and
- 12.3 The regulatory framework that governs the banker-client relationship.
- 13 During the meeting, I provided the NEC with a summary of the regulatory context in which Absa operates and the legal and policy framework within which banker-client relationships are managed, including the concept of Politically Exposed Persons ("PEPs").
- 14 The NEC then raised the issue of alleged collusion amongst the Banks to close the Oakbay companies and related parties' accounts. Absa was categorical that it does not interact with other banks in relation to client matters and that it follows its own policies, procedures and the laws that apply to it. Absa invited the NEC to raise any concerns that it may have in this regard with the relevant regulators including the Banking Regulator.

The first IMC meeting request

- 15 On 22 April 2016, the office of Ms Ramos, the Chief Executive Officer of Absa, received an email request from Ms Zarina Kellerman ("Ms Kellerman"), who purported to be the Acting

A handwritten signature in blue ink, located at the bottom right of the page.



Secretary to the IMC, inviting Absa to attend a meeting scheduled for 25 April 2016. A copy of the email is attached marked **Annexure YM1**.

- 15.1 The email explained that an IMC had been formed by Cabinet to consider "*certain allegations made against certain financial institutions*."
 - 15.2 Absa was requested to make a representative available to attend a discussion with the said IMC.
 - 15.3 It was stated that there was no set agenda for this meeting and that this would be a discussion convened for the purposes of gaining clarity on current media reports.
- 16 On the same day, Absa requested further information relating to the nature of the meeting to be held and notified the IMC of its legal and regulatory obligations which precludes it from discussing any client confidential information. A copy of ABSA's response is attached marked **Annexure YM2**.
- 17 On 24 April 2016, Ms Kellerman responded via email. A copy of her email is attached marked **Annexure YM3**.
- 17.1 Ms Kellerman's response did not address the questions raised by Absa in its email.
 - 17.2 Instead, she conveyed that the "*information shared during the discussion must of course be relayed to Cabinet for it to properly consider the media reports. Outside of that forum, all such information remains strictly confidential*".



- 18 Absa did not consider that its questions were adequately answered, particularly its concerns around possible discussions relating to client confidential information.
- 19 On the same day, 24 April 2016, Absa therefore declined the invitation to meet with the IMC on this basis. I sent the email concerned, a copy of which is attached marked **Annexure YM4**.
- 20 In that email, Absa further reaffirmed, that as a regulated bank and responsible financial institution, Absa would cooperate with the appropriate authorities to discuss any matters which Absa is permitted by law to discuss.

The second IMC meeting request

- 21 Shortly thereafter, on 4 May 2016, Ms Kellerman extended a further invitation to Absa to attend a meeting with the IMC. A copy of this email is attached marked **Annexure YM5**.
- 21.1 This meeting was to be held on 5 May 2016.
- 21.2 The stated purpose of this second request was *inter alia* to discuss public comments purportedly made by Absa around the decision taken by the banks to close the bank accounts of certain of its clients. The second request suggested that the meeting would discuss the deterrent effect that the closure of client bank accounts may have on potential investors who want to do business in South Africa.



- 22 On the same day, 4 May 2016, I responded to Ms Kellerman on behalf of Absa and declined the request. A copy of my email is attached marked **Annexure YM6**.
- 23 My response reaffirmed Absa's position by clarifying, amongst others, that:
- 23.1 The only public comment made by Absa was to the effect that it could not comment on client confidential issues and that as a regulated financial institution it would be inappropriate to discuss matters relating to prospective, current and past client information.
- 23.2 Absa is regulated by the SARB and its legal obligations arise from various pieces of legislation including, but not limited to, the Banks Act, the Prevention of Organised Crime Act, the Financial Intelligence Centre Act, the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, the Exchange Control regulations. Absa also has reporting obligations to the South African Revenue Services.
- 23.3 Absa was willing to cooperate with the appropriate authorities where necessary.

Conclusion



- 24 It is therefore clear that Absa remained steadfast in its commitment to preserving the confidentiality of its clients and to avoiding any suggestion of unlawful executive intervention in the banker-client relationship.

Signed at Johannesburg on this the ^{6th} 13 day of September 2018

X

A handwritten signature in black ink, appearing to read "Yasmin Masithela", written over a horizontal line.

YASMIN MASITHELA

From: Zarina Kellerman [mailto:Zarina.Kellerman@dmr.gov.za]

Sent: 22 April 2016 11:44

To: Botha, Alison: Barclays Africa

Subject: NTER-MINISTERIAL COMMITTEE - CONSULTATION WITH BARCLAYS AFRICA GROUP LIMITED

Dear Alison

I refer to our brief discussion a short while ago.

As explained, as the Acting Secretary for the Inter-Ministerial Committee set up by Cabinet to look into certain allegations made against certain financial institutions ("the IMC"), I have been requested to make contact with Ms Ramos alternatively a suitable alternative with requisite authority, and request that she please make herself available for a discussion with the IMC on **Monday, 25 April 2016 at 10h00-10h30**. There is no set agenda for the discussion but, I am advised, is anticipated to be a discussion to gain clarity on the current media reports. Should Ms Ramos not be available in person, a teleconference call could certainly be accommodated.

Should the allotted time not be suitable, we will attempt to accommodate you accordingly. Given the nature of the matter and the sensitivities involved, the IMC apologises for the late notice but would certainly appreciate the engagement.

Handwritten signature and initials, possibly 'ZM', in the bottom right corner.

Should Ms Ramos not be willing to participate, please advise me accordingly so that I may indicate same to the IMC.

I look forward to your response.

Sincerely

Zarina Kellerman

083 960 9188

012 444 3400

Advisor to the Minister of Mineral Resources and Acting Secretary to the IMC



mineral resources
Department
Mineral Resources
REPUBLIC OF SOUTH AFRICA

A handwritten signature, possibly 'ZM', is written in the bottom right corner of the page.

From: Botha, Alison: Barclays Africa
Sent: 22 April 2016 16:50
To: 'Zarina.Kellerman@dmr.gov.za'
Subject: NTER-MINISTERIAL COMMITTEE - CONSULTATION WITH BARCLAYS AFRICA GROUP LIMITED

Dear Zarina

On behalf of Ms Ramos, I would like to confirm receipt of your e-mail requesting a meeting.

Kindly advise us of the following:

1. The nature of the discussion anticipated to allow for appropriate preparation. This will also determine the attendees from a Barclays Africa perspective
2. The names and designations of the IMC attendees
3. The status of the committee and the meeting and the treatment of any information shared during the meeting; and
4. The venue for the meeting.

Your request refers to current media reports, within this context, please note that as a Bank we have legal and regulatory obligations which prevent us from discussing any client confidential information.

We confirm that we have informed the South African Reserve Bank our primary regulator of the meeting request.

Kind regards

Alison Botha | Office of Maria Ramos | Chief Executive Officer, Barclays Africa Group Limited
Tel +27 (0) 11 350 0304 | Mobile +27 (0)79 504 9939 | Fax +27 (0)86 753 1692 | email: alison.botha@barclaysafrica.com
8th Floor, Barclays Towers West, 15 Troye Street, Johannesburg 2001

Respect | Integrity | Service | Excellence | Stewardship
Helping people achieve their ambitions – in the right way


Zm

-----Original Message-----

From: Zarina Kellerman [Zarina.Kellerman@dmr.gov.za]

Sent: Sunday, April 24, 2016 05:29 AM South Africa Standard Time

To: Botha, Alison: Barclays Africa

Subject: Re: NTER-MINISTERIAL COMMITTEE - CONSULTATION WITH BARCLAYS AFRICA GROUP LIMITED

Dear Alison

As the Acting Secretariat for the Committee, I am not mandated to respond to the questions raised below suffice to note the following:-

- a. The Committee is constituted by Cabinet; and
- b. Information shared during the session must of course be relayed to Cabinet for it to properly consider the media reports. Outside of that forum, all such information remains strictly confidential.

The venue for the discussion is as follows:-

Department of Mineral Resources
The Office of the Minister
4th Floor
70 Trevenna Campus
Building 2C
Cnr Francis Baard & Meintjes Streets
Sunny side
Pretoria

The remainder of the contents of your email are noted and will be brought to the attention of the IMC at its sitting. Please confirm if Barclays will be participating.

Sincerely
Zarina


ZM

Masithela, Yasmin: Barclays Africa

From: Masithela, Yasmin: Barclays Africa
Sent: 24 April 2016 13:44
To: 'Zarina.Kellerman@dmr.gov.za'
Cc: ABMR789; ABCB930
Subject: Inter Ministerial Consultation - Barclays Africa Group Limited

Dear Ms Kellerman

Thank you for your email received by our Alison Botha at 5:29 am today. I note that you are not mandated to respond to the questions of clarification which were sent to you on Friday 22 April 2016, in response to your invitation which was also sent on Friday 22 April 2016. This directly impacts on our decision on whether to attend such a meeting.

You have indicated that it is proposed that current media reports will be discussed at the proposed meeting. I assume that these media reports relate to a particular company. I reiterate that it will not be appropriate for us as a bank, to discuss any matters relating to client / customer confidential information at such a meeting, whether such a client/ customer is a prospective, current or past client.

In the circumstances, we respectfully decline the invitation for a meeting.

As a regulated bank and responsible financial institution, we are obviously more than willing to cooperate with the appropriate authorities to discuss any matters which we are permitted by law to discuss.

Ms Ramos has requested that any future communication on this matter be directed to me and I will respond on behalf of Barclays Africa Group Limited.

Yours faithfully

Yasmin Masithela
Barclays Africa Group Head of Compliance



Sent with Good (www.good.com)

From: Zarina Kellerman [<mailto:Zarina.Kellerman@dmr.gov.za>]
Sent: 04 May 2016 11:12
To: Botha, Alison: Barclays Africa
Subject: Further meeting of the IMC

Dear Alison

The IMC is holding further sessions and I have been mandated to extend a further invitation to Barclays Africa group (including ABSA) to meet with the IMC on **Thursday, 05 May 2016 at 13h00**. I am now mandated to further advise as follows:-

- a. The IMC consists of the Ministers of Labour, Communications, Mineral Resources and Finance; and
- b. The engagements will take the form of a discussion with the bank's representatives. The scope of the discussions will centre around public comments made by ABSA and/or Barclays around the decision taken by the institutions to close the banks accounts of certain of its clients. Whilst Cabinet appreciates the terms and conditions of the banks, the acts may deter future potential investors who may want to do business in South Africa. Cabinet has

Handwritten signature and initials, possibly 'ZM', in the bottom right corner.

endorsed that the Ministers open a constructive engagement with the banks to find a lasting solution to the matter.

I look forward to your response.

Sincerely
Adv Zarina Kellerman
Secretariat to the IMC

This e-mail is sent by or on behalf Barclays Africa Group Limited and or one or more of its subsidiaries. Absa Bank Limited is a subsidiary of Barclays Africa Group Limited and is an Authorised Financial Services Provider and Registered Credit Provider, registration number: NCRCP7. Absa Bank Limited provides services to Barclays Africa Group Limited and its subsidiaries. This e-mail and any files transmitted with it may contain information that is confidential, privileged or otherwise protected from disclosure. If you are not an intended recipient of this e-mail, do not duplicate or redistribute it by any means. Please delete it and any attachments and notify the sender that you have received it in error. Unless specifically indicated, this e-mail is not an offer to buy or sell or a solicitation to buy or sell any securities, investment products or other financial product or service, an official confirmation of any transaction, or an official statement of Barclays Africa Group Limited or any of its subsidiaries. Any views or opinions presented are solely those of the author and do not necessarily represent those of Barclays Africa Group Limited or any of its subsidiaries. This e-mail is subject to disclaimer terms available at the following link: <http://www.absa.co.za/disclaimer>. The disclaimer forms part of the content of this email. If you are unable to access the disclaimer, send a blank e-mail to disclaimer@absa.co.za and we will send you a copy. By messaging with Barclays Africa Group Limited and or any of its subsidiaries you consent to the foregoing.

Handwritten signature and initials, possibly 'Zm'.

Masithela, Yasmin: Barclays Africa

From: Masithela, Yasmin: Barclays Africa
Sent: 04 May 2016 17:04
To: Zarina.Kellerman@dmr.gov.za
Cc: Ramos, Maria: Chief Executive Barclays Africa Group; Wheeler, Charles : Barclays Africa; Botha, Alison: Barclays Africa
Subject: RE: Further meeting of the IMC

Importance: High

Tracking:	Recipient	Delivery	Read
	Zarina.Kellerman@dmr.gov.za		
	Ramos, Maria: Chief Executive Barclays Africa Group	Delivered: 04/05/2016 17:04	
	Wheeler, Charles : Barclays Africa		
	Botha, Alison: Barclays Africa	Delivered: 04/05/2016 17:04	Read: 04/05/2016 17:18

Dear Ms Kellerman

Thank you for your email to our Alison Botha received at 11:12am this morning (04 May 2016), in which you invite us to a meeting at 13h00 tomorrow afternoon (05 May 2016).

- (1) In paragraph (b) of your mail you indicate that "...The scope of the discussions will centre around public comments made by ABSA and/or Barclays around the decision taken by the institutions to close the banks accounts of certain of its clients." We must emphasise that neither ABSA nor Barclays has made any public comment as indicated by you. The only public comment we have made is to the effect that we cannot comment on client confidential issues. We have repeatedly stated both to you and the media that as a regulated financial institution it is not appropriate for us to discuss any matters relating to client/customer confidential information whether such a client/customer is prospective, current or a past.
- (2) Absa Bank Ltd ('Absa') as a responsible Systematically Important Financial Institution (SIFI) (a financial institution that is so important to the economy such that its failure could lead to a widespread economic crisis) **is committed to complying** with our national laws, rules, regulations and policies as well as international laws.
- (3) We are highly regulated by the South African Reserve Bank who supervise our activities and ensure our compliance with regulation on a daily basis. The main legal obligations of a bank relating to customers arise from various pieces of legislation, the main ones being:
 - The Banks Act 94 of 1990;
 - The Prevention of Organised Crime Act 121 of 1998 (POCA) which creates and prohibits serious money laundering offences;
 - The Financial Intelligence Centre Act 38 of 2001 (FICA); The Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004 (POCDATARA) creates money laundering and anti-terrorism compliance obligations for financial institutions;
 - Exchange Control Regulations; and
 - We have reporting obligations to the South African Revenue Services
- (4) Your response at paragraph (a) simply indicates the membership of the IMC, this does not adequately address our request for the details of the attendees of the meeting nor address the specific question regarding the status of the meeting.
- (5) In the circumstances, we politely decline the request for a meeting for the reasons stated above.