



---

## **EXHIBIT NN 2**

**MZWANELE  
MANYI**

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

---

**AFFIDAVIT**

---

I, the undersigned

**MZWANELE MANYI**

**State under oath that**

I am an African adult male, in my capacity as former Director General of Government Communications and Information Systems & Cabinet Spokesperson make the following statement.

1. I express my disappointment with how this Commission of Inquiry is handling my various testimonies.
2. The sense I am getting is that there is a predetermined outcome and whatever input one makes falls on deaf ears or is totally ignored.
3. In addition, I am getting the sense that the accusers are believed without any hesitation and that there is virtually no interrogation of the veracity of their allegations, instead contrary with how the law works, the accused in this instance myself, I feel I am presumed guilty until I prove my innocence.
4. Even when my case is solid and supported with concrete evidence, I get asked questions that indicate that my evidence counted for nothing.

5. After submitting a letter of transfer on a Government letterhead, with the signature of a Minister, why am I still asked to explain why am I saying I was transferred? Who has now rocked up to cast doubt on a Cabinet sanctioned process and is more believable than Cabinet?
6. References to the transcripts and evidence already submitted and paginated in the bundles that the Commission has in its possessions will further bear me out.
7. Finally, and by way of indisputable example, I tabled my version to dispute the testimony of Ms Williams in November 2018, I note that she signed her rebuttal on the 22<sup>nd</sup> of February 2019, 3 months later. In my case I am given less than a week to reply to her 27page affidavit, more than 300 pages of annexures and separate list of questions dating back to the time I was Director General at the Department of Labour.
8. So, I need to put it on record that I feel that this commission is biased against me.
9. In separate letter I address the specific questions as laid out in your memo dated 16 October 2019 which I received after 16h00 on the 17th October 2019.
10. From the outset I must express my level of shock and disappointment at how Ms Williams lies with a straight face and even submits evidence that contradict her own contentions. I have never seen such dishonesty, blatant and unsubstantiated accusations, twisting of facts and evasiveness of taking accountability. Even when something is written, she denies its existence.

EMUN 

11. On her affidavit, **page 2 para 6** she goes at length laying an elaborate background of excuses for not complying with the prescripts. Ms Williams is in essence saying during the period of what she terms 'trial phase', GCIS was basically operating outside the law without securing the necessary exemptions from National Treasury. She does this in an attempt to cleanse the rot that happened during that period. Surely in line with the PFMA requirements the so called "trial phase" should NOT have happened outside an approved deviation/exemption from National Treasury. In fact the **National Treasury Forensic Report on page 16, para 8.1.1.5 last sentence says " We found no evidence that GCIS applied for a special dispensation from National Treasury in order to procure all media bulk buying without a competitive bidding process being followed."** The Commission has no latitude to entertain anything that happened under the unlawful so-called trial phase. The Accounting Officer at the time in September 2010, should have approached National Treasury to seek approval before the trial phase was embarked on.

**The very 1<sup>st</sup> recommendation by the National Treasury Forensic Report on page 25, para 8.1.2.22 states, "In accordance with Section 81 and 84 of the PFMA the Accounting Officer should be charged with financial misconduct due to his non-compliance with 40(1)(a) and Section 38(1)(a)(iii) of the PFMA. Disciplinary action should accordingly be instituted in accordance with Section 84 and 85 of the PFMA.**

12. The findings as contained in the National Treasury Forensic Investigation Report **{EXHIBIT:MM1}** by National Treasury, are the only legitimate basis to assess the horror story of the "trial phase" under the captainship of Ms Williams. Indeed, I inherited a hot mess. **The entire explanation by Ms**





**Williams must be dismissed because not to do so would be to condone unlawful practices.**

13. In her **para 8, On the 1st sentence** she makes a fatal admission which I quote verbatim **"During this trial phase, a procurement policy for in house media buying did not exist"**. Government departments do not operate in a legal vacuum. Until the next law is in place, the current law applies.
14. The Report by National Treasury which was highlighting the prescripts that were not complied with during the "trial phase" was correct because it can never be acceptable that departments do as they please with public purse and not follow prescripts or at worst operate on approved exemptions.
15. So, it is my submission that the Commission has no option but to reject out of hand the flouting of prescripts during the so called "Trial Phase". Ms Williams in this regard has shown a total lack of depth of how PFMA enjoins public officials to operate. Given that in 2019 Ms Williams has still not appreciated her flouting of the law, even after the forensic report by National treasury, I conclude that Ms Williams is a huge liability to GCIS to be entrusted with the mammoth task of acting as DG for GCIS.
16. **On para 9** she discusses what she calls Payment Commitment Notification and says nothing about which prescript she relied on for this creativity. It boggles the mind that such a senior person could commit Government funds without demanding reciprocal delivery from the supplier. This is downright siphoning of funds scheme, like I said before, a mini-VBS heist.

The Commission must reject that mechanism as contrary to the letter and spirit of PFMA.

**17. On para 11,** Ms Williams claims that 1.11 Supply Chain Delegation was also used. This is a blatant lie. The detail of 1.11 Supply Chain Delegation requires compliance with regulations, 16A6.4 and 16A8.3(a-f), There is no evidence of compliance with any regulation whatsoever during this “trial phase”. The Commission must not only reject this paragraph but must consider charging Ms Williams for lying without shame and misleading the Commission.

**18. On para 12** Ms Williams says suppliers providing services in terms of media buying were required to be listed on a GCIS supplier database. **However, on page 18 para 8.1.1.7 the National Treasury Forensic Report states “Light Views was appointed by GCIS despite not being on the supplier database of GCIS.**

**19. On para 14,** Ms Williams makes a bold and unsubstantiated claim that on my arrival at GCIS I knew of the state of affairs I suppose in terms of the short comings of procurement. Ms Williams does not explain how this osmosis of information occurred. This is another lie; I came from the Department of Labour and had no insight of what was happening in the procurement issues of GCIS. If she argues to the contrary, the Commission must ask her to provide evidence to back up her claim.



**20. On para 15** she goes further to strengthen her point by saying “In fact in May 2012 Mr Manyi wrote a letter to the Director General of National treasury, attached as annex PW2....” .... redraft of the GCIS procurement policy. This assertion lacks coherence and logic. Surely for a person that arrived and was aware of the status of procurement on arrival on the 3<sup>rd</sup> of February 2011 as claimed by Ms Williams and then only start to remedy the situation in May 2012 is not making any sense. How does what I did more than a year after my arrival confirm my knowledge and understanding of the problem on my arrival? This is again a desperate attempt by Ms Williams to avoid taking responsibility for her failures.

**21. On Para 18,** Ms Williams makes a wishful, false and absurd claim that the New Procurement policy of GCIS adopted the ‘trial phase’ practise. Fortunately, this is not the case. If one compares the checks and balances in the new GCIS policy, there is no comparison with the disaster that was happening during the “trial phase’.

By way of example, the new policy has the following safe-guards which are absent in the “trial phase”.

**On Media Bulk Buying, Media Production and Outdoor Advertising**

- s207 Regulation 16A6.4 and practice note 8 of 2007/8 is enforced  
– There was no such in the “trial phase”
- s217 – The National Treasury shall provide the necessary authorisations for the framework that will be in this particular category of services – There was no such in “Trial Phase”

**22. On para 21-24** Ms Williams makes a very ill-informed analysis where she claims that I contradicted myself by saying there was chaos in the department whilst at the same time I heaped praises on the department



by saying I was inheriting very good, qualified and hard-working people. The only shambles I ever referred to were related to procurement and the incident that led to the investigation by National Treasury. It is a blatant lie to suggest that I lumped the entire department into my shambles assertions and I challenge her to point out a relevant section in my transcript where I said that.

23. One would have thought that people in leadership positions would know how to contextualise issues and messages. On arrival at GCIS I indeed scanned through the profiles of the staff and I did walk about on all 5 floors or so. Yes, indeed GCIS people are generally properly qualified academically and yes at face value everyone was busy doing something, so indeed as a new leader I had a duty and obligation to give feedback and spur people on.
24. It is entirely inappropriate to abuse those comments made in good faith and quote them out of context to seek to find contradictions where they don't exist. The issue at hand at procurement was pure dishonesty and lack of ethics by a handful of individuals. Surely the few bad apples in procurement do not represent the character of the entire department. It therefore makes no sense to suggest that the negative commentary directed at a few bad apples wipes away the positive commentary for the rest of the staff. This in fact shows the innate maliciousness within Ms Williams. The Commission must dismiss the assertion that there was anything contradictory.



EMW



25. **On para 28**, Ms Williams makes another wild unsubstantiated claim that I said GCIS was not paying suppliers on time. This is simply not true; I reject this accusation with contempt it deserves. My comments in this regard are contained on my Reply Affidavit dated 31 October 2018, delivered on 14 November 2018 para 6.4 where I said “By the time I left GCIS we had managed to reduce the turnaround time to pay the suppliers to 14 days”. There is nowhere where I criticised GCIS for late payments. The Commission must require Ms Williams to point out her claim from my transcript. Ms Williams needs to improve her relationship with the facts and the truth.

26. **On para 29** and on various other paragraphs thereafter Ms Williams attributes the statements from the findings of Forensic Investigation by National Treasury to me. When I was tabling my statement, I was very clear that these violations are findings by National Treasury not me. **I refer the commission to my 14 November 2018 transcript, page 95 of 126, middle of 3<sup>rd</sup> paragraph where I said “What I am going through here is not me saying this, it is the National Treasury Report.** In the treasury report, page 12 Ms Williams is listed as no 15 of the people who were interviewed by National treasury. It is not clear to me why it would seem she is only getting the wisdom only now to respond to the findings which during the draft phase of the report would have been put to her as the implicated person. So, my crime was to read out what was written by forensic experts. Her accusation must be dismissed out of hand.


27. **From para 31-35** Ms Williams is trying all the tricks in the books of smokes and mirrors to rationalise the irregularities under her command whilst also

  
EMMN

expediently and selectively referring to the National Treasury Report. The Commission is advised to reject her shenanigans and refer directly to the National Treasury report for a more factual account of what really happened. By way of example, Ms Williams, **on para 32** she says “In January 2011 I signed two 48-hour Payment Commitment Notice.....” On this issue the **National Treasury Report makes a finding specifically against her where the report on page 17, para 8.1.1.8 says “Ms Williams was not delegated to approve such a notice in terms of the Financial Delegations of GCIS.**

28. **On para 34** Ms Williams again falsely accuses me and makes me the owner of the findings I was referencing. There are at least two references in the National Treasury Report that mention that Ms Williams did not have the delegated authority to sign those commitment to pay notice. The Commission is referred to clause 8.1.1.8 & clause 8.1.2.11.

Furthermore, Ms Williams in her own defence she cites annexure “PW8”, a memo from my predecessor, Mr Maseko where she purports that in terms of this memo, she was delegated to sign these payment notices by virtue of the delegation that this memo conferred on her. However, in the appointment letter, Mr Maseko did not in any way abdicate his responsibilities as the Accounting Officer. On clause 2.3 of the appointment letter Mr Maseko makes it clear that the Branch Manager is accountable to the Accounting Officer. Mr Maseko goes further in **clause 3.3 and says “You are hereby kindly reminded that the execution of your financial responsibilities should be in line with both GCIS Financial Policies as well as the Broad Public Finance Management Act (PFMA) framework.** It is very clear from the forgoing that indeed Ms Williams was on her own frolic.

EMWN 



29. In fact, even the specific power that was required to deviate in terms of 16A6.4 needed to have been obtained from National Treasury even before the issue of delegation arises. The National Treasury report on page 16, paragraph 8.1.1.5 is very clear and specific that there was no evidence that GCIS applied for this special dispensation. The authority that Ms Williams claims arises from this memo from Mr Maseko in fact is non-existent. So, Ms Williams is misleading the Commission by citing this memo.

In addition, as an annexure to this letter, Mr Maseko & Ms Williams co-signed detailed responsibilities for Ms Williams, this can be found on page 199 of Ms Williams's pagination, clause 16 which says **"Ensure that proper authorisation for all expenditures are done by delegated Programme managers and Responsibility Managers; Pre-approval signature on documents with a financial implication is not allowed. This includes payment forms."** So, in terms of this letter provided by Ms Williams, she was in fact specifically barred by Mr Maseko from signing documents like Commitment to Pay Notices.

30. On para 36, Ms Williams again creates a whole lot of conflation of issues and falsehoods. The damage happened in January 2011 yet she is quoting incidents that happened in the BAC of March 2011 after the damage and has the audacity to present the March 2011 BAC representations as if they happened prior to the irregularities. She goes further and blatantly lies about me ratifying the memo of irregularities in May 2011. The Memo that she is referring to as annexure PW9 is very clear on its **Purpose i.e. "for CEO to note the decision of the BAC"** and again on the **Recommendations, "CEO to note the decision of the BAC"**. It is wrong for Ms Williams to deliberately conflate and confuse noting with ratifying.

31. During my testimony on 14th November 2018 I predicted that this memo annex PW9 which in my testimony is referred to with its original reference in the National Treasury report as Exhibit 26 will be used to white wash this procurement rot and I objected even to National Treasury suggesting like Ms William does that I ratified it when in fact I simply noted as requested. If National Treasury had applied natural justice and afforded me the opportunity of right of reply, I would have clarified them.

32. On para 40, Ms Williams makes another bold lie that in what she calls Manyi's internal investigation where she claims my investigations had no findings of wrong doing on her part.

Ms Williams has not submitted to the Commission a copy of this Manyi internal investigation report where "no wrong doing" was established because it does not exist.

Ms Williams was not investigated by anyone in GCIS.

The truth is that the investigation had not got to her yet, I was waiting for the National Treasury Report. Ms Williams should know that it's impossible to make findings on an individual that was not investigated. It's not like there was a clean bill of health given to her either. The internal GCIS investigations and sanctions were conducted by the various DDG's to their subordinates. There was no such thing as Manyi's investigation other than the one I commissioned jointly with the Stats General.





33. **On Para 43**, just for the record, I was never interviewed by National Treasury nor was I part of the GCIS team that looked at the draft report. This is quite strange because I was the co-principal with Mr Lehohla of Stats SA when this investigation was commissioned.

34. **Para 44.1** This statement is factually incorrect. There is not a single soul that I sanctioned. The DDG's were responsible for disciplining their staff.

35. **On para 45**, Ms Williams makes an unsubstantiated claim that National Treasury report did not recommend that disciplinary steps be taken against her. The truth though is that the National Treasury Forensic team made a finding which they articulate on page 19, para 8.1.1.23 where they say " **It appears that an act of fraud may have been committed by GCIS by disposing of the detailed proposal of Light Views, thereby removing evidence of their irregular appointment.** Corporate Services, a branch that Ms Williams was heading is the custodian of contracts and related documents. The Commission needs to establish from Ms Williams as to how was it possible for these documents to be suddenly missing. This was hardly a year after the commencement of the supplier. In my book, Ms Williams should be held accountable for these missing documents because custodianship of such documents resides with her office.

Furthermore, and perhaps in realisation of this lurking reality, Ms Williams has not been honest with the Commission. In her essay of what the National Treasury report found and recommended, she has conveniently left out the recommendation on page 20, para 8.1.1.28 which states thus, "

**A charge of fraud should be registered with the SAPS in respect of the missing documents, in terms of Section 40(1)(a) of the PFMA read with section 34 of the Prevention and Combating of Corrupt Activities Act No12 of 2004.”**

Until the missing documents matter is resolved, it is premature for Ms Williams to claim innocence.

36. **On para 46**, this finding by national treasury contradicts Ms William’s outrageous claim that her so called ‘trial phase’ complied with Supply Chain Delegation 1.11.

37. **On para 47**, Ms Williams continues to justify the unlawful dispensation that obtained under the “Trial Phase”. In 2019, she has still not grasped that she had no right or authority to create her own regulations. Her justifications must be dismissed as unlawful.

38. **On para 48**, Ms Williams contends that I said the Census 2011 expenditure were not accounted for. It would have helped if Ms Williams had cited where exactly in the transcript, I made such accusations. Like I said, all what I ever said about the Census 2011 saga was directly out of the National Treasury Report. For some reason, Ms Williams is using me as a proxy for National treasury findings. I reject her posture.



EMIN

39. On page 29, para 8.2.1.20 Findings of the National Treasury Forensic Investigation, dismiss this so-called declaration on the basis that payments were already made to the supplier. In fact, the National treasury finding is that this declaration is irregular. The big concern that arises is that according to National Treasury, the Bid Adjudication Committee did not approve/recommend the appointment of Light Views. However, the memo that I signed on the 27 May 2011, as reflected on Ms Williams's pagination on page 207 to note the decision of the BAC, said the BAC had endorsed the submission presented.

40. The Commission needs to establish if the memo I signed on the 27<sup>th</sup> May 2011 indeed reflected the truth. The forensic report says the BAC did not approve, but the memo that came for my noting said BAC had endorsed the submission. I reiterate again that National Treasury just like Ms Williams are both incorrect to upgrade my noting into ratification.

41. **On para 50**, Ms Williams on behalf of GCIS assumes a liability of R3 762 000.00 as an amount still owing to STATSA. It is not clear why would GCIS still owe STATSA when GCIS had taken a decision to recover the money from errant service providers following the decisions by Courts.

42. **On para 51**, Ms Williams makes a malicious and factually incorrect point where she links my departure with the commencement of collection of monies owed to GCIS, insinuating that I somehow stood between GCIS and collection of monies that she irregularly authorised during her "trial phase". There is no link between my departure and the collection process. The collection could only start after the completion of court processes which were completed long after I had left.





43. Ms Williams's malicious remarks on paragraph 51 contradict the factual position which she had already articulated in paragraph 49 where she starts by saying, **"Following the final Treasury report being published, the GCIS commenced a process to recover the funds spent for services which had not been satisfactorily rendered."**
44. The contradictory paragraphs, (para 49 & para 51) indicate the innate dishonesty embedded in Ms Williams.
45. Ms Williams makes a point about GCIS following up on service providers to recover government's money, perhaps Ms Williams should take the Commission into her confidence and explain the circumstances that led to Mr Donald Liphoko opening a corruption case against her at the SAPS on 22 October 2018, CAS 701/10/2018 for seeking to avert the whole effort of recovering funds from the errant supplier but instead redirected GCIS funds (R7 762 000) to StatsSA to pay the supplier whose contract with Government had been declared null and void. The Commission is advised to invite Mr Liphoko to make a submission on this matter, I attach his affidavit for ease of reference as **Exhibit MM2**
46. **On para 55**, Ms Williams makes reference to National Treasury Guidelines on how Bid Adjudication Committee should be composed and makes a false claim that it was not complied with on the basis that there is no CFO and that it lacks cross functionality. Ms Williams is wrong.
47. The National Treasury code says that such a committee must consist of **at least four** senior officials,





48. **Chairperson**, where possible the Chairperson should be the CFO. Nothing in this wording makes it mandatory for the CFO to be in this committee, it's just a preferred option for a CFO to be the Chairperson, NOT a matter of must, therefore Ms Williams is wrong to suggest that the CFO's participation is mandatory. (In the BAC which I happily disbanded, Ms Williams was the Chair yet she was not the CFO at the time. The CFO was in the BAC but not chairing as proposed in the guidelines. Ms Williams saw nothing wrong with that as long as she was the chair)

49. Ms Williams also challenges the cross functionality of the New BAC team, yet it is comprised of: -

- 49.1. A Chief Director responsible for provinces – Outward looking
- 49.2. A Chief Director responsible for strategic planning and programme management -Strategic insights
- 49.3. A Chief Director responsible for government clusters – Inward looking
- 49.4. A Director responsible for Human resources – transversal looking
- 49.5. A Director responsible for Supply Chain – Technical expert in SCM

50. This new BAC team is indeed cross-functional and arguably more cross functional than the previous disbanded team. Indeed, there are other cross functional permutations, but nothing is lost because the team is free to invite or co-opt anyone who may have expertise that is not resident in the team. So, it is misleading and wrong for Ms Williams to suggest that there is only one way to achieve cross functionality and that's the way that ostensibly includes her as the chair. Ms Williams's assertions as regards

how the BAC is constituted and her criticism on its cross functionality must be dismissed out of hand.

**51. On Para 57** Ms Williams boasts about the previous BAC and the fact that it ticked all the boxes yet it is the same team that presided over the rot where more than R7m of Government money was lost. In fact, the disbanded BAC team had no reason not to implement the recommendation of National Treasury guidelines where the CFO becomes the chair where possible. The CFO was serving in the disbanded BAC and should have chaired if Ms Williams argument was honest.

**52. Para 59** Ms Williams statement is an expression of falsehood in its entirety as explained in para 47 to 51.

**53. On Para 60 and 61** Ms Williams repeats herself on her warped understanding of what constitutes cross functionality and goes further to quote the qualifications of the new BAC maliciously and out of context.


**53.1.** The point I was responding in my original testimony relating the qualifications of the new BAC team emanated from her preoccupation with the 5-day treasury workshop on BAC/SCM that seemingly in her view was an absolute requirement. Her notion is clearly misguided because the actual guidelines that she has been swearing by make no such requirement. Moreover, the new appointees were not new in snr management in Government and were thus sufficiently conversant with



all the required prescripts. In my view the fact that they possessed master's degrees meant that they each have enough cognitive capabilities to self-educate themselves on what others perhaps need a 5day workshop for and a certificate of attendance. Nowhere did I indicate that their admirable qualifications were to substitute anything. So, Ms Williams got this one wrong again.

**54. From para 62 to 65** Ms Williams is doing exactly what I predicted on my 14 November 2018 testimony was the game plan with these memos to white wash the shenanigans of her so called "trial phase" and pass on the monkey upstairs. In this elaborate scheme, a group of transactions are lumped together and submitted to BAC post facto for endorsement and for the CEO to note. In the middle of this game which would have ended with me noting on 26 May 2011, on para 64 she irrationally introduces a memo dated 28 May 2012 as part of the package of issues to support her elaborate scheme of 26 May 2011 to pass the buck. Ms Williams even says I had the opportunity to reverse things, yet she had long irregularly authorised payment. The level of dishonesty and machinations is indeed regrettable and very disappointing.

**55. On para 66** Ms Williams flatly denies the point I made about blacking out of a particular company that was in the list which was endorsed by the BAC. **Yet in her own bundle of documents page 203**, the evidence is starring her in the eyes. The blacked-out company is the same company implicated in the ~R7m fruitless and wasteful expenditure if not fraud. This specific example is another instalment of the clearest example of the character of Ms Williams, a person that has no relationship with the truth

emvN 



and is incapable of taking responsibility for her failures. How can Ms Williams submit to the Commission a blacked-out transaction and then on a sworn statement flatly deny such?

56. **On para 67** Ms Williams is making an admission albeit against her will of not raising her new found disquiet regarding the rearrangement I made on the organogram which Exco where she sits in approved.

57. **On para 68** she provides a reason in year 2019 for her failure to object in 2011. Both 2011 and 2012 Annual Reports were approved by the Minister with the new structure included. If Ms Williams was honest, she would confirm that nothing stays in the Annual report without the nod of the Minister. I had a delegated authority to run the department. The late Minister Chabane never involved himself on admin/operational issues.

58. Ms Williams has to date not provided any evidence to the Commission to suggest that Minister Chabane may his soul rest in peace, after signing off the annual reports with the revised organogram had expressed any dissenting views about the structure. Ms Williams must explain the meaning of the signature of a Minister in any annual report. Contrary to Ms Williams contention, the annual reports 2011/2012/2013 with the new structure signed by Minister constitute an admissible evidence in Court that the Minister concurred.





59. Both internal and external auditors have not said anything negative about the structure. So, Ms Williams must desist from misleading the Commission.

60. **On para 69**, Ms Williams is dishonestly kicking for touch. Surely if her concern was whether the Minister had consented or not, the simplest thing would have been for her to ask the question in the meeting. This again reveals the dark side of Ms Williams of acting in bad faith or her inability to be truthful. There was no irregularity at all. The fact that Ms Williams herself has no record of reporting what she deemed an irregularity, betrays her dishonest agenda.

61. **On para 70 to 73** Ms Williams rationalises her support for the TNA breakfasts. She basically says she was just a messenger of the department articulating views which she personally disagrees with. I put it to Ms Williams that an Acting CEO of GCIS who whilst occupying the position articulates views that are not in sync with the Government department that she is leading is effectively putting the Government into disrepute. It is untenable for an HOD who at all times should be the torch bearer of the department to be confusing her own staff and all other stakeholders with messages that are contrary to government position. **This gross error of judgment requires a disciplinary Inquiry. The Commission is advised to recommend that the Minister she reports to acts on this information.**

62. **On Para 74** Ms Williams attributes her own emotional understanding to my testimony. Again, it would assist all of us if Ms Williams would reference the exact part of my transcript where she alleges, I said the

EMIN




things she is accusing me of. I deny the statement the remarks that Ms Williams is attributing to me.

63. The thrust of my argument for the New Age was value for money based on content dissemination and their anti-hostile yet balanced posture towards government.

64. **On para 77** Ms Williams exposes her ignorance on how the media industry works. The cost per readership of any new publication will always be higher than the matured publication for a variety of reasons. This could be a matter of economies of scale which pushes down unit costs for the established publications. This is like comparing apples to stones. New Age was the newest publication competing with long established brands.

65. **On para 78** Ms Williams further exposes her lack of understanding of the trajectory of market share growth curve. Perhaps she never heard of a J curve. TNA Media the company was only established in June 2010 and the first publication of The New Age was on 6 December 2010. No rational person would expect that within 3 years of launch any publication would be in the top ten. Ms Williams assessment lacks sophistication. It does not even take into account that with the New Age, government content for most provinces was covered more than in any other newspaper. For GCIS, communication is service delivery. If government messages are not reaching communities then GCIS is not doing its job. This matter requires a nuanced approach, not a mechanical one. Ms Williams's posture should be dismissed for lack of substance, ignorance and possibly badly influenced by detractors of the New Age.

EMVN 

66. For some reason at the end of para 78, Ms Williams decided to throw another unsolicited falsehood saying in my testimony I said Telmar calculates circulation. I said no such thing.

My utterance on Telmar are contained in my oral evidence given on the 27th November 2018 on page 71 of 130, para 10. I was very categoric on this matter, I said, **"TELMAR if anything is actually not a circulation tool. It is actually a readership tool."** I challenge Ms Williams to refer the commission to the transcript that supports her assertions.

67. **On para 80**, Ms Williams discusses the SMS I sent her. Firstly, she has wrongly paraphrased what I said. It's not true that I said GCIS agreed to support TNA breakfasts after I had left GCIS. For ease of reference my text said **"Hi Phumla, Please indicate that the CFO Zweli Momeka and breakfasts happened AFTER my era"** The fundamental difference between the two is that I specifically mentioned by name the CFO, Mr Zweli Momeka/Breakfast versus GCIS agreeing to support. I never said one word about agreeing or supporting anything which is what she is claiming I said without producing any proof.

68. Just to remind Ms Williams, in her testimony she was complaining bitterly about the bullying related to breakfasts sponsorships. At which point the evidence leader, Adv Hoffman asked her who did the bullying, the answer was that it was the CFO, Mr Zweli Momeka. At the mention of the name of the CFO I knew that whatever happened, does not involve me because I left GCIS in August 2012 and Mr Momeka joined GCIS in April 2013, long after I had left GCIS. All I was trying to do was to assist her with the

EMWIN



chronology of events. So, it is disingenuous for Ms Williams to now try and twist what is explicit in my text message.

69. **On para 81** Ms Williams relies on a letter from TNA to GCIS marked as annex "PW19" in her affidavit to assert that my SMS message to her was false. Evidently, she terribly misconstrued issues. She goes on a limb to say the first TNA breakfast occurred in February 2012 and squares that against my SMS text as if I ever contested when the first TNA Breakfast occurred. Thereafter she concludes that my text was false.

70. Even the content of the TNA letter was not about breakfast sponsorship, it was a proposal for GCIS to do an eight pager insert covering the President around the State of the Nation address key messages. The letter mentioned that the President would be in a TNA breakfast, but the request had nothing to do with the breakfast itself or GCIS sponsorship of it. After this meddled up distortion of issues, she concludes that my SMS was therefore false. Her contention is rejected out of hand.

71. **In Conclusion**, it is very clear that Ms Williams is not a credible witness. I have listed a few examples where she contradicts herself (para 49 vs para 51), blatantly lies (claiming there are no findings of wrong doing by her), denies existence of issues contained in her own bundle (blacked out transaction on her own pagination page 203) etc. Ms Williams's testimony as regards her accusations of me must be dismissed in its entirety.

EMVW



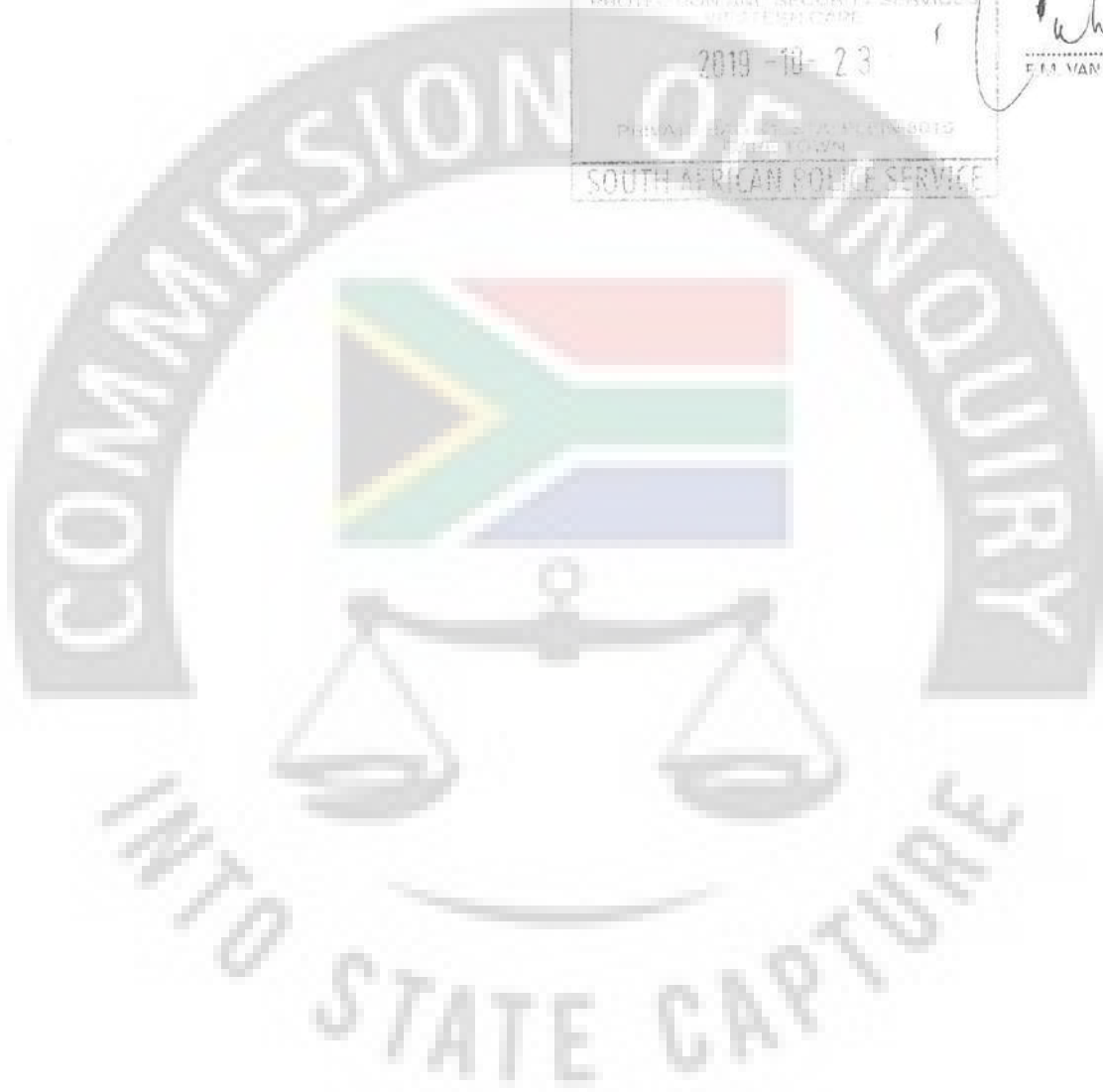
I know and understand the contents of this affidavit as I have prepared it myself and I consider it binding on my conscience.

  
Mzwanele Manyi

24 October 2019



  
532526-9  
F.M. VAN NIEKERK SGT



Judicial Commission of Inquiry  
Hillside House  
17 Empire Road  
Park Town

24 October 2019

Dear Ms Brigitte Shabalala

RE: Questions relating to **my version** testimony on GCIS as tabled in November 2018

5.1 My affidavit contains a more comprehensive response even on paragraphs that this questionnaire has not covered. But I will still respond to specific questions. Duplication is unavoidable.

**On Para 18**, Ms Williams makes a wishful, false and absurd claim that the New Procurement policy of GCIS adopted the ‘trial phase’ practise.

Fortunately, this is not the case. If one compares the checks and balances in the new GCIS policy, there is no comparison with the disaster that was happening during the “trial phase”.

By way of example, the new policy has the following safe-guards which are absent in the “trial phase”.

**On Media Bulk Buying, Media Production and Outdoor Advertising**

- s207 Regulation 16A6.4 and practice note 8 of 2007/8 is enforced – There was no such in the “Trial Phase”
- s217 – The National Treasury shall provide the necessary authorisations for the framework that will be in this particular category of services – There was no such in “Trial Phase”.



**On para 21 to 24** Ms Williams makes a very ill-informed analysis where she claims that I contradicted myself by saying there was chaos in the department whilst at the same time I heaped praises on the department by saying I was inheriting very good, qualified and hard-working people.

The only shambles I ever referred to were related to procurement and the incident that led to the investigation by National Treasury. It is a blatant lie to suggest that I lumped the entire department into my shambles assertions and I challenge her to point out a relevant section in my transcript where I said that.

One would have thought that people in leadership positions would know how to contextualise issues and messages. On arrival at GCIS I indeed scanned through the profiles of the staff and I did walk about on all 5 floors or so. Yes, indeed GCIS people are generally properly qualified academically and yes at face value everyone was busy doing something, so indeed as a new leader I had a duty and obligation to give feedback and spur people on.

It is entirely inappropriate to abuse those comments made in good faith and quote them out of context to seek to find contradictions where they don't exist. The issue at hand at procurement was pure dishonesty and lack of ethics by a handful of individuals.

Surely the few bad apples in procurement do not represent the character of the entire department. It therefore makes no sense to suggest that the negative commentary directed at a few bad apples wipes away the positive commentary for the rest of the staff. This in fact shows the innate maliciousness within Ms Williams.

The Commission must dismiss the assertion that there was anything contradictory.

**On para 28**, Ms Williams makes another wild unsubstantiated claim that I said GCIS was not paying suppliers on time. This is simply not true; I reject this accusation with contempt it deserves. My comments in this regard are contained on my **Reply Affidavit dated 31 October 2018, delivered on 14 November 2018 para 6.4** where I said **"By the time I left GCIS we had managed to reduce the turnaround time to pay the suppliers to 14 days"**. There is nowhere where I criticised GCIS for late payments. Ms Williams needs to improve her relationship with the facts and the truth.

## 5.2

1. **On para 29** and on various other paragraphs thereafter Ms Williams attributes the statements from the findings of Forensic Investigation by National Treasury to me. When I was tabling my statement, I was very clear that these violations are findings by National Treasury not me. **I refer the commission to my 14 November 2018 transcript, page 95 of 126, middle of 3<sup>rd</sup> paragraph where I said “What I am going through here is not me saying this, it is the National Treasury Report.** In the treasury report, page 12 Ms Williams is listed as no 15 of the people who were interviewed by National treasury. It is not clear to me why it would seem she is only getting the wisdom only now to respond to the findings which during the draft phase of the report would have been put to her as the implicated person. So, my crime is to read out what was written by forensic experts. Her accusation must be dismissed out of hand.
1. **From para 31-35** Ms Williams is trying all the tricks in the books of smokes and mirrors to rationalise the irregularities under her command whilst also expediently and selectively referring to the National Treasury Report. The Commission is advised to reject her shenanigans and refer directly to the National Treasury report for a more factual account of what really happened. By way of example, Ms Williams, **on para 32** she says “In January 2011 I signed two 48-hour Payment Commitment Notice.....” On this issue the **National Treasury Report makes a finding specifically against her where the report on page 17, para 8.1.1.8 says “Ms Williams was not delegated to approve such a notice in terms of the Financial Delegations of GCIS.**
2. Ms Williams again falsely accuses me and makes me the owner of the findings I was referencing. There are at least two references in the National



Treasury Report that mention that Ms Williams did not have the delegated authority to sign those commitment to pay notice. The Commission is referred to clause 8.1.1.8 & clause 8.1.2.11.

Furthermore, Ms Williams in her own defence she cites annexure “PW8”, a memo from my predecessor, Mr Maseko where she purports that in terms of this memo, she was delegated to sign these payment notices by virtue of the delegation that this memo conferred on her. However, in the appointment letter, Mr Maseko did not in any way abdicate his responsibilities as the Accounting Officer. Ms Williams seems to be confusing her powers as Acting Director General with being a Branch Manager.

On clause 2.3 of the appointment letter Mr Maseko makes it clear that the Branch Manager is accountable to the Accounting Officer. Mr Maseko goes further in clause 3.3 and says **“You are hereby kindly reminded that the execution of your financial responsibilities should be in line with both GCIS Financial Policies as well as the Broad Public Finance Management Act (PFMA) framework.** It is very clear from the forgoing that indeed Ms Williams was on her own frolic.

3. In fact, even the specific power that was required to deviate in terms of 16A6.4 needed to have been obtained from National Treasury in the 1<sup>st</sup> place, even before the issue of delegation arises. The National Treasury report on page 16, paragraph 8.1.1.5 is very clear and specific that there was no evidence that GCIS applied for this special dispensation. The authority that Ms Williams claims arises from this memo from Mr Maseko in fact is non-existent. **So, Ms Williams is misleading the Commission by citing this memo.**



In addition, as an annexure to this letter, Mr Maseko & Ms Williams co-signed detailed responsibilities for Ms Williams, this can be found on page 199 of Ms Williams's pagination, clause 16 which says **"Ensure that proper authorisation for all expenditures are done by delegated Programme managers and Responsibility Managers; Pre-approval signature on documents with a financial implication is not allowed. This includes payment forms."** So, in terms of this letter provided by Ms Williams, she was in fact specifically barred by Mr Maseko from signing documents like Commitment to Pay Notices.

**On para 36**, Ms Williams again creates a whole lot of conflation of issues and falsehoods. The damage happened in January 2011 yet she is quoting incidents that happened in the BAC of March 2011 after the damage and has the audacity to present the March 2011 BAC representations as if they happened prior to the irregularities. She goes further and blatantly lies about me ratifying the memo of irregularities in May 2011. The Memo that she is referring to as annexure PW9 is very clear on its Purpose i.e. "for CEO to note" and again on the Recommendations, "CEO to note". It is wrong for Ms Williams to deliberately conflate and confuse noting with ratifying.

During my testimony on 14th November 2018 I predicted that this memo annex PW9 which in my testimony is referred to with its original reference in the National Treasury report as Exhibit 26 will be used to white wash this procurement rot and I objected even to National Treasury suggesting like Ms William does that I ratified it when in fact I simply noted as

requested. If National Treasury had applied natural justice and afforded me the opportunity of right of reply, I would have clarified them.

2. **On para 40**, Ms Williams makes another **bold lie** that in what she calls Manyi's internal investigation where she claims my investigations had no findings of wrong doing on her part.

Ms Williams has not submitted to the Commission a copy of this Manyi internal investigation report where "no wrong doing" was established because it does not exist.

Ms Williams was not investigated by anyone in GCIS.

The truth is that the investigation had not got to her yet, I was waiting for the National Treasury Report. Ms Williams should know that it's impossible to make findings on an individual that was not investigated. It's not like there was a clean bill of health given to her either. The internal GCIS investigations and sanctions were conducted by the various DDG's to their subordinates. There was no such thing as Manyi's investigation other than the one I commissioned jointly with the Stats General.

**On Para 43**, just for the record, I was never interviewed by National treasury nor was I part of the GCIS team that looked at the draft report. This is quite strange because I was the co-principal with Mr Lehohla of Stats SA when this investigation was commissioned.

**Para 44.1** This statement is factually incorrect. There is not a single soul that I sanctioned. The DDG's were responsible for disciplining their staff.

On para 45, Ms Williams makes an unsubstantiated claim that National Treasury report did not recommend that disciplinary steps be taken against her. The truth though is that the National Treasury Forensic team made a finding which they articulate on page 19, para 8.1.1.23 where they say” **It appears that an act of fraud may have been committed by GCIS by disposing of the detailed proposal of Light Views, thereby removing evidence of their irregular appointment.** Corporate Services, a branch that Ms Williams was heading is the custodian of contracts and related documents. The Commission needs to establish from Ms Williams as to how was it possible for these documents to be suddenly missing. This was hardly a year after the commencement of the supplier. In my book, Ms Williams should be held accountable for these missing documents because custodianship of such documents resides with her office.

Furthermore, and perhaps in realisation of this lurking reality, Ms Williams has not been honest with the Commission. In her essay of what the National treasury report found and recommended, she has conveniently left out the recommendation on page 20, para 8.1.1.28 which states thus “ **A charge of fraud should be registered with the SAPS in respect of the missing documents, in terms of Section 40(1)(a) of the PFMA read with section 34 of the Prevention and Combating of Corrupt Activities Act No12 of 2004.**

Until the missing documents matter is resolved, it is premature for Ms Williams to claim innocence.



**On para 46**, this finding by national treasury contradicts Ms Williams's outrageous claim that her so called 'trial phase' complied with Supply Chain Delegation 1.11.

**On para 47**, Ms Williams continues to justify the unlawful dispensation that obtained under the "Trial Phase". In 2019, she has still not grasped that she had no right or authority to create her own regulations. Her justifications must be dismissed as unlawful.

**On para 48**, Ms Williams contends that I said the Census 2011 expenditure were not accounted for. It would have helped if Ms Williams had cited where exactly in the transcript, I made such accusations. Like I said, all what I ever said about the Census 2011 saga was directly out of the National Treasury Report. For some reason, Ms Williams is using me as a proxy for National treasury findings. I reject her posture.

**On page 29, para 8.2.1.20 Findings of the National Treasury Forensic Investigation**, dismiss this so-called declaration on the basis that payments were already made to the supplier. In fact, the National treasury finding is that this declaration is irregular. The big concern that arises is that according to National Treasury, the Bid Adjudication Committee did not approve/recommend the appointment of Light Views. However, the memo that I signed on the 27 May 2011, as reflected on Ms Williams's pagination on page 207 to note the decision of the BAC, said the BAC had endorsed the submission presented.

The Commission needs to establish if the memo I signed on the 27<sup>th</sup> May 2011 indeed reflected the truth. The forensic report says the BAC did not approve,

but the memo that came for my noting said BAC had endorsed the submission. I reiterate again that National Treasury just like Ms Williams are both incorrect to upgrade my noting into ratification.

**On para 50,** Ms Williams assumes a liability of R3 762 000.00 as an amount still owing to STATSA. It is not clear why would GCIS still owe STATSA when GCIS had taken a decision to recover the money from errant service providers following the decisions by Courts.

**On para 51,** Ms Williams makes a malicious and factually incorrect point where she links my departure with the commencement of collection of monies owed to GCIS, insinuating that I somehow stood between GCIS and collection of monies that she irregularly authorised during her “trial phase”.

There is no link between my departure and the collection process. The collection could only start after the completion of court processes which were completed long after I had left.

Ms Williams’s malicious remarks on paragraph 51 contradict the factual position which she had already articulated in paragraph 49 where she starts by saying, **“Following the final Treasury report being published, the GCIS commenced a process to recover the funds spent for services which had not been satisfactorily rendered.”**

The contradictory paragraphs, (para 49 & para 51) indicate the innate dishonesty embedded in Ms Williams.

Ms Williams makes a point about GCIS following up on service providers to recover government's money, perhaps Ms Williams should take the Commission into her confidence and explain the circumstances that led to Mr Donald Liphoko opening a corruption case against her at the **SAPS on 22 October 2018, CAS 701/10/2018** for seeking to avert the whole effort of recovering funds from the errant supplier but instead redirected GCIS funds (R7 762 000) to StatsSA to pay the supplier whose contract with Government had been declared null and void. The Commission is advised to invite Mr Liphoko to make a submission on this matter, I attach his affidavit for ease of reference as **Exhibit MM2**

5.2.1 Yes, National Treasury was jointly commissioned by myself and Statistician General to conduct a forensic investigation on this irregular appointment and payment of the supplier and I tabled the findings of that forensic investigation on 14 November 2018 at this Commission and provided the copy of this Forensic Investigation with all the annexures.

5.2.2 **ONLY the junior officials** were disciplined by their line managers. The process of disciplining was on going subject to more information becoming available. The Forensic report was expected to provide a more objective assessment, particularly to deal with the more senior people.

5.2.3 This statement is patently untrue; in fact, this is a blatant lie by Ms Williams. The Commission is referred to the findings of the National Treasury Forensic Investigation Report page 27, para 8.1.1.8 which says "**Ms Williams was not delegated to approve such a notice in terms of the Financial Delegations of GCIS.**" .... and the relevant annexure was cited. Nothing could be clearer that this finding is adverse towards Ms Williams.

It is dishonest and a misrepresentation for Ms Williams to state that there were no findings against her by the GCIS's own internal investigations when she knows very well that she was never investigated by GCIS. For her statement to be true, Ms Williams would need to produce a GCIS investigation report which absolves her of any wrong doing.



5.2.4 If this is happening, it would have started after the court cases that got completed long after I had left. Ms Williams must be asked to produce evidence of this claim. I do not believe her. The Commission is not at liberty to take her word for it, especially from someone who denies the existence of a written finding with her name on it. She is indeed not a credible witness.

5.3 noted

5.4 **On para 55**, Ms Williams makes reference to National Treasury Guidelines on how Bid Adjudication Committee should be composed and insinuates that it was not complied with on the basis that there is no CFO and that it lacks cross functionality. Ms Williams is wrong.

The extract from the National Treasury says the following

\*" Such a committee must consist of at least four senior officials

**Chairperson**, where possible the Chairperson should be the CFO. Nothing in this wording makes it mandatory for the CFO to be in this committee, it's just a preferred option NOT a matter of must, therefore **Ms Williams is wrong** to suggest that the CFO participation is mandatory. (In the BAC which I happily disbanded, Ms Williams was the Chair yet she was not the CFO. The CFO was in the BAC but not chairing as proposed in the guidelines. Ms Williams saw nothing wrong with that as long as she was the chair)

Ms Williams also challenges the cross functionality of the New BAC yet team is comprised of: -

- A Chief Director responsible for provinces – Outward looking
- A Chief Director responsible for strategic planning and programme management – Strategic insights
- A Chief Director responsible for government clusters – Inward looking
- A Director responsible for Human resources – transversal looking
- A Director responsible for Supply Chain – Technical expert in SCM

This team is indeed cross-functional and arguably more cross functional than the previous team. Indeed, there are other cross functional permutations, but nothing is lost because the team is free to invite or co-opt anyone who may

have expertise that is not resident in the team. So, it is misleading and wrong for Ms Williams to suggest that there is only one way to achieve cross functionality and that's the way that ostensibly includes her as the chair. Ms Williams's assertions as regards how the BAC is constituted and her criticism on its cross functionality must be dismissed out of hand.

5.4.1 Yes indeed the Bid Adjudication Committee met the National Treasury Code and the GCIS policy. In fact, there has never been any Internal Audit or Auditor General queries on its composition. There is nothing in the GCIS policy that suggested that the original team or certain functions have a lifetime entitlement to be in the BAC.

5.4.2

- it meets the criteria of minimum of four senior members
- It has a Chairperson who is not a CFO because it was not possible to revamp the BAC and still have the CFO remaining. In addition, with powers vested in me by s38 of the PFMA I had decided that the CFO is best placed outside the BAC to provide another check and balance role. (It must be noted that Ms Williams has missed the point in the code where it says 'where **possible**'. it's not a do or die to have a CFO in the BAC. In fact, in the list of responsibilities for various members, there is nothing specific for the CFO which confirms that indeed, the inclusion of CFO is optional.
- It has a Supply Chain Manager expert who also has capacity to provide secretariat.
- All the new BAC members are experienced senior Government officials who are conversant with BAC duties and relevant prescripts.
- None of these members serve on the evaluation committee.

5.4.3 N/A



5.5 On **para 77** Ms Williams exposes her ignorance on how the media industry works. The cost per readership of any new publication will always be higher than the matured publication for a variety of reasons. This could be a matter of economies of scale which pushes down unit costs for the established publications. It should therefore not come as a surprise. This is like comparing apples to stones. New Age was the newest publication competing with long established brands and there was a place under the sun for that publication.

**On para 78** Ms Williams further exposes her lack of market share growth understanding. TNA Media the company was only established in June 2010 and the first publication of The New Age was on 6 December 2010. No rational person would expect that in 1-3 years any publication would be in the top ten particularly in a declining newspaper sector. Ms Williams assessment lacks sophistication. It does not even take into account that with the New Age, government content for most provinces was covered much more than in any other newspaper. In addition, the New Age stable also had a TV where newspaper adds were optimised through live reading and various other methods to boost coverage. This was indeed a unique selling proposition.

For GCIS, communication is service delivery. If government messages are not reaching communities then GCIS is not doing its job. This matter requires a nuanced approach, not a mechanical one.

For some reason at the end of para 78, Ms Williams decided to throw another unsolicited falsehood saying in my testimony I said Telmar calculates circulation. My utterance in this regard are contained in my oral evidence given on the 27<sup>th</sup> November 2018 on page 71 of 130, para 10. I was very categoric on this matter, I said, "TELMAR if anything is actually not a circulation tool. It is actually a readership tool." I challenge Ms Williams to refer me to the transcript that supports her assertions.

5.6.1 please note the above content as a rebuff of Ms Williams's assertions in her para 74-79

- (a) Yes, vehemently so, for the reasons espoused in 5.5 above.
- (b) This question is irrelevant and does not arise in that it presupposes that adverts are the primary point of engagement with newspapers. New Age was big on advertorials which in fact are better communication mediums than adverts. Adverts have



far less credibility than advertorials. Telmar had no capability to factor in the nuances that were in the New Age stable.

6. Done in my reply affidavit

7. Am concerned that this matter is brought up following from further investigation when I was quite upfront about it on the 26<sup>th</sup> November 2018. I implore the Commission to read all documents and transcripts in its possession.

7.1 The 1<sup>st</sup> letter of precautionary suspension was issued on the 4<sup>th</sup> of June 2010

7.2 A litany of frivolous trumped up operational issues. (details available at the State Attorney)

7.3 Precautionary suspension and a further precautionary suspension, then special leave

7.4 Apart from lawyers meeting for discovery issues etc, I remember attending only one real DC meeting which was abandoned hardly 30mins after it started. The Chairperson announced that following a call from Mr Mdladlana during the session, the process is no longer proceeding. That was the last I heard from the DC process.

7.5 I received that Mr Mdladlana letter which has no address, from the Commission and I was seeing it for the 1<sup>st</sup> time in the email sent to me on Friday the 18<sup>th</sup> October 2019. I did request that the Commission ask Mr Mdladlana provide proof that I got the letter in 2010 when he sent it, am still waiting for that, but I know there is no such. In any event Mr Mdladlana's purported dismissal letter would not have had any force or effect, because he was not my employer, he did not have any authority to dismiss me as Director General. **The issue of incompetence of a Minister to fire a DG is settled. I refer the Commission to the Apleni vs President of South Africa, Case Number 65757/2017 EXHIBIT MM5.**

7.5.1 – 7.5.3 Do not apply because they depart from a "termination" that I knew nothing about. Evidently the Cabinet of 2011 including the Minister of DPSA also didn't know because, my transfer was done in full view in the Cabinet meeting of 2<sup>nd</sup> February 2011 and was made public.

7.6 Yes, I confirm

7.6.1 No more than about 5 days from the appointment day, possibly Monday the same week or Friday the previous week.

7.6.2 Midrand Protea Hotel

7.6.2 Just the Minister and I

7.6.4 That he had two positions I could choose from. The COO position or the DG GCIS position. I was already a DG, so, it just made more sense to choose the DG position, also because the COO position at the time was one level below the DG.

7.7 I find this question quite regrettable because the Commission in its bundles is in possession of two documents relating to this matter. The Cabinet statement of the **3<sup>rd</sup> of February 2011 EXHIBIT MM3** where the announcement was made and the **letter of appointment, EXHIBIT MM4**, which mentions the word "transfer" at least four times.

Kind Regards

Mzwanele Manyi



"MM1"

NN2-MM-040



**national treasury**  
Department  
National Treasury  
REPUBLIC OF SOUTH AFRICA .



Morar Incorporated  
Chartered Accountants (S.A.)  
Registered Auditors

**DETAILED REPORT**

**GOVERNMENT COMMUNICATIONS INFORMATION SYSTEMS**

**&**

**STATISTICS SOUTH AFRICA**

**FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS  
FOR THE CENSUS 2011 CAMPAIGN.**

**PROJECT CODE 02-05-02-2012**

**DATE: 1 NOVEMBER 2012**



FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

ABBREVIATIONS

GCIS	Government Communications Information Systems
STATS SA	Statistics South Africa
NT	National Treasury
OAG	Office of the Accountant-General (a division of the National Treasury)
SAS	Specialised Audit Services (unit within the branch of the OAG)
SCM	Supply Chain Management
SLA	Service Level Agreement
CIPC	Companies and Intellectual Property Registration Office
PFMA	Public Finance Management Act
MOU	Memorandum of Understanding
CEO	Chief Executive Officer
DDG	Deputy Director General
DCEO	Deputy Chief Executive Officer
ACD	Acting Chief Director
AD	Acting Director
DD	Deputy Director

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

### NATIONAL TREASURY MANDATE TO INVESTIGATE

In terms of the Public Finance Management Act no. 1 of 1999 (PFMA), the National Treasury may investigate any system of financial management and internal control in any department, public entity or constitutional institution and recommend improvements. It may also take any other appropriate steps necessary to fulfil its responsibilities effectively. In pursuance of this mandate, the Minister of Finance established the **Specialised Audit Services ("SAS")** in the Office of the Accountant-General Division.

The "SAS" mandate is informed by the provisions of Section 217, sub-s (1) of the Constitution of the Republic of South Africa, 1996; Public Finance Management Act ( PFMA), 1999, Section 6, sub-s (2e); Municipal Finance Management Act ( MFMA), 2003 Section 5, sub-s (2d).

The "SAS" mandate is to provide performance auditing and investigative capacity in all spheres of government, on a broad range of financial management and internal control systems in the supply chain management of public procurement. The mandate and scope of operations of SAS are not in any way to replace internal audit function and specified minimum anti-corruption capacity (approved in terms of Cabinet Memorandum 46 of 2003) in all spheres of Government; but to complement the functions, on cases where the issues may be too sensitive to investigate internally, or capacity and resources may be limited to deal with high impact cases, or preliminary investigations reveal criminal conduct on the public procurement processes.

### STANDARDS OF PROFESSIONAL PRACTICE

The Specialised Audit Services uphold the Code of Conduct for Public Service and conduct its activities in accordance with the International Standards for Professional Practice of Internal Auditing and Code of Ethics, as promulgated by the Institute of Internal Auditors (IIA); the Professional Standards set by the Association of Certified Fraud Examiners (ACFE); and any other legislation, regulation, and best practices related to its activities.

### PROJECT DETAILS

Client Name: Government Communications Information Systems & Statistics South Africa

Project Code: 02-05-02-2012

Project name: Investigation into the procurement of Outdoor Advertising and Outdoor Media space for the Census 2011.

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

CONTENTS

ABBREVIATIONS .....	1
NATIONAL TREASURY MANDATE TO INVESTIGATE .....	2
STANDARDS OF PROFESSIONAL PRACTICE .....	2
PROJECT DETAILS .....	2
NATIONAL TREASURY PROJECT TEAM.....	3
CO-SOURCED FORENSIC SERVICES .....	3
1. BACKGROUND .....	6
2 INTRODUCTION.....	7
3 PROJECT OBJECTIVES .....	7
4 SCOPE .....	7
5. LIMITATIONS .....	8
6 APPLICABLE LEGISLATION, POLICIES AND PRACTICE NOTES .....	9
7 METHODOLOGY OF REVIEW.....	11
8 DETAILED FINDINGS .....	15
8.1. APPOINTMENT OF SERVICE PROVIDERS AND EXPECTED DELIVERABLES .....	15
8.1.1 LIGHT VIEWS PRODUCTIONS ( "Light Views") .....	15
FINDINGS.....	15
CONCLUSIONS.....	18
RECOMMENDATIONS .....	19
8.1.2 LIKHWANE MEDIA (" Likhwane").....	21
FINDINGS.....	21
CONCLUSIONS.....	24
RECOMMENDATIONS .....	25
8.2. PAYMENTS TO SERVICE PROVIDERS .....	26
8.2.1 LIGHT VIEWS .....	26
FINDINGS.....	26
CONCLUSIONS .....	30
RECOMMENDATIONS .....	31
8.2.2 LIKHWANE .....	33
FINDINGS.....	33
CONCLUSIONS .....	34
RECOMMENDATIONS .....	35
8.3 TRANSFERS BY STATS SA.....	36



FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

8.3.1	CENSUS LAUNCH .....	36
	FINDINGS.....	36
	CONCLUSIONS .....	41
	RECOMMENDATIONS .....	41
8.3.2	DRESS REHEARSAL THANK YOU CAMPAIGN .....	42
	FINDINGS.....	42
	CONCLUSIONS .....	43
	RECOMMENDATIONS .....	43
8.3.3	CENSUS 2011: PHASE 1 .....	44
	FINDINGS.....	44
	CONCLUSIONS .....	48
	RECOMMENDATIONS .....	48
8.4	APPOINTMENT OF "DZINGE" FOR THE SUPPLY OF CREATIVES .....	49
	FINDINGS.....	49
	CONCLUSIONS.....	50
	RECOMMENDATIONS .....	50
9	OVERALL CONCLUSION .....	51
	Light Views .....	51
	Likhwane .....	51
	Census Launch Campaign. ....	51
	The Dress Rehearsal Thank You Campaign. ....	52
	Census 2011: Phase 1 Campaign. ....	52
10	APPROVAL .....	53
11	GLOSSARY .....	54

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

## NATIONAL TREASURY PROJECT TEAM

Quality Assurance: Freeman Nomvalo – Accountant General, SA  
Zanele Mxunyelwa, CIA, CFE

Project Director: Dumisani Cele, CFE

Project Manager: Zakhona Mvelase, CFE

Co-Sourced Firm: Morar Incorporated

## CO-SOURCED FORENSIC SERVICES

National Treasury maintains a panel of forensic investigation firms that were appointed under National Treasury Bid No. NT 019/2010 in order to support the investigative capacity of the Specialised Audit Services unit within the Office of the Accountant-General.

Morar Incorporated was identified by the Office of Accountant-General as the appropriate firm to be selected to be co-sourced for this investigation of Census 2011, as requested by the Government Communications Information Systems & Statistics South Africa.

**Project Team:**

Project Director: Roshan Morar, CA(SA), CFE  
Project Manager: Vinay Bositsumune, CFE  
Senior Investigator: Gene Bentley  
Junior Investigator: Abraham Nkabinde  
Computer Forensic Analysis: Cyanre, the Computer forensic Lab

## DISTRIBUTION LIST

No.	Position	Organisation	Name	Information	Action
1	Accountant General	National Treasury	Mr Freeman Nomvalo	X	
2	Chief Executive Officer	Government Communications Information Systems	Mr Jimmy Manyi		X
3	Statistician General	Statistics South Africa	Mr Pali Lehohla		X

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

## 1. BACKGROUND

In November 2010, GCIS, represented by the Chief Financial Officer and STATS SA, represented by Statistician General, signed a Memorandum of Understanding (MOU) regarding the procurement of all mass media space for advertising campaign for the Census 2011. The MOU stipulates the responsibilities of both parties in accordance with their respective legislative mandates. The intention of the parties was that; Government Communications Information Systems (GCIS) takes responsibility for procuring mass media space on behalf of Statistics SA (STATS SA); and that STATS SA retains the role of project owner and sponsor. STATS SA requested and transferred funds to GCIS for the projects as follows:

Campaign	Date	Amount
		R
Census Launch	18-Oct-10	4,912,030
Dress rehearsal thank you	28-Jan-11	1,828,104
Census 2011: Phase 1	26-Mar-11	18,000,000
Total Advance from STATS SA		24,740,134

During the course of implementing the general objectives of the MOU, in January 2011, it is alleged that two service providers were selected for the **Census Phase 1 Branding Phase**. Two entities trading as **Light Views Productions** for the value of **R26,258,760** and **Likhwane Media** for the value of **R4 million**, were procured for the provision of Outdoor Advertising Space and Outdoor Media Space, respectively.

It was further alleged that, the entities did not render the services that they were supposedly appointed to render but, GCIS received a letter from Light Views Production initiating the litigation against the State with a total claim of **R26m**, due to GCIS not adhering to the contractual obligations entered into between Light Views Productions and GCIS for the Census 2011 campaign.

STATS SA alleged that, due to the national importance of the Census 2011, it terminated the MOU with GCIS in order to avoid any legal proceedings which will detrimentally affect the campaign; and engaged the services of another supplier, through a tender process, without GCIS facilitation.



## 2 INTRODUCTION

This is the Report of the National Treasury, on the investigation conducted in partnership with Morar Incorporated into the procurement of Outdoor Advertising and Outdoor Media Space for the Census 2011 Campaign, as requested by the CEO of GCIS and Statistician General of STATS SA.

This report has been compiled solely to provide the CEO of the GCIS and Statistician General with the findings in respect of the independent investigation performed in terms of their mandate. Annexures have been attached and should be read in conjunction with this report.

## 3 PROJECT OBJECTIVES

The objectives of this investigation were to establish:-

- the procurement processes followed in acquiring service providers for the Census 2011 Campaign projects;
- what services were the service providers procured for;
- whether or not there was value for money to the State in the services supplied, and
- whether the project was conducted in accordance with the terms of reference entered into between STATS SA and GCIS, as covered in the terms of the Memorandum of Understanding entered into between these two departments. (See Annexure 1).

## 4 SCOPE

4.1 The scope of our work was limited to a review and analysis of documentation and information made available to us and specific enquiries undertaken to pursue our mandate.

4.2 The investigation covers the following, but are not limited to the concerns raised in the request for investigation by GCIS and STATS SA:

4.2.1 How was the appointment of Light Views Productions for the Outdoor Advertising and Likhwane Media for the Outdoor Media Space procured?

4.2.2 Who procured the services for the Outdoor Advertising and Outdoor Media Space?

**FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.**

- 4.2.3 Was the process for procuring for the Outdoor Advertising and Outdoor Media Space in line with the prescribed legislative framework?
- 4.2.4 What was Light Views Productions and Likhwane Media procured for?
- 4.2.5 What were the deliverables of both Light Views Productions and Likhwane Media?
- 4.2.6 How much has been paid to Light Views Productions and Likhwane Media?
- 4.2.7 Why were Light Views and Likhwane Media unable to complete the tasks as originally conceived?
- 4.2.8 Did government obtain value for money from the incomplete tasks?
- 4.2.9 Who were the role players in the entire transaction and what were their contributions and/or roles?
- 4.3 If additional or new documentation or information is brought to our attention subsequent to the date of this report, which would affect the findings detailed below, we reserve the right to amend and qualify our findings accordingly.

**5. LIMITATIONS**

- 5.1 We included information that we obtained verbally, as well as by way of written affidavits. Unless expressly indicated otherwise, we cannot verify that such information is credible or truthful.
- 5.2 Although our report may contain references to relevant laws and legislation, we do not provide legal opinion on the compliance with such laws and the findings in this report are not to be construed as providing legal advice.
- 5.3 The procurement processes of STATS SA were not reviewed since in terms of the Memorandum of understanding the procuring entity was GCIS.
- 5.4 Documents for review could only be accessed through the Chief Audit Executive (CAE) at GCIS and the Legal Manager (Statistics SA).

## 6 APPLICABLE LEGISLATION, POLICIES AND PRACTICE NOTES

### 6.1. Section 217 of the Constitution of the Republic of South Africa, 1996.

The constitutional imperatives relating to procurement are encapsulated in section 217 of the Constitution, which stipulates that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

### 6.2. Public Finance Management Act No. 1 of 1999. (PFMA)

In terms of section 38 of the PFMA, it is the general responsibility of the accounting officer to ensure that the department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

Section 76(4)(c) of the PFMA provides that the National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning, among others, the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

### 6.3. Treasury Regulations, for departments, trading entities, constitutional institutions and public entities, dated March 2005.

Treasury Regulations and instructions issued in terms of section 76, are, in terms of section 1 of the PFMA, regarded as part of that Act. It therefore has the same legal application and compliance requirements as if it were part of the PFMA.

Regulation 16A of the (National) Treasury Regulations sets out the framework for Supply Chain Management and provides inter alia that: "16A.3 Supply chain management system 16A3.1 The accounting officer or accounting authority of an institution to which these regulations apply must develop and implement an effective and efficient supply chain management system in his or her institution for:



FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

(a) the acquisition of goods and services; and

16A3.2 A supply chain management system referred to in paragraph 16A3.1 must:

(a) be fair, equitable, transparent, competitive and cost effective;

(b) be consistent with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

(c) be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

6.4. Treasury Practice Notes.

National Treasury Practice Note No. 6 of 2007/2008 states that accounting officers and accounting authorities are required to report within ten (10) working days to the relevant treasury and the Auditor-General, all cases where goods and services above the value of R 1 million (VAT included) were procured in terms of Treasury Regulation 16A6.4.

6.5. GCIS SCM Policy.

In particular section 7 (role of chief directorates and directorates), 8 (composition of the departmental bid adjudication committee) and 13.4 (SLA for amounts exceeding R100,000 per case).

6.6. Financial delegations of GCIS.

Paragraph 1.11a of the Financial Delegations of GCIS, which requires approval/recommendations from the Bid Adjudication Committee for all procurement that is conducted in terms of Treasury Regulation 16A6.4.

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

**7 METHODOLOGY OF REVIEW**

- 7.1 Our investigation was based upon the documents provided to us by GCIS and STATS SA.
- 7.2 Additional information was obtained through interviews with officials of GCIS, STATS SA, Light Views and Likhwane.
- 7.3 The procedures we performed comprised the following:
- 7.3.1 We interviewed the following individuals:

No	Full Name	Organisation	Designation
1	Lethukuthula Mtshali	STATS SA	Manager: Marketing
2	Trevor Oosterwyk	STATS SA	Manager: Communications
3	Sivuyile Mangxamba	STATS SA	Team Leader: Media Relations
4	Sempethe Thobejane	STATS SA	CFO
5	Lediana Amaro	GCIS	CFO
6	Delicate Mosupye	GCIS	Former Acting Director: SCM
7	Mary Jane Rabodiba	GCIS	Assistant Director: Procurement and Payment
8	Karabo Metsileng	GCIS	Previous Deputy Director: Marketing and Media buying
9	Nkateko Baloyi	GCIS	Previous Deputy Director: Marketing
10	Thokozile Modise	GCIS	Chief Director: Communication Service Agency
11	Frank Theunissen	GCIS	Director: Distribution

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

No	Full Name	Organisation	Designation
12	Nthabiseng Makuwa	GCIS	Deputy Director: Communication Service Agency
13	Nebo Legoabe	GCIS	Deputy Chief Executive Officer
14	Andrew Mohamed	GCIS	Director: Product Development
15	Phumla Williams	GCIS	Deputy Chief Executive Officer
16	Sakhumuzi Shabangu	Likhwane	Managing Director
17	Jacob Mocuminyane	Light Views	Director

7.3.2 We conducted enterprise searches on the following employees of GCIS and STATS SA, as well as service providers on the database of the Companies and Intellectual Property Commission (CIPC):

No	Full Name
1	Andrew Mohamed
2	Lediana Amaro
3	Nthabiseng Makuwa
4	Nebo Legoabe
5	Frank Theunissen
6	Karabo Metsileng
7	Thokozile Modise
8	Phumla Williams
9	Nkateko Baloyi
10	Lethukuthula Mtshali
11	Trevor Oosterwyk



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

No	Full Name
12	Sivuyile Mangxamba
13	Likhwane Media
14	Lightview Productions

7.3.3 We conducted forensic computer imaging of the desktop computers, laptops and i-pads that were purportedly used by the following employees of GCIS and STATS SA:

No	Full Name
1	Andrew Mohamed
2	Lediana Amaro
3	Nthabiseng Makuwa
4	Nebo Legoabe
5	Frank Theunissen
6	Karabo Metsileng
7	Thokozile Modise
8	Phumla Williams
9	Nkateko Baloyi
10	Lethukuthula Mtshali
11	Trevor Oosterwyk
12	Sivuyile Mangxamba

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

7.3.4 We reviewed the following documentation:

7.3.4.1 Public Finance Management Act No. 1 of 1999.

7.3.4.2 Financial delegations of GCIS (See Annexure 2).

7.3.4.3 Treasury Regulations, for departments, trading entities, constitutional institutions and public entities, dated March 2005.

7.3.4.4 National Treasury Practice Note 6 OF 2007/2008 pertaining to the "Procurement of goods and services by means other than through the invitation of competitive bids.

7.3.4.5 The Best Practice Guidelines for the procurement of marketing, Advertising and PR Services/Goods, supplied by the GCIS.

7.3.4.6 The Procurement policy of GCIS (See Annexure 3).

7.3.4.7 BAS records pertaining to payments made to GCIS.

7.3.4.8 BAS records pertaining to payments made by GCIS for the Census 2011 campaign.

7.3.4.9 Legal documents submitted by Light Views seeking judgement against GCIS and STATS SA.

7.3.4.10 Invoices submitted by GCIS relating to expenditure on the Census 2011 campaign.

7.3.4.11 Payments documentation relating to Light Views which included the following:

7.3.4.11.1 Requisitions.

7.3.4.11.2 Orders.

7.3.4.11.3 Invoices.

7.3.4.12 Payments documentation relating to Likhwane which included the following:

7.3.4.12.1 Requisitions.

7.3.4.12.2 Orders.

7.3.4.12.3 Invoices.

## 8 DETAILED FINDINGS

### 8.1. APPOINTMENT OF SERVICE PROVIDERS AND EXPECTED DELIVERABLES

#### 8.1.1 LIGHT VIEWS PRODUCTIONS ( "Light Views")

##### FINDINGS

- 8.1.1.1 The processes adopted by GCIS in requesting the services of Light Views were in contravention of their policies and relevant applicable legislation. GCIS did not appoint a Bid Specification Committee as required by Paragraph 4.1(a) of National Treasury Circular dated 27 October 2004 which states that the Accounting Officer/Authority should appoint a Bid Specification Committee. This is the committee responsible for the compiling of bid specifications. The specifications should be written in an unbiased manner to allow all potential bidders to offer their goods and/or services.
- 8.1.1.2 Furthermore, the processes adopted by GCIS in requesting the services of Light Views was not in accordance with the constitutional imperatives relating to procurement as outlined in section 217 of the Constitution, which stipulates that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. Also, in terms of section 38 of the PFMA, it is the general responsibility of the accounting officer to ensure that the department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.
- 8.1.1.3 Our investigation revealed that GCIS did not advertise its requirement for media bulk buying during the Census 2011 Campaign. Paragraph 4.9 of the National Treasury Supply Chain Management Guideline for Accounting Officers dated February 2004 states that timely notification of bidding opportunities is essential in competitive bidding. Bids should be advertised for at least 30 days before closure in at least the Government Tender Bulletin and in other appropriate media should an accounting officer/authority deem it necessary to ensure greater exposure to potential bidders except in urgent cases when bids may be advertised for such shorter periods as the accounting officer/authority may determine. The responsibility for such advertisement costs will be that of the relevant accounting officer / authority. The institution should maintain a list of responses to the advertisement. The related pre-qualification or bidding document, as the case may be, should be available on the publication date of the advertisement.



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

- 8.1.1.4 It was further noted that no bid adjudication took place. Treasury Regulation 16A6.2(a) states that a supply chain management system must, in the case of procurement through a bidding process, provide for the adjudication of bids through a bid adjudication committee.
- 8.1.1.5 During an interview with Ms Matsiane Midah Moreroa (Ms Moreroa), who is the Director of Supply Chain and Facilities Management at GCIS, we recorded a statement (**See Annexure 4**) in which Ms Moreroa stated under oath that GCIS does not have policies and procedures for the procurement of media bulk buying. She stated that procurement of media bulk buying was conducted in terms of Treasury Regulation 16A6.4, which states that if in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority. Ms Moreroa indicated that this was a resolution of the Management Committee, but could not provide us with the minutes confirming this resolution. In terms of S79 of the PFMA: "The National Treasury may on good grounds approve a departure from a treasury regulation or instruction or any condition imposed in terms of this Act and must promptly inform the Auditor-General in writing when it does so." We found no evidence that GCIS applied for a special dispensation from National Treasury in order to procure all media bulk buying without a competitive bidding process being followed.
- 8.1.1.6 Our investigation revealed that Light Views (**See Annexure 5**) was registered on 18 December 2009 with its principal business being Events Management and Production in all aspects. Various changes occurred with regards to management, with the most recent being the appointment of the following directors on 03 January 2011, which was 3 days prior to the company's appointment by GCIS:
- (a) C J Lukau Ndongala.
  - (b) S Malumo.
  - (c) J T Mocuminyane.
- 8.1.1.7 We reviewed the payment commitment notice (**See Annexure 6**) that was prepared by Ms Baloyi on 06 January 2011 and noted that it was approved by the following employees of GCIS on the very next day, 07 January 2011:
- (a) Mr Andrew Mohamed (Mr Mohamed), who was the Acting Chief Director: Communication Service Agency, who signed the payment commitment notification on behalf of Mr Frank Theunissen (Mr Theunissen), who was the Acting Director: Marketing, as Mr Theunissen was not available.

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

(b) Ms Phumla Williams (Ms Williams), who was the Deputy Chief Executive Officer: Corporate Services.

- 8.1.1.8 Ms Williams was not delegated to approve such a notice in terms of the Financial Delegations of GCIS. (See Annexure 2).
- 8.1.1.9 We interviewed Mr Oosterwyk (See Annexure 7), who confirmed that he had met with Ms Baloyi on 06 January 2011 as per her request to discuss the appointment of suppliers for the Outdoor Campaign relating to advertising on Billboards. Mr Oosterwyk confirmed having signed only one document. However, his signature appears on two documents. He further stated that he signed a blank page.
- 8.1.1.10 We established that GCIS appointed Light Views prior to receiving a request from STATS SA. A letter dated 10 March 2011 (See Annexure 8) was transmitted to GCIS from STATS SA wherein a request for Mass Media Services was requested and a commitment to pay for such services was undertaken by STATS SA. As at that date, Light Views had already been appointed by GCIS as the payment commitment notice (See Annexure 6) is dated 07 January 2011.
- 8.1.1.11 The appointment of Light Views was not supported by an appointment letter which outlined the scope of work as well as deliverables expected from this enterprise. We further noted that no agreement was concluded with Light Views to record the requirements/expectations of GCIS and STATS SA. The only document utilised during the appointment was a payment commitment notification (See Annexure 6) which served only as an undertaking to pay and did not specify the nature and timing of the services to be rendered.
- 8.1.1.12 The proposal that was supposedly submitted by Light Views was not made available to us despite numerous requests. We were provided with a copy of a one page costing document (See Annexure 9) which was supposedly submitted by Light Views. This document was signed by Mr Oosterwyk on 06 January 2011.
- 8.1.1.13 We interviewed Ms Nkateko Baloyi (Ms Baloyi), who was the former Deputy Director of Marketing at GCIS, who confirmed that she had met with Mr Oosterwyk on 06 January 2011, at which meeting, she submitted the above 3 proposals to him for input. She stated that Mr Oosterwyk recommended the appointment of Light Views during this meeting and he signed the costing document that was submitted by Light Views as evidence of his recommendation. Based on this recommendation by Mr Oosterwyk, Ms Baloyi confirmed that she had proceeded with the appointment of Light Views by way of creating a payment commitment notification. Ms Baloyi did not wish to provide us with a written statement in this regard.



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

- 8.1.1.14 We interviewed Mr Mohamed (See Annexure 10), who stated that on 07 January 2011 he was approached by Ms Baloyi who brought the payment commitment notification for Light Views to him for approval. He stated that Ms Baloyi assured him that the company was contracted by STATS SA and that all the necessary paperwork was in place. Trusting Ms Baloyi, he signed the payment commitment notification for Light Views.
- 8.1.1.15 Our investigation revealed that Mr Mohamed was not authorised by Mr Theunissen to sign the above document on his behalf. We interviewed Mr Theunissen (See Annexure 11), who stated that he did not authorise Mr Mohamed to sign the payment commitment notification on his behalf. He further stated that, prior to the signing of the payment commitment notification, Mr Oosterwyk asked him to sign the costing schedule of Light Views, to which he declined as he did not appoint the service providers.
- 8.1.1.16 There is no evidence to indicate that Light Views was screened by GCIS prior to their appointment.
- 8.1.1.17 Light Views was appointed by GCIS despite not being registered on the supplier database of GCIS. We reviewed the supplier registration document (See Annexure 12) and noted that the registration document was signed on 08 January 2011 and the registration captured on 14 January 2011. This was subsequent to the appointment of Light Views.

**CONCLUSIONS**

- 8.1.1.18 The appointment of Light Views was not in accordance with procurement policies and prescripts.
- 8.1.1.19 In terms of the MOU signed by GCIS and STATS SA, the responsibility for the procurement of media bulk buying for the Census 2011 Campaign was that of GCIS. Indeed our investigation confirmed that GCIS was responsible for the appointment of Light Views.
- 8.1.1.20 The appointment of Light Views was irregular, as Mr Theunissen did not authorise Mr Mohamed to sign the payment commitment notification on his behalf. Mr Mohamed therefore acted unlawfully by committing GCIS to pay Light Views.



**FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.**

- 8.1.1.21 The appointment of Light Views was irregular as procurement processes were not followed and the appointment was based on a one page costing document which was signed by Mr Oosterwyk. Mr Oosterwyk actually came in from leave in order to authorise the one page costing document. This "authorised" costing document constituted the appointment which in itself is in contravention of the Financial Delegations (**Annexure 2**), which only permits the Bid adjudication committee to make such recommendations which must then be approved by the CEO.
- 8.1.1.22 We were not provided with the detailed proposal that were supposedly submitted by Light Views and consequently could not establish their competencies to render the required services. We are of the opinion that, as a newly established company, they might not have had the requisite experience to render such services.
- 8.1.1.23 It appears that an act of fraud may have been committed by GCIS by disposing of the detailed proposal of Light Views, thereby removing evidence of their irregular appointment.

**RECOMMENDATIONS**

- 8.1.1.24 Disciplinary action should be instituted against Mr Oosterwyk of STATS SA in accordance with Section 45(c) of the Public Finance Management Act, Act No. 1 of 1999 (PFMA) read with Section 82 of the PFMA as he committed an act of misconduct with the appointment of Light Views. The disciplinary action should be in accordance with Sections 84 and 85 of the PFMA.
- 8.1.1.25 This matter should be referred to the South African Police Services (SAPS) for further investigation in terms of section 34 of the Prevention and Combating of Corrupt Activities Act No.12 of 2004 to facilitate a criminal investigation into Mr Oosterwyk's role during the appointment of Light Views. Such an investigation will reveal if Mr Oosterwyk benefited financially from this appointment.
- 8.1.1.26 We were informed and through review of the personnel files, it was established that Mr Mohammed of GCIS had been issued with a written warning for his role during the appointment of Light Views. However, no formal disciplinary process was effected in this regard. Consequently, this matter should be referred to SAPS for further investigation in terms of section 34 of the Prevention and Combating of Corrupt Activities Act No.12 of 2004 to facilitate a criminal investigation into Mr Mohammed's role during the appointment of Light Views. Such an investigation will reveal if Mr Mohammed benefited financially from this appointment.

**FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.**

- 8.1.1.27 Ms Baloyi's role in the appointment of Light Views should be referred to SAPS for further investigation in terms of section 34 of the Prevention and Combating of Corrupt Activities Act No.12 of 2004 to facilitate a criminal investigation into her role during the appointment of Light Views. Such an investigation will reveal if she benefited financially from this appointment.
- 8.1.1.28 A charge of fraud should be registered with the SAPS in respect of the missing documents, in terms of Section 40(1)(a) of the PFMA read with section 34 of the Prevention and Combating of Corrupt Activities Act No.12 of 2004.



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

## 8.1.2 LIKHWANE MEDIA ("Likhwane")

## FINDINGS

- 8.1.2.1 The processes adopted by GCIS in requesting the services of Likhwane were in contravention of their policies and relevant applicable legislation. GCIS did not appoint a Bid Specification Committee as required by Paragraph 4.1(a) of National Treasury Circular dated 27 October 2004 which states that the Accounting Officer/Authority should appoint a Bid Specification Committee. This is the committee responsible for the compiling of bid specifications. The specifications should be written in an unbiased manner to allow all potential bidders to offer their goods and/or services.
- 8.1.2.2 Furthermore, the processes adopted by GCIS in requesting the services of Likhwane were not in accordance with the constitutional imperatives relating to procurement as outlined in section 217 of the Constitution, which stipulates that when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. Also, in terms of section 38 of the PFMA, it is the general responsibility of the accounting officer to ensure that the department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.
- 8.1.2.3 Our investigation revealed that GCIS did not advertise its requirement for media bulk buying during the Census 2011 Campaign. Paragraph 4.9 of the National Treasury Supply Chain Management Guideline for Accounting Officers dated February 2004 states that timely notification of bidding opportunities is essential in competitive bidding. Bids should be advertised for at least 30 days before closure in at least the Government Tender Bulletin and in other appropriate media should an accounting officer/authority deem it necessary to ensure greater exposure to potential bidders except in urgent cases when bids may be advertised for such shorter periods as the accounting officer/authority may determine. The responsibility for such advertisement costs will be that of the relevant accounting officer / authority. The institution should maintain a list of responses to the advertisement. The related pre-qualification or bidding document, as the case may be, should be available on the publication date of the advertisement.
- 8.1.2.4 It was further noted that no bid adjudication took place. Treasury Regulation 16A6.2(a) states that a supply chain management system must, in the case of procurement through a bidding process, provide for the adjudication of bids through a bid adjudication committee.



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

- 8.1.2.5 During an interview with Ms Matsiane Midah Moreroa (Ms Moreroa), who is the Director of Supply Chain and Facilities Management at GCIS, we recorded a statement (See Annexure 4) in which Ms Moreroa stated under oath that GCIS does not have policies and procedures for the procurement of media bulk buying. She stated that procurement of media bulk buying was conducted in terms of Treasury Regulation 16A6.4, which states that if in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority. Ms Moreroa indicated that this was a resolution of the Management Committee, but could not provide us with the minutes confirming this resolution. In terms of S79 of the PFMA: "The National Treasury may on good grounds approve a departure from a treasury regulation or instruction or any condition imposed in terms of this Act and must promptly inform the Auditor-General in writing when it does so." We found no evidence that GCIS applied for a special dispensation from National Treasury in order to procure all media bulk buying without a competitive bidding process being followed.
- 8.1.2.6 We established that GCIS appointed Likhwane prior to receiving a request from STATS SA. A letter dated 10 March 2011 (See Annexure 8) was transmitted to GCIS from STATS SA wherein a request for Mass Media Services was requested and a commitment to pay for such services was undertaken by STATS SA. As at that date, Likhwane had already been appointed by GCIS as the payment commitment notice (See Annexure 6) is dated 07 January 2011.
- 8.1.2.7 The appointment of Likhwane was not supported by an appointment letter which outlined the scope of work as well as deliverables expected from this enterprise. We further noted that no agreement was concluded with Likhwane to record the requirements/expectations of GCIS and STATS SA. The only document utilised during the appointment was a payment commitment notification (See Annexure 6) which served only as an undertaking to pay and did not specify the nature and timing of the services to be rendered.
- 8.1.2.8 The proposal that was supposedly submitted by Likhwane was not made available to us despite numerous requests. We were provided with a copy of a one page costing document (See Annexure 9) which was supposedly submitted by Likhwane. This document was signed by Mr Oosterwyk on 06 January 2011.

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

- 8.1.2.9 We interviewed Ms Nkateko Baloyi (Ms Baloyi), who was the former Deputy Director of Marketing at GCIS, who confirmed that she had met with Mr Oosterwyk on 06 January 2011, during which she submitted the above 3 proposals to him for input. She stated that Mr Oosterwyk recommended the appointment of Likhwane during this meeting and he signed the costing document that was submitted by Light Views as evidence of his recommendation. Based on this recommendation by Mr Oosterwyk, Ms Baloyi confirmed that she had proceeded with the appointment of Likhwane by way of creating a payment commitment notification. Ms Baloyi did not wish to provide us with a written statement in this regard.
- 8.1.2.10 We reviewed the payment commitment notice (**See Annexure 6**) that was prepared by Ms Baloyi on 06 January 2011 and noted that it was approved by the following employees of GCIS on the very next day, 07 January 2011:
- (c) Mr Andrew Mohamed (Mr Mohamed), who was the Acting Chief Director: Communication Service Agency, who signed the payment commitment notification on behalf of Mr Frank Theunissen (Mr Theunissen), who was the Acting Director: Marketing, as Mr Theunissen was not available.
  - (d) Ms Phumla Williams (Ms Williams), who was the Deputy Chief Executive Officer: Corporate Services.
- 8.1.2.11 Ms Williams was not delegated to approve such a notice in terms of the Financial Delegations of GCIS. (**See Annexure 2**).
- 8.1.2.12 We interviewed Mr Oosterwyk (**See Annexure 7**), who confirmed that he had met with Ms Baloyi on 06 January 2011 as per her request to discuss the appointment of suppliers for the Outdoor Campaign relating to advertising on Billboards. Mr Oosterwyk confirmed having signed only one document. However, his signature appears on two documents. He further stated that he signed a blank page.
- 8.1.2.13 We interviewed Mr Mohamed (**See Annexure 10**), who stated that on 07 January 2011 he was approached by Ms Baloyi who brought the payment commitment notification for Likhwane to him for approval. He stated that Ms Baloyi assured him that the company was contracted by STATS SA and that all the necessary paperwork was in place. Trusting Ms Baloyi, he signed the payment commitment notice for Likhwane.



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

8.1.2.14 Our investigation revealed that Mr Mohamed was not authorised by Mr Theunissen to sign the above document on his behalf. We interviewed Mr Theunissen (See Annexure 11), who stated that he did not authorise Mr Mohamed to sign the payment commitment notification on his behalf. He further stated that, prior to the signing of the payment commitment notification, Mr Oosterwyk asked him to sign the costing schedule of Likhwane, to which he declined as he did not appoint the service providers.

8.1.2.15 There is no evidence to indicate that Likhwane was screened by GCIS prior to their appointment.

**CONCLUSIONS**

8.1.2.16 The appointment of Likhwane was not in accordance with procurement policies and prescripts.

8.1.2.17 In terms of the MOU signed by GCIS and STATS SA, the responsibility for the procurement of media bulk buying for the Census 2011 Campaign was that of GCIS. Indeed our investigation confirmed that GCIS was responsible for the appointment of Likhwane.

8.1.2.18 The appointment of Likhwane was irregular, as Mr Theunissen did not authorise Mr Mohamed to sign the payment commitment notification on his behalf. Mr Mohamed therefore acted unlawfully by committing GCIS to pay Likhwane.

8.1.2.19 The appointment of Likhwane was irregular as procurement processes were not followed and the appointment was based on a one page costing document which was signed by Mr Oosterwyk. Mr Oosterwyk actually came in from leave in order to authorise the one page costing document. This "authorised" costing document constituted the appointment which in itself is in contravention of the Financial Delegations (Annexure 2), which only permits the Bid adjudication committee to make such recommendations which must then be approved by the CEO.

8.1.2.20 We were not provided with the detailed proposal that was supposedly submitted by Likhwane and consequently could not establish their competencies to render the required services.

8.1.2.21 It appears that an act of theft may have been committed by GCIS in order to dispose of the detailed proposal of Likhwane, thereby removing evidence of their irregular appointment.



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

## RECOMMENDATIONS

- 8.1.2.22 In accordance with Sections 81 and 84 of the PFMA, the Accounting Officer should be charged with financial misconduct due to his non compliance with Section 40(1)(a) and Section 38(1)(a)(iii) of the PFMA. Disciplinary action should accordingly be instituted in accordance with Sections 84 and 85 of the PFMA.
- 8.1.2.23 Disciplinary action should be instituted against Mr Oosterwyk of STATS SA in accordance with Section 45(c) of the Public Finance Management Act, Act No. 1 of 1999 (PFMA) read with Section 82 of the PFMA as he did not take effective and appropriate steps to prevent the irregular expenditure that arose from the irregular appointment of Likhwane. The disciplinary action should be in accordance with Sections 84 and 85 of the PFMA.
- 8.1.2.24 This matter should be referred to the South African Police Services (SAPS) for further investigation in terms of section 34 of the Prevention and Combating of Corrupt Activities Act No.12 of 2004 to facilitate a criminal investigation into Mr Oosterwyk's role during the appointment of Likhwane. Such an investigation will reveal if Mr Oosterwyk benefited financially from this appointment.
- 8.1.2.25 We were informed that Mr Mohammed of GCIS had been issued with a written warning for his role during the appointment of Likhwane. However, no formal disciplinary process was effected in this regard. Consequently, this matter should be referred to SAPS for further investigation in terms of section 34 of the Prevention and Combating of Corrupt Activities Act No.12 of 2004 to facilitate a criminal investigation into Mr Mohammed's role during the appointment of Likhwane. Such an investigation will reveal if Mr Mohammed benefited financially from this appointment.
- 8.1.2.26 Ms Baloyi's role in the appointment of Likhwane should be referred to SAPS for further investigation in terms of section 34 of the Prevention and Combating of Corrupt Activities Act No.12 of 2004 to facilitate a criminal investigation into her role during the appointment of Likhwane. Such an investigation will reveal if she benefited financially from this appointment.
- 8.1.2.27 A charge of fraud should be registered with the SAPS in respect of the missing documents, in terms of Section 40(1)(a) of the PFMA read with section 34 of the Prevention and Combating of Corrupt Activities Act No.12 of 2004.

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

## 8.2. PAYMENTS TO SERVICE PROVIDERS

## 8.2.1 LIGHT VIEWS

## FINDINGS

8.2.1.1 Our investigation revealed that GCIS had paid Light Views an amount of R6,983,640 for media costs and production costs.

8.2.1.2 Invoice number 100016, totalling R R6,983,640 (See Annexure 13) was submitted by Light Views to Ms Nebo Legoabe (Ms Legoabe), who is the Deputy Chief Executive Officer: Government Stakeholder Engagement at GCIS. The invoice was dated 10 February 2011. At this point, the services had not been rendered as Ms Legoabe received an e-mail (See Annexure 14) from Light Views on 01 March 2011 wherein they confirmed that they could not supply proof of service delivery as the creatives were not received in order for them to deliver the required service.

8.2.1.3 We established that Ms Legoabe had met with Light Views (See Annexure 15) during February 2011, during that meeting Light Views complained that they had not been paid for services that were rendered. We interviewed Ms Legoabe and, in an affidavit, she confirmed that she had met with Light Views and had referred the matter to the CFO.

*The following sequence of events evidences that payment processes were bypassed in order to ensure that payment was effected to Light Views:*

8.2.1.4 We established that on 13 January 2011 a credit order instruction form (See Annexure 16) recording the details of Light Views and the banking details as First National Bank, Northgate, with account number 62258714726 was created at GCIS. The original of this document was not made available to us and hence we were unable to verify the authenticity of the bank stamp.

8.2.1.5 On 14 January 2011, Light Views was registered as a supplier on the supplier database of GCIS. It must be noted that this registration was effected subsequent to the appointment of Light Views.

8.2.1.6 On 01 March 2011, an internal memo (See Annexure 17) requesting that an order number be raised for Light Views for the placement of the Census 2011 campaign. The document was signed by Ms Karabo Metsileng ("Ms Metsileng") as Acting Director of Marketing and Mr Mohamed. The document records that the purpose of the document is to "seek approval for appointing a selected service provider for the placement of "Census 2011" according to Supply Chain Management Delegations

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

section 1.11(a)". The document commits an amount of R 6 983 640.00 which according to the memorandum was in the process of being transferred from STATS SA to GCIS.

- 8.2.1.7 On 1 March 2011 Ms Baloyi in an e-mail (See Annexure 18) to Light Views, confirmed that she was in the process of obtaining an order number.
- 8.2.1.8 On 03 March 2011, order number OR – 41538 (See Annexure 19) was made out to Light Views totalling R6,983,640. The order was signed by Ms Delicate Mosupye ("Mosupye") who was the Assistant Director of Supply Chain Management at GCIS. In addition, requisition number 100G04176 (See Annexure 20) totalling R6,983,640 and dated 03 March 2011 was issued in the name of Light Views for the Census 2011 placement.
- 8.2.1.9 We established that on 03 March 2011, Ms Mosupye informed Ms Baloyi via e-mail (See Annexure 21) that the order had been generated and that the signed invoice needs to be obtained in order to effect payment.
- 8.2.1.10 We further established that on 03 March 2011, Ms Mosupye informed Ms Baloyi (See Annexure 21) that she is experiencing difficulties in processing the invoice (invoice number 100016) as it is still pending on the Logis system. She further stated in her e-mail (See Annexure 21) that she has requested that Light Views submits seven (7) different invoices as the system is rejecting the processing of the payment.
- 8.2.1.11 Light Views accordingly submitted 7 different invoices. However, we were only supplied with copies of the following 6 invoices (See Annexure 22):

Invoice Number	Invoice Date	Rands
100017	03-Mar-11	997,662.86
1000121	04-Mar-11	997,662.86
1000122	05-Mar-11	997,662.86
1000135	08-Mar-11	997,662.86
1000128	11-Mar-11	997,662.86
1000148	18-Mar-11	997,662.86



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

- 8.2.1.12 During an interview with Ms Mosupye, she indicated that the splitting of invoices was a common practice at GCIS and she had requested suppliers to split their invoices on numerous occasions in order to ensure prompt payment. This practice was never rectified or brought to her attention as being irregular.
- 8.2.1.13 Through review of the above invoices (**See Annexure 22**), we established that Ms Metsileng had certified that the services were rendered for all of the invoices, **except** invoice number 1000148 as follows:

Invoice Number	Invoice Date	Rands	Certified By
100017	03-Mar-11	997,662.86	Ms Metsileng
1000121	04-Mar-11	997,662.86	Ms Metsileng
1000122	05-Mar-11	997,662.86	Ms Metsileng
1000135	08-Mar-11	997,662.86	Ms Metsileng
1000128	11-Mar-11	997,662.86	Ms Metsileng
1000148	18-Mar-11	997,662.86	Not certified

- 8.2.1.14 Included in the above invoices were amounts in respect of Bill Board rentals which Light Views claimed they had committed to with the lessor. We requested confirmation of these commitments, but were not supplied with these.
- 8.2.1.15 We interviewed Ms Metsileng, who stated that she did not verify whether the services were rendered, but was informed by Ms Baloyi that the services were rendered. She was further instructed by certain management members to sign the invoices in order to enable payment to be made. Ms Metsileng refused to declare the names of management members who instructed her to sign the invoices and refused to provide us with a written statement in this regard. This is tantamount to fraud as she confirmed that services were rendered when, in fact, they were not.
- 8.2.1.16 Through review of the above invoices, we established that the banking details of Light Views as recorded on the credit order instruction (**See Annexure 16**) differed from the banking details as recorded on the invoices (**See Annexure 22**). We interviewed Ms Lebogang Innocentia Maake (**See Annexure 23**) ("Ms Maake"), who is a Senior Provisioning Administration Clerk at GCIS, who confirmed that the banking details were originally captured on the system on 03 March 2011 by Ms

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

Judith Mohlatlole, who is a Supply Chain Management Officer at GCIS. The banking details were later changed on 07 March 2011 by Ms Vivian Mpho Ramashi ("Ms Ramashi"), who is a Supply Chain Management Officer at GCIS and was authorised by Ms Mary Jane Rabodiba ("Ms Rabodiba"), who is an Assistant Director: Supply Chain Management at GCIS.

8.2.1.17 We requested reasons as to why the above changes were effected to the banking details of Light Views, but could not be furnished with reasons. We interviewed Ms Ramashi (See Annexure 24) who stated that she cannot recall why the banking details of Light Views were changed.

8.2.1.18 Through review of the payments register of GCIS (See Annexure 25), we established that payments were made to Light Views as follows:

Payment Number	Payment Date	Rands
24132	07-Mar-11	997,662.86
24181	08-Mar-11	997,662.86
24226	09-Mar-11	997,662.86
24259	10-Mar-11	997,662.86
24331	11-Mar-11	997,662.86
24510	17-Mar-11	997,662.86
24666	23-Mar-11	997,662.86
		<b>6,983,640.02</b>

8.2.1.19 Through review of the BAS payments register, we noted that the payments to Light Views were made prior to the funds being received by GCIS from STATS SA which is in contravention of the MOU, as the R18 million earmarked for the outdoor media was only transferred on 31 March 2011.

8.2.1.20 On 30 March 2011 Ms Metsileng authored an internal memorandum (See Annexure 26) to Ms Lediana Amaro (Ms Amaro), who is the Chief Financial Officer of GCIS, wherein she declared the above payments of R6,983,640.02 to the Bid Adjudication Committee. This declaration was irregular, as the payment had already been made to Light Views as at the date of the declaration to the Bid Adjudication Committee. Consequently, the Bid Adjudication Committee did not approve/recommend the appointment of Light Views. On 27 May 2011, Mr Manyi ratified the payment (See Annexure 26).



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

8.2.1.21 Our investigation revealed that Ms Moreroa made a submission to National Treasury only on 06 July 2011 (See Annexure 27) stating that the service of Light Views in the amount of R6,983,640.02 was procured in terms of Treasury Regulation 16A6.4. This submission was transmitted to National Treasury 3 months (90 days) after the payments were made, thereby evidencing a contravention of Paragraph 3.1 of National Treasury Practice Note No. 6 of 2007/2008, which states that accounting officers and accounting authorities are required to report within ten (10) working days to the relevant treasury and the Auditor-General, all cases where goods and services above the value of R 1 million (VAT included) were procured in terms of Treasury Regulation 16A6.4.

8.2.1.22 In terms of the MOU it would seem that Light Views would have been responsible for outdoor media which would include the following:

- Billboards
- Airport advertising
- Township and rural wall murals
- Vehicle wraps, i.e. STATS SA government vehicles (400 vehicles)
- Quantum taxis around the country (500)
- Building wraps including all STATS SA offices
- Passenger Rail Agency of South Africa (PRASA)

8.2.1.23 It was alleged that Light Views could not fulfil their responsibilities due artwork for the creative from STATS SA not being received.

### CONCLUSIONS

8.2.1.24 Light Views submitted invoice number 100016, totalling R6,983,640 to GCIS on 10 February 2011. At this time, the required services had not been rendered, as by their own admission, Light Views informed Ms Legoabe that they could not supply proof of service delivery as the creatives were not received in order for them to deliver the required service.

8.2.1.25 Despite the above non-rendition of services, a total of R6,983,640.02 was processed for payment and subsequently paid to Light Views.

8.2.1.26 Ms Metsileng committed an act of fraud, as she had certified that the services were rendered, when in fact, the services were not rendered.

8.2.1.27 Light Views was unable to submit evidence that they had committed to Billboard rentals with the lessors.



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

- 8.2.1.28 Ms Mosupye committed an act of fraud by instructing Light Views to split the invoice into seven (7) separate invoices in order to circumvent the controls implemented by the National Treasury BAS Safety Net System.
- 8.2.1.29 Ms Mosupye authorised the payment to Light Views despite the dispensation of procurement processes not being approved by the Bid Adjudication Committee, in accordance with Paragraph 1.11a of the Financial Delegations of GCIS. This expenditure is therefore considered unauthorised and irregular.
- 8.2.1.30 There appears to be a serious lack of internal controls at GCIS regarding payment of creditors, as invoices are being split in order to bypass the BAS Safety Net System which was intended to screen all payments in excess of R1 million. Paragraph 2.4 of the MoU states that both partners of the MoU agree to maintain detailed records to ensure that an adequate system of internal controls exists that will maintain the integrity and transparency of this partnership.
- 8.2.1.31 The Accounting Officer of GCIS failed to adhere to Paragraph 1.11a of the Financial Delegations of GCIS, which requires approval/recommendations from the Bid Adjudication Committee for all procurement that is conducted in terms of Treasury Regulation 16A6.4. Ms Metsileng made a submission to the Bid Adjudication Committee after payment had been made to Light Views. (See Annexure 26).
- 8.2.1.32 The Accounting Officer of GCIS failed to comply with Paragraph 3.1 of National Treasury Practice Note No. 6 of 2007/2008, which states that accounting officers and accounting authorities are required to report within ten (10) working days to the relevant treasury and the Auditor-General, all cases where goods and services above the value of R 1 million (VAT included) were procured in terms of Treasury Regulation 16A6.4. A submission was made to National Treasury 90 days after the payment to Light Views.

## RECOMMENDATIONS

- 8.2.1.33 Ms Metsileng stated that she is no longer in the employ of GCIS but her email address is still on the dormant server which she accesses and responds from even though she purports to no longer be in the employ of GCIS. This matter should be referred to SAPS for further investigation in terms of section 34 of the Prevention and Combating of Corrupt Activities Act No.12 of 2004 to facilitate a

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

criminal investigation into Ms Metsileng's role during the appointment and payment of Light Views. Such an investigation will reveal if she benefited financially from this appointment and payments.

8.2.1.34 Since Ms Mosupye is no longer in the employ of GCIS, this matter should be referred to SAPS for further investigation in terms of section 34 of the Prevention and Combating of Corrupt Activities Act No.12 of 2004 to facilitate a criminal investigation into Ms Mosupye's role during the payment of Light Views. Such an investigation will reveal if she benefited financially from these payments. Ms Mosupye committed an act of fraud by instructing Light Views to split the invoice into 6 separate invoices.

8.2.1.35 GCIS should institute procedures for a criminal/civil recovery from Light Views, as they had been paid for services that were never rendered. The entire amount paid to Light Views should be recovered since no evidence could be supplied evidencing that Light Views had committed to the lessors for Billboard rentals.

8.2.1.36 STATS SA should institute procedures to recover all the payments made irregularly to Light Views for an amount of R6,983,640.02 from GCIS.

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

## 8.2.2 LIKHWANE

## FINDINGS

- 8.2.2.1 We established that invoice number 001, totalling R777,755.88 (See Annexure 28) was submitted by Likhwane to GCIS. The invoice was dated 17 March 2011. At this point, the services had not been rendered. Ms Phiwe Motshegoa ("Ms Motshegoa"), who is the Director of Marketing at GCIS received an e-mail from Likhwane on 01 September 2011 (See Annexure 29), wherein they confirmed that they did not receive the required artwork in order to enable them to render their services.
- 8.2.2.2 On 09 March 2011, an internal memo (See Annexure 30) requesting that an order number be raised for Likhwane for the placement of the Census 2011 campaign. The document was signed by Ms Metsileng, Mr Theunissen and Ms Amaro. The document records that the purpose of the document is to "seek approval for appointing a selected service provider for the placement of "Census 2011" according to Supply Chain Management Delegations section 1.11(a)". The document commits an amount of R777,755.88 which according to the memorandum was in the process of being transferred from STATS SA to GCIS.
- 8.2.2.3 We established that on 15 March 2011 a credit order instruction form (See Annexure 31) recording the details of Likhwane and the banking details as Nedbank, Brooklyn, with account number 1631155903 was created at GCIS.
- 8.2.2.4 On 16 March 2011, order number OR – 41873 (See Annexure 32) was made out to Likhwane totalling R777,755.88. In addition, requisition number 100G04209 (See Annexure 33) totalling R777,755.88 and dated 15 March 2011 was issued in the name of Likhwane for the Census 2011 placement.
- 8.2.2.5 Through review of the invoice, we established that on 25 March 2011, the invoice was certified that the service was rendered satisfactorily by Ms Metsileng. We interviewed Ms Metsileng, who stated that she did not verify whether the services were rendered, but was informed by Ms Baloyi that the services were rendered. She was further instructed by certain management members to sign the invoices in order to enable payment to be made. Ms Metsileng refused to declare the names of management members who instructed her to sign the invoices and refused to provide us with a written statement in this regard.



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

8.2.2.6 On 30 March 2011 Ms Metsileng authored an internal memorandum (See Annexure 26) to Ms Amaro, wherein she declared the above expenditure and deviation of procurement processes to the Bid Adjudication Committee.

8.2.2.7 Through review of the payments register of GCIS (See Annexure 34), we established that payment to Likhwane was made as follows:

Payment Number	Payment Date	Rands
34026	13-Apr-11	777,755.88

8.2.2.8 Included in the above invoice was an amount in respect of Billboard rentals which Likhwane claimed they had committed to with the lessor. We requested confirmation of these commitments, but were not supplied with these.

8.2.2.9 We established that Likhwane confirmed receipt of the above payment in an e-mail dated 01 September 2011 (See Annexure 29).

8.2.2.10 In terms of the MOU it would appear that Likhwane was responsible for outdoor media which would include the following:

- Billboards
- Airport advertising
- Township and rural wall murals
- Vehicle wraps, i.e. STATS SA government vehicles (400 vehicles)
- Quantum taxis around the country (500)
- Building wraps including all STATS SA offices
- Passenger Rail Agency of South Africa (PRASA)

8.2.2.11 It is alleged that they could not fulfil their responsibilities due to artwork for the creative from STATS SA not being received.

## CONCLUSIONS

8.2.2.12 Likhwane submitted invoice number 001, totalling R777,755.88 to GCIS on 17 March 2011. At this point, the services had not been rendered. Ms Phiwe Motshegoa ("Ms Motshegoa"), who is the Director of Marketing at GCIS received an e-mail from Likhwane on 01 September 2011, wherein they confirmed that they did not receive the required artwork in order to enable them to render their services.

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

- 8.2.2.13 Despite the above non-rendering of services, a total of R777,755.88 was processed for payment and subsequently paid to Likhwane.
- 8.2.2.14 Ms Metsileng committed an act of fraud, as she had certified that the services were rendered, when in fact, the services were not rendered.
- 8.2.2.15 Likhwane was unable to submit evidence that they had committed to Billboard rentals with the lessors. According to Mr Oosterwyk, Likhwane owned one billboard and this emerged when Mr Oosterwyk acknowledged that he had referred Likhwane to GCIS. Likhwane, however, claims that they have no knowledge of Mr Oosterwyk.

**RECOMMENDATIONS**

- 8.2.2.16 GCIS should institute procedures for a criminal/civil recovery from Likhwane, as they had been paid for services that were never rendered. The entire amount paid to Likhwane should be recovered since no evidence could be supplied evidencing that Likhwane had committed to the lessors for Billboard rentals.
- 8.2.2.17 STATS SA should institute procedures to recover all payments made to Likhwane for an amount of R777,755.88 from GCIS.

### 8.3 TRANSFERS BY STATS SA

#### FINDINGS

#### 8.3.1 CENSUS LAUNCH

8.3.1.1 Our investigation revealed that STATS SA had transferred R4,912,030 to GCIS on the 18<sup>th</sup> October 2010 for the Census Launch Campaign.

8.3.1.2 Through review of the Media Schedules presented to us, we established that the above funding was intended by STATS SA to be spent on the following media types:

(a) Census Launch Campaign (See Annexure 35)

Media Type	Amount
Print	651,030
TV	2,100,000
Radio	2,161,000
	<b>4,912,030</b>

8.3.1.3 Through review of the invoices that were submitted by GCIS to STATS SA, and the campaign allocations that were provided by Ms Maritz, we established that GCIS did not adhere to the above budgets and had overspent in certain instances, whilst under-spending in others. These over/under spends were not authorised by STATS SA.

8.3.1.4 We conducted a reconciliation between all invoices submitted by GCIS and the above transfer that was made. We noted that GCIS could not fully account for the transfers as follows:

Campaign	Transferred to GCIS	Accounted for	Balance owing



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

Campaign	Transferred to GCIS	Accounted for	Balance owing
Census Launch	4,912,030	4,691,834	220,196

8.3.1.5 Invoices to support the above payments were made available to us by Ms Maritz, who provided us with the relevant allocations for each of the invoices, as most invoices in themselves did not specify the campaign to which they related.

8.3.1.6 Notwithstanding the fact that GCIS could not provide proof of the flighting schedules, we inspected the invoices purported by Ms Maritz to be related to the Census Launch Campaign (See Annexure 35) and noted that they included the following:

Number	Service provider	Invoice Number	Invoice Date	Rands
1	Ads24	1010107798 - 039412		152,770.11
2	Ads24	1010107798 - 39412		94,175.17
3	Ads24	1010107798 - 39622		51,402.19
4	Africa On Air	272239	31 Oct 2010	58,129.42
5	Aganang Fm		1 Oct 2010	15,000.00
6	Bcr Barberton Community Radio	5050	01 Nov 2010	15,000.00
7	Botlokwa Community Radio Station	GCIS/008/2011		5,200.00
8	Cape Talk	437210		61,964.30
9	ELDO'Z Fm	Gov1011		15,000.00
10	E News	125487/125488/125489		100,006.14
11	E Tv	130042		399,817.15
12	Emalahleni Fm	0032		15,000.00
13	Emalahleni Fm	not clear		5,200.00
14	Highway Christian Outreach Association	INA22568		5,200.00

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

Number	Service provider	Invoice Number	Invoice Date	Rands
15	I Independent Newspapers	9623458		184,771.86
16	Impact Radio 103 Fm	IN000003202		15,000.01
17	Inanda 88.4 Fm	884/012	29 Oct 2010	15,000.00
18	Kangala Community Radio Services	76/2011		5,200.00
19	Kanyamazane Radio 107.3 Fm	INA11106		15,000.00
20	Kanyamazane Radio 107.3 Fm	KAN 00775		5,200.00
21	Kfm 94.5	622154		51,891.50
22	Khanya Community Radio	No Invoice number on inv.		15,000.00
23	Lethabile Community Radio	LCR/2224/11		5,200.00
24	Maputaland Community Radio	147not clear		5,200.00
25	Moletsi Community Radio Station	Moletsi 42/11		5,200.00
26	Moretele Community Radio	555		15,000.00
27	Motswako Radio Sales	GCIS/021/11		5,700.00
28	Newcastle Community Radio 103.7 Fm Stereo	65		5,200.00
29	Nkqubela Radio Station 97.0 Fm	NKQ10/2010/98	29 Oct 2010	15,000.00
30	Overvaal Stereo	8941	29Oct2010	15,000.00
31	Panorama 107.6 Fm	PI-0506		15,000.00
32	Phalaborwa 105.1Fm	0342		15,000.00
33	Phalaborwa 105.1Fm	0378		5,200.00
34	Qwa-Qwa Radio	2010/011/GCIS		15,000.00



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

Number	Service provider	Invoice Number	Invoice Date	Rands
35	Radio 93.4 Fm Namakwaland	6511		5,200.00
36	Radio Alpha	RA/STATS/1508		5,200.00
37	Radio Alpha 97.8 Fm	CL/1010	29Oct2010	15,000.00
38	Radio Atlantis 107.9 (Rafm)	3794		10,000.00
39	Radio Bushbuckridge	1299		15,000.00
40	Radio Graaff-Reinet	01/11	01Nov2010	15,000.00
41	Radio Graaff-Reinet	GCIS 10/08/11		5,200.00
42	Radio Kaboesna	101		15,000.00
43	Radio Kc	10-2010-0004	22Oct2010	15,000.00
44	Radio Kragbron 93.1Fm Stereo	IN100442		15,000.01
45	Radio Mafisa	2184		5,200.00
46	Radio Mafisa 93.4 Fm	1907		15,000.00
47	Radio Nfm Okiep	IN100419		5,200.00
48	Radio Riverside 98.2 Fm	2010/340		15,000.00
49	Radio Sunny South	0903		5,200.00
50	Radio Turf 103.8 Fm Stereo	(20110810)		5,200.00
51	Radio West Coast 92.3 Fm	1567		5,200.00
52	Radio Zibonele	IN070232		5,000.00
53	Radio Zibonele	IN070563		5,200.00
54	Radmark	I-163340	31Oct 2010	98,568.96
55	Sabc	39405		1,320,975.00



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

Number	Service provider	Invoice Number	Invoice Date	Rands
56	Sabc	90153424		780,478.20
57	Sabc	90168179		165,500.00
58	Soshanguve Radio	33		15,000.00
59	Soundfusion Media	IN100686	20 Oct 2010	6,840.00
60	Soundfusion Media	IN100694		6,840.00
61	Soundfusion Media	IN100699	04 Nov2010	6,840.00
62	Sowetan Sunday World	3936546	11 Oct 2010	94,255.20
63	Sowetan Sunday World	3930134		58,331.52
64	Star Fm 102.9 Mhz	Ref no 20110704		5,200.00
65	Takalani Community Radio Fm	2010/10		15,000.00
66	Talk Radio	58371		91,567.08
67	Thetha Fm-100.6	Ref no TFM/2011/08/28/001CC		5,200.00
68	Unitedstations	MP79615-1		34,291.25
69	Unitedstations	K79135-1		112,603.50
70	Unitedstations	BD79134-1		4,924.80
71	Unitedstations	CAN79137-1		64,236.15
72	Unitedstations	O79136-1		66,433.50
73	Unitedstations	A79133-1		45,921.43
74	Univer Radio Fm 99.8	81210		10,000.00
75	Univer Radio Fm 99.8	290611		5,200.00
76	Valley Fm Radio	1120		15,000.00

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

Number	Service provider	Invoice Number	Invoice Date	Rands
77	Vibe Fm 94.7	947057		15,000.00
78	Voice Of Tembisa Fm	0183		15,000.00
79	Voice Of Tembisa Fm	0053		5,200.00
80	Voice Over Artist Ntsoaki Qhu	Voice Over		2,000.00
81	Voice Over Artist Phetolo Lemekoana	Voice Over		6,000.00
82	Whale Coast	320		15,000.00
				<b>4,691,834.45</b>

8.3.1.7 We established that Paragraph 2.5 of the MOU (See Annexure 1) between STATS SA and GCIS states that GCIS must refund any unused funds to STATS SA should there be any.

#### CONCLUSIONS

8.3.1.8 GCIS was unable to account for R220,196 of the transfers that were made by STATS SA for the Census Launch Campaign.

8.3.1.9 GCIS received suppliers invoices before the date of placing the orders for the services.

#### RECOMMENDATIONS

8.3.1.10 STATS SA should institute procedures to recover the R220,196 from GCIS regarding the Census Launch Campaign:

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

## 8.3.2 DRESS REHEARSAL THANK YOU CAMPAIGN

8.3.2.1 Our investigation revealed that STATS SA had transferred R1,828,104 on the 28 January 2011 to GCIS for the Rehearsal and Thank You Campaign.

8.3.2.2 Through review of the Media Schedules presented to us, we established that the above funding was intended by STATS SA to be spent on the following media types:

## (a) Dress Rehearsal Thank you (See Annexure 36)

Media Type	Amount
Radio	480,624
Television	1,347,480
	1,828,104

8.3.2.3 Through review of the invoices that were submitted by GCIS to STATS SA, and the campaign allocations that were provided by Ms Maritz, we established that GCIS did not adhere to the above budgets and had overspent in certain instances, whilst under-spending in others. These over/under spends were not authorised by STATS SA.

8.3.2.4 Overall though, through a reconciliation process between all invoices submitted by GCIS and the above transfer that was made, we noted that GCIS could not fully account for the transfer as follows:

Campaign	Transferred to GCIS	Accounted for	Balance owing
Dress rehearsal thank You	1,828,104	1,159,109	668,995

8.3.2.5 Invoices to support the above payments were made available to us by Ms Maritz, who provided us with the relevant allocations for each of the invoices, as most invoices in themselves did not specify the campaign to which they related. Consequently, it was impossible for the investigation team to determine whether the invoices related to the correct campaign or to STATS SA, for that matter.



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

- 8.3.2.6 We inspected the invoices purported by Ms Maritz to be related to the Dress Rehearsal Thank You Campaign (See Annexure 36) and noted that they included the following:

Number	Service provider	Invoice Number	Rands
1	E Tv	133212	225,720.00
2	Radmark	I-166206	85,272.00
3	Sabc	90168180	400,140.00
4	Sabc	90166614	425,200.05
5	Unitedstations	Statement of Account	22,777.01
			<b>1,159,109.06</b>

- 8.3.2.7 We established that Paragraph 2.5 of the MOU (See Annexure 1) between STATS SA and GCIS states that GCIS must refund any unused funds to STATS SA should there be any.

#### CONCLUSIONS

- 8.3.2.8 GCIS was unable to account for R668,995 of the transfers that were made by STATS SA for the Dress Rehearsal Thank You Campaign.
- 8.3.2.9 GCIS received suppliers' invoices before the date of placing orders for the services.

#### RECOMMENDATIONS

- 8.3.2.10 STATS SA should institute procedures to recover the unspent amount of R668,995 from GCIS.

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

## 8.3.3 CENSUS 2011: PHASE 1

8.3.3.1 Paragraph 3.1 of the MoU (See Annexure 1) states that GCIS will issue a quotation to STATS SA and an advance payment will be made by STATS SA.

8.3.3.2 Our investigation revealed that Mr Oosterwyk had compiled a memorandum on 02 March 2011, requesting that R18 million be transferred to GCIS for media bulk buying services (See Annexure 37).

8.3.3.3 The memorandum was prepared by Mr Oosterwyk and authorised by Mr Bheki Mathunjwa ("Mathunjwa"), who is the Manager of the Chief Financial Office at STATS SA, on behalf of Ms S Thobejane (Ms Thobejane), who is the Chief Financial Officer of STATS SA. The memorandum was further approved by Mr C Molongoana (Mr Molongoana), who was the Project Director for the Census 2011 campaign. Dr Jairow Arrow (Dr Arrow), who is the Deputy Director General of STATS SA signed the memorandum on behalf of Mr Lehohla, as an Acting Head of Department.

8.3.3.4 Our investigation revealed that STATS SA had made the following transfer to GCIS in connection with the Census 2011: Phase 1 campaign:

Campaign	Date	Amount
Census 2011: Phase 1	26-Mar-11	18,000,000

8.3.3.5 Through review of the Media Schedules presented to us, we established that the above funding was intended by STATS SA to be spent on the following media types:

## (a) Census 2011: Phase 1 (See Annexure 37)

Details	Rands
Electronic Media	6,000,000
Sports Channels	3,000,000
Print Media	4,000,000
Outdoor Media	5,000,000
	<b>18,000,000</b>

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

- 8.3.3.6 The above request was not supported by any cost estimates or quotations and appears to be based solely on Mr Oosterwyk's discretion.
- 8.3.3.7 The memorandum further stipulated that outdoor media would entail the following:
- (a) Billboards.
  - (b) Airport advertising.
  - (c) Township and rural wall murals.
  - (d) Vehicle wraps, i.e. STATS SA government vehicles (400 vehicles).
  - (e) Quantum taxis across the country (500).
  - (f) Building wraps including all STATS SA offices.
  - (g) Passenger Rail Agency of South Africa (PRASA).
- 8.3.3.8 The memorandum further recommends that "deviation from the normal procurement is granted in order to bulk buy airtime and space in the media for Census 2011 adverts".
- 8.3.3.9 Through review of the creditor payment advice (See Annexure 39), we established that on 26 March 2011 the BAS Creditor Payment Advice for the payment of the R18 million was authorised, allowing for the transfer to GCIS.
- 8.3.3.10 Through review of the invoices that were submitted by GCIS to STATS SA, and the campaign allocations that were provided by Ms Maritz, we established that GCIS did not adhere to the above budgets and had overspent in certain line items, whilst under-spending in others. These over/under spends were not authorised by STATS SA.
- 8.3.3.11 Of this R18 million transferred, R6,983,640 relate to Light Views and R777,756 relate to Likhwane. This totals R7,761,396, effectively GCIS over spent on the allocated budget for outdoor media of R5 million by an amount of R2 761 396.
- 8.3.3.12 However, invoices purporting to be that of STATS SA to support the above payments were made available to us by Ms Maritz, who provided us with the relevant allocations for each of the invoices, as most invoices in themselves did not specify the campaign to which they related. It is for this reason that albeit that these invoices are listed below, the investigation team could not conclusively establish whether they were, in fact, for STATS SA or its campaigns.



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

8.3.3.13 We inspected the invoices purported by Ms Maritz to be related to the Census 2011: Phase 1 Campaign (See Annexure 38) and merely note that they included the following:

Number	Service provider	Invoice Number	Invoice Date	Rands
1	Ads24	1103107798 - ADV0098		791,413.31
2	Ads24	1109107798-042654		76,950.00
3	Bdfm The Business Media Company	4164034		100,320.00
4	Dispatch Media	4162762		134,200.80
5	E Tv	135871c		278,062.13
6	Independent Newspapers	INV00033288		83,718.18
7	Independent Newspapers	1104107798 - 0098		527,588.72
8	Independent Newspapers	6781243		114,797.09
9	Independent Newspapers	6781244		13,858.63
10	Independent Newspapers	6781245		203,067.97
11	Independent Newspapers	6781246		31,483.02
12	Independent Newspapers	6781247		82,441.15
13	Independent Newspapers	6785353		13,858.63
14	Independent Newspapers	6785354		203,067.97
15	Independent Newspapers	6785355		114,797.09
16	Independent Newspapers	6785356		82,441.15
17	Independent Newspapers	6785357		31,483.02
18	Independent Newspapers	6792153		149,763.17
19	Independent Newspapers	6792154		24,844.69
20	Independent Newspapers	135871b		999,999.01

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

Number	Service provider	Invoice Number	Invoice Date	Rands
21	Independent Newspapers	135871a		999,999.01
22	Light Views	INV100017		997,662.86
23	Light Views	INV1000121		997,662.86
24	Light Views	INV1000122		997,662.86
25	Light Views	INV1000135		997,662.86
26	Light Views	INV1000128		997,662.86
27	Light Views	INV1000148		997,662.86
28	Light Views	INV100016		997,662.86
29	Likhwane Consulting Services	001		777,755.88
30	Sabc	90176101		3,756,220.20
31	Sowetan Sunday World	4161333		259,646.40
32	Sowetan Sunday World	4167601		61,176.96
33	Tna The New Age Media	1000000951		147,251.52
				<b>17,043,845.72</b>

8.3.3.14 Through review of the BAS payments register, we noted that the payments to Light Views were made prior to the funds being received by GCIS from STATS SA.

8.3.3.15 We established that Paragraph 2.5 of the MOU (See Annexure 1) between STATS SA and GCIS states that GCIS must refund any unused funds to STATS SA should there be any.

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

## CONCLUSIONS

- 8.3.4 The transfer of R18 million to GCIS was not supported by any costing schedules indicating the reasonableness of the transfer.
- 8.3.5 Mr Oosterwyk acted negligently in recommending the transfer of R18 million without having been supplied with cost estimates from GCIS.
- 8.3.6 Mr Molongoana acted negligently in recommending the transfer of R18 million without having been supplied with cost estimates from GCIS.
- 8.3.7 Mr Mathunjwa acted negligently in approving the transfer of R18 million without having been supplied with cost estimates from GCIS.
- 8.3.8 GCIS was unable to account for R932 077 (*R18 million minus R17,043,845.72*) of the transfers that were made by STATS SA for the Census 2011: Phase 1 Campaign.
- 8.3.9 GCIS clearly contravened the MOU by paying suppliers prior to receipt of funds from STATS SA.

## RECOMMENDATIONS

- 8.3.10 Disciplinary action should be instituted against Mr Oosterwyk of STATS SA for failing to ensure that the transfer of R18 million was substantiated by costing schedules from GCIS.
- 8.3.11 STATS SA should institute procedures to recover from GCIS the amount of R932 077 as not accounted for from the R18 Million transferred for Census 2011: Phase 1.



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

## 8.4 APPOINTMENT OF "DZINGE" FOR THE SUPPLY OF CREATIVES

- 8.4.1 Our investigation revealed that on 11 June 2010 the tender with number STATS SA 005/10 was advertised for the creative advertising concepts and production for Census 2011 in the Government Tender Bulletin (See Annexure 40).
- 8.4.2 We established that the above tender was awarded to Dzinge who were responsible to supply the creatives for the Census 2011 campaign as on 06 October 2010, in the Government Tender Bulletin (See Annexure 41) it is recorded that the tender for the creative advertising concepts and production for Census 2011, was awarded to Dzinge.
- 8.4.3 During interviews, Mr Oosterwyk and Mr Malongoana both confirmed that Dzinge was appointed to produce the creatives for the Census 2011 campaign.
- 8.4.4 Ms Baloyi confirmed that there were various problems with the creatives received from Dzinge and that there were corrections to be made to the products that they supplied.
- 8.4.5 Both Light Views and Likhwane claimed that they did not receive the creatives in time for them to place the artwork on the billboards.
- 8.4.6 We obtained the BAS payment confirmation (See Annexure 42) from STATS SA and found that Dzinge was paid R64 million by STATS SA in order to produce the creatives for the Census 2011 campaign.
- 8.4.7 We attempted to contact Dzinge in light of the fact that Light Views and Likhwane were not supplied with the creatives in order to render the advertising service to GCIS. Dzinge failed to contact us in this regard.
- 8.4.8 Through our data imaging techniques, it was established that on 08 March 2012, the office of the Auditor General wrote (See Annexure 43) to STATS SA and confirmed that the original copies in the tender file of Dzinge were missing and that only copies of the relevant documents were available and the audit could not be conducted. This is indicative of further investigation into "Dzinge".
- 8.4.9 Furthermore, it came to our attention that Mr Theunissen, at a meeting in Birchwood, stated that the brief of "Dzinge" overlapped with that of GCIS. He further communicated to Ms Modise that there was a problem with the project and was advised that there was an executive decision to undertake the project and accept the funds from STATS SA. Ms Amaro also supported the view of Mr Theunissen

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

that this could have been an attempt by STATS SA to utilise their unspent budget. This further supports the notion that further investigation into "Dzinge" is warranted.

**CONCLUSIONS**

- 8.4.10 Dzinge was appointed by STATS SA to supply the creatives for the Census 2011 campaign following an open tender process.
- 8.4.11 Dzinge was paid an amount of R64 million for the above services.
- 8.4.12 It appears that these services were never rendered at the required time, as Likhwane and Light Views confirmed that they did not receive the required creatives, on their request.

**RECOMMENDATIONS**

- 8.4.13 A detailed investigation should be initiated by STATS SA into the appointment of Dzinge and whether STATS SA received the creatives and there was any value for money.

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

**9 OVERALL CONCLUSION****9.1 Light Views**

- 9.1.1 The appointment of Light Views was not in accordance with procurement policies and prescripts.
- 9.1.2 In terms of the MOU signed by GCIS and STATS SA, the responsibility for the procurement of media bulk buying for the Census 2011 Campaign was that of GCIS. Indeed our investigation confirmed that GCIS was responsible for the appointment of Light Views.
- 9.1.3 It appears that an act of fraud may have been committed by GCIS by disposing of the detailed proposal of Light Views, thereby removing evidence of their irregular appointment.
- 9.1.4 Light Views submitted invoice number 100016, totalling R6,983,640 to GCIS on 10 February 2011. At this time, the required services had not been rendered, as by their own admission, Light Views informed Ms Legoabe that they could not supply proof of service delivery as the creatives were not received in order for them to deliver the required service.

**9.2 Likhwane**

- 9.2.1 The appointment of Likhwane was not in accordance with procurement policies and prescripts.
- 9.2.2 In terms of the MOU signed by GCIS and STATS SA, the responsibility for the procurement of media bulk buying for the Census 2011 Campaign was that of GCIS. Indeed our investigation confirmed that GCIS was responsible for the appointment of Likhwane.
- 9.2.3 Likhwane submitted invoice number 001, totalling R777,755.88 to GCIS on 17 March 2011. At this point, the services had not been rendered. Ms Phiwe Motshegoa ("Ms Motshegoa"), who is the Director of Marketing at GCIS received an e-mail from Likhwane on 01 September 2011, wherein they confirmed that they did not receive the required artwork in order to enable them to render their services.

**9.3 Census Launch Campaign.**

- 9.3.1 GCIS was unable to account for R220,196 of the transfers that were made by STATS SA for the Census Launch Campaign.
- 9.3.2 GCIS received suppliers invoices before the date of placing the orders for the services.



#### 9.4 The Dress Rehearsal Thank You Campaign.

9.4.1 GCIS was unable to account for R668,995 of the transfers that were made by STATS SA for the Dress Rehearsal Thank You Campaign.

#### 9.5 Census 2011: Phase 1 Campaign.

9.5.1 GCIS was unable to account for R932 077 (R18 million *minus* R17,043,845.72) of the transfers that were made by STATS SA for the Census 2011: Phase 1 Campaign.



FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

10 APPROVAL

*Development:*

*[Handwritten signature]*

**R MORAR**

**Director**

**MORAR INCORPORATED**

**Chartered Accountants (S.A)**

**Registered Auditors**

**DATE:** 1 November 2012.

**Z. Mxunyelwa. CIA, CFE**

**Head: Specialised Audit Services**

**Office of Accountant- General**

**National Treasury**

**DATE:**

*Approval for Distribution:*

**Freeman Nomvalo**

**Accountant General**

**National Treasury**

**DATE:**

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

## 11 GLOSSARY

Throughout this document, unless otherwise stated, the following abbreviations have been used. These descriptions and explanations, however, serve to clarify this report and are not intended to be authoritative.

NO	ABBREVIATION	DESCRIPTION
1	Ms Amaro	Ms Lediana Amaro, the Chief Financial Officer of GCIS
2	Ms Baloyi	Ms Nkateko Baloyi, the previous Deputy Director, Marketing, GCIS
3	CEO	Chief Executive Officer
4	CFO	Chief Financial Officer
5	CIPC	Companies and Intellectual Property Registration Office
6	DCEO	Deputy Chief Executive Officer
7	Dzinge	Dzinge Productions
8	GCIS	Government Communications Information System
9	Ms January	Ms Nomonde January, Legal Services of STATS SA
10	Ms Legoabe	Ms Nebo Legoabe, Deputy Chief Executive Officer, Government Stakeholder Engagement, GCIS
11	Mr Lehohla	Mr Pali Lehohla, the Statistician-General of STATS SA
12	Light Views	Light Views Production (Pty) Ltd.
13	Likhwane	Likhwane Consulting Services
14	Ms Makuwa	Ms Nthabiseng Makuwa, Acting Project Manager, GCIS
15	Mr Maluleke	Mr Risenga Maluleke, the Deputy Director General, Corporate Relations, STATS SA



## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

NO	ABBREVIATION	DESCRIPTION
16	Mr Manyi	Mr Jimmy Manyi, the CEO of GCIS
17	Mr Mathunjwa	Mr Bheki Mathunjwa, Financial Manager, STATS SA
18	Ms Metsileng	Ms Karabo Metsileng, as Acting Director , Marketing, GCIS
19	Mr Mocuminyane	Mr Jacob Mocuminyane, a member of Light Views
20	Mr Modiba	Mr Dalsen Modiba, Internal Audit Unit, GCIS
21	Ms Modise	Ms Thoko Modise, the Chief Director, CSA, GCIS
22	Mr Mohamed	Mr Andrew Mohamed, Acting Chief Director, CSA, GCIS
23	Mr Molungoana	Mr Calvin Molungoana, the Project Director: Census 2011 of Statistics South Africa
24	Ms Moreroa	Ms Midah Moreroa, Director, Supply Chain and Facilities Management, GCIS
25	Ms Mosupye	Ms Delicate Mosupye, Assistant Director, Supply Chain Management, GCIS
26	MoU	Memorandum of Understanding
27	NT	National Treasury
28	Mr Oosterwyk	Mr Trevor Oosterwyk, Manager, Communications, STATS SA
29	Ms Rabodiba	Ms Mary Jane Rabodiba, the Assistant Director, Payment Section, GCIS
30	Ms Ramashi	Ms Mpho Ramashi, Supply Chain Management Officer, GCIS
31	Mr Shabangu	Mr Sakhumuzi Shabangu, sole member of Likhwane
32	Shokwane	Doctor Shokwane, representative of STATS SA
33	STATS SA	Statistics South Africa

## FORENSIC INVESTIGATION INTO THE APPOINTMENT OF SERVICE PROVIDERS FOR THE CENSUS 2011 CAMPAIGN.

NO	ABBREVIATION	DESCRIPTION
34	Mr Theunissen	Mr Frank Theunissen, Acting Director, Marketing, GCIS
35	Ms Thobejane	Ms Sempethe Thobejane, the CFO of STATS SA
36	Ms Williams	Ms Phumla Williams, Deputy Chief Executive Officer, Corporate Services, GCIS



SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

SAPS 3M(a)  
SAPD

Part A  
Deel

PREAMBLE TO STATEMENT \* AANHEF TOT VERKLARING

Station Stasie		CAS no MAS no	
<b>PERSONAL PARTICULARS * PERSOONLIKE BESONDERHEDE</b>			
Title Titel	MR	Initials Voorletters	LD
Surname Van		LIPHOKO	
First names Voornam			
LEKOTA DONALD			
Identity number Identiteitsnommer	7111185655089		Race Ras
Passport number Paspoortnommer			A Br B W A Br Sw W
Date of Birth Geboortedatum	18111971	Age Ouderdom	47
Nationality Nasionaliteit	SOUTH AFRICAN		Gender Geslag
			M F M V
	Citizenship Burgerskap		SOUTH AFRICA

I am/am not a member of the SAPS with PERSAL no \* Ek is lid/nie lid van die SAPD met PERSAL no

<b>RESIDENTIAL ADDRESS * WOONADRES</b>			
Street name Straatnaam		282 WILLOWVIEW DRIVE,	
Building/farm/plot/place Gebou/plaas/plot/plek			
Suburb/Extension/Area Voorstad/Uitbreiding/Gebied		NORTHCLIFF, EXTENSION 4	
Town/City Dorp/Stad		RANDBURG, JOHANNESBURG	
Telephone number Telefoonnommer	Home Huis	Code	011 No 431 1737
Cellphone number Sellulêre foonnommer	082 901 0766		
	Work Werk	Code	No
	Fax Faks	Code	No

<b>ADDRESS-WORK/BUSINESS/INSTITUTION/ORGANISATION * ADRES-WERK/BESIGHEID/INSTANSIE/ORGANISASIE</b>			
Name of Institution/Organisation Naam van Instansie/Organisasie		GOVERNMENT COMMUNICATION & INFORMATION SYSTEM	
Street name Straatnaam		CORNER FESTIVAL & FRANCES BAARD STREETS	
Building/farm/plot/place Gebou/plaas/plot/plek			
Suburb/Extension/Area Voorstad/Uitbreiding/Gebied		HATFIELD	
Town/City Dorp/Stad		PRETORIA	
Telephone number Telefoonnommer	Home Huis	Code	No
Cellphone number Sellulêre foonnommer	082 901 0766		
	Work Werk	Code	012 No 473 0000/1
	Fax Faks	Code	No
Would you like to receive information regarding this case via sms? Wil u inligting in verband met die saak ontvang per sms?			
Yes / Ja No / Nee			

<b>CONTACT PERSON (IF APPLICABLE) * KONTAK PERSOON (INDIEN VAN TOEPASSING)</b>			
Title Titel	MR	Initials Voorletters	LD
Surname Van		LIPHOKO	
Telephone number Telefoonnommer	Home Huis	Code	011 No 431 1737
	Work Werk	Code	082 No 901 0766

22 OCTOBER 2008

Date/Datum

Signature/Handtekening



## DISCLOSURE OF CORRUPT ACTS BY A STATE OFFICIAL

I Lekaota Donald Liphoko state under oath in English that:

1

I am an adult male with ID Number 711185655089 residing at 282 Willowview Drive, Northcliff Extension 4, Randburg, Johannesburg and formerly employed by the Government Communication and Information System (GCIS), Tshedimosetso House, corner Frances Baard and Festival Streets, Hatfield, Pretoria, as a Chief Director: Communication Services Agency. My home telephone number is 011 431 1737 and mobile phone number 082 901 0766.

2

I wish to open a corruption case against Mirriam Phumla Williams (ID Number unknown), acting Director General of the Government Communication and Information System (GCIS) in her capacity as a state official, as provided for under the Prevention and Combating of Corrupt Activities Act 12 of 2004.

3

On or about 27 November 2012, I became aware of an investigation conducted by the Office of the Accountant General (OAG) into a suspect media buying transaction entered into by the GCIS with two service providers (Light Views Productions, or alternatively Lightviews; and Likhwane) procured for outdoor advertising, on behalf of Statistics South Africa (StatsSA). It had been widely reported that the GCIS had irregularly procured the service providers and illegally paid them a sum of R7 762 000 for outdoor advertising which was not rendered, thereby compromising the efficacy of the Census 2011 public awareness campaign.

4

During this time, I was invited to a meeting by the Acting CEO, GCIS Mr Vusi Mona to provide specialist media buying advice to himself and the Chief Audit Executive Mr Dalson Modiba. The other attendees were Mr Freeman Nomvalo, and a team of approximately eight forensic auditors from Morar Incorporated who were contracted to the OAG. The meeting was held in the CEO's Boardroom on the 7th floor, at Midtown

1



Building, Pretoria Central. In this meeting, the forensic auditors presented approximately two full A4 lever arch files containing documents of their investigation, titled Detailed Report Government Communication and Information System & Statistics South Africa: Forensic Investigation into the Appointment of Service Providers for the Census 2011 Campaign.

5

Messrs Mona, Modiba and I were provided with individual lever arch files of the same and followed the presentation, making inputs or asking questions on process and facts therein. On conclusion of the presentation, Mr Nomvalo summarized the presentation and announced that the report was complete and that the GCIS as an affected party should accept the evidence and sign off the recommendation for presentation to the Ministers of Finance: Trevor Manuel and The Presidency: Collins Chabane, the respective executive authorities of the departments concerned. Given the volume of the documents, Mr Mona requested that we be given copies of the presented documents for discussion with Ms Williams who was the substantive Accounting Officer, and was unavailable due to official travel commitments with Minister Chabane in Rwanda.

6

The request was declined by Mr Nomvalo as in his view, Ms Williams was an implicated party and this would be a conflict of interest. Mr Mona was of the view that it would be unethical to sign the report and its recommendations without discussion with Ms Williams. To break the impasse, Mr Modiba suggested that we hand back all the documents presented by the forensic auditors and that a new date be scheduled with Ms Williams on her return. The discussion was closed and the meeting ended cordially. I was not invited to any further meetings on this matter, nor was the detailed report brought to the attention of the MANCO of the GCIS, of which I was a member, for discussion. I assumed that the matter was resolved as an internal disciplinary process was initiated against middle and senior management departmental officials.

7

On or about 2 March 2016, the Department of Communications Director: Legal Services Tshegofatso Kgarabjang requested an informal meeting to brief me on a litigation matter brought to his attention by the State Attorney. I was the acting Director General of the GCIS at the time. Mr Kgarabjang advised me that the Minister of Communications had received a third party notice for case number 69615/2011, a matter before the High



of South Africa, Gauteng Division in which Lightviews was pursuing a claim of R19 275 120 against Statistics South Africa, this after electing to abandon its claim against the GCIS. I was surprised by the turn of events as I thought this matter had been resolved in 2011, I was also shocked that Lightviews had proceeded to litigation against GCIS, which I thought irrational as they were in breach of their obligations and had unduly benefited to the tune of R6 983 640, an amount processed as a prepayment for services that had not been rendered.

8

Having reviewed the legal notice, Mr Kgarabjang and I requested an urgent meeting to jointly brief the Minister. In this meeting, an advocate from the State Attorney, Ms Nangamso Qongqo, Minister Faith Muthambi and I discussed the case at length. Having listened to the various arguments and recommended next steps presented in the meeting, Minister Muthambi gave me a mandate to meet StatsSA to find a resolution to this matter. I assembled a team comprising the GCIS Chief Financial Officer: Zweli Momeka, Chief Audit Executive: Dalson Modiba and myself to meet with the Statistician General: Pali Lehohla, StatsSA Deputy Director General: Akhtari Henning and Fasken Martineau, StatsSA's attorneys.

9

In our meeting held at Tshedimosetso House, Hatfield, Pretoria, we reviewed the circumstances of the 2011 media buying transaction and the agreement entered into between GCIS and StatsSA to implement the Census 2011 public awareness campaign. We also agreed that it was not in the interest of the state to have departments suing each other, an option that StatsSA was considering in order to pay the R19 275 120 claim should the court find in favor of Lightviews.

10

Based on Section 41 of the Constitution, which provides principles of cooperative government and intergovernmental relations, we devised a joint legal strategy to firstly challenge the legality of the agreement between Lightviews and GCIS, and secondly to open a fraud case against Lightviews with the South African Police Service (SAPS) so that we could pursue and recover the R6 983 640 already paid to Lightviews by GCIS. We also developed a mutually acceptable financial disclosure strategy so that the two respective departments could disclose the liability in our financial statements. Each



department was then able to separately table the necessary financial disclosures to their Audit and Risk Committees for ratification.

11

After reviewing the evidence presented, the High Court found in favor of StatsSA and dismissed Lightviews claim on or about 31 March 2016. On or about 18 January 2017, I sent a request to Ms Zanele Nhlaysi, acting Head of the State Attorneys Office for assistance to initiate legal proceedings for a civil or criminal recovery of R6 983 640 from Lightviews. As agreed, I then instructed Mr Kgarabjang to prepare a document bundle for submission to the SAPS so that we could open a case against Lightviews to recover state funds improperly paid to them. I also initiated an independent investigation through Gildenhuis Malatji Attorneys into whether Ms Williams conduct in relation to the Lightviews financial transaction and its subsequent handling constituted misconduct on or about 9 March 2017. Ms Williams was the senior official that authorised the procurement transaction and she later authorised that payments be made although no goods or services procured had been delivered.

12

I attach copies of the letter to Ms Nhlaysi - Forensic Investigation into the Appointment of Service Providers for the Census 2011, dated 18 January 2018 and received by the State Attorney on 26 January 2017. Also attached is the bundle of documents from Gildenhuis Malatji Attorneys - Appointment to Investigate the Alleged Acts of Misconduct by SMS Member: Ms Phumla Williams, dated 10 March 2017. This bundle includes the National Treasury investigative report titled Detailed Report, Government Communications Information System & Statistics South Africa: Forensic Investigation into the Appointment of Service Providers for the Census 2011 Campaign, Project Code 02-05-02-2012.

13

In May 2017, whilst pursuing this matter, I was abruptly transferred out of the GCIS to the Media Development and Diversity Agency (MDDA) by the new Minister of Communications, Ms Ayanda Dlodlo. At this stage, the GCIS CFO and CAE were in the process of finalizing the 2016/17 Annual Financial Statements. Central to this was the treatment of financial disclosure of liabilities for the financial year ending 31 March 2017. The 2016/17 Annual Financial Statements were incomplete when I left the department. Ms Williams was subsequently appointed as the acting Director General

and I presumed that she would follow through on both the legal and financial strategies that the departments were pursuing to recover the funds illegally paid to Lightviews and Likhwane.

14

In May 2017, whilst I was on secondment to the MDDA, Ms Williams called me to discuss the legal and financial strategies agreed by StatSA and GCIS to recover the R7 762 000 from Lightviews and Likhwane under the pretext that she did not understand them clearly. I briefed her on the departments joint plan to recover the funds and we terminated the telephonic discussion.

15

I returned to the GCIS after another secondment to the Centre for Public Service Innovation in March 2018 and discovered that instead of pursuing the recovery of the funds from Lightviews and Likhwane, GCIS at the instruction of Ms Williams had reached a different agreement to refund StatsSA an amount of R7 762 000. In effect, the state was transferring funds from one department to another, without any economic or social benefit to citizens, when the funds could have been recovered from the party that had defrauded the state on the basis that the High Court had declared the contracts between GCIS and Lightviews void ab initio. This effectively translates to a loss suffered by the state on a contract that was found to be invalid and illegal by the High Court. I have attached the court ruling by the honourable Mr Justice Tuchten, issued by the High Court Register on 31 March 2016.

16

I am of the opinion that Ms Williams has participated in a corrupt act in that she authorised an irregular transaction and the advance payment of R7 762 000 to Lightviews and Likhwane on or about 7 January 2011, further that she was dishonest in that she sought to conceal an inducement to Lightviews in return for them abandoning the claim against GCIS for R19 275 120. Ms Williams had a legal duty to recover and prevent further abuse of state resources by Lightviews and Likhwane. Instead, she hindered or prevented the recovery of state funds and abetted an act of fraud against the state.

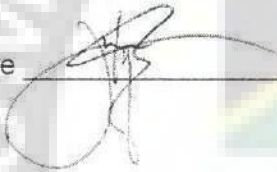
17

In redirecting funds from the departmental vote of the GCIS, Ms Williams has not only diverted voted funds for purposes unrelated to those for which they were intended, but has also inexplicably shown consistent favor to Lightviews and Likhwane. The financial statements of GCIS should have disclosed the losses suffered as required by the Public Finance Management Act and National Treasury Regulations and legal avenues pursued to recover the R7 762 000.

18

I know and understand the contents of this statement. I have no objection to taking the prescribed oath. I consider the prescribed oath to be binding on my conscience.

Signature



22 OCTOBER 2018



MM3

**government  
communications**Department:  
Government Communication and Information System  
REPUBLIC OF SOUTH AFRICA

Published on *Government Communication and Information System (GCIS)*  
(<https://www.gcis.gov.za>)

[Home](#) > Statement on Cabinet meeting of 2 February 2011

## Statement on Cabinet meeting of 2 February 2011

---

### 3 February 2011

Cabinet took the opportunity of the meeting, since the hospitalisation of the former State President Nelson Mandela to wish him well and a speedy recovery. Cabinet appeals to all South Africans to continue supporting him and thanked everyone who took the opportunity to pray for his recovery and send the family messages of support during this time.

Cabinet noted the impact that the floods in a number communities and re-affirmed its commitment to providing assistance and support to all affected communities. An Inter-Ministerial Committee is coordinating government's response and is tasked with the responsibility to ensure that all the three spheres of government provide assistance and support to our communities in a coordinated manner.

The National Disaster Management Centre, located at the Department of Cooperative Governance and Traditional Affairs (COGTA), is monitoring the situation country-wide and provides regular reports to the IMC and other relevant institutions. The National Joint Operations Center (NATJOINTS) was activated to coordinate the response by the security cluster. The NATJOINTS coordinates with the disaster management centre to ensure prompt deployment of security forces in all the affected areas.

The GCIS has re-activated the 24-hour operations room (Ops room) to facilitate the speedy flow of information regarding flooding to keep the government and the public informed.

Cabinet commends all members of the security forces, emergency services, civil society organisations and members of the public for supporting communities and families that are in distress as a result of the floods. The public must be assured that government is doing everything to mitigate the impact of the floods.

Cabinet welcomed and supported the initiative by the departments of health and basic education to introduce and implement voluntary HIV testing in schools. This initiative is part of a campaign aimed at ensuring that all South Africans know their HIV status and receive treatment if necessary. A task team consisting of the South African National AIDS Council Secretariat, SANAC Childrens sector, social workers from the Department of Social Development and representatives from the national and provincial education departments has been set up to ensure that the campaign is properly implemented.



The task team will formulate guidelines on how the campaign will be implemented and provide support to schools that require support. A workshop has been held the Foundation for Professional Development to prepare all the professionals and NGO's that will be involved in the testing of learners. Parents must be assured that care will be taken to ensure that the testing is done in a professional and responsible manner. We urge all teachers and learners to participate in the campaign.

Cabinet noted that President Jacob Zuma will be delivering his State of the Nation Address on the evening of the 10 February. The address will be followed by a debate in the National Assembly and a series of media engagements by the Ministers. The Minister of Finance will deliver his budget speech in Parliament on the 23rd February 2011.

Cabinet calls on all South Africans to register for the upcoming local government elections. The registration will take place on the 5-6 February 2011.

Cabinet discussed the current challenges in a number of countries on the Continent and re-affirmed its commitment to the active promotion of democratic values and practices in which governments constantly strive to deepen ties with their people and address the real concerns and problems facing them. Cabinet supported the position taken by the African Union to establish a panel to deal with challenges in the Ivory Coast.

Cabinet approved that South Africa hosts the Southern African Customs Union (SACU) Summit and the Second Tripartite Summit of the Southern African Development Community – East African Community-Common Market of East and Southern Africa (SADC-EAC-COMESA) in February and March 2011 respectively.

Cabinet also noted and endorsed the outcomes of the Clean Energy Ministerial Meeting that held in Washington DC on 19 – 20 July 2010. The meeting endorsed a number of low carbon technologies including the following initiatives: Super-efficient Equipment and Appliances Development (SEAD); International Smart Grid Action Network (ISGAN); Continuous Energy Performance Improvement (CEPI); Renewables such as wind, solar, Biofuels; Carbon Capture Use and Storage (CCUS); Electric/Advanced Vehicles and 'C-3E Women's Initiative and Clean Energy, Education and Empowerment.

Cabinet noted and welcomed the Minister of Energy, Ms Dipuo Peters's nomination as Ambassador of Energy for Africa.

Cabinet noted and supported the appointment of Dr Sandile Malinga as the Chief Executive Officer of the South African National Space Agency (SANSA).

Cabinet noted that Mr Themba Maseko was to be redeployed to the Department of Public Service and Administration (DPSA) with immediate effect. Mr Maseko will be replaced by Mr Jimmy Manyi as the new Government Spokesperson and Chief Executive Officer of the Government Communication and Information System (GCIS).

**Enquiries:**

Themba Maseko  
Cell: 083 645 0810

**Issued by: Government Communications (GCIS)**

[top](#)

[Cabinet statements](#) <sup>[1]</sup>

**Year:** 2011

**Media Statement date:** Thursday, February 3, 2011

**Source URL:** <https://www.gcis.gov.za/content/newsroom/media-releases/cabinet-statements/statement-cabinet-meeting-2-february-2011>

**Links**

[1] <https://www.gcis.gov.za/category/media-releases/cabinet-statements>





"MM4"

NN2-MM-107



MINISTER IN THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA  
Private Bag X1000, Pretoria, 0001

Mr MJ Manyi  
PO BOX 6021  
RIVONIA  
2128

TRANSFER  
APPEARS  
34X

Dear Mr Manyi

I have pleasure in informing you of your transfer with effect from the 3<sup>rd</sup> of February 2011 until 25 August 2012 from the Department of Labour to the post of the Director - General: GCIS on all-inclusive remuneration package per annum. You will also receive a non-pensionable head of department allowance calculated as 10% of your all-inclusive remuneration package. Your transfer will be based on twelve calendar months period.

The all-inclusive remuneration package consists of a basic salary, the State's contribution to Government Employees Pension Fund and flexible portion. The flexible portion must be structured in terms of the guidelines that are contained in the Senior Management Handbook attachment as Annexure A at Head Office in Pretoria.

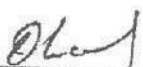
You will be required to enter into performance agreement within one month of your transfer and you are also required to complete a financial disclosure form that will be provided to you.

Please contact Ms Phumla Williams, DCEO: Corporate Services on the telephone 012 314 2402 should you have any inquiries regarding your transfer.

May I take this opportunity to congratulate you on your transfer.

I trust that you will be happy and successful in your new sphere of employment.

Yours Sincerely;

  
O.C. Chabane, MP  
Minister In The Presidency: Performance Monitoring, Evaluation and  
Administration  
Date 22/03/2011

## South Africa: North Gauteng High Court, Pretoria

**DONATE TO SAFLII >>>**

You are here: SAFLII >> Databases >> South Africa: North Gauteng High Court, Pretoria >> 2017 >> [2017] ZAGPPHC 656

| Noteup | LawCite

Apleni v President of the Republic of South Africa and Another (65757/2017) [2017] ZAGPPHC 656; [2018] 1 All SA 728 (GP) (25 October 2017)

### Download original files

 PDF format

 RTF format

### Bookmark/share this page

 SHARE   

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

Case Number 65757/2017

Reportable

Of interest to other judges

Revised.

25/10/2017

In the matter between:

MKUSELI APLENI

And

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

MINISTER OF HOME AFFAIRS

APPLICANT

1<sup>st</sup> RESPONDENT

2<sup>nd</sup> RESPONDENT

JUDGMENT

Fabricius J,

1.

This urgent application was set down for 3 October 2017. It is dated 23 September 2017, and was filed with the Registrar of this Court on 26 September 2017. On the same day, the Respondents who intended to oppose the application were required to deliver a Notice of Opposition, and then file their Answering Affidavit on or by 27 September 2017. The Applicant would then reply by 28 September 2017. First Respondent filed a Notice of Intention to Oppose on 27 September 2017, and Second Respondent on 26 September 2017.

2.

The Director-General in the Presidency, filed an Answering Affidavit on behalf of First Respondent on 28 September. On behalf of the Second Respondent, the Acting Director-General in the Department of Home Affairs, Mr J. McKay, filed an Answering Affidavit dated 28 September.

Page 2 of 9 "MM5"

3.

The application was not heard during the week of 3 October in the Urgent Court, but was referred to the Deputy Judge President for the allocation of a special date. His allocation is dated 5 October 2017, and sets the application down for hearing as a special motion on 17 October. Direction was given as to the filing of further affidavits. On 13 October, the Second Respondent then filed an Answering Affidavit.

4.

The relief that the Applicant seeks on this urgent basis, is that:

- "2. It is declared that the Second Respondent lacks authority to suspend the Applicant;
3. It is declared that the suspension of the Applicant by the Second Respondent is unconstitutional, invalid and of no force and effect.
4. The decision by the Second Respondent to suspend the Applicant is set aside".

A cost order against the Second Respondent was also sought. No relief was sought against the First Respondent.

5.

The Applicant is the Head of the Department of Home Affairs ("the Director-General") in terms of the provisions of s. 12 of the *Public Service Act 103 of 1994 as amended*, ("PSA"). He had been re-appointed as the Director-General for a period of five years commencing from 1 April 2015. On 18 September 2017, the Second Respondent placed him on precautionary suspension, as it was put. He alleged in the Founding Affidavit that this precautionary suspension was invalid and unlawful, because the Minister acted outside of her authority. The Minister had no power to suspend him. In any event, so it was alleged, that even if the Minister had the power to suspend him:

1. The Minister's reasons for such suspension were irrational. The Minister did not have a justifiable reason to believe, *prima facie* at least, that he had engaged in the serious misconduct alleged.
2. The process followed by the Minister in putting into effect his precautionary suspension was procedurally unfair.
3. The Minister had failed to show any objectively justifiable reason to deny him access to the workplace based on the integrity of any pending investigation into the alleged conduct, or some other relevant factor that would place the investigation or the interest of the affected parties in jeopardy.

6.

As far as the First Respondent was concerned, he was sited in his official capacity as Head of the Government of the Republic of South Africa and the Head of the National Executive in terms of s. 83 (a) of the *Constitution*. In terms of s. 12 (1) of the *Public Service Act*, the appointment and other career incidents of the Heads of Department in the case of a National Department shall be dealt with by the President.

7.

#### Urgency:

As far as urgency was concerned, the Applicant relied on a legal argument, and a number of arguments pertaining to facts which have been disputed in the two Answering Affidavits by or on behalf of the Second Respondent, and upon which, in these proceedings, one is unable to make a finding. The point of law is that the Second Respondent has no power to suspend him from his position as Director-General. Only the First Respondent can do so. Ministers do not appoint Directors-General as these appointments are done by Cabinet. Ministers therefore also do not have the powers to suspend, implied or otherwise. These powers are vested in the President. It was alleged in the Founding Affidavit that the only instance where a Minister could take a decision to suspend a Director-General was where the power is implied in the general power of a Minister or has been delegated by the President.

Neither applies here.

8.

He also alleges that the application was brought to vindicate the Rule of Law, to ensure that the power is exercised by the correct repository of the power. As such, the application is founded on s. 1 (c) of the *Constitution*, and it was his contention that the decision of the Minister



infringed upon the principle of legality, and that as a result, the application was inherently urgent.

Page 3 of 9

MM5<sup>11</sup>

9.

The Applicant dealt with a number of factual situations which according to him indicated that the decision of the Minister was manifestly irrational. A number of these relate to cases of litigation pending in this Court, which Applicant says the Second Respondent intends to settle, despite there being no lawful grounds therefore. The Minister has denied this, and stated that such decisions would not be taken without advice from their legal representatives.

10.

Apart from those issues, the Applicant also relies on urgency, with reference to specific examples, by stating that the suspension of a Director-General has a substantial negative effect on service delivery and critical projects that the Government Department was carrying out. Certain of those critical functions require experience and institutional knowledge, and are not functions that should be fulfilled by someone acting in the position of Director-General. It is that context also that Applicant alleges that it was critical that the unlawful and irrational suspension be set aside as a matter of urgency. There were significant projects that were being delayed and hampered because of the instability that his suspension has caused. He also alleged that the Minister was abusing her powers, and was clearly attempting to remove him from his position so that she could influence the operational decisions of the department. I hold that the application is urgent. Where allegations are made relating to abuse of power by a Minister or other public officials, which may impact upon the Rule of Law, and may have a detrimental impact upon the public purse, the relevant relief sought ought normally be urgently considered.

11.

#### The precautionary suspension:

It was alleged that in placing the Applicant on precautionary suspension, the Minister exercised a power reserved for the President which had not been delegated to her. According to s. 12 of the *Public Service Act*, the appointment and other career incidents of the Heads of Department shall be dealt with, in the case of a Head of a National Department, by the President. His contract of service between him and the Government of the Republic also makes it clear that his appointment as Head of the Department of Home Affairs is in terms of s. 12 of the *Public Service Act of 1994*. The Minister is not the Applicant's employer, it was said, and therefore the particular provisions of the Public Service Handbook, which relate to the powers of the "employer", do not apply to him.

The extension of his employment contract was signed by the Minister of Public Service and Administration and the Minister of Home Affairs. In both letters the Ministers state that Cabinet approved the extension of the employment contract. In terms of the Constitution, the President is the Head of Cabinet. Even in respect of the extension of his term of Office, the Minister as the Executive Authority only acted after he obtained Cabinet approval for such extension. The only way in which the Minister would have been empowered to suspend him and exercise the power she purported to exercise, was if she had a proper and lawful delegation from the President, which has not occurred. The precautionary suspension was therefore unlawful and the Minister acted *ultra vires*.

12.

#### First Respondent's Answering Affidavit:

The Director General in the Presidency made an affidavit and stated that he did not intend to address the merits of the allegations of misconduct levelled against the Applicant as these were not within his personal knowledge. Because of the time strictures to which the Applicant had subjected the Respondents, he could not be apprised of the complete facts in this regard. It was also obvious that no relief was sought against the President. He disputed the urgency of the application. As far as the dispute about delegation was concerned, he relied on certain provisions contained in Chapter 8 of the *Senior Management Service Handbook of 2003* ("the *SMS Handbook*") which makes provision for employment of Heads of Department.

Clause 18 of Chapter 8 of this handbook provides as follows:

#### "18. SUSPENSION

18.1. The suspension of HoD's is covered in Chapter 7.

18.2. The EA may suspend a HoD on full pay if :

1. She/ he is alleged to have committed a serious offence ; and

2. The EA believes that the presence of the HoD at the workplace might jeopardise an investigation into the alleged misconduct, or endanger the well-being or safety of any person or State property.

18.3. The suspension of this kind is a precautionary measure that does not constitute a judgment and must therefore be on full pay.

18.4. When a HoD is suspended, a disciplinary hearing must be held within 60 days. The Chair of the hearing must then decide on any further postponement and/ or further suspension."

It was said that the "EA" referred to in clause 18.2 of Chapter 8 of the SMS Handbook is the executive authority, mainly the Minister. That is the meaning of "executive authority" in the Public Finance Management Act, 1 of 1999 in relation to a National Department, and there was no reason to deviate from that here. This was reinforced by Clause 2.8 (ii) of Chapter 7 of the *SMS Handbook*. Clause 2.7 (2) of Chapter 7 of the *SMS Handbook* provides as follows:

"(2) Precautionary suspension or transfer

(a) The employer may suspend or transfer a member on full pay if –

- The member is alleged to have committed a serious offence; and
- The employer believes (I underline) that the presence of a member at the workplace might jeopardise any investigation into the alleged misconduct, or endanger the wellbeing or safety of any person or state property".

Clause 2.8 of Chapter 7 of the *SMS Handbook* defines "employer" as:

"employer" means –

- i) In respect of all members (excluding heads of department in their capacities as employees), the head of department or any member of his/ her department designated to perform the specific action; and
- ii) In respect of heads of department, the relevant executing authority".

13.

The deponent then referred to Clause 2 of Chapter 8 which deals with "Employment of Heads of Department" and provides for a delegation by the President:

"2. DELEGATION OF POWERS:

2.1 The Public Service Act, 1994 (3 (B) (i) ) entrusts –

- (1) The President has the power to undertake and manage the appointment and career incidents of Heads of Department of National Departments and organisational components; and
- (2) ...

2.2 The Act (s. 3 (B) (4)) further stipulates that the President/Premier may delegate:

- (1) The power to appoint a HoD as well as;
- (2) Any other power regarding the career incidents of HoD's.

(2.3) The President has delegated his powers to the Deputy President and Ministers. (s. 3 (B) (4) of the Act) . Letter of President dated 8 October 1999 - Annexure A) . This chapter has been drafted on the assumption that EA's have been awarded the power to manage the career incidents of HoD's".

The letter of the President reads as follows:

"8 October 1999

Dear Colleague

DELEGATION OF POWERS ENTRUSTED TO THE PRESIDENT: HEADS OF NATIONAL DEPARTMENTS

As you are aware, a new regulatory framework to effectively manage human resources within the Public Service has come into operation with effect from 1 July 1999.

Section 38 of the *Public Service Act*, 1994 entrusts me as President with the power to undertake and manage the appointment and other career incidents of heads of national departments. These powers include, *inter alia*, the appointment, deployment, performance management, salary increases, secondments and extension and termination of employment contracts of heads of departments in the national sphere of government.

In view of the fact that Ministers and their Departmental heads actively and continuously work together to optimise departmental functioning contribute towards effective service delivery. I have delegated, in accordance with section 38 (4) (a) of the *Public Service Act*, 1994, the powers entrusted to me as described in the first column of the attached Annexure, to Ministers. Please note that the deployment of heads of departments in terms of section 38 (2) (a) of the Act, is not delegated. I will exercise this power together with you and other Executing Authorities in Cabinet, as envisaged in the said section, read with section 85 (2) of the Constitution, 1996.



The application of the delegated powers listed in the Annexure is, besides the conditions laid down therein, also subject to the relevant provisions of the *Public Service Act, 1994*, the new Regulations and other instructions.

The Minister for the Public Service and Administration will gladly render support and give advice to the application of delegated powers, if required.

Kind regards.

T. M. MBEKI

Dr E. G. Pahad

Minister in the Office of the Presidency

Room 223B

Tuynhuys

CAPE TOWN

It will be noted that this particular copy, the only one which is before me, was not signed by President Mbeki and by another Cabinet member envisaged by the provisions of s. 101 (1) and (2) of the *Constitution* of the Republic.

14.

In that regard he drew attention to the fact that s. 3 B of the *Public Service Act* was repealed by s.5 of *Act 30 of 2007* with effect from 1 August 2008. Section 42 A (3) of the *Public Service Act* however provides that:

"(3) The executive authority referred to in s. 12 (1) may, in the case of –

(a) The President, delegate to the Deputy President or a Minister any power conferred on the President by s. 12; or

(b) ..."

15.

On 10 October 2017, the Applicant filed a second Supplementary Affidavit referring to a press statement issued by the Presidency on 5 October 2017. In that press statement it was stated that "the President's position with regard to this question (the Minister's authority to suspend the Applicant) (my insertion) is that the authority was delegated to the Minister of Home Affairs. This was apparent from Chapter 8 of the *Senior Management Service Handbook, 2003* ("the *SMS Handbook*).

16.

On 13 October 2017, the Second Respondent filed an Answering Affidavit. She took issue with the urgency of the application. She stated that the haste with which the application had been launched and pursued, impacted upon her rights as Minister of Home Affairs to access to Court as contemplated in s. 34 of the *Constitution*. This right includes the right to consult adequately, gather evidence and prepare argument. This was also recognised in international instruments such as the *African Charter on Human and Peoples' Rights, 1986*. I do not intend to deal with this Charter in these proceedings.

I agree that the question of urgency could justifiably have been debated on 3 October 2017. It is however accepted law that even where a Respondent is given strict time constraints, it must comply therewith as best it can, or take the consequences. See: *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pen Publikasies (Edms) Bpk 1972 (1) SA 773 (AA)* at 782 D.

After the new date had been determined by the Deputy Judge President, all relevant affidavits had been filed by 13 October 2017 and in the interests of considerations relating to the Rule of Law, I decided to hear the application as being urgent for present purposes.



I do not however agree with the assertion by the Minister that she can justifiably directly rely on the provisions of s. 34 of the *Constitution* of the Republic. The section does not say that a person is constitutionally entitled to "Access to Court" irrespective of relevant provisions of substantive or procedural law. Access to Court and related matters, both of a substantive and procedural nature are now regulated by the Superior Courts Act No. 10 of 2013, the *Uniform Rules of Court*, and relevant Practice Manuals and Directions relating to urgency. A party cannot justifiably rely on the provisions of s. 34 of the *Constitution* to demand time to consult, gather evidence or prepare argument. Were it otherwise, this article in the *Constitution* could be used (and abused) to prevent or delay almost any urgent application. The principle of subsidiarity prohibits such an approach. This means that where legislation gives effect to constitutional rights, it is not permissible to go behind that legislation by relying on the *Constitution* directly. The rights in s. 34 are given effect to, *inter alia*, by the *Uniform Rules of Court*.

See: *Giesecke & Devrient Southern Africa (Pty) Ltd v Minister of Safety and Security 2012 (2) SA 137 (SCA)* at par. [24] It is clear that a litigant who seeks to assert a constitutional right should in the first place base his or her case on any legislation enacted to regulate the right, not the *Constitution*.

See: *South African National Defence Union v Minister of Defence and Others 2007 (5) SA 400 (CC)* at par. [52].

18.

#### The delegation:

Counsel for Applicant argued as follows:

1. There was no delegation by President Zuma. That is common cause;
2. From an evidentiary point of view, there was no delegation that complied with the provisions s. 101 of the *Constitution* inasmuch as the letter by President T. M. Mbeki that formed part of the *SMS Handbook*, had not been signed by him, nor countersigned by another Cabinet member of the particular National Department concerned. It was merely a case of the name of Dr E. G. Pahad, Minister in the Office of the Presidency, being mentioned beneath the name of T. M. Mbeki.

In that context, that delegation could not be regarded as being lawful;

3. Quite apart from that, s. 38 of the *Public Service Act* of 1994, upon which President Mbeki ostensibly relied and in terms of which he purported to act, had been repealed by s. 5 of the Public Service Amendment Act No. 30 of 2007, with effect from 1 August 2007.

An Annexure to this particular purported delegation states as following:

#### "2. DELEGATIONS

- 2.1 The President delegates the powers assigned to him in terms of s. 38 (1) of the *Public Service Act, 1994* (*Proclamation 103 of 3 June 1994*), to the extent indicated in the Annexure and subject to the conditions as set out thereunder, in terms of s. 38 (4) of the *Public Service Act, 1994* to Ministers as indicated".

The Annexure to this submission refers amongst others to the appointment to the post of Head of Department, the Minister who was the "Executing Authority" under the 1994 Act, and the provisions of s. 12 (1) of the 1994 Act. Those particular provisions, applied also to the suspension of a Head of a Department. The "Notes" to this particular letter with the Annexures mentions the fact that the President was exercising his Executive Authority together with the "other members of Cabinet", as per s. 85 (2) of the *Constitution of 1996*.

19.

It was argued that it was a well-established principle that the repeal of an enabling statute of power in turn repeals a Regulation or By-law made thereunder unless it is preserved by some or other provision. In this context reference was made to *Blaikie-Johnston v D Nell Developments (Pty) Ltd and Another 1978 (4) SA 883 (N)* at 889 B to E, *Hatch v Koopoomal 1936 AD 190* at 197 and in particular *R v Madine 1961 (3) SA 29* at 30 H to 31 A, where it was held where a particular enabling power had been repealed, and there had been no preservation of certain Regulations, a particular Proclamation ceased to have any validity, as well as a certificate issued in terms thereof. It was contended that the position was in fact very clear: any delegation done pursuant to a statute that was repealed, lost its force, unless saved by the repealing provisions. In this particular instance, the power to delegate was now contained in the 2007 Act by way of the provisions of s. 42A (3), which stated that the Executive Authority referred to in s. 12 (1) may, in the case of the President, delegate to a Minister the powers conferred on the President by s. 12.

Section 12 of the 2007 amending Act deals with the appointment of Heads of Department and career incidents and states that such, in the case of a Head of a National Department, shall be dealt with by the President. In *Masethla v President of the Republic of South Africa and Another [2007] ZACC 20; 2008 (1) SA 566 (CC)* at par. 147, it was held that "career incidents" was a wide enough phrase to include other matters relating to the career of a head of a department including terms and conditions of employment. This would in my view then include the power to suspend such a head.

20.

I was also referred to a relevant dictum in *Pharmaceutical Manufacturers Association of South Africa and Another v In re Ex parte President of the Republic of South Africa and Others* [2000] ZACC 1; 2000 (2) SA 674 (C) at par. 12, where it was said that it was well-established that delegated powers must be exercised within the limits of the authority that was conferred. Therefore, the repeal of a legislative provision must in turn revoke any power to exercise that provision including a power in terms of a delegation of authority.

21.

In this case there was also no preservation. The *Public Service Act* has a repeal of laws and savings provision in s. 43. Section 43 (2) provides that "anything done under any law repealed by subsection (1) and which could be done under provision of this Act, shall be deemed to have been done under that provision". The repeal of s. 38 of the *Public Service Act* by the *Amendment Act 30 of 2007*, is not included in the list of laws that are saved by s. 43 (2). It was therefore not open to the First Respondent to argue that the delegation and power provided for in s. 38 was now catered for in s. 12 (1) and s. 42A (3) of the amending Act. Had it been the intention of the legislature to preserve anything done under the repealed s. 38, it would have expressly stated so. In that context I was referred to the unreported decision in *Roy Ramdass Incorporated v Amajuba District Municipality and Others* 2003 JTR 0180 at p. 10, where P. Combrinck J said the following: "Once a delegation of powers was effected under existing legislation, such delegation is not rendered void or invalid simply because the Act giving them power to delegate has been repealed. The resolution passed by the Council was passed legitimately under existing legislation and in my view, Executive Committee's power to act in terms of such delegation did not fall away once the Act was repealed". No authority was given for this statement and I do not agree with it. It is clearly wrong. The provisions of s.12 (1) and (2) of the *Interpretation Act* 33 of 1957 as amended also do not assist Respondents as s. 38 was not specifically saved, as I have said.

22.

It is also clear that in terms of the provisions of s. 84 (2) (e) of the *Constitution of the Republic*, the powers and functions of the President include the making of appointments required by the *Constitution* and legislation. The *Public Service Act* as amended is the legislative instrument that gives effect to this function and more particularly, by way of provisions of s. 12 (1).

23.

As far as the question is concerned whether or not President Mbeki's "letter" complies with the provisions of s. 101 (1) (b) of the *Constitution*, it was argued on behalf of the President that the relevant delegation was indeed in writing. Mr Ngilwana SC also submitted that the delegation by President Mbeki was "akin" to an administrative decision, but was not an executive decision merely because the President had made it. The *Public Service Act*, by way of the provisions of s. 42A (7) (a) merely required that any delegation of a power to perform a duty in terms of that section had to be in writing.

24.

It therefore needs to be decided whether or not the particular delegation herein was an executive decision. A number of authorities were put before me in this context and it is clear that at least the following considerations pertain:

1. The definition in the *Promotion of Administrative Justice Act No. 3 of 2000* ("PAJA") of "administrative action" has various features amongst which are that such decision must adversely affect the rights of any person, but does not include the executive powers or functions of the National Executive, including certain powers and functions specifically mentioned in the definition section. I was not told which rights of any person would be affected by the particular delegation and I cannot think of any rights being adversely affected in this particular instance;
2. The nature of the public power is important to determine its true character;
3. The source of the power must be considered, as well as its purpose;
4. The question whether or not the exercise of a public duty is involved and how closely such would be related to policy matters;
5. A distinction must be drawn between the functionary and the particular function. The mere fact that a power is exercised by a member of the Executive is not in itself determinative. Executive powers are, in essence, high-policy or broad direction-giving powers.  
See: *Minister of Defence and Military Veterans v Motau* 2014 8 BCLR 930 (CC) at par. [33] and further .
6. Each case must be determined on its own merits.

25.



It is clear from the actual delegation and certain provisions contained in the Annexures thereto which I have mentioned, that President Mbeki's letter is more closely related to policy matters in terms of all relevant provisions of the *Public Service Act*. It is clearly envisaged that the optimum departmental functioning is a consideration as well as effective service delivery. These are matters that pertain to the executive and in my view are not administrative functions, nor "akin" to an administrative act.

See: *The Minister of Home Affairs and Others v Scalabrini Centre and Others* 2013 (6) SA 421 SCA at par. /48] to /57], and the cases referred to in those paragraphs.

26.

In my opinion, the letter of President Mbeki is an executive act and accordingly it had to comply with the provisions of s. 101 (1) (a) of the *Constitution*. From an evidentiary point it did not: there is no evidence before me that President Mbeki signed such delegation or that it was signed by a Cabinet member as envisaged by the mentioned section. On that basis, I therefore cannot find that it was a lawful delegation in terms of s. 101 (1) (a) of the *Constitution*.

See: *Masetlha v President of the Republic of South Africa and Another* [2007] ZACC 20; 2008 (1) SA 566 (CC) at par. 15, where it was unsurprisingly held with reference to the *Constitution* that a decision by the President, if it is to have legal consequences, must be in writing. As I have said, apart from the letter annexed to the Handbook, no other delegation was put before me, despite a request in terms of Rule 35 (12) having been made by the Applicant, and despite sufficient time having been afforded to the Respondents to produce it.

27.

In my opinion, the purported delegation was in any event rendered ineffective by the repeal of the provisions of s. 38 of the *Public Service Act* for the reasons stated. No delegation in terms of the amended *Public Service Act* exists. The result is that the Second Respondent, the Minister, had no lawful authority to suspend the Applicant.

28.

In the light of this finding it is not necessary to deal with other arguments pertaining to whether her decision was rationally connected to the purpose for which it was made, and whether that test had to be made on a subjective basis as seemingly envisaged by the Handbook, or on an objective basis as eloquently contended for by Applicant's Counsel, Mr Mokhari SC and Mr T. Ngcukaitobi.

29.

During the hearing it came to my notice that the Second Respondent had been replaced by a new Minister and had been deployed to another department. After an appropriate adjournment, I was told that this Cabinet re-shuffle did not impact upon the present proceedings and that they ought to continue. (Obviously without any reference to the consideration that a relationship of trust ought to exist between a Minister and a Director-General). On 19 October 2017, I was informed by the Attorneys acting on behalf of the Applicant that the new Minister would not interfere with this Court process and that she would prefer to await my judgment before taking any particular decision.

30.

In the light of all of the above, the following order is made:

1. It is declared that the Second Respondent, the Minister of Home Affairs, lacked authority to suspend the Applicant;
2. It is declared that the suspension of the Applicant by the Second Respondent is unconstitutional, and of no force or effect;
3. The precautionary suspension imposed by the Second Respondent is set aside.
4. The Second Respondent is ordered to pay the costs of this application, including costs of two Counsel.

JUDGE H.J FABRICIUS

JUDGE OF THE HIGH COURT GAUTENG DIVISION, PRETORIA



Case number: 65757/17

Counsel for the Applicant: Adv W. Mokhari SC

Adv T. Ngcukaitobi

Adv L. Zikalala

Instructed by: Hogan Lovells (South Africa)

Counsel for the 1<sup>st</sup> Respondent : Adv V. Ngalwana SC

Adv F. Karachi

Instructed by: State Attorney

Counsel for the 2nd Respondent: Adv G. Hulley SC

Adv A. Mofokeng

Instructed by: State Attorney

Date of Hearing: 17 October 2017

Date of Judgment: 25 October 2017 at 10:00





2<sup>nd</sup> floor, Hillside House  
17 Empire Road,  
Parktown  
Johannesburg  
2193

Tel (International): +27 (10) 214-0651  
Tel (Tollfree): 0800 222 097  
Email: [inquiries@sastatecapture.org.za](mailto:inquiries@sastatecapture.org.za)  
Web: [www.sastatecapture.org.za](http://www.sastatecapture.org.za)

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

**16 October 2019**

**To: Mr. Mzwanele Manyi**

**E-mail: [mzwanele@mweb.co.za](mailto:mzwanele@mweb.co.za)**

**Dear Mr Manyi**

**RE: MANYI // COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF  
STATE**

- 1 We refer to your testimony before the Commission at the end of 2018 and your email dated 20 August 2019.
- 2 Since your testimony at the Commission, the Commission has continued with its investigations.
- 3 There are a number of matters arising from those investigations that it wishes to engage you on. These are set out below.

## GCIS and The New Age

- 4 The Commission has obtained an affidavit from Ms Williams in response to your testimony. Ms Williams's affidavit deals with various aspects of your evidence. The affidavit plus its annexures are attached to this letter as "A".
- 5 The Commission requires your response to a number of matters arising from the affidavit. These are set out below.
  - 5.1 In paragraphs 18 to 28 of the affidavit, Ms Williams deals with your statement during your testimony that GCIS was run as "a mini VBS" prior to you joining the organisation. You are invited to indicate which (if any) of the statements in this section you dispute and the grounds on which you do so.
  - 5.2 In paragraphs 29 to 51 of the affidavit, Ms Williams deals with your statement in evidence that GCIS irregularly appointed services providers in relation to the 2011 Census campaign in 2011. Ms Williams's affidavit states that:
    - 5.2.1 There was a full National Treasury investigation into this matter.
    - 5.2.2 The officials of GCIS implicated in that investigation were disciplined.
    - 5.2.3 There was no finding against her in the internal investigation you undertook within GCIS on this matter nor in the final report from National Treasury.
    - 5.2.4 GCIS has since taken steps to endeavour to recover the funds spent.



5.3 You are invited to indicate which (if any) of these statements you dispute and the grounds on which you do so.

5.4 At paragraph 55 of the affidavit, Ms Williams's refers to the National Treasury's Code of Conduct for Bid Adjudication Committee (annexure PW15) which requires bid adjudication committees to have cross functional teams comprising senior officials of whom at least one is a supply chain practitioner and recommends that the Chief Financial Officer forms part of the committee. Paragraph 54 of the affidavit refers to the GCIS Procurement Policy of 2009/10 (annexure PW16) which recommends that the bid adjudication committee should comprise the Deputy Direct-General Corporate Services and the Chief Directors of the following disciplines: Government Media Liaison, Communication Service Agency, Provincial Liaison, Policy Research and Corporate Services.

5.4.1 Did the Bid Adjudication Committee that you appointed at the end of 2011 meet the requirements of the National Treasury Code and the GCIS Policy?

5.4.2 If so, how did it meet the requirements?

5.4.3 If not, why not?

5.5 In paragraphs 74 to 79 of Ms Williams's affidavit, she deals with Telmar's rankings of The New Age. Annexure PW18 shows that for the period 2011 to 2013, The New Age was not in the top ten newspapers in terms of readership. In 2011 and 2012, the New Age received an "unstable" rating from Telmar which meant that the newspaper should be treated with caution for decision making.

5.6 The New Age was also amongst the most costly of the newspapers with a cost per thousand in 2013 of R820.27.

5.6.1 In the light of this information,

- (a) do you continue to maintain, as you did in your affidavit presented to the Commission and deposed to on 21 November 2018, that "the TNA had very competitive prices if not the least expensive, so it made business sense to advertise in TNA";
- (b) do you agree that, during 2011 and 2012, the GCIS's most objective tool in deciding where adverts should be placed did not recommend placing advertisements with the New Age?

6 You are invited to respond to any other matters contained in Ms William's affidavit which you deny or dispute. If you do so, please indicate the grounds on which you deny or dispute those aspects.

**The disciplinary process when you were at the Department of Labour**

7 In the course of the Commission's further investigations regarding your transfer into GCIS at the beginning of February 2011, it has come to the Commission's attention that you were involved in a disciplinary process when you were the Director-General in the Department of Labour. The Commission requires further information regarding this process and therefore requests your assistance with the following questions:

7.1 When was the disciplinary process initiated?

- 7.2 What were the charges against you?
- 7.3 What form did the disciplinary process take?
- 7.4 Were there hearings convened in the process? If so, did you participate in them? If you did not participate in them, why not?
- 7.5 The Commission has obtained a copy of a letter dated 29 October 2010 addressed to you, in which former Minister Mdladlana terminated your appointment as Director-General of the Department of Labour with effect from 1 December 2010. A copy of that letter is attached hereto as "B". It has the following questions arising from that letter:
- 7.5.1 Did you take steps to appeal this decision of the former Minister? If so,
- (a) to whom did you appeal?
- (b) please provide the Commission with copies of any and all documents filed in that appeal which may be in your possession or under your control.
- 7.5.2 Did you refer the decision to the Public Service Bargaining Council? If so,
- (a) please provide the Commission with copies of any and all documents filed in that process which may be in your possession or under your control.



7.5.3 Did you engage with any of the following persons about your termination as Director-General of Labour after receiving the letter attached as "B" hereto:

- (a) former Minister Mdladlana,
- (b) former Minister of Public Administration, Mr Baloyi,
- (c) former Minister of Labour, Ms Oilphant;
- (d) former President, Mr Zuma?

If so, please provide full details of those engagements.

7.6 In your testimony before the Commission on 27 November 2018, you testified that before you were transferred to GCIS, you had a discussion with the late Minister Chabane in which you consented to being transferred to GCIS. Please provide details of this discussion:

7.6.1 When did it occur?

7.6.2 Where did it occur?

7.6.3 Who was present?

7.6.4 What, precisely, was discussed?

7.7 In your testimony before the Commission on 27 November 2018, you described your appointment as head of GCIS as a "transfer". How could your appointment have been a transfer if, as from 1 December 2010, you had been dismissed as Director-General of the Department of Labour?

**Your correspondence of 20 August 2019**

8 In your email of 20 August 2019, you enquired about the Commission's investigations regarding the alleged R1.7 billion that was irregularly spent by National Treasury through the IFMS project.


9 I can confirm that this allegation is receiving the Commission's attention.

**Conclusion**

10 Please would you provide the Commission with a response to the issues set out above on affidavit by Monday, 21 October 2019.

11 Your cooperation is appreciated.

Yours faithfully



**Ms Brigitte Shabalala**

**Acting Secretary**

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

**Lerato L. Buthelezi**

**From:** Shannon S. Van Vuuren  
**Sent:** Friday, 18 October 2019 13:39  
**To:** Mzwanele Manyi  
**Cc:** Andre J. Lamprecht; Ouma Thagane  
**Subject:** RE: Testing 2 // Mzwanele Manyi // Commission of Inquiry into allegations of State Capture

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	Mzwanele Manyi	
	Andre J. Lamprecht	Delivered: 2019/10/18 13:39
	Ouma Thagane	Delivered: 2019/10/18 13:39

Dear Mr. Manyi

I refer to your email below as well as our telecom early yesterday evening.

As I mentioned, your affidavit is required as soon as possible so that the Commission can finalise matters. Monday's deadline was in no way intended to be unfair nor put you under pressure.

The Commission has no version to tell and requires your further input on those aspects relevant to your testimony. Thank you for your suggestion regarding a meeting between yourself and the relevant members of the legal and investigation's teams.

This meeting has been arranged for Monday, 21 October 2019, at 1pm. I believe that you have been contacted by Ouma Thagane regarding flight/travel arrangements.

As requested, please find links below to the transcripts relevant to your testimony (I cannot attach PDF's because the size limit of this email will be exceeded – but you can save PDF's from the website):

[https://www.sastatecapture.org.za/site/files/transcript/27/14\\_November\\_2018\\_Sessions.pdf](https://www.sastatecapture.org.za/site/files/transcript/27/14_November_2018_Sessions.pdf)

[https://www.sastatecapture.org.za/site/files/transcript/33/26\\_November\\_2018\\_Sessions.pdf](https://www.sastatecapture.org.za/site/files/transcript/33/26_November_2018_Sessions.pdf)

[https://www.sastatecapture.org.za/site/files/transcript/34/27\\_November\\_2018\\_Session.pdf](https://www.sastatecapture.org.za/site/files/transcript/34/27_November_2018_Session.pdf)

Thank you for your willingness to meet with the Commission's Team and thank you for your cooperation with the work of this Commission.

Please do not hesitate to contact me regarding any queries in this regard.

Kind regards,

**Shannon Van Vuuren**

**Legal Advisor: Operations & Investigative Support**

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193 | Gauteng | South Africa |

Email: [shannonv@commissionsc.org.za](mailto:shannonv@commissionsc.org.za) | [www.sastatecapture.org.za](http://www.sastatecapture.org.za)





**From:** Mzwanele Manyi [mailto:mzwamanyi@gmail.com]  
**Sent:** Thursday, 17 October 2019 18:04  
**To:** Shannon S. Van Vuuren <ShannonV@commissionsc.org.za>  
**Cc:** Mzwanele Manyi <mzwamanyi@gmail.com>  
**Subject:** Re: Testing 2 // Mzwanele Manyi // Commission of Inquiry into allegations of State Capture

Dear Ms Van Vuuren

At the outset I must express my utter disappointment with the lack of rigour with which your team engaged with my testimony.

Both orally and by way of submission of concrete evidence I had responded to a few if not all of your questions.

I however undertake to repeat myself.

In fact I request that you furnish me with my transcript so that I can highlight for you how I responded to these very same questions.

As far as Department of Labour matters are concerned all my files are at home in Johannesburg whilst I am physically in Cape Town. Are you able to pay for my return flight?

I would need to get the cooperation of my then lawyers to retrieve pertinent details regarding issues related to my tenure at the Department of Labour. In the meantime, could I ask you to please ask former Minister Mdladlana to supply you with my confirmation of receipt of his alleged dismissal letter which I NEVER RECEIVED.

Your Monday 21 October 2019 deadline is way UNACHIEVABLE and GROSSLY UNFAIR.

Basically you are giving me Just 1 day, Friday, 18th October 2019 to respond to comprehensive questions received after 16h00 on the 17th October 2019. And even that Friday is spoken for, because I have a early morning flight to East London where I shall be the whole day for ATM business.

If I intended to answer yes/no then Monday would be no problem. But like I did during my submission, I want to supply you with as much evidence that is available as possible to support my responses, so please treat me with fairness and justice.

The Deputy Chief Justice has enjoined all those that make submissions to do so with supporting evidence. So please allow and enable me to comply, surely you are not setting me up for failure.

Finally, if you are willing to pay for my return flight, Cape Town to Jhb and back to Cape town, I would be happy to come to your offices and take you through my answers and evidence that are already in the bundles in your possessions and were made under oath.

I must inform you that I do feel a great sense biasness against me by the commission, I will include my reasons for feeling this way as part of my response.

I look forward to hearing from you..

Mzwanele Manyi

On Thu, 17 Oct 2019 at 16:35, Shannon S. Van Vuuren <[ShannonV@commissionsc.org.za](mailto:ShannonV@commissionsc.org.za)> wrote:

Dear Mr Manyi

Thank you for getting back to me and informing me that our email of yesterday has not gotten through to you. This may be due to the size of the one attachment – which I will send through shortly via a secure link.

As mentioned earlier, the Commission wishes to engage you on matters arising from its further investigations (which matters are relative to your testimony given before this Commission).

Please find the attached correspondence marked for your urgent attention.

Further, the two attachments referred to in this correspondence will be sent through shortly via secure link.

We look forward to receiving your affidavit and thank you for your cooperation. Please let me know if you will be able to submit your affidavit by Monday, 21<sup>st</sup> October 2019?

Please feel free to contact me regarding this matter.

Thanking you for your co-operation with the work of this Commission.

Yours faithfully,

Shannon Van Vuuren

Legal Advisor: Operations & Investigative Support

COMMISSION OF INQUIRY INTO STATE CAPTURE

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193 | Gauteng | South Africa |

Email: [shannonv@commissionsc.org.za](mailto:shannonv@commissionsc.org.za) | [www.sastatecapture.org.za](http://www.sastatecapture.org.za)



Shannon Van Vuuren

Legal Advisor: Operations & Investigative Support

COMMISSION OF INQUIRY INTO STATE CAPTURE

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193 | Gauteng | South Africa |

Email: [shannonv@commissionsc.org.za](mailto:shannonv@commissionsc.org.za) | [www.sastatecapture.org.za](http://www.sastatecapture.org.za)



**From:** Mzwanele Manyi [mailto:[mzwamanyi@gmail.com](mailto:mzwamanyi@gmail.com)]

**Sent:** Thursday, 17 October 2019 16:24

**To:** Shannon S. Van Vuuren <[ShannonV@commissionsc.org.za](mailto:ShannonV@commissionsc.org.za)>

**Subject:** Testing 2



**Lerato L. Buthelezi**

**From:** Mzwanele Manyi <mzwamanyi@gmail.com>  
**Sent:** Thursday, 31 October 2019 19:47  
**To:** Lerato L. Buthelezi  
**Cc:** mzwanele@mweb.co.za; Boipelo B. Ratshikana; Shannon S. Van Vuuren  
**Subject:** Re: Appearance before the Commission

Dear Lerato

If you could please bring to the attention of Ms Shabalala, my response here-under to the invitation sent to me, to appear before the Commission.

The letter inviting me to present myself at the Commission is very clear that the issues to be probed relate essentially to two matters, namely

- (a) the withdrawal of dismissal by former Minister Oliphant and
- (b) my transfer to GCIS. (This matter has been extensively discussed in my more than one testimonies that the Commission has in its possession)

My concerns are as follows

1. By all counts, this is a pure, Human Resources/Labour Relations/CCMA matter.
2. I can't see how it relates to the brief of State Capture Commission to the extent that I am affected, because on both matters I was not holding the power.
3. The people who were exercising their powers, rightly or wrongly are the former Ministers.
  - (a) Former Minister Mdladlana suspended me.
  - (b) Former Minister Mdladlana purported to have dismissed me (notwithstanding that he didn't even have the authority to do so).
  - (c) You have brought information that former Minister Oliphant rescinded the dismissal.
  - (d) The late Minister Chabane appointed me at GCIS on a transfer basis and you have a letter in that regard.
  - (e) I submitted a Cabinet Statement (Public Document) where my transfer was discussed.

It would appear to me that the former Ministers and Cabinet who were wielding power over me, are the best people/institution to answer all related questions on this matter.

I do not have information about what their thought processes were to arrive at all these decisions which they made over me.

I think it is unfair to me and to the Commission that I should take the stand to simply say I do not know.

4. What would have been of concern to both me and the Commission in my humble view, is if the new information somehow contradicts what I had already stated under oath, namely, that I was transferred. If anything, your own investigation that has brought up former Minister Oliphant's name, actually confirm that Minister Chabane departed from a legitimate platform to effect my transfer.

If there are specific questions that I need to answer, I am happy to do so through another affidavit, like I did, on the GCIS matter, (over and above my reply affidavit.)

Beyond creating a spectator value on the stand, I do not see either substantive or monetary value in me commuting all the way from Cape Town to Park Town to simply plead ignorance because as I said, I was the subject of the decisions by former Ministers.

For reasons explained in this letter I am respectfully unable to accede to your invitation.

I however remain committed to assisting and co-operating with the Commission on matters I have personal information on.

Kind Regards

Mzwanele Manyi

On Fri, 25 Oct 2019 at 15:46, Lerato L. Buthelezi <[LeratoB@commissionsc.org.za](mailto:LeratoB@commissionsc.org.za)> wrote:

Dear Mr Manyi

Please find attached correspondence for your attention.

Kind regards

**Lerato Buthelezi**

**COMMISSION OF INQUIRY INTO STATE CAPTURE** Hillside House, 3rd Floor, 17 Empire Road,  
Parktown, Johannesburg, 2193, Gauteng South Africa,

email: [leratob@commissionsc.org.za](mailto:leratob@commissionsc.org.za), [www.sastatecapture.org.za](http://www.sastatecapture.org.za)

Cell: 0607739825



**Subject:** PRIORITY // MANYI // Appearance before the Commission  
**Date:** Friday, 01 November 2019 at 15:10:53 South Africa Standard Time  
**From:** Shannon S. Van Vuuren  
**To:** Mzwanele Manyi  
**CC:** mzwanele@mweb.co.za, Andre J. Lamprecht, Lerato L. Buthelezi, Boipelo B. Ratshikana  
**Attachments:** image001.jpg, image002.jpg, Oliphant commissioned affidavit.pdf, Summons - CPT - Mr Manyi - 4 Nov 2019.pdf

Dear Mr Manyi

Please find the following communication from the Commission for your urgent attention:

- "1. Your email of 31 October 2019 refers.
2. In your email, you indicate that it would be of concern both to you and to the Commission if there is information that somehow contradicts what you have previously stated to the Commission about your transfer as Director-General of the Department of Labour to the Government Communication and Information Service (GCIS).
3. In the on-going investigations of the Commission, you were asked whether you had appealed against former Minister Mdladlana's decision (contained in a letter dated 29 October 2010) to terminate your appointment as Director-General of the Department of Labour.
4. You responded on the basis that you had never received former Minister Mdladlana's letter dated 29 October 2010 and therefore no issue of an appeal arose.
5. The Commission has received an affidavit deposed to by former Minister Oliphant in which she says that after she was appointed as Minister of Labour, you phoned her and indicated that you intended to appeal the decision to dismiss you or to take the Department of Labour to court over your dismissal. She says that there was a further meeting between the two of you at which you again indicated to her that you wanted to take the Department of Labour to court over Minister Mdladlana's decision to dismiss you. A copy of that affidavit is **attached** to this email.
6. Ms Oliphant's email directly contradicts your response to the Commission that you had no knowledge of Minister Mdladlana's decision to terminate your appointment as Director-General of the Department of Labour.
7. As you have confirmed in your email, it is in the interests of the discharge of the Commission's mandate that a contradiction of this nature be probed further.
8. In the light of this, a summons has been issued for you to attend to give evidence before the Commission on Wednesday, 6 November 2019. It will be served at both your 4 Riet Avenue, Woodmead and 10 Brooke Street, Claremont residences. A copy of the summonses that is being served at your Cape Town residence is **attached**.  
  
If the Woodmead and Claremont addresses are not suitable addresses for the service of the summons, please **indicate** what address will be suitable.
9. As you will see from the attached summons, the venue for the hearings next week has changed. The Commission will be sitting at the City of Johannesburg Council Chamber, 158 Civic Boulevard, Braamfontein.
10. As the summons sets out, you will be questioned at the hearing about:



- a. matters relating to the period of your tenure as Director-General in the Department of Labour and in Government Communications and Information System; and
- b. any other matters arising, which are within the Commission's mandate to investigate allegations of state capture, corruption and fraud in the public sector."

Kindly acknowledge receipt hereof.

Yours sincerely,

**Shannon Van Vuuren**

**Legal Advisor: Operations & Investigative Support**

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193 | Gauteng | South Africa |

Email: [shannonv@commissionsc.org.za](mailto:shannonv@commissionsc.org.za) | [www.sastatecapture.org.za](http://www.sastatecapture.org.za)



**From:** Mzwanele Manyi [mailto:mzwamanyi@gmail.com]

**Sent:** Thursday, 31 October 2019 19:47

**To:** Lerato L. Buthelezi <LeratoB@commissionsc.org.za>

**Cc:** mzwanele@mweb.co.za; Boipelo B. Ratshikana <BoipeloR@commissionsc.org.za>; Shannon S. Van Vuuren <ShannonV@commissionsc.org.za>

**Subject:** Re: Appearance before the Commission

Dear Lerato

If you could please bring to the attention of Ms Shabalala, my response here-under to the invitation sent to me, to appear before the Commission.

The letter inviting me to present myself at the Commission is very clear that the issues to be probed relate essentially to two matters, namely

- (a) the withdrawal of dismissal by former Minister Oliphant and
- (b) my transfer to GCIS. (This matter has been extensively discussed in my more than one testimonies that the Commission has in its possession)

My concerns are as follows

1. By all counts, this is a pure, Human Resources/Labour Relations/CCMA matter.
2. I can't see how it relates to the brief of State Capture Commission to the extent that I am affected, because on both matters I was not holding the power.
3. The people who were exercising their powers, rightly or wrongly are the former Ministers.
  - (a) Former Minister Mdladlana suspended me.
  - (b) Former Minister Mdladlana purported to have dismissed me (notwithstanding that he didn't even have the authority to do so).
  - (c) You have brought information that former Minister Oliphant rescinded the dismissal.
  - (d) The late Minister Chabane appointed me at GCIS on a transfer basis and you have a letter in that regard.
  - (e) I submitted a Cabinet Statement (Public Document) where my transfer was discussed.

It would appear to me that the former Ministers and Cabinet who were wielding power over me, are the best people/institution to answer all related questions on this matter.

I do not have information about what their thought processes were to arrive at all these decisions which they made over me.

I think it is unfair to me and to the Commission that I should take the stand to simply say I do not know.

4. What would have been of concern to both me and the Commission in my humble view, is if the new information somehow contradicts what I had already stated under oath, namely, that I was transferred. If anything, your own investigation that has brought up former Minister Oliphant's name, actually confirm that Minister Chabane departed from a legitimate platform to effect my transfer.

If there are specific questions that I need to answer, I am happy to do so through another affidavit, like I did, on the GCIS matter, (over and above my reply affidavit.)

Beyond creating a spectator value on the stand, I do not see either substantive or monetary value in me commuting all the way from Cape Town to Park Town to simply plead ignorance because as I said, I was the subject of the decisions by former Ministers.

For reasons explained in this letter I am respectfully unable to accede to your invitation.

I however remain committed to assisting and co-operating with the Commission on matters I have personal information on.

Kind Regards

Mzwanele Manyi

On Fri, 25 Oct 2019 at 15:46, Lerato L. Buthelezi <[LeratoB@commissionsc.org.za](mailto:LeratoB@commissionsc.org.za)> wrote:

Dear Mr Manyi

Please find attached correspondence for your attention.

Kind regards

**Lerato Buthelezi**

**COMMISSION OF INQUIRY INTO STATE CAPTURE** Hillside House, 3rd Floor, 17  
Empire Road, Parktown, Johannesburg, 2193, Gauteng South Africa,  
email: [leratob@commissionsc.org.za](mailto:leratob@commissionsc.org.za), [www.sastatecapture.org.za](http://www.sastatecapture.org.za)

**Cell: 0607739825**



**Derick de Beer**

---

**From:** Shannon S. Van Vuuren  
**Sent:** 01 November 2019 17:25  
**To:** Mzwanele Manyi  
**Cc:** mzwanele@mweb.co.za; Andre J. Lamprecht; Lerato L. Buthelezi; Boipelo B. Ratshikana; Ouma Thagane  
**Subject:** RE: PRIORITY // MANYI // Appearance before the Commission

Hello Mr Manyi

I confirm our conversation a few minutes ago.

Thank you for confirming that you will attend at the Commission on Wednesday, 6 November 2019, in order to testify before the Chairperson, Deputy Chief Justice Zondo.

Ouma will be in contact with you on Monday morning in order to arrange your flights and travel logistics here in JHB.

Kind regards,

**Shannon Van Vuuren**

**Legal Advisor: Operations & Investigative Support**

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

Hillside House, 17 Empire Road, Parktown,  
 Johannesburg, 2193 | Gauteng | South Africa |

Email: [shannonv@commissionsc.org.za](mailto:shannonv@commissionsc.org.za) | [www.sastatecapture.org.za](http://www.sastatecapture.org.za)




---

**From:** Shannon S. Van Vuuren  
**Sent:** Friday, 01 November 2019 15:11  
**To:** 'Mzwanele Manyi' <mzwamanyi@gmail.com>  
**Cc:** mzwanele@mweb.co.za; Andre J. Lamprecht <andrel@commissionsc.org.za>; Lerato L. Buthelezi <LeratoB@commissionsc.org.za>; Boipelo B. Ratshikana <BoipeloR@commissionsc.org.za>  
**Subject:** PRIORITY // MANYI // Appearance before the Commission

Dear Mr Manyi

Please find the following communication from the Commission for your urgent attention:

- "1. Your email of 31 October 2019 refers.
2. In your email, you indicate that it would be of concern both to you and to the Commission if there is information that somehow contradicts what you have previously stated to the Commission about your transfer as Director-General of the Department of Labour to the Government Communication and Information Service (GCIS).



3. In the on-going investigations of the Commission, you were asked whether you had appealed against former Minister Mdladlana's decision (contained in a letter dated 29 October 2010) to terminate your appointment as Director-General of the Department of Labour.
4. You responded on the basis that you had never received former Minister Mdladlana's letter dated 29 October 2010 and therefore no issue of an appeal arose.
5. The Commission has received an affidavit deposed to by former Minister Oliphant in which she says that after she was appointed as Minister of Labour, you phoned her and indicated that you intended to appeal the decision to dismiss you or to take the Department of Labour to court over your dismissal. She says that there was a further meeting between the two of you at which you again indicated to her that you wanted to take the Department of Labour to court over Minister Mdladlana's decision to dismiss you. A copy of that affidavit is **attached** to this email.
6. Ms Oliphant's email directly contradicts your response to the Commission that you had no knowledge of Minister Mdladlana's decision to terminate your appointment as Director-General of the Department of Labour.
7. As you have confirmed in your email, it is in the interests of the discharge of the Commission's mandate that a contradiction of this nature be probed further.
8. In the light of this, a summons has been issued for you to attend to give evidence before the Commission on Wednesday, 6 November 2019. It will be served at both your 4 Riet Avenue, Woodmead and 10 Brooke Street, Claremont residences. A copy of the summonses that is being served at your Cape Town residence is **attached**.  
  
If the Woodmead and Claremont addresses are not suitable addresses for the service of the summons, please **indicate** what address will be suitable.
9. As you will see from the attached summons, the venue for the hearings next week has changed. The Commission will be sitting at the City of Johannesburg Council Chamber, 158 Civic Boulevard, Braamfontein.
10. As the summons sets out, you will be questioned at the hearing about:
  - a. matters relating to the period of your tenure as Director-General in the Department of Labour and in Government Communications and Information System; and
  - b. any other matters arising, which are within the Commission's mandate to investigate allegations of state capture, corruption and fraud in the public sector."

Kindly acknowledge receipt hereof.

Yours sincerely,

**Shannon Van Vuuren**

**Legal Advisor: Operations & Investigative Support**

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193 | Gauteng | South Africa |

Email: [shannonv@commissionsc.org.za](mailto:shannonv@commissionsc.org.za) | [www.sastatecapture.org.za](http://www.sastatecapture.org.za)



**From:** Mzwanele Manyi [<mailto:mzwamanyi@gmail.com>]

**Sent:** Thursday, 31 October 2019 19:47

**To:** Lerato L. Buthelezi <[LeratoB@commissionsc.org.za](mailto:LeratoB@commissionsc.org.za)>

**Cc:** [mzwanele@mweb.co.za](mailto:mzwanele@mweb.co.za); Boipelo B. Ratshikana <[BoipeloR@commissionsc.org.za](mailto:BoipeloR@commissionsc.org.za)>; Shannon S. Van Vuuren <[ShannonV@commissionsc.org.za](mailto:ShannonV@commissionsc.org.za)>

**Subject:** Re: Appearance before the Commission

Dear Lerato

If you could please bring to the attention of Ms Shabalala, my response here-under to the invitation sent to me, to appear before the Commission.

The letter inviting me to present myself at the Commission is very clear that the issues to be probed relate essentially to two matters, namely

- (a) the withdrawal of dismissal by former Minister Oliphant and
- (b) my transfer to GCIS. (This matter has been extensively discussed in my more than one testimonies that the Commission has in its possession)

My concerns are as follows

1. By all counts, this is a pure, Human Resources/Labour Relations/CCMA matter.
2. I can't see how it relates to the brief of State Capture Commission to the extent that I am affected, because on both matters I was not holding the power.
3. The people who were exercising their powers, rightly or wrongly are the former Ministers.
  - (a) Former Minister Mdladlana suspended me.
  - (b) Former Minister Mdladlana purported to have dismissed me (notwithstanding that he didn't even have the authority to do so).
  - (c) You have brought information that former Minister Oliphant rescinded the dismissal.
  - (d) The late Minister Chabane appointed me at GCIS on a transfer basis and you have a letter in that regard.
  - (e) I submitted a Cabinet Statement (Public Document) where my transfer was discussed.

It would appear to me that the former Ministers and Cabinet who were wielding power over me, are the best people/institution to answer all related questions on this matter.

I do not have information about what their thought processes were to arrive at all these decisions which they made over me.

I think it is unfair to me and to the Commission that I should take the stand to simply say I do not know.

4. What would have been of concern to both me and the Commission in my humble view, is if the new information somehow contradicts what I had already stated under oath, namely, that I was transferred. If anything, your own investigation that has brought up former Minister Oliphant's name, actually confirm that Minister Chabane departed from a legitimate platform to effect my transfer.

If there are specific questions that I need to answer, I am happy to do so through another affidavit, like I did, on the GCIS matter, (over and above my reply affidavit.)

Beyond creating a spectator value on the stand, I do not see either substantive or monetary value in me commuting all the way from Cape Town to Park Town to simply plead ignorance because as I said, I was the subject of the decisions by former Ministers.

For reasons explained in this letter I am respectfully unable to accede to your invitation.

I however remain committed to assisting and co-operating with the Commission on matters I have personal information on.

Kind Regards

Mzwanele Manyi

On Fri, 25 Oct 2019 at 15:46, Lerato L. Buthelezi <[LeratoB@commissionsc.org.za](mailto:LeratoB@commissionsc.org.za)> wrote:

Dear Mr Manyi

Please find attached correspondence for your attention.

Kind regards

**Lerato Buthelezi**

**COMMISSION OF INQUIRY INTO STATE CAPTURE** Hillside House, 3rd Floor, 17 Empire Road,  
Parktown, Johannesburg, 2193, Gauteng South Africa,

email: [leratob@commissionsc.org.za](mailto:leratob@commissionsc.org.za), [www.sastatecapture.org.za](http://www.sastatecapture.org.za)

**Cell: 0607739825**

