



EXHIBIT NN 4

**MAKARANGE RICHARD
BALOYI**

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

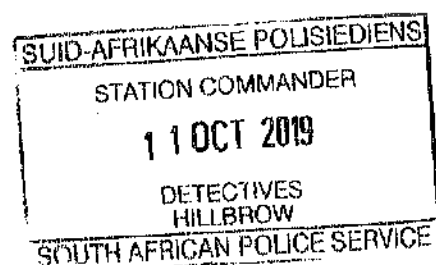
1. STATEMENT

1.1 I, the undersigned, MAKARINGE RICHARD BALOYI state under oath as follows:

1.1.1 That the facts herein contained and to which I depose are within my personal knowledge true and correct to the extent that I can remember, unless otherwise stated.

1.1.2 That I am an adult married South African male residing at Number 22 Dromedaries Street, Phalaborwa, Ba-Phalaborwa Municipality in the Mopani District of Limpopo.

1.1.3 That I am currently unemployed and I fully deal with my work history, experience and expertise below.



1.1.4 That, having been a political activist throughout my life, I continue to be one to this date and also deal with my position in this aspect below.

1.1.5 That It is because of my prior position as a Minister ten (10) years ago in the National Executive of the Republic of South Africa that I have been asked to make this statement which follows below:

1.1.6 That the information contained in my statement herein is largely, if not exclusively, based in my memory in circumstances where I no longer have access to such information that is located in the Department wherein I served in various capacities as referred to in the background information in this statement.

2. INTRODUCTION

2.1 I respond to a letter dated 5 March 2019 from Adv. Paul Pretorius SC acting on the instructions and directives of the Chairperson of the Judicial Commission of Inquiry on allegations of State Capture, corruption and fraud in the Public Sector, including Organs of State, herein also referred to as State 'Capture



Commission' or simply "the Commission", Deputy Chief Justice Raymond Zondo.

2.2 In this letter, Adv. Pretorius states, among others, that Mr. Maseko, a former government employee, "testified that during February 2011 he was transferred as the Chief Executive Officer of the GCIS to become the Director-General of the Department of Public Service and Administration (DPSA) when you (myself) were the Minister and the relevant Executive Authority of the DPSA".

2.3 Adv. Pretorius goes on to state that "The Chairperson would like you to assist the Commission by addressing and commenting on the following issues which are of relevance to the Commission:

2.3.1 When did you become aware of the transfer of Mr. Maseko from the GCIS to the DPSA?

2.3.2 Was there any prior discussion between you and any other member of the Executive Authority before the transfer took place?

In this connection the Chairperson would like to know whether you have knowledge of the facts and circumstances which gave rise to the transfer of Mr. Maseko.

2.3.3 Did the then President of the Republic consult with you before the transfer took place. If yes, are you able to state when, where and how such consultation took place? If not, are you able to explain why such a consultation did not take place?



2.3.4 To your knowledge and recollection, what are the normal requirements and practice or procedures to bring about a lawful transfer of a Head of a National Department, having regards to the provisions of section 12 and 12A of the Public Service Act?

2.4 I further respond to a directive by the Chairperson of the State Capture Commission, issued in terms of Regulation 10(6) of the Commission, dated 04th September 2019, asking me to provide the Commission with all the information I have and everything I know about Mr Maseko regarding:

2.4.1 Your working relationship with Mr Maseko when he was Director General in the DPSA.

2.4.2 The termination of Mr Maseko's appointment as Director General in the DPSA.

2.5 The Commission Chairperson's directive of the 04th September 2019 as per Regulation 10(6) also asked me to provide the Commission with all the information I have and everything I know about Mr Mzwanele Manyi regarding:

2.5.1 His appointment as the Director-General in the Department of Labour in September 2009;

2.5.2 His dismissal from the Department of Labour;

2.5.3 His transfer to the Government Communications and Information Services (GCIS) as Director-General.



3. The Chairperson emphasized by further stating that "when you provide your account of the topics listed above, please ensure that you provide full details of any and all meetings, discussions, interactions or correspondence with other persons including, but not limited to, who they were with, when they occurred, who was present, and where applicable provide copies of any relevant documents.

4. MY RESPONSES TO THE TWO DOCUMENTS ABOVE ON Mr MASEKO

4.1 My response to the letter dated 5 March 2019 is as follows:

4.1.1 ADD PARAGRAPH 2.1

QUESTION:

When did you become aware of the transfer of Mr. Maseko from the GCIS to the DPSA?

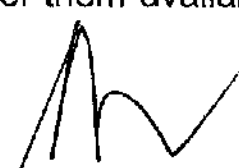


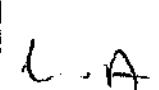
SUID-AFRIKAANSE POLISIEDIENS
STATION COMMANDER
11 OCT 2019
DETECTIVES HILLBROW
SOUTH AFRICAN POLICE SERVICE

L.A.

ANSWER:

- (a) I did not just become aware of the transfer of Mr Maseko from the GCIS to the DPSA because I facilitated that transfer and that happened during the period that his transfer took place, around February 2011.
- (b) It was part of my responsibilities as Minister for Public Service and Administration, at the time, to support Ministers as Executive Authorities of their Departments in dealing with matters like the one under consideration.
- (c) In all instances that it would arise that there had to be an exit of a CEO or DG (in the case of Departments) and in situations like that of Mr Maseko, i.e before the expiry of the contract, the relevant Executive Authority would approach the Minister (Executive Authority of the Department of Public Service and Administration [EADPSA]) for the management of such an exit.
- (d) I was approached on the matter concerning Mr Maseko by the Executive Authority of Government Communications and Information Services, the Minister in the Presidency responsible for Performance Monitoring and Evaluation at the time.
- (e) I, as the EADPSA, considered appropriate options and there were two of them available, i.e the redetermination of his contract on a





severance package and allow him to exit or negotiating for a possible transfer, because, based on information at my disposal, the exit was not initiated by him and the exit had to happen.

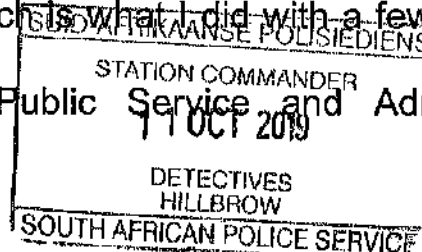
(f) I preferred the option of transfer and began to negotiate for such to happen and do so in a manner that he be transferred to the Department of Public Service and Administration, as, at the time, there was a need for such a resource and, considering his experience, he would be suitable for the job, hence I moved for his transfer, after I took a decision that his services would be of value to the DPSA.

(g) I discussed with his Principal and obtained concurrence.

(h) I discussed with Mr Maseko and got his consent.

(i) I must state that during our discussion I made it clear to him that I was ready to even extend his contract at its expiry, provided that we would reach that stage both of us still with the Department and assuming that all other things would remain the same to that end, meaning that there would have been no negative development justifying non-renewal of his contract.

(j) I have to underscore the fact that I was not doing the transfer for any special reason to him, but that it was the way I chose to handle retention of DGs, which is what I did with a few DGs since my turn as Minister for Public Service and Administration,



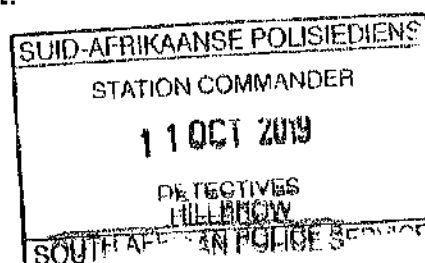
C-A 7

recommending and bargaining with Ministers to consider a practice where we use 'transfer' as an option rather than getting DGs completely out of the system and in such humiliating circumstances as if we found them guilty of any wrong doing.

- (k) My arguments were always based on my observation that, even if it was allowed to redetermine a DG's contract on grounds of irretrievable breakdown of trust between an Executive Authority and a Head of a National Department or equivalent Agency, the latter would have no recourse to test the validity of the alleged irretrievable breakdown, unless in highly unlikely situation where the official would declare a dispute, refuse to resign and put up a case of constructive dismissal.
- (l) I must state that for my duration in the Public Service, I do not remember a Head of a National Department who contested the decisions of Executive Authorities up to a point of declaring a dispute and raise such a case of constructive dismissal.
- (m) I do not remember any Minister for Public Service and Administration intervening to challenge the validity of any Executive Authority's claim of irretrievable breakdown of trust, meaning that whether material or imaginary, the Executive Authority's word would prevail without challenge.



- (n) I did not challenge that practice when I was a Minister for Public Service and Administration for reasons of power relations with other Executive Authorities because mine was not a super ministry because that does not obtain in our dispensation.
- (o) Even if that was to be the case that we have it as a super ministry, it would not help much in this case because the power to finally appoint and finally transfer Heads of National Departments vests with the Executive Authority of the National Executive - the Executive Authority of the Republic - the President of the Republic and the Principal of the Minister for the Minister for Public Service and Administration.
- (p) Some of us thought that the implementation of the 1998 Presidential Review Commission would have gone a long way, particularly the recommendation that the Ministry for Public Service and Administration was to relocate to be a Ministry in the Presidency, because that would have somehow given such a Ministry some sort of seniority with other Ministries, as it would probably leverage on the adage "first among the equals", because of its location.
- (q) Unfortunately, the implementation of that Presidential Review Commission missed this point.



9
L.A.

- (r) Some of us also thought that the 2008 'National Micro Organization of the State' review project would correct this missed point.
- (s) Unfortunately, instead, the project introduced a Ministry in the Presidency responsible for Performance Monitoring and Evaluation whilst retaining the Ministry of Public Service and Administration which has in its functional list such powers of monitoring and evaluation— a possible costly duplication.
- (t) Put the last point aside as debatably not directly linked to the scope of the Commission, the point I am making is that the Minister for Public Service and Administration would deal decisively with issues related to the employment, transfer and/or dismissal situations of the Heads of National Department, including testing the validity of a claim by any Executive Authority that there is irretrievable breakdown of trust affecting and justifying the exit of a Head of a National Department, if the seniority question was addressed.
- (u) For me, this was- and remains a missing link today and most Heads of National Department become victims of this missing link.
- (v) Similarly, the missing link deprives Executive Authorities of an opportunity to provide the merits of their assumption of the prevalence of irretrievable breakdown of trust justifying their moves

RECEIVED
DETECTIVES
HILLBROW
SOUTH AFRICAN POLICE SERVICE
11 OCT 2019
STATION COMMANDER

K.A

to let go of Heads of National Department, exposing them to second-guessing.

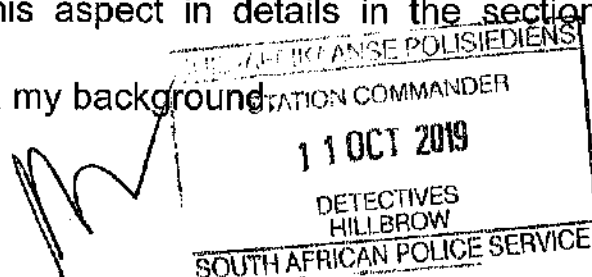
(w) Of course, it can be argued that Cabinet itself could manage the situation and demand qualifications on a claim of breakdown of trust as a reason for any transfer because all such cases need their concurrence, but the reality is that it is a forum of Executive Authorities who themselves, as individuals, are the ones taking such decisions based on the allegation in question.

(x) Perhaps the situation could be different if it was made an obligatory procedure that whenever an Executive Authority, including the President, alleges that there is an irretrievable breakdown of trust, the Public Service Commission, acting in consultation with the Minister for Public Service and Administration, should confirm the validity of the allegation of such a relationship before such a case can be considered by Cabinet.

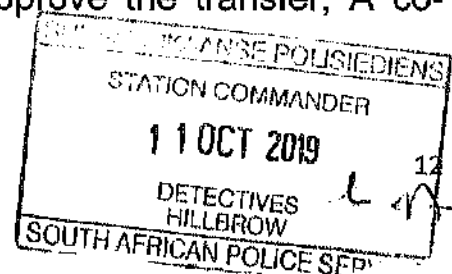
(y) I decided to take the option of transfer in order to avoid a situation where Mr Maseko would have been a victim of the missing link he did not create and exit the Public Service with a cloud hanging over his head.

(z) I do not regret to have done that.

(aa) I reflected on this aspect in details in the section of this Statement dealing with my background.



- (bb) I would do it still if I were to get a second chance under similar circumstances.
- (cc) I could not see our Public Service winning in the delivery of services unless we take care of senior officials beyond temptations to release them, no matter how strongly we feel against them as principals, of course they (DGs) also bringing their side and not create reasons for the temptations.
- (dd) I recall that Mr Maseko was very clear with me about his decision no longer to stay long in public service as he had other options to pursue, as he said so in response to my offer to extend his contract at the expiry of his term.
- (ee) So, I knew his position about public service by the time the transfer was implemented, and I went ahead with the transfer, anticipating a possibility where he could change his mind but also appreciating that he would have made a valuable contribution by the time he decided to leave.
- (ff) Because my offer was agreed to, I managed the transfer process, and I think it should be in the records of DPSSA and/or GCIS that the due process was managed through, namely: The written consent of the releasing Executive Authority, a Cabinet Memorandum requesting Cabinet to approve the transfer, A co-



signed Cabinet Minute of the Minister of DPSA and the President, as well as the appointment letter on transfer.

(gg) If my offer of transfer was not approved, the remaining option was that of redetermining his contract in terms of the applicable formula and procedure, including that he would have been expected to give consent to the calculated severance package, in writing, because, as indicated earlier, the exit was not initiated by him and that it had to happen at the time that his contract was still valid.

(hh) Suppose that the exit was initiated by him and there was no pending case of misconduct on his part, he would have been expected to resign and his resignation case would have been handled in terms of applicable procedure dealing with resignations.

(ii) If there was a case of unbecoming conduct pending, his Executive Authority would have exercised discretion on whether to reject the resignation and subject him to a hearing or allow him to resign as part of settlement.

(jj) The worst case scenario would have been that Mr Maseko refused to resign and the Executive Authority still insisted that the decision for his exit should stand, in which case the Executive Authority could have invoked dismissal proceedings.



- (kk) The alternative worst case situation could have been that Mr Maseko could have refused to resign but declare a dispute.

4.1.2 ADD PARAGRAPH 2.2

QUESTION:

Was there any prior discussion between you and any other member of the Executive Authority before the transfer took place? In this connection the Chairperson would like to know whether you have knowledge of the facts and circumstances which gave rise to the transfer of Mr. Maseko.

ANSWER

(a) YES, I had a discussion with the Executive Authority (Minister) in the Presidency responsible for Performance Monitoring and Evaluation, who was also in charge with matters relating to Government Communications and Information Services (GCIS) and was Mr Maseko's Principal.

(b) It was in that discussion where I made a proposal for Mr. Maseko's transfer to the Department of Public Service and Administration, after it came to light that there was a decision for his exit.



- (c) I did not have knowledge of the facts and circumstances which gave rise to a decision for Mr Maseko's exit from Government Communications and Information Services (GCIS).
- (d) The Minister was very clear to me that there was a decision for Mr Maseko's exit and he was not approaching me for an advice about that decision, but he was doing so for an advice on exit management only.
- (e) I asked him as to whether Mr Maseko initiated the exit, and he indicated that he (Mr Maseko) did not initiate the exit.
- (f) I understood what it meant.
- (g) I did not ask further because his answer was enough for me to advise, hence I referred to the two options I alluded to earlier in this Statement, i.e. transfer or contract redetermination.
- (h) I negotiated for his transfer and the Minister gave me an assurance that he would support the move to transfer him if he, Mr Maseko, give consent and if I am satisfied that such should be done.
- (i) We agreed that both of us should consult him (Maseko) about this individually, the outcome of which I referred to earlier in this Statement, that he gave consent to the transfer.



- (j) Yes, I know the facts and circumstances that gave rise to the transfer of Mr Maseko to the Department of Public Service and Administration.
- (k) It came about as an option considered and introduced by the Minister for Public Service and Administration of the time (I) after it was reported (to me) that there was a decision taken for his (Mr Maseko's) exit from GCIS.
- (l) I did that because in the process of providing support to Ministers in dealing with exit management of DGs I preferred to take the option of retention through transfers where such opportunities existed.
- (m) The case of Mr Maseko was not my first to handle in this manner and more information in this regard is in the background section of this Statement.
- (n) It was a contribution I made for stability in the Public Service, hence the move to transfer him and still utilize his services than let him out.

4.1.3 AD PAGRAPH 2.3

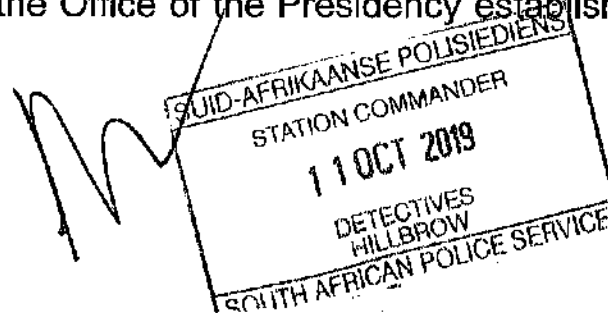


QUESTION:

Did the then President of the Republic consult with you before the transfer took place? If so, please indicate where, when and how the consultation took place. If not, are you able to explain why such a consultation did not take place?

ANSWER:

- (a) NO, the then President of the Republic did not consult with me before the transfer of Mr. Maseko took place and therefore it is not applicable that I provide information as to "where", "when" and "how".
- (b) Yes, I am in a position to state why such a consultation did not take place.
- (c) I consulted with the Minister in the Presidency responsible for Performance Monitoring and Evaluation and who was the Executive Authority of the Department and the Principal of the official affected by the transfer, and we exhaustively dealt with the question of transfer to a point where the said Minister gave support to the move and the necessary paper work done
- (d) It was my understanding that the Minister in the Presidency duly represented the Office of the Presidency establishment, under the



personal leadership of the then President, and that was enough for me.

- (e) I did not have any doubt about that fact and it therefore did not arise that I should demand the personal presence of the then President to have a discussion with me, granted that, anyway, he was the only one who could approve such a transfer when he signed the Presidential Minute after Cabinet concurrence.
- (f) For me everything was aboveboard and it was confirmed when the transfer Cabinet Memorandum served before Cabinet as there was no issue raised about the transfer.
- (g) I co-signed a Presidential Minute with the President for the transfer of Mr Maseko and there was no issue of concern raised, a point which confirms that we were in order not entertaining a discussion between the Minister for Public Service and Administration and the then President in person before the transfer was effected.

4.1.4 ADD PARAGRAPH 2.4

QUESTION

.To your knowledge and recollection, what are the normal requirements and practice or procedures to bring about a lawful transfer of a Head of a

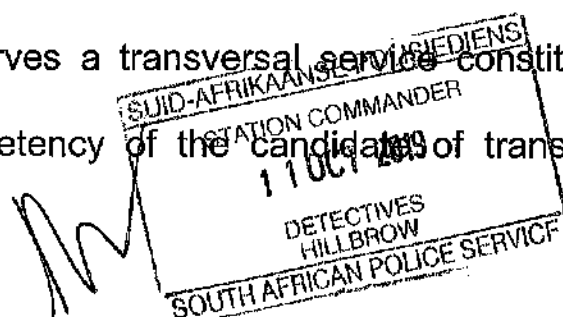
L. A

National Department, having regards to the provisions of section 12 and 12A of the Public Service Act?

ANSWER

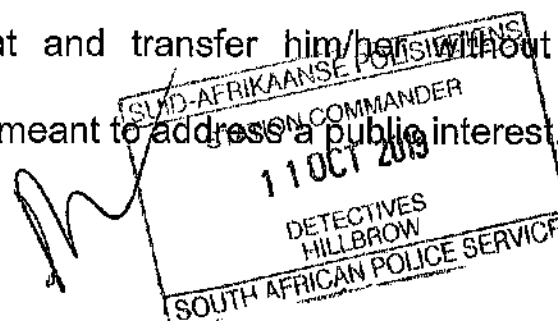
(a) REQUIREMENTS

- (i) A lawful transfer of a Head of a National Department is done to an incumbent who still has a valid contract and who has a clean record of good service.
- (ii) The transfer may be meant to strengthen the location of the intended transfer, due consideration taken of peculiar competencies of the Head of Department to be transferred, vis-a-vis the functional scope of the targeted location.
- (iii) It may be meant to strengthen the general Public Service, more especially in a situation where the intended location of transfer serves a transversal service constituency and the wide competency of the candidates of transfer commands



such strength, and this is what is considered as transfer at public interest.

- (iv) The transfer may be meant to combine the competencies of the candidate with management of a crisis situation where there exist a material irretrievable breakdown of trust between the Executive Authority and the Head of a National Department, and particularly meant to accommodate such an official within the broader public service.
- (v) The transfer has to be initiated, either by the Executive Authority or the Head of a National Department concerned.
- (vi) If initiated by the Head of a Department, the Executive Authority of the Department must concur.
- (vii) If initiated by the Executive Authority, the Head of a National Department to be transferred must give consent.
- (viii) The Executive Authority may overrule the Head of the Department and transfer him/her without consent if the transfer is meant to address a public interest.



- (ix) The initiator must have negotiated for an alternative location.
- (x) The alternative location must be the same in rank and conditions or equivalent with the one being vacated, so that the transferred official is not worse-off due to the transfer.
- (xi) The Executive Authority of the receiving location must concur

(b) PRACTICE OR PROCEDURE

- (i) The Minister/Executive Authority of the releasing Department becomes the recommending Minister for the transfer, irrespective of whether the transfer was initiated by him/her or not and, having satisfied him-/herself of the above requirements.
- (ii) The releasing Minister coordinates with the Minister for Public Service and Administration in developing a Cabinet Memorandum seeking Cabinet Approval.



(iii) The transfer can only be effected if Cabinet concurs with the recommendation.

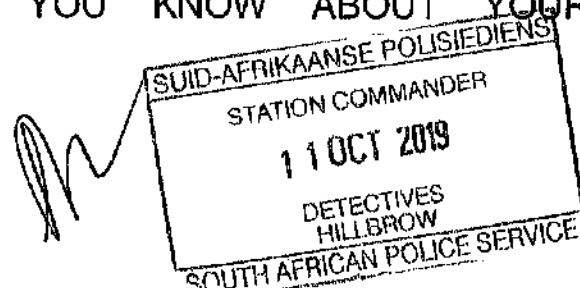
(iv) After Cabinet concurrence, the Executive Authority of the National Executive signs a Presidential Minute for the transfer of such an official, with the powers vested in him/her to appoint and transfer Heads of Department.

4.2 My response to the letter dated the 04th September are as follows:

4.2.1: **ADD PARAGRAPH 1.1 (e)**

QUESTION

PROVIDE THE COMMISSION WITH ALL INFORMATION YOU HAVE AND EVERYTHING YOU KNOW ABOUT YOUR WORKING



RELATIONSHIP WITH Mr MASEKO WHEN HE WAS DIRECTOR
GENERAL IN THE DPSA

ANSWER

- (a) I had a normal working relationship with Mr Maseko as a Director General of the Department of Public Service and Administration and I really do not remember any issue of dispute or where I treated him differently compared to all Directors General with whom I worked
- (b) For me it was business-as-usual and nothing special in our relationship that would justify a grave concern necessitating that I account as to whether any of my action/s in that relationship could amount to a suspicion of contributing to State capture, committing or promoting corruption and fraud, as it appears to be now.
- (c) I indicated details of how I handled cases of DGs and all Members of the Senior Management Service in the background section of



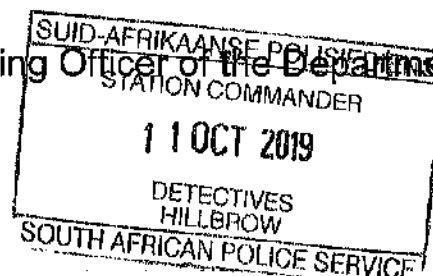
this Statement, including those who would even go to the extent of challenging my leadership.

(d) That articulation gives an illustration of what to me constituted a normal working relationship.

(e) That is meant to cut across my relationship with all, including Mr Themba Maseko.

(f) The summary of some of the issues about my experience in working with Members of the Senior Management Service of the Department, including the DGs was based on the expectations we had from each other, eloquently defined in our respective designations, job profiles, performance targets and accountability relationships.

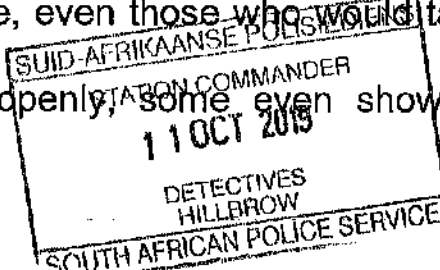
(g) In my capacity as the Executive Authority of the Department I knew the cut-off points and points of convergence between the responsibilities of a Minister and those of the Accounting Officer of the Department and at no stage did I encroach into the protected areas of the DG as the Accounting Officer of the Department.



(h) In fact, I worked also and at around the same time with the Director General of Palama, formerly South African Management Development Institute (SAMDI) and now School of Governance; the Director General of Government Employees Medical Scheme (GEMS); the Director General for the Public Service Commission; the Director General of the Centre for Public Service Innovation (CPSI); the Chief Executive Officer of the State Information Technology Agency (SITA) and the CEO of the Public Service Sector Education and Training Authority (PSSETA) of which I was their political principal at the time, and my relationship with all those were just as normal as general workplace normalcy ought to be understood, meaning that there could be different interpretations of issues from time to time, but we managed to handle them without organizational paralysis or alarmingly crying foul.

(i) There could be no special dispensation for Mr Maseko and I never treated him with any difference.

(j) Of course, there was space for senior officials, including DGs to sharply raise issues with me, even those who would take it to the extreme and criticize me openly, some even showing acts of

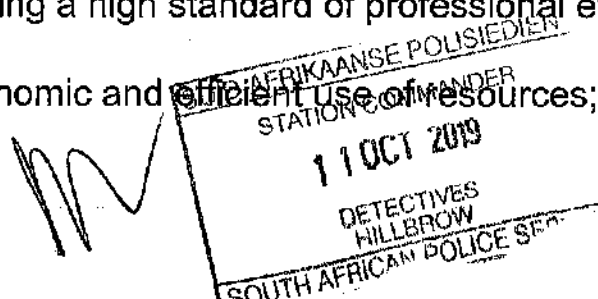


insubordination, as I recalled in details in the background section of my statement.

(k) All other Members of the Senior Management Service of the DPSA were assigned areas of responsibility and specialisation, such as Governance, Corporate Services, Labour Relations, Human Resource Management and Information Technology Management, and they all functioned according to their respective areas, all recognizing that the overall team leader of the time was the Executive Authority and that was me and it would happen at given times that I relate directly with anyone of them, given the material conditions prevalent at the time and without undermining the role of the DG concerned.

(l) I also never abdicated my responsibility to ensure that those officials whose responsibilities would be to provide support to the Executive Authority should in fact do so, for the realization of the strategic objectives of the Department in the realization of the basic values of the Public Administration, as enshrined in the Constitution, namely:

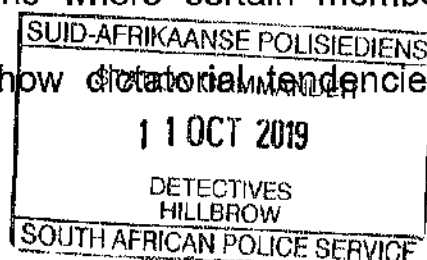
- Promoting and maintaining a high standard of professional ethics;
- Promoting efficient, economic and efficient use of resources;



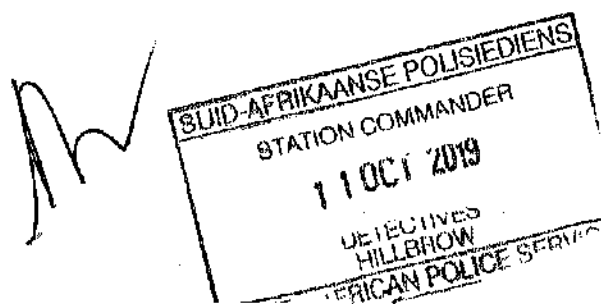
- Ensuring a development-oriented public service;
- Providing services impartially, fairly and without bias;
- Responding to peoples' needs and encouraging the public to participate in policy-making;
- Ensure accountable public administration;
- Fostering transparency by providing the public with timely, accessible and accurate information;
- Cultivating good human resource management and career development practices to maximize human potential
- Ensuring public administration broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past.

(m) I would come strong diplomatically in a measured tone and insist on doing things the way we had to go about as a team, respecting each other.

(n) I would intervene in situations where certain members of the senior management would show dictatorial tendencies towards their subordinates.

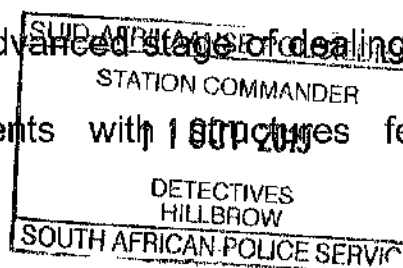


- (o) I understand that Mr Maseko worked with us for a very short period of time and that possibly he left before we really bonded and possibly he left before he was fully accustomed to the intricate situation in DPSA, judging from the statement he made with the Commission that he was badly treated by me and possibly being the Statement that got the Commission to develop this question for me to answer.
- (p) I also understand that he was probably still at a state of mind having to cope with the alleged difficult situation on his encounters in the previous location and the manner of his exit and possibly looking at everything through his imaginations that he was not welcome at the DPSA.
- (q) To be honest I was so surprised to read about his version about our relationship, but that is water under the bridge and, perhaps I should not write a lot about this.
- (r) He is entitled to his own conclusions about me and I consider that as normal.



C.A.

- (s) All what I can say is that for any observation that he may have made about our relationship and which he disliked, it was all in the course of duty and it is just that I sometimes feel strongly about certain things and would like to see them handled in a particular way and if, for the short period that we worked together, it was all disappointment on his part, it was not intended and there were no ulterior motives, and for me, I valued his leadership.
- (t) I can imagine through recollection that the short period of time he was with us was during the wage negotiation period and much of my time was devoted to leading the collective bargaining processes that required my hands-on attention, having to manage the programme of the Mandating Committee of Ministers that I could not delegate, and also interacting with leaders of Trade Unions at federation level at a point where we had established a platform to try and avoid confrontation that lead to strikes.
- (u) In this regard, I have to state that we did not have the luxury of time and would have been counter-productive for keeping a long chain of communications in labour relations and that, at the time, we were already at an advanced stage of dealing with established channels of engagements with 1800 churches feeding into our




collective bargaining at a political level, due consideration taken of the sensitivities around this highly-regulated process of the Public Service Sector Collective Bargaining Council (PSSCBC).

(v) At that stage, Mr Maseko was still new in the Department and we would have compromised the negotiations in a big and negative way, had we introduced a new practice to cater for rising expectations and, of course, there was a need for him to broadly customize himself with all line-function policy and established practices within the Department.

(w) Maybe there was a need for more time to be devoted for each other and that I can assure anyone, would have delivered the best of ourselves to each other or prove the opposite, in whichever case I would have considered same as normal, given my relative experience in dealing with matters like this, as articulated in my background section of this Statement.

(x) Unfortunately, his exit robbed us of an opportunity to do do anything about perceptions.


SUID-AFRIKAANSE POLISIEDIENS
STATION COMMANDER
11 OCT 2019
DETECTIVES
HILLBROW
SOUTH AFRICAN POLICE SERVICE

4.2.2: ADD PARAGRAPH 1.1 (f)**QUESTION**

PROVIDE THE COMMISSION WITH ALL INFORMATION YOU HAVE AND EVERYTHING YOU KNOW ABOUT THE TERMINATION OF Mr MASEKO'S APPOINTMENT AS DIRECTOR GENERAL OF DPSA

ANSWER

- (a) I am putting pieces of information together to establish the facts about the redetermination of Mr Maseko's contract and I am reading in his letter that there is reference to a meeting we held on the 10th June and 15th June 2011, about 8 years ago and it would appear that such is a meeting where his exit was discussed.



(b) I cannot explain how much I wish I could have access to all those records to be able to answer this question fully and to attach to this Statement for the Commission's convenience and ease of reference, and how much frustrated I feel that these records, available to all interested except me, are not accessible to me and yet I am expected to answer verbatim, this bringing to light why I included a Scenario analysis section in the Conclusion section of this Statement.

(c) I want to refer the Commission to a quotation from a letter written to me by Mr Maseko on the 15th July 2011 and a copy of which was given to me from the Investigators of the Commission, and he says: "I hereby confirm that I am indeed accepting the proposal for my contract to be re-determined with effect from 1 July 2011..... I have now had the opportunity to study the proposal made by Mr Rapea and hereby confirm that I accept paragraph 4.1 under 'Exit mechanisms'. I believe that this is a fair and reasonable way to exit the public service. I am grateful to you for making my exit to be as amicable as possible"

(d) The contents of this letter sound to be coming from a Mr Themba Maseko that I know, and not the one reflected in his concerns

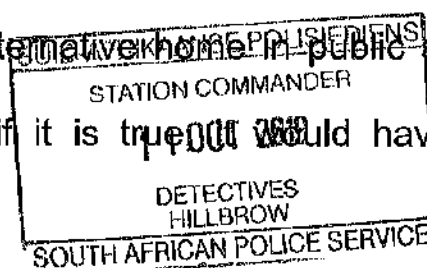


about our relationship, and these contents sound like communicating what has been the essence of my engagement with him right from the time I had to manage his exit from GCIS.

(e) I do not remember the details of our discussion that led to the conclusion bringing about a dispensation on the basis of which this letter was written, but of course, there could have been a valid reason explaining why this step was taken, obviously buried in the records of the meeting referred to in the letter or a submission which ought to be there in one file in one Office of the Department of Public Service and Administration.

(f) The recollection I am making is that Mr Maseko could have indicated that he wants to exit the Public Service and I may have treated this like a continuation of our discussion during his transfer to the DPSA, and what I alluded to that he indicated to me during that discussion that he would not stay long as he had plans outside.

(g) It could also have been that he did not like my style of leadership and so what was to be an alternative home in public service for him seemed eluding which, if it is true, it would have been a



manifestation of some of the things I am alluding to in the background section of this Statement about some officials challenging my leadership, although in his case it would have been a hasty conclusion.

- (h) It could have been that I came strongly on some of the issues, which is part of a character in me if I think I hold a valid point and that somebody uncompromisingly digs his/her heels unreasonably.
- (i) It could be that we lacked time to deal with whatever could have been the case and took a short cut, probably to justify a redetermination by managing his exit before the chapter of his transfer was finally out of memory, the likelihood of which was high, had I left the Department before his exit, as the new principal would have most probably dealt with it as a matter not connected with the transfer, with dire consequences for such an exit.
- (j) If taking a short cut was the case, and viewed against the background of the situation prior the transfer, the move was fair and that can only be done by a principal who would not like to see officials worse off even at the point of exit from service, for as long as a valid case exist.



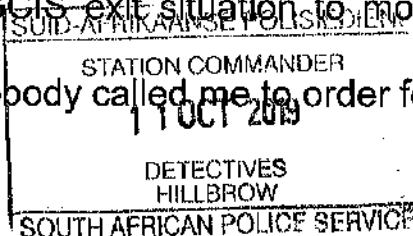
SUID-AFRIKAANSE POLISIEDIENS
STATION COMMANDER
11 OCT 2019
DETECTIVES HILLBROW
SOUTH AFRICAN POLICE SERVICE

(k) After all, redetermination of the contract was the option we would have taken earlier if the transfer one did not materialize by the time he left the GCIS.

(l) In whatever could have led to the circumstances giving rise to Mr Maseko's exit from the DPSA and the public service, there will be none referring to me exposing the State to capture and/or committing or promoting corruption and fraud, as the decisions I was taking were based on objective facts and I was not acting on anyone's subjective instruction.

(m) I can also state with no doubt that in a strict narrow consideration of his decision to exit from DPSA, he did not qualify for a redetermination of a contract because it was his decision to do so and under normal circumstances, he should have resigned or declare a dispute that would have been handled accordingly.

(n) I considered the implication of him resigning and the consequences thereof, and I decided to treat the matter broadly and voluntarily revoked the GCIS exit situation to motivate for a redetermination and, luckily nobody called me to order for that.



(o) Although Mr Maseko has no space to accommodate and appreciate what I did, I do not regret to have facilitated his smooth exit which, by the way, even then I tried to encourage him to stay within DPSA.

(p) My conscious is clear!

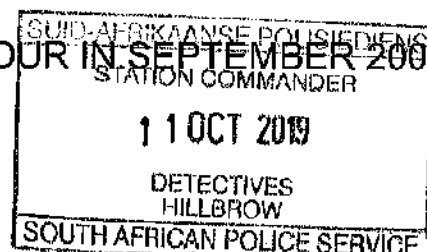
5. MY RESPONSE ON Mr MZWANELE MANYI

5.1 My response on the letter dated the 04th September are as follows:

5.1.1 ADD PARAGRAPH 1.1 (a)

QUESTION

PROVIDE ALL THE INFORMATION YOU HAVE AND EVERYTHING YOU KNOW ABOUT THE APPOINTMENT OF Mr MZWANELE MANYI AS DIRECTOR GENERAL OF LABOUR IN SEPTEMBER 2009



ANSWER

- (a) I got to know about the appointment of Mr Manyi when I was called upon to support the Minister of Labour during that time, as he was negotiating a package with him, because he was an external candidate and was earning more than what we could offer in the public service.
- (b) I think he was coming from Tiger Brands.
- (c) I remember in our discussion that neither the Minister nor he could provide anything justifying me to make a determination for a special consideration to warrant a waiver from what we were offering, meaning that there was no above average competency detectable from him as a candidate and there was no special situation that needed a special skill in the Department of Labour at the time.
- (d) Mr Manyi accepted to be appointed at the applicable salary scale.



(e) I do not remember as to the stage at which the Minister was in the recruitment process at the time we had the discussing, I mean as to whether at the time the selection interview was done or it was before that.

(f) Thereafter he was appointed and this can be verified with the Ministry of Labour.

(g) I cannot provide as much details about Mr Manyi's appointment as I did with Mr Maseko because his Ministers of the time, respectively, can handle that, save to say that we worked together with the Minister in the preparation of the Cabinet memo up until the President signed the Presidential Minute.

5.1.2: ADD PARAGRAPH 1.1 (b)

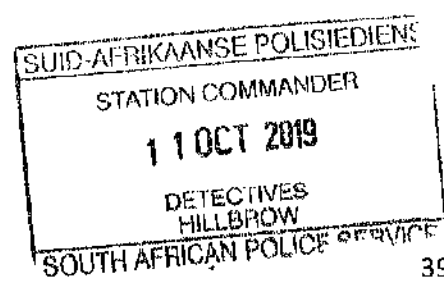
THE QUESTION

PROVIDE ALL THE INFORMATION YOU HAVE AND EVERYTHING YOU KNOW ABOUT THE DISMISSAL OF Mr MANYI FROM THE DEPARTMENT OF LABOUR



ANSWER

- (a) I recall only limited information about this matter, refreshed through a copy of a letter sent to me by the investigators of the State Capture Commission.
- (b) Working backwards, I can only imagine that a due dismissal process was done to arrive at a decision to dismiss and that the concurrence of Cabinet was sought and there was a President's Minute to that effect, because I do not think of any other procedure that could have led to the dismissal.
- (c) All this information I am giving is a stone thrown in the dark from me as there is really nothing I remember about details of this case, and that the Executive Authorities concerned should respond to this question.

5.1.3: ADD PARAGRAPH 1.1 (c)

QUESTION

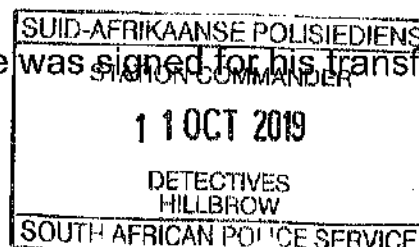
PROVIDE ALL THE INFORMATION YOU HAVE AND EVERYTHING YOU KNOW ABOUT THE TRANSFER OF Mr MANYI TO THE GOVERNMENT COMMUNICATION AND INFORMATION SERVICES

ANSWER

(a) Mr Manyi's transfer to the GCIS happened at the same time with Mr Maseko's transfer from the GCIS to the DPSA, and it was probably done as an effort to fill the space that became vacant with the transfer of Mr Maseko.

(b) The Ministers of Labour and of Performance Monitoring and Evaluation in the Presidency, respectively, concurred with the move after Mr Manyi declared his consent to the transfer, and thereafter the due process ensued.

(c) A Cabinet Memorandum was submitted seeking concurrence and, accordingly, the Cabinet Minute was signed for his transfer.



6. MY RESPONSE TO A DIRECTIVE TO PROVIDE A PORTFOLIO OF EVIDENCE

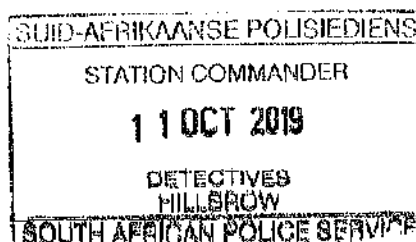
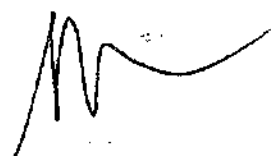
6.1.1 ADD PARAGRAPH

QUESTION

1. The Chairperson emphasized by further stating that "when you provide your account of the topics listed above, please ensure that you provide full details of any and all meetings, discussions, interactions or correspondence with other persons including, but not limited to, who they were with, when they occurred, who was present, and where applicable provide copies of any relevant documents.

ANSWER

- (a) I am not in a position to provide documentary proof of the meetings, discussions and interactions with other persons, including those I mentioned in names and in titles of their positions in this Statement, because it is almost ten years now



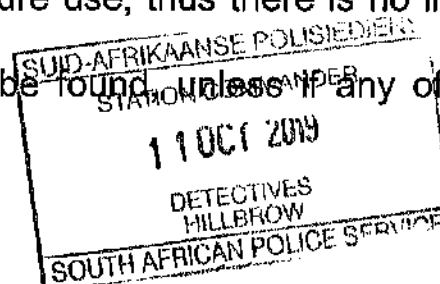
L.A 41

since I left the Department and I have no access to such records.

(b) I am afraid that even in situations where I could find assistance to have access to such records from the Departments concerned, whoever would provide such an assistance would require authorization to do so, and I am also mindful of the fact that some, if not all, of such documents are confidential and/or classified.

(c) I am aware that the Departments mentioned in this Statement may provide any document to assist the Commission in its work to get to the bottom of the matters being investigated, if approached by the Commission, particularly such records as Cabinet Memoranda, Presidential Minutes, Cabinet Minutes, Letters of appointments, minutes of meetings and any other obtainable record at the Commission's interest.

(d) I am aware that I did not record my discussions, consultations and interactions with the Ministers mentioned in this Statement and also some discussions with Mr Maseko, because it did not arise that any such instances should be recorded and I was not collecting any dossier for future use, thus there is no likelihood that a record like that may be found unless any of those I



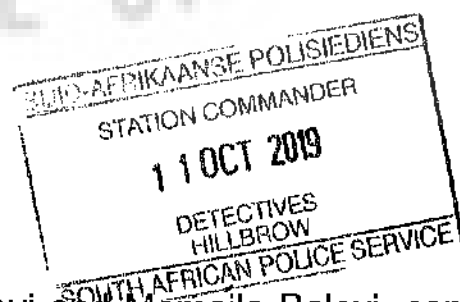
interacted with kept a record of some sort, though its admissibility as concrete evidence will have to be tested, if any.

(e) With a time lapse of almost ten years and a lot of things I did in the interval, a lot of details found space in the cracks of oblivion and I cannot remember who attended which meeting on which date to discuss what issue producing what detailed outcome with who else at what time, etc.

7. MY BACKGROUND

My response to questions raised to me by the Commission is drawn from my background as indicated hereafter in this Statement, and the extent to which I go in providing such answers is a factor of the picture painted as scenario analysis in the Conclusion section of this Statement.

7.1 PERSONAL



7.1.1 I, son of John Mantlanyi Baloyi and Mamaila Baloyi, came to life 5th (fifth) on Christmas Day in 1958, into a family of 16 (sixteen) {09 from

my mother and 07 from my junior mother, my father's second wife}, born and bred at the now-Shawela Village in the Mahumani Traditional Community, Greater Giyani Municipality, in Limpopo).

7.1.2 I started school at the age of 13 (thirteen) years in 1971.

7.1.3 I graduated from Primary School in 1975, passing my Standard Five (5 – now Grade 7) at Baleni Primary School at the said Village, proceeded and passed my Junior Secondary Studies (Form 3 – now Grade 10) in 1978 at Vuxeni Junior Secondary School (now High School) at Namakgale Township in Phalaborwa, and completed my Matric (now Grade 12) at Giyani High School at Giyani Township) in 1980.

7.1.4 After teaching for two years as an Unqualified Educator at Maphusha High School at the Shikhumba Village of the Mahumani Traditional Community in 1981 - 1982, I pursued my College Studies at Tompi Seleka College of Agriculture at Marble Hall in the Sekhukhune District of Limpopo in 1983 to



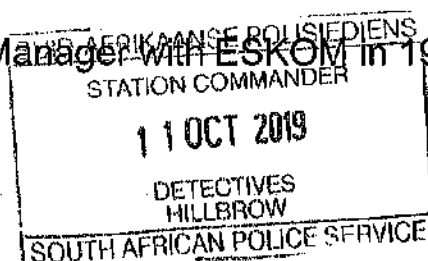
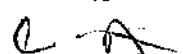
April 1984, reading for a Diploma in Agricultural Extension and Rural Development.

7.1.5 My studies got interrupted when I was expelled from the College, for my role as a Student Leader (President of the SRC, there called Top Seven Students).

7.1.6 I enrolled for a BA Degree in Politics and Administrative Sciences, majoring in Political Science and Public Administration, successfully graduating record-time in 1990 with the University of the North.

7.1.7 My tour of duty as a working adult South African is recorded as follows:

- (a) An Agriculture and Xitsonga Educator at Maphusha Secondary School in 1981 – 1982;
- (b) A Transport Administration Officer with the Giyani Department of Agriculture in 1984 – 1994;
- (c) A Community Development Officer with ESKOM in 1994 – 1995;
- (d) A Customer Service Manager with ESKOM in 1995 – 1997;
- (e) A Municipal Mayor (Part-time) for Greater Giyani Transitional Local Council in 1997 – 1999;
- (f) A Electrification Planning Manager with ESKOM in 1997 – 1999;

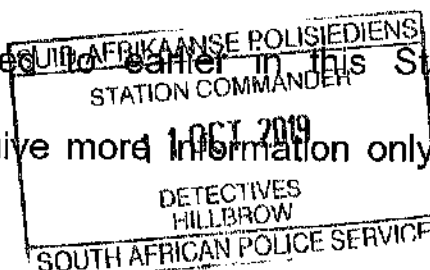




- (g) A Member of Parliament (National Assembly) in 1999 – 2013;
- (h) A Minister for Public Service and Administration in 2008 – 2011;
- (i) A Minister for Cooperative Governance and Traditional Affairs in 2011 – 2013;
- (j) A Diplomat representing South Africa as an Ambassador in the Republic of Congo – Brazzaville in 2014 – 2018;

7.1.8 It also suffices to mention that my adult work life was, and continue to be interspersed with a commitment to serve the public through active involvement in political and community activities, where I held several leadership positions in the African National Congress (ANC) and the South African National Civic Organization (SANCO) (of which I am currently a member of its National Executive Committee (NEC).

7.2 ABOUT MY KNOWLEDGE OF- AND ROLE IN PUBLIC SERVICE

7.2.1 Notwithstanding my broad background information as to the work experience alluded to earlier in this Statement, I decided that I should give more information only about my



turn in the public service locally at Legislative and Executive levels in the National sphere of the State and externally as a Diplomat, singling out certain responsibilities to give meaning to the command of consciousness about what makes the practice of administration tick, and confine my personal contribution and take about how I got things to happen and needed to be done.

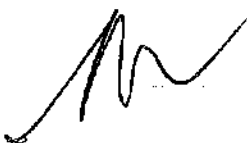
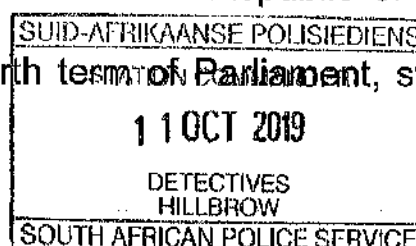
7.2.2 I saw it proper to do so because if I have to provide to the Commission all the information I have and everything I know in any aspect and capacity, be it as a Minister of any portfolio of Government, I would draw inferences with such knowledge and experience I gained throughout my tour of exposure in the practice of public management, administration, diplomacy and leadership.

7.2.3 My exposure, therefore, is as follows:

7.3 MY EXPERIENCE AT THE LEGISLATURE LEVEL

7.3.1 RESPECT TO ORGANS OF STATE

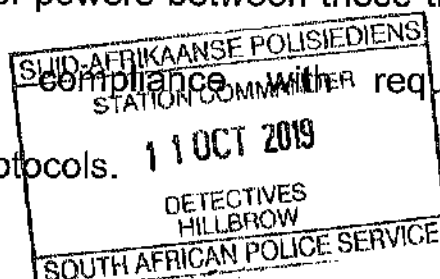
(a) I was a Member of Parliament of the Republic of South Africa during the 2nd up to the fourth term of Parliament, sworn in as a

L. A

Member of the National Assembly for the 1st time in 1999, the second time in 2004 and the third time in 2009.


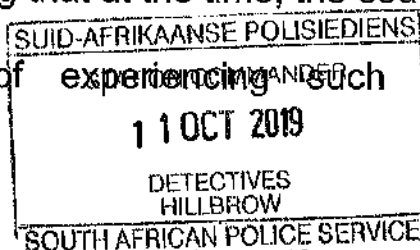
- (b) At all these opportunities I took an Oath of Office in terms of the Constitution, stating that "I swear that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I solemnly promise to perform my functions as a Member of the National Assembly to the best of my ability. So help me God".
- (c) I understood that being "faithful to the Republic" meant that I should be truthful to protect and defend the interests of the three Organs of the State of South Africa, first and foremost, i.e the Legislature, the Executive and the Judiciary.
- (d) It was also my understanding that defending and protecting the Organs of State implied doing so also to all the institutions and structures of the said Organs of State and providing unqualified support to those at the helm of such Organs, institutions or structures and those supporting them.
- (e) The connecting dot for a Member of Parliament in this regard has to do with internalizing the obligations to respect the notion and practice of the separation of powers between these three Organs, as well as to ensure compliance with requisite power convergence/interphase protocols.



- (f) I served with that consciousness, to the best of my ability, and would make it a point that my corner of responsibility remained bright as a team player part of the whole establishment of the Legislative Organ of State.

7.3.2 SERVED WITH NO RESERVATION

- (a) Protecting and defending the Republic against anything that would harm it, as well as promoting and safeguarding its interests would be done through efforts to responsibly legislate, make policies and judiciously advance those policy directives.
- (b) This was done by a collective of individual Members of Parliament drawing on their respective strengths.
- (c) I always availed myself to live up to the fulfillment of the Oath I took and to discharge my duties without reservations, including where I had to go extra miles, though at all such times leaving room for correction and continual self-renewal, peer-influence and organizational discipline.
- (d) It is worth considering that at the time, the country was still at her early years of experiencing such a democratic

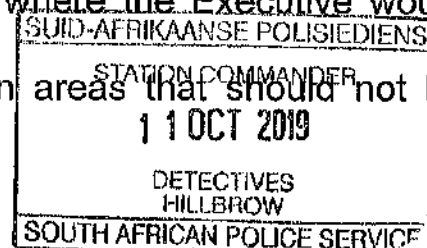



49



dispensation and that there was little to inherit from those who were part of the intra-parliamentary politics from the old order.

- (e) From a practical point of view it sometimes looked like a walk in a thick jungle with sometimes complicated inhabitants, given that the notion and practice of the separation of powers had no historical legacy.
- (f) It is also a fact, the World-over, that the general temptation for encroachment of one Organ of State into the other's domain remains common.
- (g) One other experience for Parliamentarians of my time was to work in a situation where there had to be a rethink on the question of the supremacy of the Legislature/Parliament as a classical philosophical standpoint versus the notion of the Supremacy of the Constitution.
- (h) From time to time there would be mumblings when the Judiciary would pronounce on the unconstitutionality of a piece of legislation and direct the Legislature to review same, arguing that the latter was in fact legislating through the back door.
- (i) There would also be situations where the Executive would feel like there should be certain areas that should not be

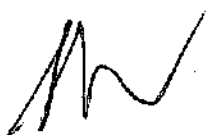
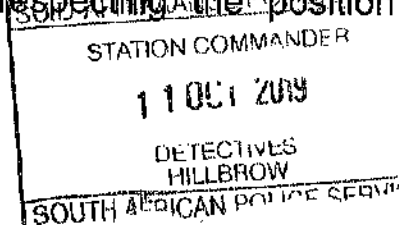



legislated and where the powers of Parliament should be curtailed, such as whether Parliament should effectively pass the Budget Bill or it should just flow like a formality of debate and the Executive just continue to implement the Budget.

- (j) I found it a very interesting and complex experience that could easily exhaust the spirit of the faint-hearted and send them crazy-searching for excuses to cry foul.

7.3.3 WORKED IN CONSONANCE

- (a) Notwithstanding, Parliament had to function and to do its work in terms of the provisions of the democratic dispensation and Parliamentarians had to soldier on.
- (b) I was part of the process and duty-called to contribute in ensuring that the voice of Parliament was heard and in a manner that it played its role in perfect alignment with the defined relationship with the other Organs of State.
- (c) One natural character is that I do not subscribe to the notion of grandstanding and egocentrism and as such would handle issues as they came and work in consonance with colleagues, respecting the position of my principals and

L. R. 51

adhering to the policy standpoint of my Government of the day.

- (d) In situations where I would be duty bound to make a contribution to insist on the right things to be done and the right decision to be taken whenever divergence would rear its ugly head, I would not "pass the buck" and I would not hold back my views irrespective of the temptation.
- (e) I would also not "build my nest through the feathers of others" or take advantage of a colleagues' limitations.
- (f) I knew that I was not a Member of Parliament on my own and for my sake, but that I was a representative in a Proportional Representation electoral democracy and would make a perfect alignment of my representative obligations with the dictate of the Oath I took.

7.3.4 PARTY PARLIAMENTARY ORGAN LEADERSHIP ROLE

- (a) I served in a number of Whippery positions, such as on Constituency work, discipline transformation of Parliament



and participated at all instances that my involvement would be required.

- (b) In so doing I contributed in strengthening the hand of Parliament because in a Democracy with a proper notion and practice of the separation of powers between Organs of State, there is a compelling obligation for each Organ to pull its weight so that no other Organ should take advantage of any slackness or a perception thereof to encroach into its realm.
- (c) I had to strengthen the contribution of the Parliamentary Caucus of the ruling party, the African National Congress.

7.3.5 OVERSIGHT WITH A CONSCIOUS

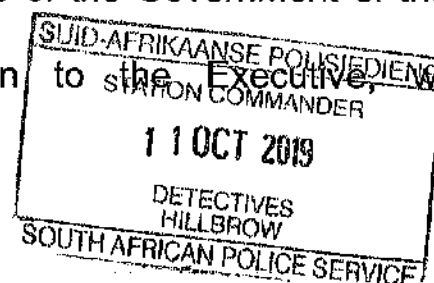
- (a) My exposure as a Member of Parliament enjoined me to come to terms with policy and other regulatory instruments involved in the interphase between the Executive Organ of the State and the Legislative one, as well as the role and responsibilities of the structures in the Executive Organ and



SUID-AFRIKAANSE POLISIEDIENS
STATION COMMANDER
11 OCT 2019
DETECTIVES HILLBROW
SOUTH AFRICAN POLICE SERVICE

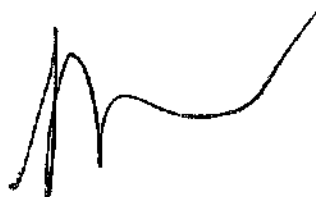
the three spheres of Government, i.e Local, Provincial and National Government spheres.

- (b) This had to be so because Parliament has an oversight function over the Executive and in the manner that for such to happen, Parliamentarians ought to be equal to the tasks and fully understand what the Executive Organ's powers and functions, as well as associated limitations, are.
- (c) It is therefore required that Parliamentarians should know that the Constitution prescribes that the President is a Head of State and Head of the Executive, with the Executive Authority of the Republic vested in him/her.
- (d) The President appoints Ministers and assigns each one of them powers and functions.
- (e) He/She coordinates the functioning of Government Departments and Administration and chairs Cabinet, the highest body in the Executive.
- (f) It is also provided that Ministers are Executive Authorities of their respective Departments.
- (g) The overall responsibility of the Executive Authority to initiate and implement the policies of the Government of the day is thus the mandate given to the Executive, with the



implementation led by the Ministers at a micro-level and by the President at a macro level.

- (h) It is an implied course in the accountability regime therefore that, under normal circumstances, Ministers' first line of accountability is with the Head of the National Executive, the coordinator of State Departments and the Executive Authority of the Republic of South Africa, i.e the President.
- (i) Of course it should be expected that issues could arise in relations management but the rule remains under normal circumstances, which was a dispensation generally obtaining for my duration as a Member of Parliament.
- (j) Parliament's role in holding the Executive accountable recognized the power relations as indicated above, calling on Ministers to account for activities of their respective Departments through debates in Parliament, and the President also having to appear at given times to do so within the confines of his Executive Authority.
- (k) As a Member, I generally participated as and when it emerged that I should raise issues.



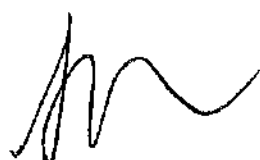
SUID-AFRIKAANSE POLISIEDIENS	
STATION COMMANDER	
11 OCT 2019	
DETECTIVES HILLBROW	
SOUTH AFRICAN POLICE SERVICE	

55

7.3.6 PARLIAMENT COMMITTEES

- (a) I served in several Committees of Parliament at different levels, as indicated in the table below, and would from time to time raise issues as part of the collective, calling on Ministers to account as well as leaders of other organs of the democratic government in their line-function focus.

COMMITTEE	LEVEL OF PARTICIPATION
Portfolio Committee on Public Service and Administration	Member, Whip, Chairperson
Portfolio Committee on Minerals and Energy	Member
National Assembly Rules Committee	Member
Joint Rules Committee	Member
Joint Committee on Ethics and Members' Interests	Member



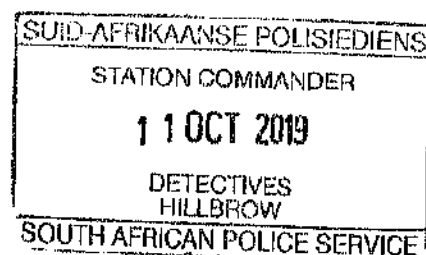

L.A

Ad hoc Committee on one Public Protector's Report	Whip
Reference Group on the remunerative packages of Members of Parliament and other organs of State	Participant
The Ad hoc Committee on the African Peer Review Mechanism	Chapter Leader on Governance

(b) As indicated in the table above, the Committee of Parliament in which I served the most was the one on Public Service and Administration, which opportunity gave me further experience in dealing with the practical side of the functions.

(c) I served in this Committee from the beginning of my time as a Member of Parliament.

(d) It was a choice I made as one of the options, noting my studies in this field at University level, as well as having had several exposures in matters that had to do with related activities.

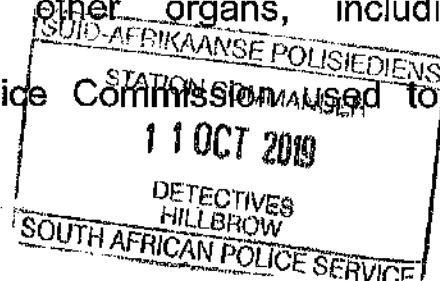




7.3.7 FOCUS ON REGULATORY INSTRUMENTS

(a) I managed the process to implement applicable legislation and policies as an enabling mechanism of a Constitutional instruction that the Public Administration of the Republic of South Africa should embrace the values as enshrined in Section 195 of the Constitution, putting people first in that regard and the successful realization of which values and policy directives should be by a Public Service duly established and ready to loyally execute the lawful policies of the government of the day, as prescribed in Section 197, and of course, all under the watchful monitoring by the Constitution's Section 196-created Public Service Commission (PSC).

(b) As Chairperson of the Portfolio Committee on Public Service and Administration, my role entailed coordinating the oversight responsibility of the Committee over the activities of the Department of Public Service and Administration and all other organs of State whose primary responsibilities would be the promotion of the values of administration enshrined in the Constitution.

(c) The Department and other organs, including the independent Public Service Commission, used to appear



before the Portfolio Committee and deal with those robust questions that would seek to respond to issues of governance at the behest of Parliament.

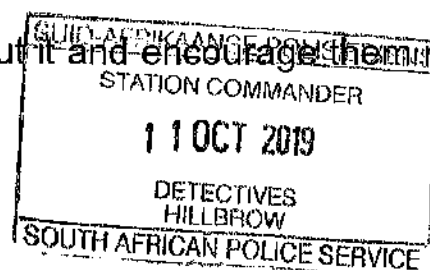
- (d) The relationship was always professional; meaning that different role players had to understand that we could only be complementary to each other if we knew the extent of our respective functions and powers and always deliver according to expectations, lest remedial actions would be caused to bear.
- (e) I remember under my watch representatives of the Department and other organs sent back to the drawing board and directed to reappear before the Committee at a later stage with more profound representations on issues at hand.
- (f) It would happen and no hassle about it, even in situations where there could be face-value deep-rooted differences about respective standpoints.
- (g) We would always rise above such differences and look at a bigger picture around which we would shape a way forward, reminding each other of the inherent functions and powers of the institutions we represented and how we should forge a common understanding, even if to refer to each other as necessary evils in



a State with a profound separation of powers as a cornerstone of our democratic dispensation.

7.3.8 TEAMWORK

- (a) There would be situations where the officials of the Department and other organs would have different takes on different issues and often times approach the Chairperson of the Portfolio Committee for intervention, some with uncompromising hardline positions even against standpoints held by their principals.
- (b) I would respect their views and always sought to juxtapose those views against the positions of their opponents and seek for a common point around which to bring them together, for I knew that success was more possible in group effort than stalemates.
- (c) The interesting point I am making here is that in dealing with professional relationships there is bound to be instances where people see things differently.
- (d) The mantle of astuteness in this regard and a s leader is in trying to understand why one differs with the standpoints of others and feel so strongly about it and encourage them to resolve

their differences and let them not pull rank or cry victim without due engagement.

7.4 MY EXPERIENCE AT THE NATIONAL EXECUTIVE

7.4.1 MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION

(a) I was appointed as a Minister for Public Service and Administration around September 2008, the period after the exit of the second President of the Democratic Republic of South Africa and the resignation of several Ministers and Deputy Ministers.

(b) That was just before the 2009 elections.

(c) After the said elections, I was again appointed to the same Portfolio of Public Service and Administration as a Minister.

(d) At both such appointments I took an Oath and said "I swear that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic and I undertake to hold my



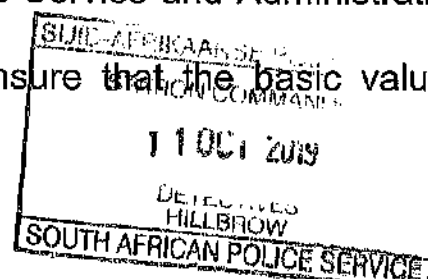
office as Minister with honor and dignity; to be a true and faithful counsellor; not to divulge directly and indirectly any secret matter entrusted to me; and to perform the functions of my office conscientiously and to the best of my ability. So help me God".

7.4.2 EXECUTIVE AUTHORITY OF DPSA

(a) I understood that the appointment as a Minister meant that, although I was still a Member of Parliament, I had assumed a responsibility as a Member of the National Executive, at the invitation by the respective Executive Authorities of the Republic of South Africa at the times, to be part of the collective.

(b) I understood that it meant that I assumed the position with distinct line-functions assigned to me as per the specific Portfolio establishment gazette.

(c) I understood that I had become the Executive Authority of the Department of Public Service and Administration and accordingly meant to ensure that the basic values and

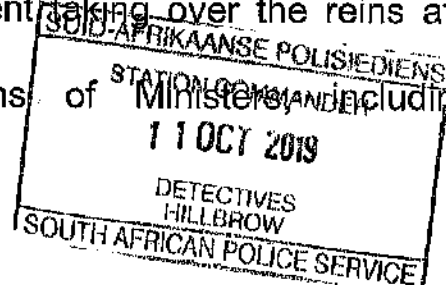


principles of our public administration had to be promoted, that the Public Service Commission must be supported to perform its functions as a watch-dog body for our value-laden administration and that the career incidents of the public service must be well guided through policies, regulations and directives and that sound labour relations should be maintained through collective bargaining.

- (d) The position imposed a responsibility to manage the Department to be in a position to deliver its mandate by ensuring that it is organizationally well-structured and functionally well-coordinated.
- (e) Because I was coming from the Portfolio Committee on Public Service and Administration that had the oversight responsibility over the same Department, I came with a fair understanding of the situation and would then find my fit in the bigger picture of the establishment.

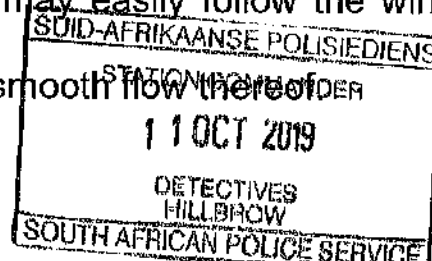
7.4.3 MANAGING IN A TRANSITION

- (a) It was a difficult moment taking over the reins after the advent of resignations of Ministers, including my

predecessor and also coming into the picture few months before the national elections that was to bring about a new dispensation of leadership of the administration.

- (b) It was like managing a transition, but doing so in an environment business-as-usual with full accountability to Parliament as an individual and collectively as the government leadership of the time.
- (c) There was a reaction to the shock of resignations which affected everybody and that could not spare the public servants in the Department.
- (d) In a normal situation when such happens, people react in a manner either embracing or rejecting the developments and they use that to adopt attitudes to in-coming leadership, either to support, undermine or defy them.
- (e) I also understood that in any situation, there would also be officials who believe too much in themselves, are so confident and complacent with dispensations and would be so suspicious about a change of leaders
- (f) I also understood that there would be those officials who are so unpredictable and may easily follow the winds of change or try to block the smooth flow thereof



- (g) All these tendencies are prone of entrenching themselves throughout terms of assignments/employment and have the ability to mutate into different forms, thus characterizing the work environment as perfectly dynamic.
- (h) Even some of those officials that get appointed by leaders on accumulated merits observed through the recruitment process of interviews or as headhunted more often than not follow the same trend and get absorbed in the complex web of work-place relationship 'normalcy'.
- (i) The test of leadership is thus defined around the ability to manage and lead in this complex environment, and that has always been my desire to internalize.

7.4.4 TRANSFORMATION MANAGEMENT

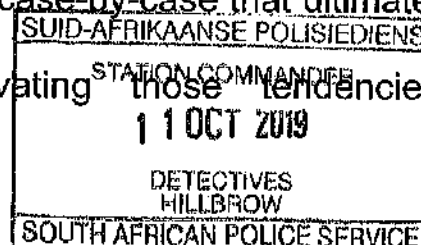
- (a) I was not naïve about the reality of change and general work-place dynamics and would thus not expect anything to the contrary, and I was ready to treat such as a normal situation.



SUID-AFRIKAANSE POLISIEDIENS
STATION COMMANDER
11 OCT 2019
DETECTIVES HILLBROW
SOUTH AFRICAN POLICE SERVICE

L-A

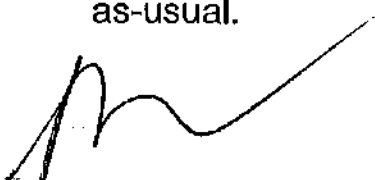
- (b) This was so because of the experience I had in dealing with different manifestations in leading people and in being led by other principals before.
- (c) I understood that some could argue that the type of change that took place in South Africa at the time was unprecedented and developed a somewhat passive resistance among civil servants with long-term effects and had the potential to negatively affect the entire Fourth Administration and possibly leap into the Fifth one and beyond.
- (d) Others would even say that such a move would be recorded in the history of Democratic South Africa as a major turning point that could swallow the very wildly celebrated post-apartheid dispensation.
- (e) My take, however, was that whilst the assertion could be true, such a change was not beyond imaginations.
- (f) Indeed some of those negative tendencies confronted me in my position as a Minister for Public Service and Administration, manifesting in different ways and at all such times I treated those as normal, confronted them and found solutions on a case-by-case that ultimately kept us going without elevating those tendencies into



insurmountable problems warranting a review ten years or more down the line.

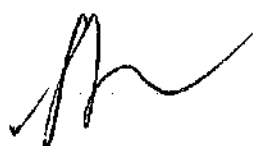
- (g) I recall that at one of the Strategic Planning Sessions a member of the Senior Management Service (SMS) of the Department charged at me and the Director General (DG) of the time, who was chairing the session, making a baseless accusation that we knew nothing about our work and in a manner that left the said DG and other members of the SMS worried about such utterances.
- (h) Noting the changing mood that was threatening to undermine the business of the Strategic Planning Session because of that manner of participation, I intervened and thanked that official who was accusing us for so sharply raising such observations about our perceived level of understanding and I encouraged participants to respect such a view and to take that on a positive note as a suggestion that we were duty-bound to all rise to a point of using the work-place as a platform to correct each other and learn from one another without stressing on differences.
- (i) The situation calmed down and we continued business-

as-usual.

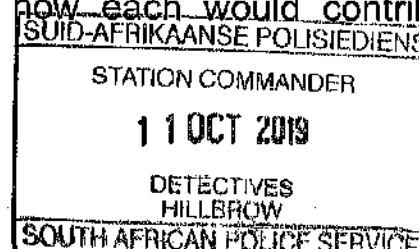


SUID-AFRIKAANSE POLISIEDIENS
STATION COMMANDER
11 OCT 2019
DETECTIVES HILLBROW
SOUTH AFRICAN POLICE SERVICE

- (j) For me it was a normal situation and work came first.
- (k) I recall a situation where one of the associated organs of government attached to the Department, the State Information Technology Agency (SITA) was almost dysfunctional because of infighting and divisions that had been going on for sometimes before I became the Minister in charge.
- (l) The divisions existed even by the time I was the Chairperson of the Portfolio Committee on Public Service and Administration and feuding officials used to approach me and the Portfolio Committee for a solution.
- (m) As a Minister I introduced a Turn-around Strategy for the entity, working with the various groupings and encouraging them to pool their wisdom and agility around finding a lasting solution.
- (n) The Board of SITA was also a player in the game and we worked together through the whole SITA transformation programme.
- (o) It was not a small matter but I soldiered on, guided by my resolve to look at a bigger picture and deal with issues in a solution-oriented manner than dig our heels on personal issues and differences.



- (p) One of the highlights in this case was that at the point that I was to become the Minister, there was a recommendation from the SITA Board that a certain candidate be appointed as the Chief Executive Officer, and there was a view that such a move would introduce a new dispensation and be a solution to the ongoing challenges that were there.
- (q) After I became a Minister, and well informed from different angles in the broader Public Service picture, I decided against making such an appointment as I thought I did not have time to apply my mind fully on the recommendations as to whether it was not going to further fuel tensions in the Agency, and I preferred that the selection of the new CEO be done as part of the Turn-Around Strategy implementation.
- (r) I recall having identified a need to strengthen the functioning of the Department through swapping two Deputy Directors General of the Department in an internal managed horizontal cross-transfer.
- (s) The driving point was that I had identified their respective strengths and pondered how each would contribute in

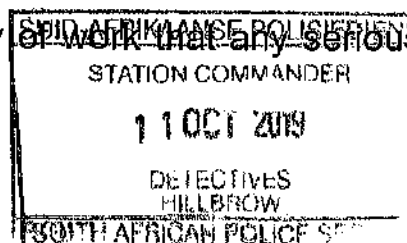



their new assignments, all with the intention to bolster our operations.

- (t) As the Public Service Act dictated, I approached the two officials, but one refused.
- (u) I engaged the said official, canvassing my views as to how I thought such would be in the best interest of the public.
- (v) I do not remember whether such a cross-transfer was finally effected and, if so, whether such was done with all officials' consent or it was based on the transfer being at the best interest of the public and thus a necessity, either of which would have been a valid sanction.
- (w) I must state that it was not a simple matter, and a lot had to be done to manage the situation.

7.4.5 MY LEADERSHIP STYLE CONTESTED

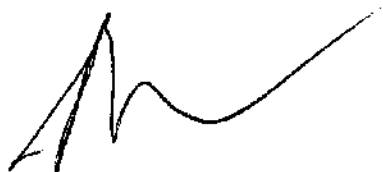
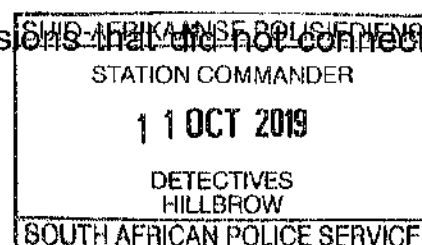
- (a) I recall situations where issues would be raised for my hands-on attitude towards work and for developing intimate taste to quality of work that any serious principal

L'A 70

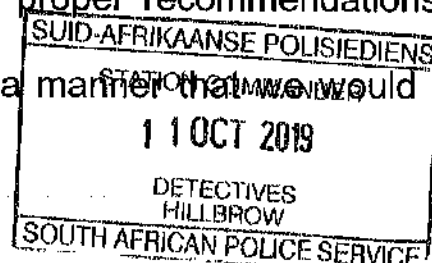
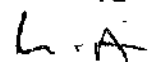
would like to do, particularly with political advisers, researchers, speech writers, members of the Senior Management Service and officials whose functional scope would place a responsibility to generate submissions that would require my final attention, to approve or not approve.

- (b) Experience about the latter situation is where an official would generate a submission, arguing for a particular decision to be taken on the matter that he/she would provide the detailed background and send that through established processing channels, with recommendations and selected portion where the Minister would sign.
- (c) The common expectation would be that when such a submission reaches the desk of the Minister, having gone through a number of officials in the processing chain, the said Minister would simply sign in the spaces provided, having only glanced the submission through selected reading only.
- (d) I would instead peruse the whole submission, sentence to sentence, and quite often I would pick up some issues with some of those submissions that did not connect well

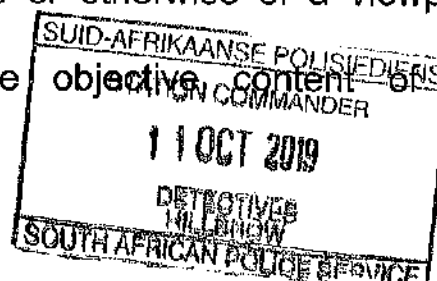
with the recommendations and the type of action I should sanction with my signature.

- (e) I would draw the attention of such an official or the last one who would have signed the submission before me.
- (f) That caused embarrassment to some officials, as they would view that as a negative reflection on their alertness or grasp of the flow in written communication or generate a feeling that they were deliberately setting me up to sanction wrong things through my hand.
- (g) I would be accused of causing unnecessary delays on semantics, on first reaction, but that changed as I indicated the impact of the misalignment caused either by the omissions or incorrect insertions in several submissions.
- (h) I made that an issue for discussion at management meetings, drawing their attention to the significance of giving due attention to written submissions and together we found a solution that the submissions should be written as short as possible, straight to the point and simple language used with no jargon, so that we help each other to support proper recommendations through our signatures and in a manner that we would be proud

reading the texts later or when our attention would be drawn to such.

- (i) I would at times also be accused of second-guessing officials, a perception that I would predict an official's intentions from a position of relative ignorance and yet pull rank to enforce my stance, risking possible negative impact of the moves I was authorizing.
- (j) That mostly happened in situations where some officials would be daring on their resolve to disagree with the position or a line of thinking I would introduce different to theirs, some arguing on what they considered as their command of superior knowledge or the fact that they were in the Public Service long before me.
- (k) I was not impatient with such officials although I would come strongly on my points at times, having always thoroughly considered same before introducing them and at times having been exposed to the limitations of their line of thinking.
- (l) I would walk an extra mile, however, give such officials space to engage me, premising our engagements on the notion that the correctness or otherwise of a viewpoint should be based on the objective content of the



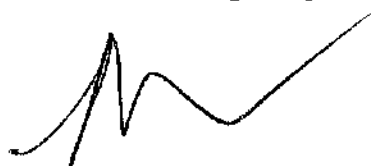
standpoints themselves and not narrowly on time-driven subjective experience or rank.

- (m) Where those engagements would point to limitations on my side, I would admit, change my thinking and adopt theirs, and would always request them to do the same in situations where my thinking would be found sustainable.
- (n) There would be those who would respond positively to such engagements and we got along as a team and tackled the issues before us at the time.
- (o) There would be those who would dig their heels and be uncompromising on their stance.
- (p) I would engage them to a point of sufficient consensus where we would agree to disagree on the fundamentals of our standpoints and find no issue to be detrimental in the implementation of my thinking, or theirs if they enjoy a benefit of doubt.
- (q) There were issues raised from time to time by some officials in the field of advisory, research, speechwriting and representations to Parliament's Portfolio Committee on Public Service and Administration.
- (r) Contrary to somewhat archaic conventional wisdom around advisory services suggesting that the advisors are

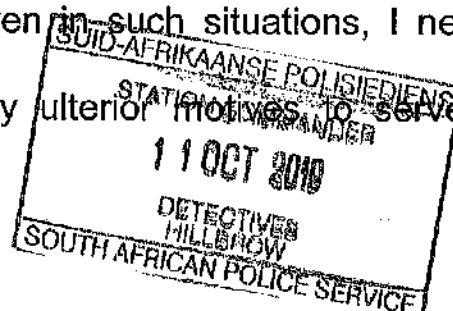



there as spoon-feeders of facts and positions, and that they always give correct versions about things and that they will always cater for the advised completely, requiring the advised to make no effort at all and for the advised to accept the advised facts and positions at face value; my experience was that of receiving advise as support intervention on the things that I was consciously and thoroughly engaged on.

- (s) The advisors would thus be there to enrich my thinking and the objective position of the Department as a representative organ of the Public Service of the Administration of the Government of the day.
- (t) In reality there would be those who would raise issues on my angle of doing things, arguing that I was not taking their views and thus generating a sense that they were not gainfully employed.
- (u) There would be those who viewed my stance as mutually beneficial, nonetheless.
- (v) Similar positions would be held by some speechwriters in response to me correcting their speeches almost to a point of re-writing, making same arguments about them not being fully utilized.



- (w) On engagements, we developed an approach where we would sit and discuss what would be in the speech, including quotations to be made, after which I would use those facts to develop the speech myself.
- (x) I admit that this might not be encouraging to go about doing things and my experience is that there was one speechwriter who seriously threatened me with resignation for failure to change my approach, but the truth is that I believed more in my style of writing a speech and would flow nicely delivering such a speech than just read another person's writing, and at the end we found each other.
- (y) It may appear in light of the expositions in this section that I managed to deal with all issues of differences with officials and that there were no instances where we would differ so irreconcilably that someone's voice had to prevail nevertheless.
- (z) This is not the issue because such situations would arise and we had to act in a particular way, with final instructions having to be taken.
- (aa) The reality is that even in such situations, I never took decisions informed by ulterior motives to serve private



interests and/or to undermine the interests of the State or cause same to be undermined.

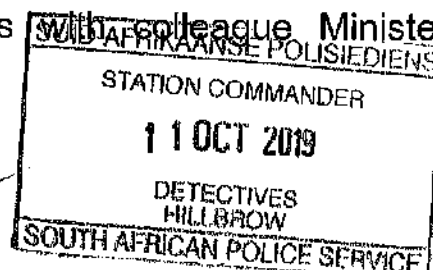
(bb) Whenever my word prevailed, it was for best serving public interests and not at the expense of the State.

(cc) It was just that any team has a leader whose voice should prevail after all else is done, and the voice happened to be mine at the time in question.

7.4.6 MANAGING WAGE NEGOTIATIONS

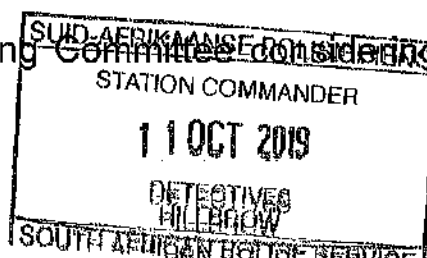
(a) It was also in the functions' package of the position of Minister for Public Service and Administration to be the Chairperson of the Mandating Committee, a structure of Ministers dealing with issues related to the determinations and adjustments of the salaries of public servants and with the responsibility to provide a mandate for the Government's angle of negotiations in the collective bargaining processes.

(b) This was also one area where there would be sharp and robust engagements with colleague Ministers, as my



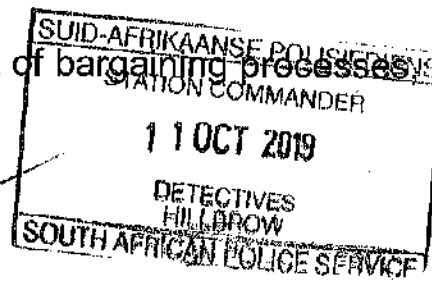
responsibility would always be to lead negotiations for dealing with a difficult matter of drawing a balance between what the Government would afford and what organized labour would demand through the bargaining processes.

- (c) Organized labour would always demand higher increases and colleagues in the Mandating Committee always being mindful about budget constraints.
- (d) What made it more difficult was the misalignment of the budget process with the collective bargaining cycle, in that the increment quantum would be determined as part of the budgeting process and before the negotiations begin, thus imposing a reality that a Government negotiator would always get into the negotiation chambers already armed with a predetermined dispensation.
- (e) On the other hand, labour negotiators would always start where the workers had determined a balloted position with demands put forward, already rejecting the budgeted figures as per the determined budget.
- (f) The whole process would thus start on a negative footing.
- (g) There would always be difficult sessions more especially with the Mandating Committee considering proposals for



moves upward to meet the demands from labour, the arguments always being constraints due to the financial situation, whereas labour would always stress about the burdensome cost-of-living as a factor determining their demands and they always sharpened their weapon of influence, i.e strike action.

- (h) Government as an employer also had weapons to use in case of intransigence by the unions.
- (i) The obligatory responsibility of the Minister for Public Service and Administration in situations like those was to try and manage the gap so that the different stances between labour and Government do not reach catastrophic levels.
- (j) Considering that it was decisions taken at meetings of the Mandating Committee and Union Federation houses that would tell as to whether the country would be facing confrontations between the Government as the employer and organized labour or not, with sometimes far-reaching implications including the collapse of essential services like health and education, a lot of work had to be done to ensure that less-risky decisions are taken in the management of bargaining processes, both on the side of



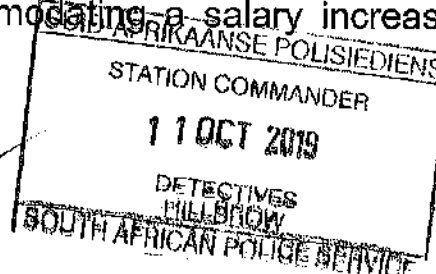
members of the Mandating Committee and the top leadership of the Trade Union federations.

- (k) I introduced a practice where key officials of two central Departments in the bargaining process, i.e the DPSA and the Department of Finance were organized into a team supporting the Minister for Public Service and Administration with the crunching of numbers to inform decision-making by the Mandating Committee.
- (l) On the DPSA side the lead official would be the Deputy Director General assigned with such responsibilities, assisted by the Government Chief Negotiator.
- (m) They would then give the necessary advice on the basis of which I would make representations to the Mandating Committee, alongside my assessment of the socio-political landscape.
- (n) This needed so concentrated a process that, at all times, my close hands-on attention was a necessity.
- (o) On the other hand, I negotiated with the leadership of the union federations to establish a structure we referred to as the Political Committee, where we would discuss issues related to questions that would arise at the negotiating



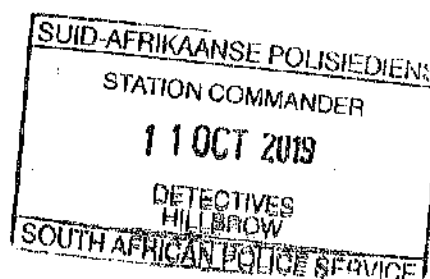

table and try to establish principles of engagements when the negotiators finally engage on those issues.

- (p) Given that these federations were ideologically and/or politically affiliated, they had to be consulted separately and such consultations had to be done confidentially, lest the collective bargaining processes get compromised.
- (q) This assisted a lot to narrow the gap before actual negotiations would take place so that such would be less antagonistic, and also during the actual negotiations and at appropriate timing.
- (r) It was at this forum where we took a decision to implement the long-time-introduced multi-term negotiations and a mechanism to align the negotiation cycle with the Government budget programme.
- (s) This structure operated more like a Caucus platform and also dealt with issues whenever there was a breakdown in actual negotiations and, quite often, we managed to bring the process back on track.
- (t) I remember during one negotiation season, I think the first one of my turn as a Minister, where we discussed issues around accommodating a salary increase based on the



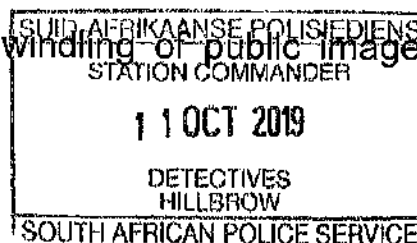
principle of catch-up for a reportedly lost bargaining period before, because of circumstances beyond control.

- (u) The issue was thoroughly addressed at the Political Committee level and taken forward at the negotiations platform.
- (v) Before the Government Negotiator took the matter forward to the negotiating chambers, the principle position was canvassed with the Mandating Committee and the special team of DPSA and Finance officials I referred to earlier was taken on board to add its voice on the matter.
- (w) A final negotiating dispensation was thus crafted and the Chief Negotiator took the matter forward, resulting in the amicable conclusion of the negotiations, thus we had stability and no strike action that year.
- (x) However, there were issues raised with the carry-through effect of the increment quantum on the outer years of the negotiating calendar, in that a school of thought emerged to argue that whereas the negotiated dispensation was fine for the first year, it carried with it a burdensome picture on the years going forward, a point that did not arise during the in-house business efforts of the DPSA



and Finance officials, and it came to light after the final negotiated agreement was signed.

- (y) We were left with a position having to decide either to claw back and renegotiate or find a cushion with the outer year negotiations, and we opted for the latter, canvassing for the introduction of the multi-term negotiated position.
- (z) It was not a simple decision to take, but it was the best comparing with what would have happened if the claw back option was the decided case.
- (aa) It suffices to reflect on the merits of the negotiated position as well, and truth be told, labour would have pushed for the negotiated dispensation anyway, given the reasoning considered and which led to the conclusion arrived at.
- (bb) The country would have been plunged into a serious predicament with a stand-off between organized labour and Government as an employer.
- (cc) It happened that such deadlocks took place from time to time; with serious consequences including loss of human lives and untold amount of destruction of properties, injuries and the dwindling of public image but it would

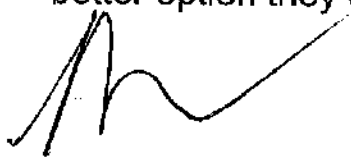
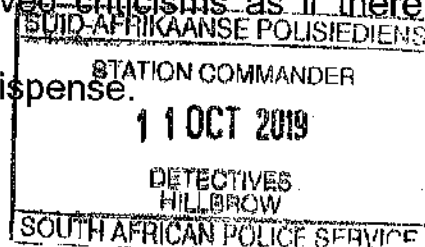



have been more haunting if such happened under conditions that could have been avoided.

(dd) It was always heartbreaking to see the public defenseless and exposed to more often violent labour action by employees of the Government that also has a responsibility to protect such people, and it is for that reason that some of us believed in making an effort to conclude negotiations fully exhausting all avenues than creating excuses for actions to erupt.

(ee) It was always my determination that when we say a position is a final offer for negotiation from the Government, it ought to be indeed a final offer, and not to take that position when we know that we still have a window of opportunity to resolve the deadlock, as if we use that as a bait testing unions' ability to mobilize for a strike action, only to move after they acted and caused all manner of suffering to innocent citizens.

(ff) As sometimes people contest positions for egoistic considerations or for any reason as long as what is done was not done by them, whether justified or not, the negotiated position received criticisms as if there was a better option they could dispense.

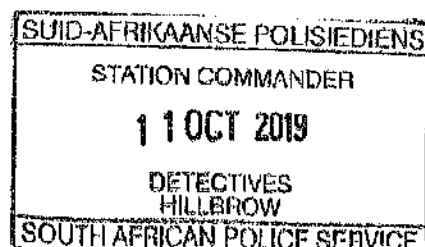



7.4.7 IMPROVING CONDITIONS OF SERVICE

(a) The position of Minister for Public Service and Administration carries with it the responsibility to make efforts for performance enhancement of the Public Service through betterment of conditions of service and alignment of career incidents.

(b) It is therefore the responsibility of such a Minister to identify possible bottlenecks, if any, and make recommendations that such be removed, as well as to initiate new improvements.

(c) I made one observation after in my position as a Minister that whereas the Public Service Act prescribes that the Directors General in the Public Service should be appointed for a period of not less than five years, renewable for not less than five years at a time, there was a Cabinet decision that they be appointed for a period of three years, renewable.



(d) I noted that, although this was not illegal and that it was obviously the case after certain observations, possibly the high turn-over rate of such officials, I thought we could do better with the dispensation as expressly contained in the Act.

(e) I thought three years was not enough for a Head of Department to release his/her best in leading a Department.

(f) I motivated to Cabinet that the practice be changed and it was accepted that we handle appointments for five years, renewable for five years at a time.

(g) For me it just did not make sense that we can allow a situation where such officials could be given a shorter term in Office when there is so much expected from them.



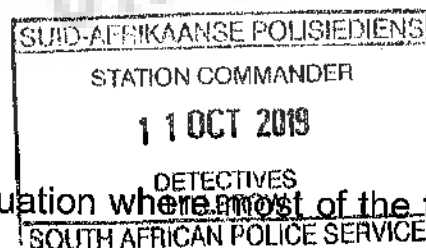
L.A

7.4.8 DEALING WITH A HIGH RATE OF DGs' EXIT FROM THE PUBLIC SERVICE

(a) I was more concerned about what I considered as lack of stability in the Public Service due to the short term of Office of the most senior Administrative officials of State Departments and I wanted to manage that situation or contribute in doing so in a manner that such should be minimized.

(b) I thought DGs needed enough time to learn the ropes, build a relationship with the entire Department, associated stakeholders and broader civil society.

(c) In fact I thought that the short-term employment scenario of the time would in no time compromise the Public Service's ability to attract the best from the pool of would-be-competent candidates, as people would rather look for more stable opportunities elsewhere and we thus had to contend with what remains in the market.



(d) I could imagine a frustrating situation where most of the time of a DG's first year in Office would be devoted to him/her customizing to the new work environment, well established in

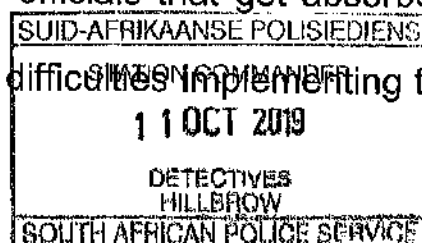
L. A

the second year but beginning to look for an alternative employment during the early months of the third year, for in case the contract would not be renewed.

(e) I remember taking the issue up with one Minister who was there since the dawn of the new dispensation and he said that during the time of three years' term there were fewer cases of redetermination of contracts compared to the time that the term was revised to five years, meaning that there was a common trend for DGs exiting the Public Service and that was a reason for the shortening of the term.

(f) In search of what contributed to high exit rate of DGs, either as a reason why Cabinet could have decided to shorten the period and manage it based on the three years renewable period or a growing number of contract redetermination in the five year dispensation, renewable, I could only draw understanding from certain assumptions, as follows:

(1) The first assumption I had was that it was the effect of the negotiated sunset clauses at the Convention for a Democratic South Africa, the impact of which being that there were probably old-order carry-through senior officials that got absorbed into DG positions but who would have difficulties implementing the policies



of the Government of the day, thus causing friction between them and their political principals.

- (2) The second assumption I had was that the recruitment nets for DGs were cast widely among former political activists, the impact of which being a stalemate on "who's who" with their political principals, as some would invest their time more on struggle-time political credentials and seniority, political connections and/or claim on the command of superior knowledge, resulting in friction with their political principals and early exit.
- (3) The third assumption I had was that of resentment built around circumstances that led to the manner of exit of the Second President of a Democratic South Africa, possibly fuelling tensions between some DDs and Executive Authorities.
- (4) The fourth assumption was that politics-administration dichotomy in the context of the Executive Authority versus the Accounting Authority dispensation was a complex environment to manage, such that tendencies were prone to show.



- (g) These assumptions helped me understand possibilities in the whole scheme of things, strengthening my position to continue working for stability in the Public Service.
- (h) My first call to handle a case of separation between a Minister and a DG was on the first day it was announced that I was to be appointed as a Minister.
- (i) The announcement was done in Parliament during a Session, and immediately thereafter, one Minister approached me to assist in handling the matter.
- (j) I was not sworn in yet and I 'hit the ground running' soon after those rituals.
- (k) The said Minister indicated to me that the relationship with the DG had broken down irretrievably that they had to part ways.
- (l) I knew that in a situation like that the immediate route was the exit and decided to continue in my resolve to work for stability and manage the situation differently.
- (m) In fact I started disliking a practice where DGs would be sent packing at a slightest opportunity that a Minister finds a reason



for such when I was a Member and Chairperson of the Portfolio Committee on Public Service and Administration. So, this was my time to make a difference.

(n) I negotiated with the Minister to support a move that I try find an alternative space for the said DG so that the official remain in the Public Service, did the same with the DG and the third participant was another Minister who agreed to have the DG transferred to that Department.

(o) I scored my first victory in the battle for stability through retaining the DG in the service.

(p) After this case I handled a number of transfers in a similar manner under similar circumstances and also in situations of transfers on mutual consent and arising out of interests.

(q) I have to indicate that my role in situations like these have always been that of support through negotiating for opportunities and influencing decision-making.

(r) The responsibility for recruitment, appointment and transfer remained the competency and prerogative of respective Executive Authorities.



(s) It would be helpful to understand power relations between the Minister for Public Service and Administration with any other Minister, in that there is no inference that the assigned functions to the former would suggest any form of seniority to the latter.

(t) Any intervention in the form of support, negotiation and exerting influence had to be approached in that light, thus the success or failure to realize the intended outcome of the intervention and the accountability thereof remained the business of the advised Minister.

(u) In dealing with appointments, for instance, the Minister for Public Service and Administration would support the recommending Executive Authority to ensure compliance with the following:

- (1) Security requirements in that the candidate should have a valid security clearance;
- (2) Qualifications requirements in that the candidate should meet the minimum qualifications requirements;
- (3) Selection procedure requirements in that the candidate should have been subjected to an interview with a properly constituted Panel;



C. A.

(4) Salary dispensation requirements in the sense that the candidate should have given consent to be paid within the prescribed salary scale or that there is a strong motivation for deviation which Cabinet should consider simultaneously.

(v) When full compliance is realized with the above requirements, the Minister for Public Service and Administration would then submit a Cabinet Memorandum recommending the appointment of such a candidate DG and, if approved, the Executive Authority of the National Executive (the President) and the Executive Authority of the Department (the Minister of Cabinet concerned) would then sign an appointment minute.

(w) It is expected that at the point that the recommending Minister approaches the Minister for Public Service and Administration with the profile of the candidate, such a Minister would have consulted the President on same.

7.4.9 SPECIAL CASES IN APPOINTMENTS AND EXIT

(a) There were situations that demanded a different approach in handling matters of appointments and



C. A.

transfers due to the distinctiveness of the circumstances.

(b) There were DGs for instance that would be appointed on a higher salary scale than the one for everybody and that happened in situations where such officials were recruited from outside the Public Service and on consideration of unique skills needed for turn-around interventions in Departments, particularly where such people were earning more at the places we recruited them from, compared with what we were offering.

(c) In this case the Minister for Public Service and Administration would come with a determination in terms of applicable instruments of authority to recommend to Cabinet for sanctioning, in consultation with the Minister recommending the appointment, which should be handled simultaneously with the consideration of the recommendations for the appointment of the said candidate by Cabinet.

(d) There would also be situations where my negotiations and influence would not yield the retention of a DG within the broader Public Service upon his/her exit from his/her

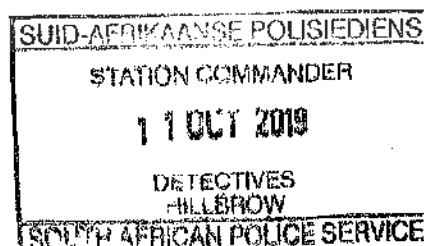


Department and where we had to manage exit through redetermination of contracts or resignations.

(e) The case of redetermining a contract would be considered in a situation where the DG's exit is initiated by the Executive Authority where there is material irretrievable breakdown of trust and relationship between the two and that they may not continue to work together and in such a situation where there is no breach of a code of conduct and no material evidence of any action or inaction of unbecoming conduct.

(f) It was rare that a DG-initiated exit could be handled in terms of the redetermination proceedings and more often than not such would either be at the turn of the term or treated a resignation.

(g) Throughout my career as Minister for Public Service and Administration I maintained my conviction to the Oath of Office I took and handled issues to the extent of my ability.



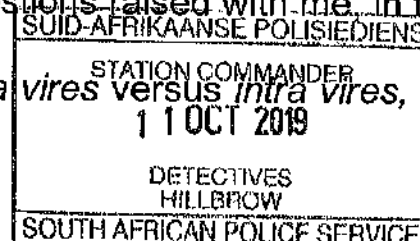
L. A.

8. CONCLUSION

8.1 In Conclusion, I bring a note addressing a general but related scenario analysis about the call for me to appear before the Commission and answer questions in a private-person capacity, on my own, but deal with issues I got exposed to representing the Government of the Republic of South Africa, in the discharge of my duties and within my valid authority and scope as the Minister and Executive Authority of the Department of Public Service and Administration of the time, as follows:

8.1.1 Whereas the questions raised with me are only relevant insofar as I have to provide all the information I have and everything I know about facts I got exposed to in an environment where I was acting in my official capacity as an assigned official of a Government Department in the Fourth and Fifth Administration of the still-existing African National Congress'-led Government of the Republic of South Africa, acting truly and within the scope of my mandate at the time;

9.1.1 Whereas it is my understanding that the said Government-employer ought to have an interest in the answers to the questions raised with me, in the spirit of the doctrine of *ultra vires* versus *intra vires*, and where



I as an official of the said Government at the time has to account for my actions taken in the course of the discharge of my valid duties;

8.1.2 Whereas I am called upon to provide in details all information I have and everything I know on things some of which happened about ten years ago and long after I moved on out of the said establishment and no longer have access to records and technical support to do justice responding to the questions raised;

8.1.3 Whereas those who originated the idea of the subject matter and those who expect me to provide all information I have and everything I know on those things and under the circumstances canvassed in this section do so fully aware, or ought to be so aware, of the participative nature of the public service and the inherent interdependence of officials in executing their tasks such that it normally requires more than one individual to answer some of those questions fully and satisfactorily;

8.1.4 Whereas any instruction for officials to operate outside the established protocol as stated in 2.4 above, either for reasons of defending themselves or advancing their self-identified interests may set them against each other and bear consequences too costly to manage for their employer;



8.1.5 Whereas I am called upon to respond and nonetheless provide all information I have and everything I know relying on recollection, to the extent that I can remember, when such information is readily available in Government records and through which an informed solid case could be formulated, thus warranting proper sanctions;

8.1.6 Whereas the chosen platform to handle this matter is the one that conducts its affairs in public;

8.1.7 Whereas this Statement may be a precursor to a hearing reminiscent of a trial in a case of being alleged to be guilty of willful neglect of duty as a state official at the time, to the detriment of State interest, committing or promoting Corruption and Fraud or that I am a potential witness that somebody indeed exposed the State to capture and/or committed or promoted corruption and fraud;

8.1.8 Whereas submitting this Statement and/or appearance before a hearing is largely an actuality of appearance before a Court of Public Opinion, with the same accusations or as a witness in a case with the same elements, and where there are myriad judges formulating opinions and making conclusive standpoints with possible reputational consequences too ghastly to contemplate, as I have to submit to the process as if there are face value facts

suggesting that indeed there is something wrong I did or there is



somebody I know who have done so, through availing myself, without recourse and assistance, to feed into the more-often-vindictive caprice of the Court of Public Opinion, as they may apparently feast on my reputation as if I am a criminal or unreliable witness;

8.1.9 Whereas possible impugning of my character, even as a factor of perceptions formed from my participating in this process, may in not a small measure affect my private image, thus jeopardize my future prospects, as its conceivable negative effects may well go beyond my personality as a state official;

8.1.10 Whereas there is an inherent perception that the people who are called upon to give information to the Commission are those who are suspected of some wrong-doing in the context of the subject matter of the Commission or those people who have allegations to make against other people and there is a reality that perceptions weigh more heavily in defining the public image on an individual;

8.1.11 Whereas I give answers to the questions raised in this Statement mindful of the fact that this is a call for me to account in as far as how I interpreted and applied the contents of the oaths of office I subscribed to when holding those positions, the due injunction of the assigned individual responsibilities ascribed to the




C. A. 99

scope of my work as a public official, the requisite collective effort for the shared outcomes and joint accountability mechanism in the know that I was just part of the complete whole picture duly expected to act in unison and conscious to do so within the expectations of the values of our public administration as enshrined in Section 197 of the Constitution of the Republic of South Africa;

8.1.12 Whereas submitting this Statement and possible appearance before the Commission hearing may put me on the public's radar screen for people making it their unlimited call to find issues to raise, based on the subject matter of the Commission in the manner that even if such could be rebutted later, the negative effect on reputation could be expensive to reverse;

8.1.13 Whereas the content of my Statement or testimony at the Commission hearing may put me at the thick of things and trigger follow up reactions and possible reprisal either by those who will like to just contest my views and/or those in authority who may dislike my angle;

8.1.14 Whereas, to the extent that I can remember what happened and provide all information I have and everything I know about the issues raised with me and for which answers I am stating under




oath as correct in that context, I am strongly convinced that perusing documents at the disposal of Government – my employer at the time of my exposure to the situation around which the questions are raised – as well as making a little effort to examine existing appropriate Government instruments or mere conferencing with other established organs such as the Public Service Commission could shed more light to a conclusive position on my angle of argument in this submission.

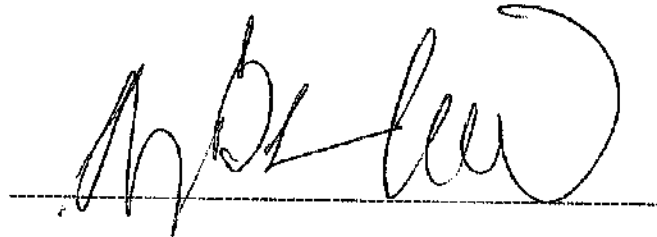
8.1.15 Whereas I reserve a right of making a supplementary statement to my affidavit, at a later stage, wherein I give more clarity on certain areas and make additions not tempering with the content of this Statement.

8.1.16 Now therefore, my Statement without recourse but under Oath is submitted in response to the questions the Commission instructed me to do, as indicated above.

8.2 I also want to state that, contrary to some officials of the Commission alleging that I responded to correspondence the Commission addressed to me with contempt by either ignoring or refusing to attend to them, I only got the documents around August 2019, and officials of the Commission later acknowledged that their correspondence did not reach me in time.



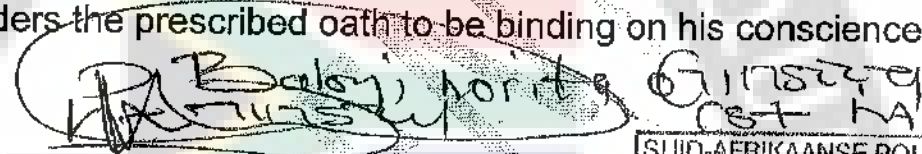
SUID-AFRIKAANSE POLISIEDIENS	
STATION COMMANDER	
11 OCT 2019	
DETECTIVES HILLBROW	101
SOUTH AFRICAN POLICE SERVICE	



SIGNATURE OF DEPONENT

Sworn to before me at Hillbrow SAPS on this the 11-day of
October 2019, the deponent having acknowledged that:

1. He knows and understands the contents of this affidavit.
2. He has no objection to taking the prescribed oath.
3. He considers the prescribed oath to be binding on his conscience.



COMMISSIONER OF OATHS

SUID-AFRIKAANSE POLISIEDIENS
STATION COMMANDER
11 OCT 2019
DETECTIVES HILLBROW
SOUTH AFRICAN POLICE SERVICE



2nd Floor, Hillside House
17 Empire Road Parktown
Johannesburg
2193

Tel: (010) 214-0651
Email: inquiries@sastatecapture.org.za
Website: www.sastatecapture.org.za

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

**CHAIRPERSON'S DIRECTIVE IN TERMS OF REGULATION 10(6) OF THE
REGULATIONS OF THE COMMISSION**

TO : MR MAKARINGE RICHARD BALOYI

ADDRESS : 22 DROMMEDARIS STREET
PHALABORWA
1389

TEL : 082 366 0727 / 083 377 2126

EMAIL : khuvanani@gmail.com / nhlamulo.baloyi@gvrogroun.co.za

1. By virtue of the powers vested in me in my capacity as Chairperson of the above-mentioned Commission by Regulation 10(6)* of the Regulations of the Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud In the Public Sector Including Organs of State, I hereby direct you, **Mr Richard Baloyi**, to:

*Regulations 10(6) of the Regulations of the Commission reads: "For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person."

1.1 deliver on or before **Wednesday, 6 November 2019** to the Secretary or Acting Secretary of the Commission at the address given above an affidavit or affirmed declaration in which:

- (a) you state whether you admit or deny the allegations made about, or, against, you in the affidavit or statement or affirmed declaration of **Ms Mildred Oliphant dated 7 October 2019** attached hereto which was submitted to the Commission for the purpose of its investigations.
- (b) you state, if you deny or dispute any allegation or statement made about, or, against, you in the said affidavit or statement or affirmed declaration, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in that statement or affidavit which refer, or, relate, to you.

2. If you would like assistance from the Commission in order to prepare the affidavit or affirmed declaration, you must, within five days (excluding weekends and public holidays) of receipt of this directive, contact, or, communicate with, the Secretary or Acting Secretary of the Commission and indicate that you would like such assistance in which case the Commission will provide someone to assist you with the preparation of the affidavit or affirmed declaration. In such a case you will not pay anything for such assistance. Should you have difficulty in reaching the Secretary or Acting Secretary or should the Secretary or Acting Secretary not return your call or respond to your letter or emails, you may contact Ms Lerato Chesi-Buthelezi at 060 773 9825 or at leratob@commissionsc.org.za.

3. If, in order to prepare the affidavit, or affirmed declaration, you do not need any assistance from the Commission, you must, with or without the assistance of a lawyer of your own choice, prepare the affidavit or affirmed declaration and have it delivered to the Secretary or Acting Secretary of the Commission on or before the date given above for the delivery of the affidavit. If you make use of a lawyer of your own choice to assist you to prepare such affidavit or affirmed declaration, the Commission will not be responsible for the payment of your lawyer's fees or costs.

4. This directive is issued for the purpose of pursuing the investigation of the Commission.

5. Your attention is drawn to Regulations 8(2), 11(3)(a) and (b) and 12(2)(b) and (c) of the Regulations of the Commission. Regulation 8(2) reads:

- "8 (1) ...
 (2) A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947)."

Regulation 11(3)(a) and (b) reads:

- "11 (1) ...
 (2) ...
 (3) No person shall without the written permission of the Chairperson—
 (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
 (b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson."

Regulation 12(2)(b) and (c) reads:

"12 (1) ...

(2) Any person who

(a) ...

(b) wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10; or

(c) contravenes a provision of regulation 11, is guilty of an offence and liable on conviction -

(i) in the case of an offence referred to in paragraph (a) to a fine, or to imprisonment for a period not exceeding six months; and

(ii) in the case of an offence referred to in paragraph (b) or (c), to a fine, or to imprisonment for a period not exceeding 12 months."

SIGNED IN JHB ON THIS 25th DAY OF October 2019.



JUSTICE RMM ZONDO
DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

and

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

STATEMENT TO THE JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE
PUBLIC SECTOR, INCLUDING ORGANS OF STATE: MAKARINGE RICHARD
BALOYI, ID NUMBER 5812256283089

1. STATEMENT


1.1 I, the undersigned, **MAKARINGE RICHARD BALOYI** state under oath as follows:

1.1.1 That the facts herein contained and to which I depose are within my personal knowledge true and correct to the extent that I can remember, unless otherwise stated.

1.1.2 That I am an adult South African male residing at Number 22 Drommedaris Street, Phalaborwa, Ba-Phalaborwa Municipality in the Mopani District of Limpopo.

1.1.3 That I am currently unemployed and I present a consolidated account of my work history, experience and expertise below.

1.1.4 That, having been a political activist throughout my life, I continue to be one to this date and I include some details thereof in the summary of my background below.


S.d

1.1.5 That it is because of my prior position as a Minister some ten (10) years ago in the National Executive of the Republic of South Africa that I have been instructed to make this statement to the Judicial Commission of Inquiry into allegations of State Capture, Corruption and fraud in the Public Sector, including Organs of State

1.1.6 That the information contained in my statement herein is largely, if not exclusively, based on my memory in circumstances where I no longer have access to such information that is located in the Department wherein I served.

2. INTRODUCTION

2.1 I respond to a directive dated 25th October 2019 from the Chairperson of the Judicial Commission of Inquiry into allegations of State Capture, corruption and fraud in the Public Sector, including Organs of State, herein also referred to as State 'Capture Commission' or simply "the Commission", Deputy Chief Justice Raymond Zondo.

2.2 In this directive, the Deputy Chief Justice instructs that I should state whether I admit or deny the allegations made about or against me in the affidavit or statement of Ms Mildred Oliphant, the former Minister of Labour, as she gave representations to the Commission to answer questions about Mr Mzwanele Manyi, encapsulated as follows:



S.a

2.2.1 Deliver on or before Wednesday, 6 November 2019 to the Secretary or Acting Secretary of the Commission, an affidavit or affirmed declaration in which:

- (a) You state whether you admit or deny allegations made about, or, against, you in the affidavit or statement or affirmed declaration of Ms Mildred Oliphant dated 7 October 2019 attached hereto which was submitted to the Commission for the purpose of its investigations.
- (b) You state, if you deny or dispute any allegations or statement made about, or, against, you in the said affidavit or statement or affirmed declaration, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in that statement or affidavit which refer, or, relate, to you.

3. BACKGROUND INFORMATION

- 3.1 My personal background information is that I am a South African citizen by birth, a political and civil activist involved under the banner of the African National Congress (ANC) and the South African National Civic Organization (SANCO), a University Graduate in Social Sciences and with a work record, thus: a Teacher; a Transport Administrator; a Community Development Officer with Eskom; A Customer Service Manager with Eskom; a Electrification Planning Manager with Eskom; a Mayor; a Member of Parliament with the National Assembly; a Minister

W
S.a

for Public Service and Administration; a Minister for Cooperative Governance and Traditional Affairs; a Diplomat.

- 3.2 The first **subject matter background information**, by Recordal, is that it is for the second time that I have to submit an account to the same Commission, answering questions related to the same Mr Mzwanele Manyi, as contained in my Statement served on the 11th October 2019, forwarded herewith, for ease of reference, as Annexure A.
- 3.3 The second **subject matter background information**, by Recordal, is that in my first account to the Commission submitted on the 11th October instant, I dealt with a situation relating to legal provisions for the lawful transfer of a Director General or CEO in Public Service, and that answer bodes well as a reference point as I deal with the answer to the directive of the Chairperson and, for ease of reference, I attached that account hereto, as Annexure B.
- 3.4 The third **subject matter background information**, by further Recordal, is drawing reference with my account in my first submission to the Commission, and dealing with the powers that a Minister of Public Service and Administration wields and the associated limitations, as and when I was alluding to the transfer of one Director General from Government Communications and Information Services to the Department of Public

M
S. a

Service and Administration, Mr Temba Maseko, attached hereto as Annexure C.

3.5 The **fourth subject matter background information** is that in my affidavit of 11 October 2019, I submitted an account to further reflect on the powers and limitations of a Minister for Public Service and Administration relating to my experience in the management of high exit rate of Directors General in the Public Service, also as a reference point for the Commission, attached hereto as Annexure D.

3.6 The **fifth subject matter background information** to my affidavit is reference to specific sections of Ms Oliphant's affidavit on Mr Manyi's situation, selected and attached hereto as Annexure E

4. MY RESPONSE TO THE CHAIRPERSON'S DIRECTIVE OF THE 25TH OCTOBER 2019 ON Mr MANYI

ADD PARAGRAPH 1.1 (a)

4.1 QUESTION

M
S.a

STATE WHETHER YOU ADMIT OR DENY THE ALLEGATIONS MADE ABOUT, OR, AGAINST, YOU IN THE AFFIDAVIT OR STATEMENT OR AFFIRMED DECLARATION OF Ms OLIPHANT DATED 07 OCTOBER 2019

4.2 ANSWER

4.2.1 I do not deny or dispute the allegations made and I am interested in further dealing with additional matters of context, as I indicate below.

ADD PARAGRAPH 1.1 (b)

4.3 QUESTION

STATE, IF YOU DENY OR DISPUTE ANY ALLEGATION MADE ABOUT, OR, AGAINST, YOU IN THE SAID AFFIDAVIT OR STATEMENT OR AFFIRMED DECLARATION, THE GROUNDS ON WHICH YOU BASE YOUR DENIAL AND GIVE YOUR FULL VERSION IN REGARD TO THE ALLEGATION(S) OR STATEMENT(S) OR ISSUE(S) OR MATTERS OR INCIDENTS COVERED IN THAT STATEMENT OR AFFIDAVIT WHICH REFER, OR, RELATE, TO YOU

M
S.9


4.4 ANSWER

4.4.1 ON GROUNDS FOR DENIAL OR DISPUTE

- (a) I submit that I have nothing to offer as grounds for denial or dispute because, as stated above, I do not deny or dispute the allegations of Ms Oliphant.

4.4.2 MY VERSION IN CONTEXT


- (a) Notwithstanding my position that I do not deny or dispute any allegation in Ms Oliphant's statement or affidavit and would therefore not provide any ground for the denial because it does not exist, I elect to provide more information in my context of representation after recollecting facts and possibilities arising from Ms Oliphant's affidavit or statement, as follows:
- (i) The context of my response is that her articulation gives a proper picture applicable in dealing with a case like that of Mr Manyi and, of course, it reminds me of the fact that we had discussions about the case, and that I did provide the necessary support until the end of the case.
- (ii) In my Statement submitted to the Commission on the 11th October instant when dealing with questions related to the same Mr Manyi, as quoted above, I indicated that more details about his situation may be obtained from the Executive Authorities concerned as I was only playing a supportive role to them, and that such a reference meant both Ms Oliphant and Mr Mdladlana, as former Ministers of the Department of Labour at the



S.a

time, and, thanks that Ms Oliphant has provided part of her area of responsibility in this matter and thanks that the Commission referred that to me, as it assists me to do a recollection of the facts around the case, given a long time-lapse since my last involvement with the issues.

- (iii) I concur with Ms Oliphant's account, despite my elaborate context in some sections, which is in line with what I indicated in my earlier Statement to the Commission on 11 October 2019 and concerning Mr Manyi and the Department of Labour.
- (iv) I was as involved in the case of Mr Manyi as it was expected from me then as Minister for Public Service and Administration, and I went to the extent guided by my resolute stance where I would provide support to Ministers in the manner that there had to be fairness in dealing with matters concerning Directors General, for the sake of justice and integrity in our stable public service of the accountable Administration of the ANC-led Government, and my advice to Ms Oliphant should be viewed in that light.
- (v) It should be recalled that Directors General are outside the collective bargaining space of public servants and are not allowed to join trade unions, and we can argue that they could easily be taken advantage of unless somebody prevails from a neutral point of view.
- (vi) I responded in details on the procedure for appointments and transfers as well as dismissals of Directors General in my earlier Statement and quoted as a subject matter background case in this Statement above, though relating to another case and also in general terms, because it is the same dispensation that applies across the board.



S.a

- (vii) By juxtaposition, a clearer position about Mr Manyi's dismissal circumstances can thus be established from that stated account, as per the quoted cases.
- (viii) The reason for me advising Ms Oliphant to meet with Mr Manyi, as he requested, was to ensure that she was fully briefed on his situation as well as what he was intending to do with that, as she indicated that her Department did not share any information about him and the Departmental Legal Team had no information in details beyond just knowing that he was dismissed two or three days before her appointment as a Minister and that he was dismissed because he did not respect Minister Mdladlana.
- (ix) It was necessary to establish such facts from Mr Manyi so that we use the information as we weigh options in dealing with the matter, to make sure as I advise Ms Oliphant, and as she takes a final decision on the advice, that both of us should be conscious that whatever we had to do should be devoid of a possible risk of Government exposure and humiliation arising from a possible loss of Mr Manyi's case in the Labour court.
- (x) I would not have advised her to meet Mr Manyi if she had an opportunity for a hand-over briefing with Mr Mdladlana, because she would have got the information from him.
- (xi) I did not advise her to consult Mr Mdladlana because he was no longer in the National Executive.
- (xii) I do not remember if I knew by that time that Mr Manyi was dismissed, and of course, even if I knew that he was dismissed I would not have provided details thereof in a manner to substitute the advice I gave because I had

Handwritten signature and initials, possibly "S.9", in the bottom right corner.

no authority to act at that space of articulating circumstances surrounding his dismissal.

- (xiii) As to whether Mr Manyi should have lodged an appeal, if so desired, with the Minister of Public Service and Administration or not, I state the context as follows:

(aa) The Minister for Public Service and Administration is the custodian of the Public Service Act but only in the sense of having to ensure that general applicable enabling regulations and overarching appropriate enforcement systems such as the Senior Management Services Handbook and the Handbook for Executive Authorities, etc. have to be in place.

(bb) However, this does not go to the extent of allocating carte blanche powers on regulated matters of the functioning of the National Executive to the Minister for Public Service and Administration.

(cc) Appointments, transfers and dismissals are regulated functions of the National Executive, bestowing the functions of initiating such actions to Departmental Executive Authorities.

(dd) The support functions are assigned to the Executive Authority of the Department of Public Service and Administration (if he/she is not the line-function Minister in that particular case).


(ee) The final approval function vests with the Executive Authority of the National Executive, who is the National Executive of the Republic and is the President of the State, with Cabinet concurrence.

(ff) Of course, Ministers are political principals of Departmental administrative functions such as the determination and enforcement of

M
S.a

line-function policies defining content issues; performance standards setting, measurement, reward practices and consequence management; general discipline management and remedial interventions.

- (xiv) As a point of reference without suggesting anything in this case of Mr Manyi, and using this information on a hypothetical case, procedurally, cases of dismissals of Directors General follow a due process, including that there has to be a case of misconduct preferred against the affected DG and a hearing accordingly conducted, with the ultimate definite involvement of the Executive Authority of the National Executive – the Executive Authority of the Republic.
- (xv) I must state that a Minister's position to have a DG dismissed remains a wish until the due process is followed to the end and such a wish does not carry the same weight with a dismissal, and no DG can be expected to appeal against a wish.
- (xvi) In fact, a Minister has no powers to dismiss a DG as he/she has no powers to appoint.
- (xvii) In practice, the support services by a Minister for Public Service and Administration in dealing with dismissals, though important, is not sacrosanct.
- (xviii) In light of the above and in specific terms, the issue on whether there was a dismissal case against Mr Manyi is not for me to answer as, at the time, I was not the Executive Authority of the Department of Labour to initiate such and I was not the Executive Authority of the National Executive to approve that the dismissal.



S.a

- (xix) At the time I was the Minister for Public Service and Administration whose involvement in such a case was not mandatory.
- (xx) It therefore does not arise that the DG may appeal a decision of dismissal with a Minister for Public Service and Administration.
- (xxi) By implication, and because the final authority to dismiss a DG vests with the President, it means that the appeal authority should be elsewhere, possibly with the Public Service Commission.
- (xxii) I am not sure of this point of where the DG should lodge an appeal because for the duration of my turn as a Minister for Public Service and Administration and as a Member of the Portfolio Committee on Public Service and Administration, I never met such a case.
- (xxiii) I would have sought legal advice if it happened.
- (xxiv) The advice I gave to Ms Oliphant to withdraw the dismissal case of Mr Manyi was in fact granting the Ministry of Labour a benefit of a doubt that such a dismissal was formally in place.
- (xxv) The advice I gave to Ms Oliphant to place Mr Manyi on special leave until the finalization of his case was done in order to allow the Administration to locate itself on the best dispensation out of the predicament rather than have him back in the Department and appear like arbitrarily dismissing the decision to have him out of the system or suddenly, without a due process, bring him back to the system and cause confusion in the Department.
- (xxvi) Thanks that the legal Team of the Department of Labour supported my advice, according to Ms Oliphant.
- (xxvii) I facilitated Mr Manyi's transfer to the Government Communications and Information Services (GCIS), acting on the concurrence of the then



S.A

(xxvii) It should also be noted that Ms Oliphant indicated that the transfer instilled a sense of stability in the Department, not in so far maybe of it being seen as good riddance, but a fair treatment that he was not thrown out in the street and such a move quelled internal wrangles with organized labour in the Department.

4.4.3 THE SIGNIFICANCE OF Mr MDLADLANA'S EVIDENCE TO MY VERSION

- (a) I submit that the absence of former Minister Mdladlana's version of the story is a missing link for me to do justice in the account of my actions in dealing with this matter, as it relates to the role I played in relating with or ought to relate with one Office, i.e the Office of the Minister of Labour, which happened to be occupied at different times by two Ministers during my turn as a Minister for Public Service and Administration, and where my role was that of support, when requested, i.e former Minister Mdladlana and former Minister Oliphant.
- (b) The issues we are dealing with happened long time ago that my account depends on own original memory and the recollections from what those I worked with have to say, like, in this case, Ms Oliphant, so far.
- (c) I will balance my recollection and provide a more useful account to the Commission and for public interest, if I am exposed to Mr Mdladlana's version.

AN
S. a

- (d) If it was, and I guess it is, in the business of the Commission's investigation to have me comment on whatever is said about this case and where my involvement is expressly cited or implied, it would have been helpful to me also to consider what he is saying on the matter, if any, of course depending on the Commission's own interests and its chosen angle, because the support I gave was to both of them holding the same Office at different times to each other.
- (e) Even if the Commission's interests would be to deal with this matter differently, I would request that I have such a version from Mr Mdladlana, so that I can meaningfully be of value in support of the Commission's investigation and properly serve the unbiased interests of the public in my response.
- (f) I indicated in my Statement of 11 October 2019 when answering questions on the same Mr Manyi that I did all in his case in support of the two former Ministers and that there should surely be records in the Ministry of Labour through which facts can be established, and I state now that it is those records reference to which Mr Mdladlana's version may address, that can assist the process.
- (g) I can imagine that the only reason that his account has not been referred to me for consideration is that the Commission does not have such a Statement from him, possibly because he may not have been cited by any other witness as having information on this matter at the point of the Commission's reference of Ms Oliphant's case to me, but I recall having cited him in my



S.a

statement of 11 October, though only in title, and that reference makes it relevant to call for such a version.

- (h) I repeat that there is a strong case to request his version because he was occupying the same position that Ms Oliphant as his immediate successor held, thus for a smooth flow of my version in matters concerning the Ministry of Labour during my turn as Minister for Public Service and Administration, and in particular concerning the ins- and outs of Mr Manyi, such a version is paramount.
- (i) A problem with the absence of his Statement is that I will use suppositions when dealing with part of my account that refers to his position on the matter and it will not be helpful for me, as I would prefer the same logic applicable on my involvement during my time and his as Ministers, respectively, coming in only after his request, and not advising him by taking a lead in initiatives.
- (j) I think it is in order for me to request the Commission to provide me with his version on this matter before I conclude my submission, so that even the day I appear before the Commission for oral hearing, if it will be so, I would do so having fully applied my mind and articulate to the best interest of the expectations the public has on the outcome of the Commission's inquiry, rather than feel ambushed in case I get confronted with his version during the hearing.
- (k) Take an account of dealing with Mr Manyi's dismissal, for instance, because, as and when we dig into this case to establish facts on the withdrawal of Mr Manyi's case of dismissal, we may want to balance such an interest with a



desire to establish the circumstances under which he was dismissed and view that against the established procedure for dismissing a Director General, for us to conclude that, indeed, there was a dismissal and therefore something to withdraw.

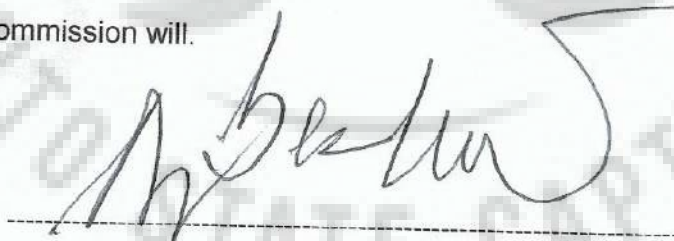
- (l) Ms Oliphant did not indicate anything about that because he was already dismissed, they say, two or three days before her appointment as a Minister.
- (m) I indicated in my earlier statement of the 11th October that the details are with the Ministers involved, and that obviously records ought to exist somewhere in the Ministry/Department.
- (n) To be exact, this is what I said in response to a question on his dismissal: "I recall only limited information about this matter, refreshed through a copy of a letter sent to me by the investigators of the State Capture Commission. Working backwards, I can only imagine that a due dismissal process was done to arrive at a decision to dismiss and that the concurrence of Cabinet was sought and there was a President's Minute to that effect, because I do not think of any other procedure that could have led to the dismissal. All this information I am giving is a stone thrown in the dark from me as there is really nothing I remember about details of this case and that the Executive Authorities concerned should respond to this question".
- (o) We now know from Ms Oliphant's affidavit that, in addition to my Statement that I do not have facts about this case, she has no details because Mr Manyi was dismissed before she was appointed.



- (p) I think it is just fair to request the Commission to give me support on things that I have no control on and are needed for my role as a witness to give proper evidence to the Commission, given the reality exposed in the section dealing with situational analysis in the conclusion section below.

5. CONCLUSION

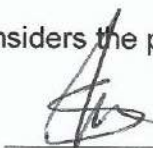
5.1 In Conclusion, and as I stated in my Statement to the Commission, submitted on the 11th October instant, attached hereto as Annexure F, I think it is unfair that I have been called upon to deal with pure administrative matters through this Commission, and worse if I will be called for a hearing on available evidence, as if I have a case to answer suspected to have acted in a manner that I was an agent of State capture or benefited from that, or committed or promoted general corruption and/or committed or promoted fraud as a manifestation of corruption, separately, or in the same conduct as an agent of State capture. It is unfair, to say the least, and I wish we had people in authority who are ready to listen. Maybe the Commission will.



SIGNATURE OF DEPONENT

Sworn to before me at ----- on this the -----day of October 2019,
the deponent having acknowledged that:

1. He knows and understands the contents of this affidavit.
2. He has no objection to taking the prescribed oath.
3. He considers the prescribed oath to be binding on his conscience.



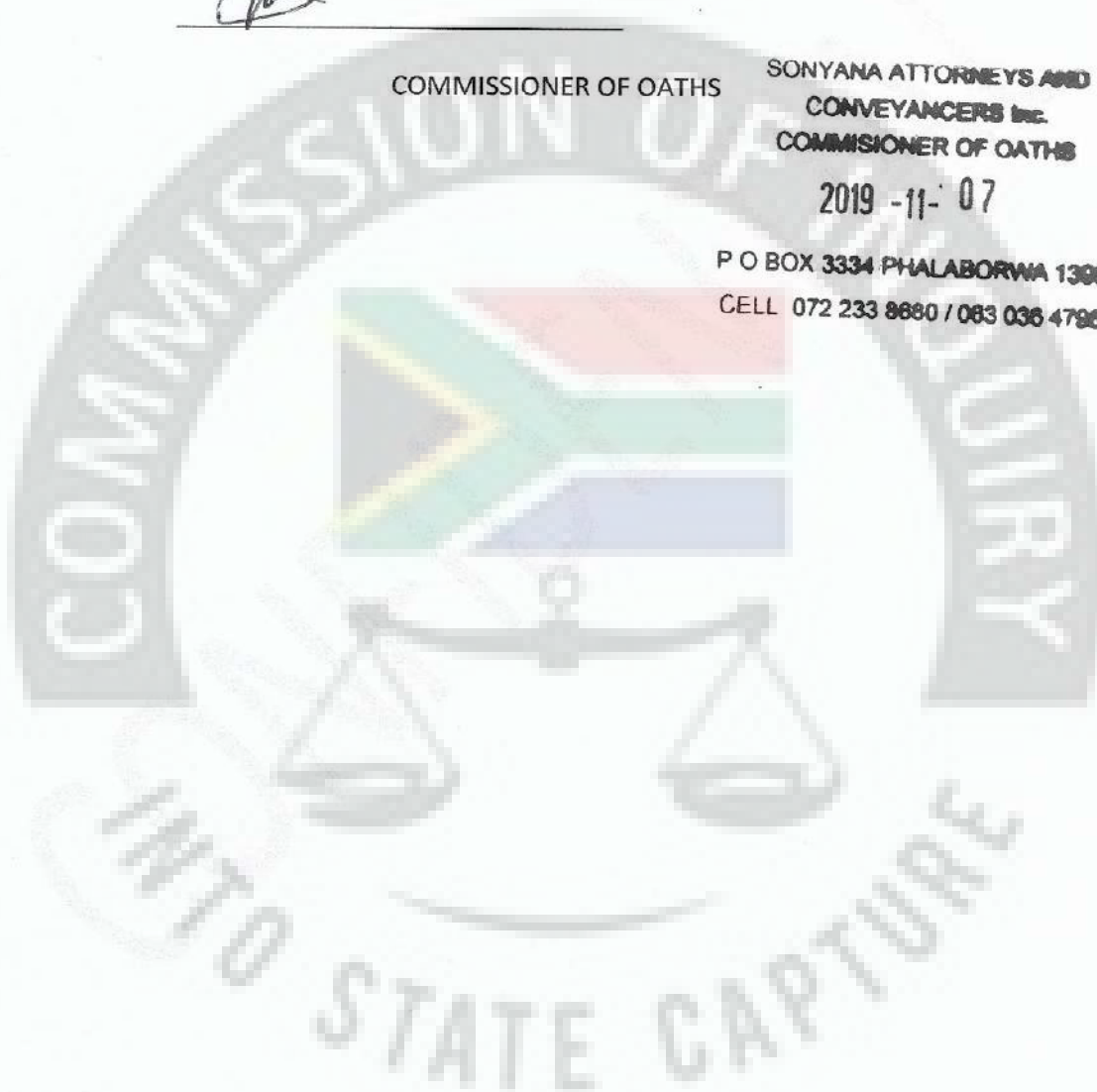
COMMISSIONER OF OATHS

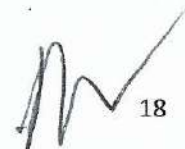
SONYANA ATTORNEYS AND
CONVEYANCERS INC.
COMMISSIONER OF OATHS

2019 -11- 07

P O BOX 3334 PHALABORWA 1360

CELL 072 233 8680 / 083 036 4788



 18

S.a

ANNEXURE A

REFERENCE TO QUESTIONS AND ANSWERS ON Mr MZWANELE MANYI, AS PER AFFIDAVIT OF 11 OCTOBER 2019

"QUESTION

PROVIDE ALL THE INFORMATION YOU HAVE AND EVERYTHING YOU KNOW ABOUT THE APPOINTMENT OF Mr MZWANELE MANYI AS DIRECTOR GENERAL OF LABOUR IN SEPTEMBER 2009

ANSWER

- (a) I got to know about the appointment of Mr Manyi when I was called upon to support the Minister of Labour during that time, as he was negotiating a package with him, because he was an external candidate and was earning more than what we could offer in the public service.
- (b) I think he was coming from Tiger Brands.
- (c) I remember in our discussion that neither the Minister nor he could provide anything justifying me to make a determination for a special consideration to warrant a waiver from what we were offering, meaning that there was no

M. S. a

above average competency detectable from him as a candidate and there was no special situation that needed a special skill in the Department of Labour at the time.

- (d) Mr Manyi accepted to be appointed at the applicable salary scale.
- (e) I do not remember as to the stage at which the Minister was in the recruitment process at the time we had the discussion, I mean as to whether at the time the selection interview was done or it was before that.
- (f) Thereafter he was appointed and this can be verified with the Ministry of Labour.
- (g) I cannot provide as much details about Mr Manyi's appointment as I did with Mr Maseko because his Ministers of the time, respectively, can handle that, save to say that we worked together with the Minister in the preparation of the Cabinet memo up until the President signed the Presidential Minute.

5.1.2: ADD PARAGRAPH 1.1 (b)

THE QUESTION

M S. a

PROVIDE ALL THE INFORMATION YOU HAVE AND EVERYTHING YOU KNOW ABOUT THE DISMISSAL OF Mr MANYI FROM THE DEPARTMENT OF LABOUR

ANSWER

- (a) I recall only limited information about this matter, refreshed through a copy of a letter sent to me by the investigators of the State Capture Commission.
- (b) Working backwards, I can only imagine that a due dismissal process was done to arrive at a decision to dismiss and that the concurrence of Cabinet was sought and there was a President's Minute to that effect, because I do not think of any other procedure that could have led to the dismissal.
- (c) All this information I am giving is a stone thrown in the dark from me as there is really nothing I remember about details of this case, and that the Executive Authorities concerned should respond to this question.

5.1.3: ADD PARAGRAPH 1.1 (c)

QUESTION

W
Sea

PROVIDE ALL THE INFORMATION YOU HAVE AND EVERYTHING YOU KNOW ABOUT THE TRANSFER OF Mr MANYI TO THE GOVERNMENT COMMUNICATION AND INFORMATION SERVICES

ANSWER

- (a) Mr Manyi's transfer to the GCIS happened at the same time with Mr Maseko's transfer from the GCIS to the DPSA, and it was probably done as an effort to fill the space that became vacant with the transfer of Mr Maseko.
- (b) The Ministers of Labour and of Performance Monitoring and Evaluation in the Presidency, respectively, concurred with the move after Mr Manyi declared his consent to the transfer, and thereafter the due process ensued.
- (c) A Cabinet Memorandum was submitted seeking concurrence and, accordingly, the Cabinet Minute was signed for his transfer."

M
S.a

ANNEXURE B

REFERENCE TO LEGAL PROVISIONS FOR THE HANDLING OF TRANSFERS OF DGs, AS PER AFFIDAVIT
OF 11 OCTOBER 2019

QUESTION

To your knowledge and recollection, what are the normal requirements and practice or procedures to bring about a lawful transfer of a Head of a National Department, having regards to the provisions of section 12 and 12A of the Public Service Act?

ANSWER

(a) REQUIREMENTS

- (i) A lawful transfer of a Head of a National Department is done to an incumbent who still has a valid contract and who has a clean record of good service.
- (ii) The transfer may be meant to strengthen the location of the intended transfer, due consideration taken of peculiar competencies of the Head of Department to be transferred, vis-à-vis the functional scope of the targeted location.


Sea

- (iii) It may be meant to strengthen the general Public Service, more especially in a situation where the intended location of transfer serves a transversal service constituency and the wide competency of the candidate of transfer commands such strength, and this is what is considered as transfer at public interest.
- (iv) The transfer may be meant to combine the competencies of the candidate with management of a crisis situation where there exist a material irretrievable breakdown of trust between the Executive Authority and the Head of a National Department, and particularly meant to accommodate such an official within the broader public service.
- (v) The transfer has to be initiated, either by the Executive Authority or the Head of a National Department concerned.
- (vi) If initiated by the Head of a Department, the Executive Authority of the Department must concur.
- (vii) If initiated by the Executive Authority, the Head of a National Department to be transferred must give consent.

M
S.a

- (viii) The Executive Authority may overrule the Head of the Department and transfer him/her without consent if the transfer is meant to address a public interest.
- (ix) The initiator must have negotiated for an alternative location.
- (x) The alternative location must be the same in rank and conditions or equivalent with the one being vacated, so that the transferred official is not worse-off due to the transfer.
- (xi) The Executive Authority of the receiving location must concur

(b) PRACTICE OR PROCEDURE

- (i) The Minister/Executive Authority of the releasing Department becomes the recommending Minister for the transfer, irrespective of whether the transfer was initiated by him/her or not and, having satisfied him-/herself of the above requirements.
- (ii) The releasing Minister coordinates with the Minister for Public Service and Administration in developing a Cabinet Memorandum seeking Cabinet Approval.

W
Soa

- (iii) The transfer can only be effected if Cabinet concurs with the recommendation.
- (iv) After Cabinet concurrence, the Executive Authority of the National Executive signs a Presidential Minute for the transfer of such an official, with the powers vested in him/her to appoint and transfer Heads of Department.”



W
S.d

ANNEXURE C

Mr MASEKO'S TRANSFER AS A REFERENCE CASE FROM 11 OCTOBER STATEMENT

QUESTION:

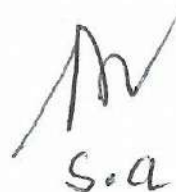
When did you become aware of the transfer of Mr. Maseko from the GCIS to the DPSA?

ANSWER:

- (a) I did not just become aware of the transfer of Mr Maseko from the GCIS to the DPSA because I facilitated that transfer and that happened during the period that his transfer took place, around February 2011.
- (b) It was part of my responsibilities as Minister for Public Service and Administration, at the time, to support Ministers as Executive Authorities of their Departments in dealing with matters like the one under consideration.
- (c) In all instances that it would arise that there had to be an exit of a CEO or DG (in the case of Departments) and in situations like that of Mr Maseko, i.e before the expiry of the contract, the relevant Executive Authority would approach the Minister (Executive Authority of the Department of Public Service and Administration [EADPSA]) for the management of such an exit.
- (d) I was approached on the matter concerning Mr Maseko by the Executive Authority of Government Communications and Information Services, the Minister in the Presidency responsible for Performance Monitoring and Evaluation at the time.
- (e) I, as the EADPSA, considered appropriate options and there were two of them available, i.e the redetermination of his contract on a severance package and allow him to exit or negotiating for a possible transfer, because, based on information at my disposal, the exit was not initiated by him and the exit had to happen.

M
S.a

- (f) I preferred the option of transfer and began to negotiate for such to happen and do so in a manner that he be transferred to the Department of Public Service and Administration, as, at the time, there was a need for such a resource and, considering his experience, he would be suitable for the job, hence I moved for his transfer, after I took a decision that his services would be of value to the DPSA.
- (g) I discussed with his Principal and obtained concurrence.
- (h) I discussed with Mr Maseko and got his consent.
- (i) I must state that during our discussion I made it clear to him that I was ready to even extend his contract at its expiry, provided that we would reach that stage both of us still with the Department and assuming that all other things would remain the same to that end, meaning that there would have been no negative development justifying non-renewal of his contract.
- (j) I have to underscore the fact that I was not doing the transfer for any special reason to him, but that it was the way I chose to handle retention of DGs, which is what I did with a few DGs since my turn as Minister for Public Service and Administration, recommending and bargaining with Ministers to consider a practice where we use 'transfer' as an option rather than getting DGs completely out of the system and in such humiliating circumstances as if we found them guilty of any wrong doing.
- (k) My arguments were always based on my observation that, even if it was allowed to redetermine a DG's contract on grounds of irretrievable breakdown of trust between an Executive Authority and a Head of a National Department or equivalent Agency, the latter would have no recourse to test the validity of the alleged irretrievable breakdown, unless in highly unlikely situation where the official would declare a dispute, refuse to resign and put up a case of constructive dismissal.
- (l) I must state that for my duration in the Public Service, I do not remember a Head of a National Department who contested the decisions of Executive Authorities up to a point of declaring a dispute and raise such a case of constructive dismissal.
- (m) I do not remember any Minister for Public Service and Administration intervening to challenge the validity of any Executive Authority's claim of



S.A

- irretrievable breakdown of trust, meaning that whether material or imaginary, the Executive Authority's word would prevail without a challenge.
- (n) I did not challenge that practice when I was a Minister for Public Service and Administration for reasons of power relations with other Executive Authorities because mine was not a super ministry because that does not obtain in our dispensation.
 - (o) Even if that was to be the case that we have it as a super ministry, it would not help much in this case because the power to finally appoint and finally transfer Heads of National Departments vests with the Executive Authority of the National Executive - the Executive Authority of the Republic - the President of the Republic and the Principal of the Minister for the Minister for Public Service and Administration.
 - (p) Some of us thought that the implementation of the 1998 Presidential Review Commission would have gone a long way, particularly the recommendation that the Ministry for Public Service and Administration was to relocate to be a Ministry in the Presidency, because that would have somehow given such a Ministry some sort of seniority with other Ministries, as it would probably leverage on the adage "first among the equals", because of its location.
 - (q) Unfortunately, the implementation of that Presidential Review Commission missed this point.
 - (r) Some of us also thought that the 2008 'National Micro Organization of the State' review project would correct this missed point.
 - (s) Unfortunately, instead, the project introduced a Ministry in the Presidency responsible for Performance Monitoring and Evaluation whilst retaining the Ministry of Public Service and Administration which has in its functional list such powers of monitoring and evaluation- a possible costly duplication.
 - (t) Put the last point aside as debatably not directly linked to the scope of the Commission, the point I am making is that the Minister for Public Service and Administration would deal decisively with issues related to the employment, transfer and/or dismissal situations of the Heads of National Department, including testing the validity of a claim by any Executive Authority that there is irretrievable breakdown of trust affecting and justifying the exit of a Head of a National Department, if the seniority question was addressed.

W
S.a


- (u) For me, this was- and remains a missing link today and most Heads of National Department become victims of this missing link.
- (v) Similarly, the missing link deprives Executive Authorities of an opportunity to provide the merits of their assumption of the prevalence of irretrievable breakdown of trust justifying their moves to let go of Heads of National Department, exposing them to second-guessing.
- (w) Of course, it can be argued that Cabinet itself could manage the situation and demand qualifications on a claim of breakdown of trust as a reason for any transfer because all such cases need their concurrence, but the reality is that it is a forum of Executive Authorities who themselves, as individuals, are the ones taking such decisions based on the allegation in question.
- (x) Perhaps the situation could be different if it was made an obligatory procedure that whenever an Executive Authority, including the President, alleges that there is an irretrievable breakdown of trust, the Public Service Commission, acting in consultation with the Minister for Public Service and Administration, should confirm the validity of the allegation of such a relationship before such a case can be considered by Cabinet.
- (y) I decided to take the option of transfer in order to avoid a situation where Mr Maseko would have been a victim of the missing link he did not create and exit the Public Service with a cloud hanging over his head.
- (z) I do not regret to have done that.
- (aa) I reflected on this aspect in details in the section of this Statement dealing with my background.
- (bb) I would do it still if I were to get a second chance under similar circumstances.
- (cc) I could not see our Public Service winning in the delivery of services unless we take care of senior officials beyond temptations to release them, no matter how strongly we feel against them as principals, of course they (DGs) also bringing their side and not create reasons for the temptations.
- (dd) I recall that Mr Maseko was very clear with me about his decision no longer to stay long in public service as he had other options to pursue, as he said so in response to my offer to extend his contract at the expiry of his term.
- (ee) So, I knew his position about public service by the time the transfer was implemented, and I went ahead with the transfer, anticipating a possibility



S.a

where he could change his mind but also appreciating that he would have made a valuable contribution by the time he decided to leave.

- (ff) Because my offer was agreed to, I managed the transfer process, and I think it should be in the records of DPSA and/or GCIS that the due process was managed through, namely: The written consent of the releasing Executive Authority, a Cabinet Memorandum requesting Cabinet to approve the transfer, A co-signed Cabinet Minute of the Minister of DPSA and the President, as well as the appointment letter on transfer.
- (gg) If my offer of transfer was not approved, the remaining option was that of redetermining his contract in terms of the applicable formula and procedure, including that he would have been expected to give consent to the calculated severance package, in writing, because, as indicated earlier, the exit was not initiated by him and that it had to happen at the time that his contract was still valid.
- (hh) Suppose that the exit was initiated by him and there was no pending case of misconduct on his part, he would have been expected to resign and his resignation case would have been handled in terms of applicable procedure dealing with resignations.
- (ii) If there was a case of unbecoming conduct pending, his Executive Authority would have exercised discretion on whether to reject the resignation and subject him to a hearing or allow him to resign as part of settlement.
- (jj) The worst case scenario would have been that Mr Maseko refused to resign and the Executive Authority still insisted that the decision for his exit should stand, in which case the Executive Authority could have invoked dismissal proceedings.
- (kk) The alternative worst case situation could have been that Mr Maseko could have refused to resign but declare a dispute.

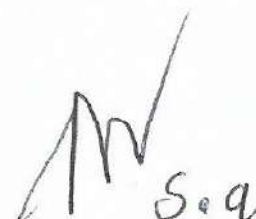


S.a

ANNEXURE D

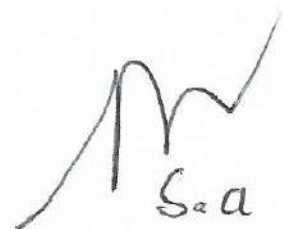
DEALING WITH A HIGH RATE OF DGs' EXIT FROM THE PUBLIC SERVICE

- (a) I was more concerned about what I considered as lack of stability in the Public Service due to the short term of Office of the most senior Administrative officials of State Departments and I wanted to manage that situation or contribute in doing so in a manner that such should be minimized.
- (b) I thought DGs needed enough time to learn the ropes, build a relationship with the entire Department, associated stakeholders and broader civil society.
- (c) In fact I thought that the short-term employment scenario of the time would in no time compromise the Public Service's ability to attract the best from the pool of would-be-competent candidates, as people would rather look for more stable opportunities elsewhere and we thus had to contend with what remains in the market.
- (d) I could imagine a frustrating situation where most of the time of a DG's first year in Office would be devoted to him/her customizing to the new work environment, well established in the second year but beginning to look for an alternative employment during the early months of the third year, for in case the contract would not be renewed.
- (e) I remember taking the issue up with one Minister who was there since the dawn of the new dispensation and he said that during the time of three years' term there were fewer cases of redetermination of contracts compared to the time that the term was revised to five years, meaning that there was a common trend for DGs exiting the Public Service and that was a reason for the shortening of the term.

A handwritten signature in black ink, consisting of a stylized 'M' followed by 'S. a'.

(f) In search of what contributed to high exit rate of DGs, either as a reason why Cabinet could have decided to shorten the period and manage it based on the three years renewable period or a growing number of contract redetermination in the five year dispensation, renewable, I could only draw understanding from certain assumptions, as follows:

- (1) The first assumption I had was that it was the effect of the negotiated sunset clauses at the Convention for a Democratic South Africa, the impact of which being that there were probably old-order carry-through senior officials that got absorbed into DG positions but who would have difficulties implementing the policies of the Government of the day, thus causing friction between them and their political principals.
- (2) The second assumption I had was that the recruitment nets for DGs were cast widely among former political activists, the impact of which being a stalemate on "who's who" with their political principals, as some would invest their time more on struggle-time political credentials and seniority, political connections and/or claim on the command of superior knowledge, resulting in friction with their political principals and early exit.
- (3) The third assumption I had was that of resentment built around circumstances that led to the manner of exit of the Second President of a Democratic South Africa, possibly fuelling tensions between some DDs and Executive Authorities.
- (4) The fourth assumption was that politics-administration dichotomy in the context of the Executive Authority versus the Accounting Authority dispensation was a complex environment to manage, such that tendencies were prone to show.
- (g) These assumptions helped me understand possibilities in the whole scheme of things, strengthening my position to continue working for stability in the Public Service.

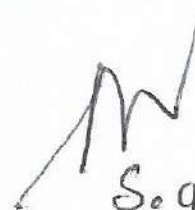


S. a

- (h) My first call to handle a case of separation between a Minister and a DG was on the first day it was announced that I was to be appointed as a Minister.
- (i) The announcement was done in Parliament during a Session, and immediately thereafter, one Minister approached me to assist in handling the matter.
- (j) I was not sworn in yet and I 'hit the ground running' soon after those rituals.
- (k) The said Minister indicated to me that the relationship with the DG had broken down irretrievably that they had to part ways.
- (l) I knew that in a situation like that the immediate route was the exit and decided to continue in my resolve to work for stability and manage the situation differently.
- (m) In fact I started disliking a practice where DGs would be sent packing at a slightest opportunity that a Minister finds a reason for such when I was a Member and Chairperson of the Portfolio Committee on Public Service and Administration. So, this was my time to make a difference.
- (n) I negotiated with the Minister to support a move that I try find an alternative space for the said DG so that the official remain in the Public Service, did the same with the DG and the third participant was another Minister who agreed to have the DG transferred to that Department.
- (o) I scored my first victory in the battle for stability through retaining the DG in the service.
- (p) After this case I handled a number of transfers in a similar manner under similar circumstances and also in situations of transfers on mutual consent and arising out of interests.


S. a

- (q) I have to indicate that my role in situations like these have always been that of support through negotiating for opportunities and influencing decision-making.
- (r) The responsibility for recruitment, appointment and transfer remained the competency and prerogative of respective Executive Authorities.
- (s) It would be helpful to understand power relations between the Minister for Public Service and Administration with any other Minister, in that there is no inference that the assigned functions to the former would suggest any form of seniority to the latter.
- (t) Any intervention in the form of support, negotiation and exerting influence had to be approached in that light, thus the success or failure to realize the intended outcome of the intervention and the accountability thereof remained the business of the advised Minister.
- (u) In dealing with appointments, for instance, the Minister for Public Service and Administration would support the recommending Executive Authority to ensure compliance with the following:
- (1) Security requirements in that the candidate should have a valid security clearance;
 - (2) Qualifications requirements in that the candidate should meet the minimum qualifications requirements;
 - (3) Selection procedure requirements in that the candidate should have been subjected to an interview with a properly constituted Panel;
 - (4) Salary dispensation requirements in the sense that the candidate should have given consent to be paid within the prescribed salary scale or that there is a strong motivation for deviation which Cabinet should consider simultaneously.
- (v) When full compliance is realized with the above requirements, the Minister for Public Service and Administration would then submit a Cabinet Memorandum recommending the appointment of such a candidate DG and, if approved, the Executive Authority of the National Executive (the



S. a

President) and the Executive Authority of the Department (the Minister of Cabinet concerned) would then sign an appointment minute.

- (w) It is expected that at the point that the recommending Minister approaches the Minister for Public Service and Administration with the profile of the candidate, such a Minister would have consulted the President on same.



M
S.a

ANNEXURE E

Specific sections of Ms Oliphant's affidavit on Mr Manyi's situation, selected as follows:

- 3.5.1 The Department's first briefing to her did not mention anything about Mr Manyi;
- 3.5.2 She became aware that there was a Mr Manyi who was dismissed when he (Mr Manyi) informed her one week after resuming her duties as a Minister;
- 3.5.3 The legal team of the Department of Labour confirmed that Mr Manyi was dismissed but did not give details relating to the reasons for his dismissal apart from the fact that Minister Mdladlana dismissed him two or three days before her appointment as a Minister.
- 3.5.4 She was not shown any documentation relating to Mr Manyi's dismissal;
- 3.5.5 She reported the matter to then Minister Baloyi and she indicated to him that the Legal team in the Department of Labour did not give her full information concerning Mr Manyi's dismissal and she asked him to assist;
- 3.5.6 Minister Baloyi advised her to meet Mr Manyi and establish as to his position about appealing against the dismissal and mooted court action
- 3.5.6 She was not aware of any appeal and she thought that if that was to be done, it ought to have been lodged with the Minister for Public Service and Administration as a custodian of the Public Service Act.
- 3.5.7 She met Mr Manyi and he confirmed his intentions to take the dismissal case to the Labour Court



S.9

3.5.8 She got advice about possible withdrawal of dismissal and then withdrew the dismissal.

3.5.8 Ms Oliphant asked Mr Baloyi to transfer Mr Manyi to another Department.

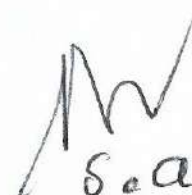


M. S. a

ANNEXURE F

REFERENCE TO SCENARIO ANALYSIS AS PER 11 OCTOBER STATEMENT

- 8.1 In Conclusion, I bring a note addressing a general but related scenario analysis about the call for me to appear before the Commission and answer questions in a private-person capacity, on my own, but deal with issues I got exposed to representing the Government of the Republic of South Africa, in the discharge of my duties and within my valid authority and scope as the Minister and Executive Authority of the Department of Public Service and Administration of the time, as follows:
- 8.1.1 **Whereas** the questions raised with me are only relevant insofar as I have to provide all the information I have and everything I know about facts I got exposed to in an environment where I was acting in my official capacity as an assigned official of a Government Department in the Fourth and Fifth Administration of the still-existing African National Congress'-led Government of the Republic of South Africa, acting truly and within the scope of my mandate at the time;
- 8.1.2 **Whereas** it is my understanding that the said Government-employer ought to have an interest in the answers to the questions raised with me, in the spirit of the doctrine of *ultra vires* versus *intra vires*, and where I as an official of the said Government at the time have to account for my actions taken in the course of the discharge of my valid duties;
- 8.1.3 **Whereas** I am called upon to provide in details all information I have and everything I know on things some of which happened about ten years ago and long after I moved on out of the said establishment and no longer have access to records and technical support to do justice responding to the questions raised;



8.1.3

- 8.1.4 Whereas** those who originated the idea of the subject matter and those who expect me to provide all information I have and everything I know on those things and under the circumstances canvassed in this section do so fully aware, or ought to be so aware, of the participative nature of the public service and the inherent interdependence of officials in executing their tasks such that it normally requires more than one individual to answer some of those questions fully and satisfactorily;
- 8.1.5 Whereas** any instruction for officials to operate outside the established protocol as stated in 8.1.4 above, either for reasons of defending themselves or advancing their self-identified interests may set them against each other and bear consequences too costly to manage for their employer;
- 8.1.6 Whereas** I am called upon to respond and nonetheless provide all information I have and everything I know relying on recollection, to the extent that I can remember, when such information is readily available in Government records and through which an informed solid case could be formulated, thus warranting proper sanctions;
- 8.1.7 Whereas** the chosen platform to handle this matter is the one that conducts its affairs in public;
- 8.1.8 Whereas** this Statement may be a precursor to a hearing reminiscent of a trial in a case of being alleged to be guilty of willful neglect of duty as a state official at the time, to the detriment of State interest, committing or promoting Corruption and Fraud or that I am a potential witness that somebody indeed exposed the State to capture and/or committed or promoted corruption and fraud;

S. a

8.1.9 Whereas submitting this Statement and/or appearance before a hearing is largely an actuality of appearance before a Court of Public Opinion, with the same accusations or as a witness in a case with the same elements, and where there are myriad judges formulating opinions and making conclusive standpoints with possible reputational consequences too ghastly to contemplate, as I have to submit to the process as if there are face value facts suggesting that indeed there is something wrong I did or there is somebody I know who have done so, through availing myself, without recourse and assistance, to feed into the more-often-vindictive caprice of the Court of Public Opinion, as they may apparently feast on my reputation as if I am a criminal or unreliable witness;

8.1.10 Whereas possible impugning of my character, even as a factor of perceptions formed from my participating in this process, may in not a small measure affect my private image, thus jeopardize my future prospects, as its conceivable negative effects will well go beyond my personality as a state official;

8.1.11 Whereas there is an inherent perception that the people who are called upon to give information to the Commission are those who are suspected of some wrong-doing in the context of the subject matter of the Commission or those people who have allegations to make against other people and there is a reality that perceptions weigh more heavily in defining the public image on an individual;

8.1.12 Whereas I give answers to the questions raised in this Statement mindful of the fact that this is a call for me to account in as far as how I interpreted and applied the contents of the oaths of office I subscribed to when holding those positions, the due injunction of the assigned individual responsibilities ascribed to the scope of my work as a public official, the requisite collective effort for the shared outcomes and joint accountability mechanism in the

Sed

know that I was just part of the complete whole picture duly expected to act in unison and conscious to do so within the expectations of the values of our public administration as enshrined in Section 195 of the Constitution of the Republic of South Africa;

8.1.13 Whereas submitting this Statement and possible appearance before the Commission hearing may put me on the public's radar screen for people making it their unlimited call to find issues to raise, based on the subject matter of the Commission in the manner that even if such could be rebutted later, the negative effect on reputation could be expensive to reverse;

8.1.14 Whereas the content of my Statement or testimony at the Commission hearing may put me at the thick of things and trigger follow up reactions and possible reprisal either by those who will like to just contest my views and/or those in authority who may dislike my angle;

8.1.15 Whereas, to the extent that I can remember what happened and provide all information I have and everything I know about the issues raised with me and for which answers I am stating under oath as correct in that context, I am strongly convinced that perusing documents at the disposal of Government – my employer at the time of my exposure to the situation around which the questions are raised – as well as making a little effort to examine existing appropriate Government instruments or mere conferencing with other established organs such as the Public Service Commission could shed more light to a conclusive position on my angle of argument in this submission;

8.1.16 Whereas I reserve a right of making a supplementary statement to my affidavit at a later stage, wherein I may give more clarity on certain areas and make additions not tempering with the content of this Statement.

S.a

8.1.17 Now therefore, my Statement without recourse but under Oath is submitted in response to the questions the Commission instructed me to do, as indicated above.



S.a.

SUPPLEMENT ON STATEMENT TO THE JUDICIAL COMMISSION OF INQUIRY
INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE
PUBLIC SECTOR, INCLUDING ORGANS OF STATE: MAKARINGE RICHARD
BALOYI, ID NUMBER 5812256283089

1. SUPPLEMENT

- 1.1 That I, the undersigned, **MAKARINGE RICHARD BALOYI** state under oath as follows:
- 1.1.1 That the facts herein contained and to which I depose are within my personal knowledge true and correct.
- 1.1.2 That on the 7th November 2019 I submitted a Statement to the Commission, under oath, regarding my version on the allegations made about me in the affidavit of Ms Mildred Oliphant, former Minister of Labour in the matter of the Commission investigating allegations into State capture, corruption and fraud in the public sector including organs of State, and specifically relating to the role I played in advising the said former Minister about the withdrawal of a dismissal case against Mr Mzwanele Manyi.
- 1.1.3 That in the process of scanning and emailing the said Statement, I omitted to attach a document that was meant to have been part of the package, cited in paragraph 3.2 of the said Statement as Annexure A.



1.1.4 That the said Annexure A was signed by the Commissioner of Oaths and myself simultaneously, on the 7th November 2019, together with the main Statement referred to in paragraph 1.1.2 above, as well as the other Annexures to that document, i.e Annexures B,C,D, E and F.

1.1.5 That the said Annexure A is attached to the Statement and forwarded herewith, with the other annexures for consideration as a supplement to the Statement of the 7th November 2019.

[Handwritten Signature]

SIGNATURE OF DEPONENT

Sworn to before me at Phalaborwa on this the 11-day of October 2019, the deponent having acknowledged that:

1. He knows and understands the contents of this affidavit.
2. He has no objection to taking the prescribed oath.
3. He considers the prescribed oath to be binding on his conscience.

[Handwritten Signature]

[Handwritten Signature]

COMMISSIONER OF OATHS



22 Drommedaris Street

PHALABORWA

1390

The Secretary

Judicial Commission of Inquiry into State Capture

17 Empire Road

Parktown

JOHANNESBURG

Dear Sir

CHAIPERSON'S DIRECTIVE ADDRESSED TO ME IN TERMS OF REGULATION 10(6) OF THE REGULATIONS OF THE COMMISSION DATED 25 OCTOBER 2019: MAKARINGE RICHARD BALOYI

1. I hereby respond to the above directive in terms of which I was instructed to appear before the Commission on the 3rd of December 2019, as follows:

1.1 OBSERVATIONS

- 1.1.1 The Commission was established to investigate the widely publicised allegations of State capture, corruption and fraud in the public sector including organs of State which generated in the mind of the public great expectations and interests that at long last justice would be done on this subject matter.

1.1.2 The general public perception is that the Commission was created as a platform where people who are suspected; alleged and or presumed to be corrupt or to have committed fraud will be called upon to prove themselves that they are innocent, for the veil of guilt to be uplifted, or fail to do so and the allegation is confirmed, thus arrest action or other forms of consequence management is expected.

1.1.3 It is my humble submission therefore, with due respect, that a directive by the Commission for me to appear for a hearing on the 3rd December presupposes that I have questions to answer in as far as a specific matter or matters are concerned, where I am suspected of some wrong-doing as an agent of State capture, having promoted general corruption or fraud as a manifestation of corruption or that I benefitted in one or all of those aspects.

1.1.4 I have already submitted two Statements under oath to the Commission, not voluntarily, responding in full to administrative questions raised about me by Mr Temba Maseko, Mr Mzwanele Manyi and Ms Mildred Oliphant, namely:

(a) Provide the Commission with all the information you have and everything you know about Mr Maseko regarding:

- (i) When did you become aware of Mr Maseko's transfer from GCIS to DPSA?
- (ii) Was there any discussion with any member of the National Executive before the transfer took place?
- (iii) Did you have any discussion with the then President before the transfer took place?

- (iv) Explain your working relationship with Mr Maseko when he was Director General in the DPSA.
 - (v) Explain the termination of Mr Maseko's appointment as Director General in the DPSA.
- (b) Provide the Commission with all the information you have and everything you know about Mr Mzwanele Manyi regarding:
- (i) His appointment as the Director-General in the Department of Labour in September 2009;
 - (ii) His dismissal from the Department of Labour;
 - (iii) His transfer to the Government Communications and Information Services (GCIS) as Director-General.
- (c) When you provide your account of the topics listed above, please ensure that you provide full details of any and all meetings, discussions, interactions or correspondence with other persons including, but not limited to, who they were with, when they occurred, who was present, and where applicable provide copies of any relevant documents
- (d) Deliver on or before Wednesday, 6 November 2019 to the Secretary or Acting Secretary of the Commission, an affidavit or affirmed declaration in which:
- (i) You state whether you admit or deny allegations made about, or, against, you in the affidavit or statement or affirmed declaration of Ms Mildred Oliphant dated 7 October 2019 attached hereto which was submitted to the Commission for the purpose of its investigations.

- (ii) You state, if you deny or dispute any allegations or statement made about, or, against, you in the said affidavit or statement or affirmed declaration, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in that statement or affidavit which refer, or, relate, to you.

1.1.5 I answered all those questions, providing as much information as possible, convinced that the details provided would clear the air on administrative issues concerning those questions.

1.1.6 In dealing with all those questions I established that there was no specific mention of- or a clear implication that I was suspected of something that would suggest that I have to be called to answer those questions in a hearing before the State capture Commission, and I am therefore surprised and in deed apprehensive about the instruction as per the above Directive.

1.1.7 The Directive for me to appear for oral hearing was issued even before I made the second submission and I suspect it was even before the Commission finally read my first submission, raising an interesting point that the hearing is apparently not about the questions that have been sent to me but something else that I am not aware of.

1.1.8 Maybe when such questions are asked to me during the impending public hearing, they will somehow, if not fully, illustrate that indeed the guilty suspicion or presumption arise against me. My additional worry is that if that is the intention, the truth is that I will not have been given time to consider them fully and respond in writing accordingly, and such a move would, with due respect, be tantamount to an ambush.

- 1.1.9 If I have to appear for the same questions that have been raised and on which I already made two submissions, notwithstanding the provision as in 1.1.8 above, I think the questions are administrative and will fly against public expectations on the subject matter of the Commission and will unfairly expose me to a platform of people presumed to be guilty of the allegations of State capture, corruption and fraud when there are, in my view, no grounds for that.
- 1.1.10 It is my humble view and submission that administrative questions not directly linked to State capture, corruption and fraud, such as those I answered, may be handled through other processes and not the State capture Commission.
- 1.1.11 While dealing with the questions in my Second Statement to the Commission, I dedicated a paragraph addressing what I referred to as a missing link in evidence of the Ministry of Labour on Ms Oliphant's affidavit about me.
- 1.1.12 By the missing link I was referring to the absence of Mr Mdladlana's version on the matter concerning Mr Mzwanele Manyi's dismissal and the withdrawal thereof.
- 1.1.13 The evidence and version aforesaid are paramount to me for proper closure on the matter and I would then make a supplementary Statement to respond to that (his) version, as well, in writing.
- 1.1.14 This would have given an invaluable opportunity for a simultaneous consideration of such evidence and version with that of his successor, Ms Oliphant. For ease of reference, a copy of the said paragraph is attached hereto as Annexure 1.
- 1.1.15 Responding to the questions already referred to me and as articulated above has been so involved a process and, no doubt, it will be more so if I still have to be subjected to a public hearing on

same, more especially as I am responding in my personal capacity, on my own, when my involvement in the whole project was at the time- and in the process of executing my officially assigned duties and within the prescripts of my employer of the time, hence I requested them to come on board and to draw the attention of the Commission, as I hereby do, on this matter, as it obviously has a bearing on consideration of my future engagements with the Commission, including the purpose of writing this letter.

1.1.16 On the other hand, if the reasons for my appearance before the Commission on the 3rd December are different, and for a fair hearing to prevail, it would be appropriate that I be furnished with such questions in time before such a hearing, to enable me to prepare accordingly.

2. REQUEST

2.1 In light of the above observations, I hereby make the following requests for your consideration:

2.1.1 That I am not subjected to the hearing to deal with administrative questions that are not citing me, **Makaringe Richard Baloyi**, as presumed guilty of State capture, corruption and fraud in the public sector including organs of State, i.e all those raised with me concerning Mr Themba Maseko, Mr Mzwanele Manyi and Ms Oliphant, on the basis of which I submitted two Statements to the Commission;

2.1.2 That my written statements be considered as sufficient evidence from me, for the Commission to conclude the matter and that I be made to provide supplementary statements, if need be;

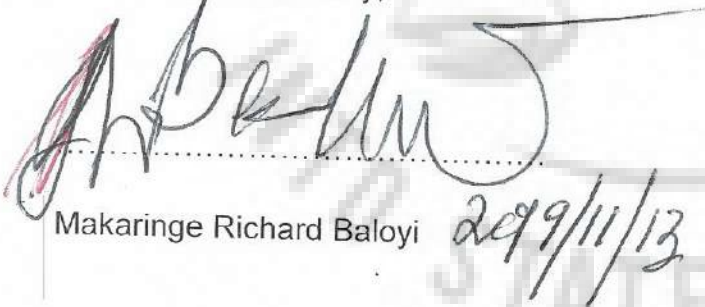
2.1.3 That, whether my request as in 2.1.1 above is granted or not, I be forwarded with Mr Mdladlana's version on the case of Mr Manyi, as I requested in my second Submission to the Commission and as referenced above;

2.1.4 That if there are new questions other than those referred to in paragraph 2.1.1 above, such be sent to me for preparation including incorporating answers thereto to the Statements submitted through supplementary affidavits;

2.1.5 That if I have to appear for oral hearing, either to answer questions as in 2.1.1 or 2.1.3, I should be allowed to make a live Statement for public consumption during the hearing, summing up the issues as in the two Submissions I made to the Commission and incorporating answers to the questions identified for oral hearing;

2.1.6 That if the Commission reject my request for no appearance for oral hearing before the Commission, the date for such a hearing be set such that I would have been given enough time to finalise the matter of my employer of the time for their involvement.

3. Yours Faithfully,


Makaringe Richard Baloyi 29/11/13

ANNEXURE 1:**4.4.2 THE SIGNIFICANCE OF Mr MDLADLANA'S EVIDENCE TO MY VERSION**

- (a) I submit that the absence of former Minister Mdladlana's version of the story is a missing link for me to do justice in the account of my actions in dealing with this matter, as it relates to the role I played in relating with or ought to relate with one Office, i.e the Office of the Minister of Labour, which happened to be occupied at different times by two Ministers during my turn as a Minister for Public Service and Administration, and where my role was that of support, when requested, i.e former Minister Mdladlana and former Minister Oliphant.
- (b) The issues we are dealing with happened long time ago that my account depends on own original memory and the recollections from what those I worked with have to say, like, in this case, Ms Oliphant, so far.
- (c) I will balance my recollection and provide a more useful account to the Commission and for public interest, if I am exposed to Mr Mdladlana's version.
- (d) If it was, and I guess it is, in the business of the Commission's investigation to have me comment on whatever is said about this case and where my involvement is expressly cited or implied, it would have been helpful to me also to consider what he is saying on the matter, if any, of course depending on the Commission's own interests and its chosen angle, because the support

I gave was to both of them holding the same Office at different times to each other.

(e) Even if the Commission's interests would be to deal with this matter differently, I would request that I have such a version from Mr Mdladlana, so that I can meaningfully be of value in support of the Commission's investigation and properly serve the unbiased interests of the public in my response.

(f) I indicated in my Statement of 11 October 2019 when answering questions on the same Mr Manyi that I did all in his case in support of the two former Ministers and that there should surely be records in the Ministry of Labour through which facts can be established, and I state now that it is those records reference to which Mr Mdladlana's version may address, that can assist the process.

(g) I can imagine that the only reason that his account has not been referred to me for consideration is that the Commission does not have such a Statement from him, possibly because he may not have been cited by any other witness as having information on this matter at the point of the Commission's reference of Ms Oliphant's case to me, but I recall having cited him in my statement of 11 October, though only in title, and that reference makes it relevant to call for such a version.

(h) I repeat that there is a strong case to request his version because he was occupying the same position that Ms Oliphant as his immediate successor held, thus for a smooth flow of my version in matters concerning the Ministry

of Labour during my turn as Minister for Public Service and Administration, and in particular concerning the ins- and outs of Mr Manyi, such a version is paramount.

- (i) A problem with the absence of his Statement is that I will use suppositions when dealing with part of my account that refers to his position on the matter and it will not be helpful for me, as I would prefer the same logic applicable on my involvement during my time and his as Ministers, respectively, coming in only after his request, and not advising him by taking a lead in initiatives.
- (j) I think it is in order for me to request the Commission to provide me with his version on this matter before I conclude my submission, so that even the day I appear before the Commission for oral hearing, if it will be so, I would do so having fully applied my mind and articulate to the best interest of the expectations the public has on the outcome of the Commission's inquiry, rather than feel ambushed in case I get confronted with his version during the hearing.
- (k) Take an account of dealing with Mr Manyi's dismissal, for instance, because, as and when we dig into this case to establish facts on the withdrawal of Mr Manyi's case of dismissal, we may want to balance such an interest with a desire to establish the circumstances under which he was dismissed and view that against the established procedure for dismissing a Director General, for us to conclude that, indeed, there was a dismissal and therefore something to withdraw.

- (l) Ms Oliphant did not indicate anything about that because he was already dismissed, they say, two or three days before her appointment as a Minister.
- (m) I indicated in my earlier statement of the 11th October that the details are with the Ministers involved, and that obviously records ought to exist somewhere in the Ministry/Department.
- (n) To be exact, this is what I said in response to a question on his dismissal: “I recall only limited information about this matter, refreshed through a copy of a letter sent to me by the investigators of the State Capture Commission. Working backwards, I can only imagine that a due dismissal process was done to arrive at a decision to dismiss and that the concurrence of Cabinet was sought and there was a President’s Minute to that effect, because I do not think of any other procedure that could have led to the dismissal. All this information I am giving is a stone thrown in the dark from me as there is really nothing I remember about details of this case and that the Executive Authorities concerned should respond to this question”.
- (o) We now know from Ms Oliphant’s affidavit that, in addition to my Statement that I do not have facts about this case, she has no details because Mr Manyi was dismissed before she was appointed.
- (p) I think it is just fair to request the Commission to give me support on things that I have no control on and are needed for my role as a witness to give proper evidence to the Commission, given the reality exposed in the section dealing with situational analysis in the conclusion section below.