



EXHIBIT GG (b)

FORMER PRESIDENT

MR JACOB GEDLEYIHLEKISA

ZUMA



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

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BARBARA HOGAN



STATEMENT OF BARBARA HOGAN

THE PURPOSE OF THIS STATEMENT

1. The purpose of this statement is to set out the reasons for my dismissal as the Minister of Public Enterprises as well as my experiences relating to the conduct of the former President of South Africa, President Jacob Zuma ("President Zuma"), in respect of his involvement in the affairs of State Owned Entities ("SOEs"), which I believe influenced President Zuma's decision to remove me from office.

PERSONAL HISTORY

2. I was born and schooled in Benoni, and I obtained an Honours degree in Development Studies from the University of the Witwatersrand.
3. I joined the African National Congress ("ANC") as an underground political activist in 1977. In 1979, I enrolled for a Master's degree focusing on unemployment in South Africa.
4. In 1981, I was detained and sentenced to ten years imprisonment, having been found guilty of high treason. During my incarceration, I enrolled for a Bachelor of Commerce degree and midway through my degree, I was released, a week after the ANC was unbanned on 9 February 1990.
5. In April 1990, I was appointed by the Interim Leadership Core of the ANC to sit on the Interim Leadership Committee ("ILC"), which was mandated to set up the structures of the ANC in Gauteng. I was later elected as the full-time

General Secretary of the Gauteng ANC, a position I held until the end of 1992.

6. In 1994, I was elected as an ANC MP in the National Assembly and served mainly on the Portfolio Committee on Finance (which I chaired from 1999 to 2004) and on the Standing Committee on Public Accounts. I also chaired the Audit Commission that oversaw the work of the Auditor-General.
7. I participated in the Finance Theme Committee that dealt with the financial aspects of the Constitution for the duration of the Constitutional Assembly, and I was later appointed to the Accounting Standards Board.
8. In September 2008, the former President of South Africa, President Kgalema Mollathe, appointed me to cabinet as the Minister of Health.
9. In May 2009, following the national elections, President Zuma appointed me as the Minister of Public Enterprises and Mr Enoch Godongwana was appointed as the Deputy-Minister of Public Enterprises.
10. I served as the Minister of Public Enterprises until 31 October 2010, when I was removed from office by President Zuma. I have no knowledge of the reasons for my dismissal, as they were not explained to me. As such, I am only in a position to provide information relating to the events leading to my dismissal as the Minister of Public Enterprises, which are set out below.

SOEs FALLING UNDER MY JURISDICTION

11. A total of 9 (nine) SOEs and public entities fell within the jurisdiction of the Department of Public Enterprises ("DPE"), including Eskom, Transnet, SAA, SA Express, Denel, Infraco, PBMR, Alexkor, and SAFCOL.
12. The DPE also had several specialised units, which were headed mainly by Deputy Director-Generals under the supervision of a Director General - who

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at the time of my appointment was Ms Portia Molefe. The specialised units were responsible for the close monitoring of the SOEs that fell under the DPE's jurisdiction and would advise and report directly to me.

PRESIDENT ZUMA'S DIRECT INTERVENTION IN THE APPOINTMENT OF CHIEF EXECUTIVE OFFICERS ("CEOs") AT SOEs

13. President Zuma took a very active, and at times, inappropriate interest in who was to be appointed to the Boards of SOEs. I shall give two illustrations in relation to Eskom and Transnet.

Eskom

14. In 2009, Eskom's CEO, Mr Jacob Maroga ("Mr Maroga"), resigned during a Board meeting. Despite Mr Maroga's subsequent insistence that I reinstate him, I refused. Labour issues of CEOs in relation to their Boards fell outside my jurisdiction as the Minister, and also the Board of Eskom had unanimously refused his request for reinstatement after he had resigned.
15. President Zuma placed considerable pressure on me to persuade the Board to reinstate Mr Maroga. Finally on the day that the Board informed staff that Mr Maroga was leaving, President Zuma angrily phoned me to tell me to instruct the Board to cease this process immediately, just as the Board was about to address a press conference to communicate Mr Maroga's departure. The press conference was hastily cancelled, causing considerable embarrassment and huge press speculation about the actual employment status of Mr Maroga, and considerably diminishing the reputation of Eskom.
16. A while later, Mr Maroga returned to his office at Eskom in a much-publicised event, on President Zuma's instructions. On the same day, Mr Maroga released a letter to the Press, addressed to myself as Minister, which essentially stated that he was reinstated as CEO of Eskom at the behest of

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President Zuma and that, in future, he could be removed only with the approval of President Zuma. Under pressure, President Zuma was constrained to phone Mr Moroga to instruct him to immediately vacate his office in Eskom, saying he could only return with my approval.

17. Not only was President Zuma behaving inappropriately by actively intervening in matters that are essentially the prerogative of a Board, but it was also apparent that President Zuma had been privately meeting with Mr Maroga behind my back and finalising a deal with him without my knowledge or input. He exhibited no loyalty or honesty with a Minister in his Cabinet. Mr Maroga later sued Eskom and myself for R85million and lost with costs.

Transnet

18. President Zuma insisted that Siyabonga Gama ("Mr Gama"), an employee of Transnet, be appointed as the CEO of Transnet. At the time, there was an acting CEO. The Board had considered Mr Gama as a candidate but had nominated another excellent candidate to be CEO. Mr Gama was facing an inquiry regarding certain irregularities and the Board was also of the opinion that he was not yet CEO material. When I refused to put Mr Gama's name to Cabinet until the findings of the disciplinary process had been concluded, President Zuma prevented me from nominating both the Board's chosen candidate, as well as designating a new Chairperson of the Transnet Board, when the term of office of the latter expired. Transnet had to endure a considerable period of instability, having both an Acting Chairperson and an Acting CEO. Mr Gama was later found guilty on 3 out of 4 counts, each count warranting a dismissal, and was dismissed from Transnet.
19. Since my appointment, I, and my Deputy-Minister, refused to cooperate with President Zuma's inappropriate interference with the Boards of SOEs and his apparent disregard of proper corporate governance. I believe that our resistance to the interferences of President Zuma was one of the factors that lead to my removal from office and the assignment of the Deputy-Minister to another Department.

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PRESIDENT ZUMA'S DISREGARD FOR CORPORATE GOVERNANCE

20. High standards of corporate governance in SOEs are essential, not only for the good governance of the company and its investors and borrowers, but also for the proper functioning of the economy, given the strategic position in the economy of many SOEs. As such, Boards are expected to adhere to the highest standards of corporate governance as exemplified in the King Code of Corporate Governance.
21. The Shareholder's Agreements that govern the relationship between the DPE and SOEs empower the Minister to hold SOEs accountable by providing certain key performance areas and requiring Ministerial approval for certain decisions taken by the Board. As the Minister of Public Enterprises, I engaged with the SOEs on strategies, policies, financial and operating results. My engagements with the SOEs were always through the Board or the Chairperson. I would only engage with the CEO of a SOE on issues delegated to them by the Board.
22. As the Minister of Public Enterprises, I was responsible for the appointment of the Board of Directors and the Chairpersons of each SOE that fell under my jurisdiction. Unless otherwise stipulated in legislation or Memorandums of Incorporation, it was my strong view, in line with KING III, that CEOs are appointed and accountable to their Boards. The practice was that Boards provided the Minister of DPE with a recommendation for their preferred candidate/s for a CEO position, and the Minister takes their proposal to Cabinet for approval. Once appointed, CEOs should not go over the heads of their Boards to a Minister on their issues; nor should they lobby Cabinet Ministers, ANC structures or political leaders or, similarly allow themselves to be lobbied by outside nefarious interests. Regrettably, this standard principle of CEO accountability was not universally honoured, and CEOs

would sometimes by-pass Boards, and even Ministers, in pursuit of their objectives.

23. Political interference is extremely damaging to a SOE, because it disempowers the Board and Senior Management, often forcing them to constantly second-guess proposals and approvals. In addition, no political authority or civil servant has the entire skill set or the resources to manage SOEs on a day to day basis, or to provide the requisite strategic direction and leadership to the SOE. In corporatized SOEs there has to be a respectful delineation of powers and authority between the SOE and the Board and its Senior Managers, otherwise proper management and leadership will fail.
24. It is crucial that politicians and civil servants provide an enabling environment for SOEs to accomplish their work. However, the manner in which President Zuma conducted himself in relation to constantly interfering with executive appointments to SOEs reflected a deep lack of understanding and disregard for corporate governance.

PRESSURE TO TERMINATE SAA'S SOUTH AFRICA-MUMBAI ROUTE

25. In June 2010, I was part of an official State visit to India, led by President Zuma. Whilst I was there, I heard rumours that SAA intended to terminate its South Africa-Mumbai route. As such, I sent a text message to then Chairperson of the SAA Board, Cheryl Carolus ("Ms Carolus"), enquiring whether the rumours were true. Ms Carolus responded to my text message, stating that the rumours were untrue, saying it must be Jet Airways still lobbying for this. However, it should be noted that during my India visit, the Chairperson of Jet Airways was persistently following me around, trying to meet with me. I declined to engage with him as I did not have the authority to make any business decisions on behalf of the SAA Board.
26. In August 2010, Ms Carolus sent me another text message informing me that the CEO of Jet Airways was in South Africa and would be lobbying for

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SAA to end its Mumbai flight, and that SAA rejected this. She also requested me to inform her if the CEO of Jet Airways requested to meet with me, so that I could be briefed accordingly. In October 2010, I was removed from office by President Zuma. My successor, Malusi Gigaba, later cancelled SAA's Mumbai flight.

CONCLUSION

27. In the circumstances, I am unable to provide definitive reasons for my removal as the Minister of Public Enterprises; however, the information set out herein serves to highlight some of the events leading up to my removal from office, as well as the inappropriate conduct of President Zuma in addressing issues relating to the governance of the DPE and the SOEs for which it was responsible.

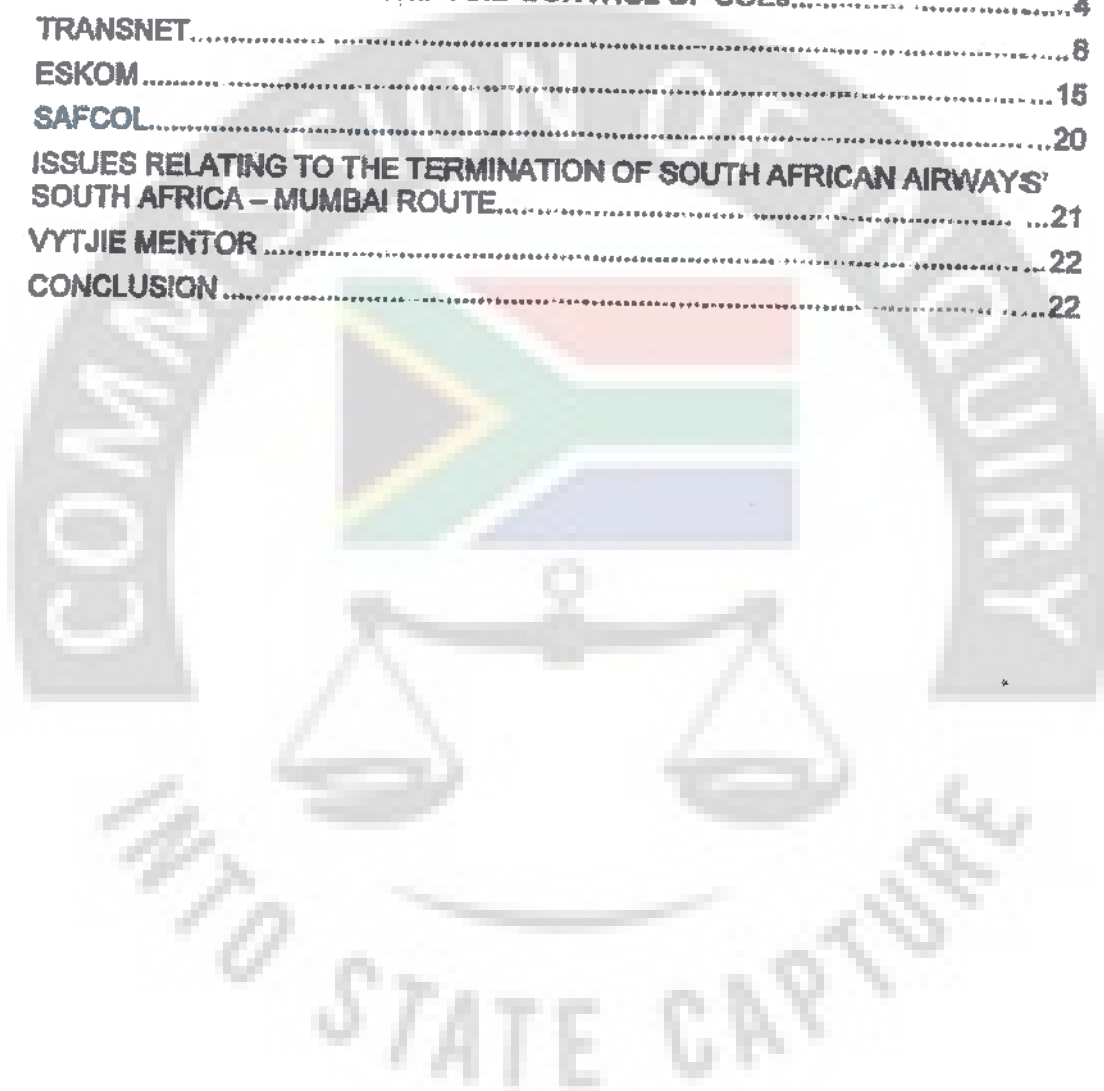
Dated at JOHANNESBURG on this 30th day of July 2018.


BARBARA HOGAN

**STATEMENT OF MS BARBARA HOGAN TO
THE HONOURABLE DEPUTY CHIEF JUSTICE,
MR RAYMOND ZONDO:
CHAIRPERSON OF
THE JUDICIAL COMMISSION OF INQUIRY
INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC
SECTOR, INCLUDING ORGANS OF STATE**

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THE PURPOSE OF THIS STATEMENT

- 1 The purpose of this statement is to illustrate from my personal experience as Minister of Public Enterprises (from 11 May 2009 to 31 October 2010) the extent to which the former President of South Africa, President Jacob Zuma (President Zuma), improperly and recklessly interfered in matters relating to the appointment of Board Directors and Chief Executive Officers (CEOs) of State Owned Enterprises (SOEs). In doing so, I will make specific reference to SOEs such as Eskom and Transnet. The actions of President Zuma, set out below, damaged the performance of these entities and embedded an ethos of political cronyism, nepotism, lack of accountability and corruption in our body politic.

PERSONAL HISTORY

- 2 I was born and schooled in Benoni, and I obtained an Honours degree in Development Studies from the University of the Witwatersrand.
- 3 I joined the African National Congress ("ANC") as an underground political activist in 1977. In 1979, I enrolled for a Master's degree focusing on unemployment in South Africa.
- 4 In 1981, I was detained and sentenced to ten years imprisonment, having been found guilty of high treason relating to my political activities as a member of the ANC. During my incarceration, I enrolled for a Bachelor of Commerce degree and midway through my Honours degree, I was released, a week after the ANC was unbanned on 9 February 1990.
- 5 In April 1990, I was appointed by the Interim Leadership Core of the ANC, under the direction of Walter Sisulu, to the Interim Leadership Committee of Gauteng which was mandated to set up the structures of the ANC in Gauteng. Later that year, I was elected as the full-time General Secretary of the Gauteng ANC, a position I held until the end of 1992.
- 6 In 1994, I was elected as an ANC MP in the National Assembly and served mainly on the Portfolio Committee on Finance (which I chaired from 1999 to 2004) and on the

Standing Committee on Public Accounts. I also chaired the Standing Committee on Oversight of the Auditor-General's Office.

- 7 I participated in the Finance Theme Committee that formulated the financial clauses of the Constitution for the duration of the Constitutional Assembly, and I was later appointed to the Accounting Standards Board.
- 8 In September 2008, the President of South Africa, President Kgalema Motlanthe, appointed me to his Cabinet as the Minister of Health.
- 9 On 11 May 2009, following the national elections, President Zuma appointed me as the Minister of Public Enterprises and Mr Enoch Godongwana (Mr Godongwana) was appointed as the Deputy-Minister of Public Enterprises.

STRUCTURE OF OWNERSHIP AND CONTROL OF SOEs

- 10 A total of 9 (nine) SOEs and public entities fell within the jurisdiction of the Department of Public Enterprises (DPE), including Eskom, Transnet, SAA, SA Express, Denel, Infraco, PBMR, Alexkor, and SAFCOL. All of these are classified as Schedule 2 Major Public Entities in terms of the Public Finance Management Act No 1 of 1999.
- 11 When SOEs were corporatised in the 1990's, the structure of ownership and accountability was similar to any other company under the legal jurisdiction of the Company's Act, 71 of 2008 but with some differences. Simply put, the CEO and senior management run the SOE and are accountable to the Board of Directors who provide the shape and strategic direction of the SOE. These directors ensure compliance with the laws and obligations applicable to the SOE. Directors have onerous fiduciary responsibilities and must act at all times in the interests of the SOE.
- 12 Unlike in profit-oriented companies, the focus of major SOEs such as Eskom and Transnet is on performance, because in both these cases they provide the essential infrastructure (energy and freight transport) on which the entire economy and South Africans depend. Of course, they must produce a financial surplus sufficient enough to cover operating costs and to maintain a healthy level of reserves. They must also operate as efficiently and economically as possible so as not to impose punitive tariffs

on services they provide to the public, municipalities, corporates and to the whole economy.

- 13 These large SOEs raise the bulk of their capital from user tariffs, from the raising of loans for big capital projects and through the issuing of bonds. At that time, government provided virtually nothing in the form of equity and, when I was there, National Treasury would sometimes have to issue loan guarantees to maintain a SOE as a going concern. SAA is a case in point. These become contingent liabilities on the State. Financial risk and debt is a major issue in these SOEs and that is why ratings agencies and National Treasury carefully monitor them.
- 14 DPE is not a policy department. Other departments such as the Department of Transport and Department of Energy develop policies for their sector and once these are approved by Cabinet, and hopefully by Parliament, it is the responsibility of DPE to align the work of SOEs with these policies via the mechanism of a Shareholders' Compact that is reviewed regularly.
- 15 As the representative government shareholder, the Minister of Public Enterprises (the Minister) must appoint Directors to the Boards of SOEs as and when vacancies arise or terms of office of Directors expire. This is usually done at the Annual General Meeting (AGM) of the SOE. It is the job of the Minister to screen and carefully select professional, competent and experienced Board members to ensure that a Board has the right mix of skills and experience, and also to give due regard to the demographics of the country in accordance with government's commitment to transformation.
- 16 In most companies, the Board appoints the CEO and other senior management and that is the norm that applies to SOEs as well; however, a Memorandum of Incorporation or the founding legislation of a particular SOE may empower the Minister to appoint the CEO of that SOE, as was the case with Transnet.
- 17 However, a Minister would not unilaterally appoint a CEO above the heads of a Board, because a CEO is ultimately accountable to the Board, and not the Minister. Similarly, it is the Board that enters into an employment contract with the CEO, not the Minister. As such, there should always be consultation between the Board and the Minister when appointing the CEO of a SOE.

- 18 A general illustration of the appointment process of a CEO and / or Board member during my tenure as the Minister of the DPE was that, under the direction of the Director General of DPE ("DG"), the DPE would conduct professional searches, head hunt candidates, follow up on recommendations by industry experts or, in some cases, recommendations by the Board. Mr Godongwana and I would constantly engage on these issues and the DG would draw on the skills and expertise of specialist sectoral units within the DPE with respect to suitable candidates.
- 19 Once I had approved of the composition of a Board, I would send a Cabinet Decision Memorandum to the Economics Sub-Committee of Cabinet for approval, and then to Cabinet for final approval. A Minister may make a special appeal to the President to by-pass the sub-committee process and proceed straight to Cabinet for final approval of matters that are urgent.
- 20 Sub-Committees of Cabinet meet every second week and Cabinet meets in the week following the Sub-Committee meeting. The President chairs Cabinet meetings and approves the Agenda drawn up by the Cabinet Secretariat, so he has a decisive role on what goes on to the Agenda. As part of the Cabinet collective, ministers do, however, tend to involve Cabinet in the exercise of their powers to appoint the CEO, both as the Executive Authority in terms of the Public Finance Management Act and as the shareholder representative on behalf of the State.
- 21 The Department of Public Enterprises conducted an assessment of the extent of Cabinet's involvement in order to establish the trend and the nature of its involvement. To this end, a review was conducted of previous decisions of cabinet spanning from April 2002 to February 2009 relating to appointments of CEOs of a variety of SOEs. The results showed that Cabinet's involvement varied between approval (ten times), concurrence (six times), and noting (twice) of the relevant Minister's decision, indicating that every CEO appointment is dealt with on a case by case basis, having considered the size, importance and circumstances facing the SOE at the time of making the appointment.
- 22 In practice however, there were parallel behind-the-scenes processes. As the ruling party, the ANC had expectations that they would have influence over who was appointed to Boards via the Deployment Committee of the ANC. When the ANC came into power in 1994, the Deployment Committee played a useful role in identifying appropriate candidates from among the ranks of progressive forces to fill crucial

positions as the State, at that time, was staffed entirely by previous apartheid government appointees.

- 23 However, the usefulness of such a Deployment Committee these days is debatable. How can just a handful of people possibly have the institutional knowledge and resources to pronounce on suitable candidates for every senior position in government and the private sector? It cannot be that closeness to or membership of the ANC, or any of its Alliance structures (or to factions within these structures), should be the determining factors in the selection of candidates for senior positions. In this day and age, there are a host of capable black and white professionals (women and men) from which to choose, who clearly understand and have an appetite for making the economy grow. Directorships on Boards should never be granted to the favoured few, as a reward for loyalty to a party or a faction of a party, or as a retirement benefit for the well-connected.
- 24 When I took office, 18 months after the divisive Polokwane conference, those in power in the ANC, including the Tripartite Alliance, were intent on rolling back the so-called neo-liberalism of the Mbeki era and on installing an interventionist Developmental State.
- 25 Regrettably, these factional battles in the ANC only served to encourage and entrench nepotism and patronage from within the ranks of the ANC and the Tripartite Alliance, and this would have very damaging consequences for SOEs and, by extension, for our economy which I will illustrate below with regard to my experiences in the appointment of board members and CEOs of Transnet and Eskom, during my time as the Minister of DPE.
- 26 It is important to note that there were three damaging processes afoot in my time with regard to SOE related appointments: there were the very public political maneuverings of certain elements within the ANC and Tripartite Alliance to get their way; then there were the ways that President Zuma, and some Cabinet colleagues, thwarted my attempts to get Cabinet approval for Board appointments; and finally, the inexcusable interference with my responsibilities as a Minister by President Zuma that eroded my executive authority.

- 27 In the international literature on SOEs it is common cause that political interference is one of the greatest risks encountered by parastatals. If anything, the narrative that follows shows how great that risk is. The experiences I had during my time as Minister were just the beginning.

TRANSNET

- 28 A simple but important job of appointing a CEO to Transnet, after the resignation of Maria Ramos at the end of February 2009, became the site of an ugly protracted battle between President Zuma and I, in which he thwarted all the legal and legitimate procedures that I took to obtain Cabinet approval for any appointments whatsoever to Transnet, including the appointment of a CEO. As a consequence, Transnet had an Acting Chairperson, an Acting Group CEO (GCEO), an Acting CFO, and later on, an Acting CEO in one of their divisions, Transnet Freight Rail (TFR), for one and a half years.
- 29 When Maria Ramos resigned as the CEO of Transnet in February 2009, the Transnet Board, after a careful selection process, and extensive engagement with the then Minister of Public Enterprises, Bridget Mabandla (Minister Mabandla), recommended Pravin Gordhan (Mr Gordhan) as their only candidate for the CEO position. I attach hereto marked Annexure "A1", a memorandum dated 13 February 2009 indicating the Board's decision to appoint Mr Gordhan as the CEO of Transnet and, as Annexure "A2", a letter dated 9 March 2009 from the then Chairperson of the Transnet Board, Mr Fred Phaswana ("Mr Phaswana"), addressed to Minister Mabandla, wherein Mr Phaswana confirms that *"...the Nominations Committee fully supported by the Board, recommended the appointment of Mr Pravin Gordhan on the basis of the strengths he displayed against the competency profile and in comparison with the other candidates who were interviewed... Each of the other previously shortlisted candidates was not recommended for appointment for various reasons..."*
- 30 A week later, Mr Gordhan withdrew his candidature and several months later, he became the Minister of Finance after the General Elections of May 2009. A fiction arose at that time, which was untrue, that Siyabonga Gama ("Mr Gama"), then CEO of TFR, was second on the list of preferred candidates for the position of Transnet CEO. There was no such preferential list. The Transnet Board was adamant that Mr Gordhan stood head and shoulders above the rest, and that he was the only

candidate that they wanted to recommend for the position. But this fiction of a second in line candidate, Mr Gama, did not go away.

- 31 After Mr Gordhan's withdrawal, the Board had difficulties getting a firm direction from government. They wanted to commence with a new search but could not get an unequivocal endorsement to do this. At this point, the election period had begun. There are many correspondences in this regard, including the letter from Mr Phaswana to Minister Mabandla (Annexure A2) and a memorandum dated 19 March 2009 from the then DG. Minister Mabandla did however approve the appointment of the Chief Financial Officer ("CFO") of Transnet, Mr Chris Wells ("Mr Wells"), as the acting CEO of Transnet and Anoj Singh, a Transnet employee, as the acting CFO of Transnet.
- 32 The Transnet Board nevertheless embarked on a further search, as they felt that they could not abandon their fiduciary responsibilities. On the 18th of June 2009, the Transnet Chairperson Mr Phaswana, met with me and submitted a memorandum, dated 9 June 2009, which has been attached hereto marked Annexure "B" which, amongst other things, recommended the appointment of a candidate for the position of CEO. This was a highly capable and experienced black candidate who had the requisite experience and admirable managerial capabilities. Again, it is important to note that the Board had nominated only one candidate for appointment. However, the fiction persisted that Mr Gama was next in line. They did not recommend an internal candidate, although, as noted by the Board, *"the preference was to appoint a suitably qualified internal candidate, after consideration of the current global 'meltdown' and the global recession, its current and future potential impact on Transnet, and a thorough consideration of these individuals, the Corporate Governance and Nominations Committee, fully supported by the board, recommends the appointment of Mr X ["Mr X" our insertion] on the basis of the strengths he displayed against the competency profile and in comparison with the other candidates who were interviewed."*
- 33 Approximately a month after my appointment as the Minister of DPE, I met with President Zuma and gave him a full background about the developments in Transnet. I informed him that the Transnet AGM was coming up very soon and that a GCEO and a Chairperson of Transnet would have to be appointed as a matter of urgency. I briefed him about the Board's candidate of choice (whom I too endorsed) and the inquiry potentially implicating Mr Gama.

- 34 I was shocked and disappointed when President Zuma informed me that he was adamant that Mr Gama was his only choice for GCEO. I informed him that that was not possible and that Mr Gama was not the Board's choice and I could not override the Board as they had undergone a very professional selection process. I further informed President Zuma that Mr Gama was the subject of an inquiry into procurement irregularities and it would be very messy to appoint a GCEO who could potentially be facing fairly serious charges. President Zuma said that, if that was my view, no appointment whatsoever was to be made at Transnet until Mr Gama's disciplinary process was over. We agreed that I would provide him with more detailed information for him to further apply his mind to.
- 35 The problem was that President Zuma, two of my Cabinet colleagues and elements within the ANC and the Tripartite Alliance, including the Secretary-General, Gwede Mantashe, were very vocal that the candidate of their choice, Mr Gama, would become the next GCEO of Transnet, despite the fact that the black dominated Board of Transnet, after a rigorous and professional selection process, were clearly of the view that Mr Gama was not an appropriate candidate. In fact, the Board had nominated a highly recommended person who had scored well in all the professional assessments and had the requisite experience.
- 36 There were further complications that were very worrying. After several whistle-blower tip-offs, an investigation into procurement irregularities had already started in 2008, which was raising concerns about Mr Gama's role in irregularly signing off contracts. Unfortunately, one of these contracts was with a company that had been owned at the time by a Cabinet colleague, Mr Nyanda. In this regard, I attach hereto, marked Annexure "C", a letter dated 6 March 2009 annexed to a summary report by Transnet Internal Audit into the aforementioned investigation.
- 37 Notwithstanding all this, Mr Gama's supporters claimed he was being victimized by an anti-transformation white cabal that had instituted an inquiry (and later disciplinary proceedings) to prevent him from being appointed the GCEO. Moreover, it was falsely claimed that Mr Wells himself wanted to be GCEO and had started the inquiry in order to eliminate his rival, Mr Gama. Mr Wells had, in fact, put his name forward to apply for the GCEO position in November 2008 when the process started, but retracted his application within days of applying.

- 38 In the months to come, Mr Wells was to face a tirade of insults, slander and racist slurs for the rest of the time he was at Transnet.
- 39 Mr Gama was later found guilty of unwarranted criticism of Transnet Executives, a charge serious enough to warrant dismissal.
- 40 On or around 28 July 2009, I sent President Zuma a comprehensive report, attached hereto marked Annexure "D", with annexures detailing the selection process, the strong motivation for the appointment of the candidate that had been recommended to me by the Transnet Board, details of the procurement irregularities under investigation by the Transnet Audit Committee, the corporate governance aspects of CEO appointments, including the legal opinions prepared by Michael Katz and Advocate Wim Trengove SC. In this regard, However, President Zuma did not respond.
- 41 The Transnet AGM was postponed from July 2009, and took place on 11 August 2009. I was in an embarrassing position as I could not appoint a CEO or a Chairperson, nor could I fill the four vacancies on the Board. I endorsed the continuation of office of the existing Board members for their terms of office were due to expire the following year.
- 42 The inability to appoint a Chairperson and a CEO of Transnet at the AGM was a very serious breach of corporate governance. In all good faith, the Transnet Board had conducted a thorough and very professional search for a CEO, always in close consultation with Minister Mabandla and then with myself when I took over. I can count no less than 18 engagements between Transnet and the Government in that six-month period with regard to the GCEO succession. I am however mindful that the political turmoil of the time, the turbulence of a general election, and the ascension to power of a new political elite aligned to President Zuma probably made decision-making for an out-going Minister very problematic. As for myself, it was the absolute dogged insistence of President Zuma that no-one be appointed to any position in Transnet until his candidate of choice, Mr Gama's disciplinary case was over, that prevented me from making an appointment.
- 43 Cabinet was due to meet on 26 August 2009 and recognizing the urgency of the situation in Transnet, and still not having received a reply from President Zuma, I sent

an urgent letter on 25 August 2009, attached hereto marked "Annexure E", requesting his assistance to expedite the placement of Cabinet Memo 7/2009 on the Cabinet Agenda. He gave me instructions to withdraw the Cabinet Memo and now wanted the names of three potential chairpersons for Transnet.

44 Mr Gama was formally charged by Transnet and later suspended on 1st September 2009. Immediately before, and in the days following his suspension, Minister Jeff Radebe, ("Gama will become CEO"), Minister Siphwe Nyanda ("Gama is being persecuted like Jacob Zuma"), and also the ANC, the SACP, the South African Transport Workers Union (SATAWU) and the ANC Youth League (under Julius Malema at the time) all issued strong and harsh statements in support of Gama, accusing Transnet of persecuting him¹. This was reflected in numerous statements and reports in the media, which I attach hereto marked Annexure "F1" to "F13".

45 I quote from SATAWU's statement made by the General Secretary, Randall Howard, attached hereto marked Annexure "G":

"SATAWU will ensure that no puppet appointment takes place until the disciplinary process of Gama is completed even though at the cost of keeping the untransformed cabal in place a little longer. SATAWU is in the process... to clean up the lily white Transnet Capital Projects..."

46 The accusations of an "untransformed" cabal and "puppet appointments" was outrageously insulting of the Transnet Board and the proposed candidate. The candidate was black, as were the majority of the members of Transnet Board who were also very senior and professional people. All I could conclude from this fusillade of insults hurled at Transnet was that there were concerted attempts to improperly and irregularly influence the appointment process of the Transnet CEO, with blatant disregard for the Board and myself as Minister.

47 An editorial in the City Press on 13 September 2009, attached hereto marked Annexure "H" warned:

"The level of political interference at Transnet does not bode well for the effective management of parastatals...The question of who is right and

¹ Zwelenzima Vavi, the then General Secretary of COSATU, did not add his voice to these criticisms as he had his reservations.

who is wrong is not for the ANC to determine. Neither is it terribly good practice to level the race card at the Board and the executive team at Transnet. The Board is diverse... Their reputations are being sullied and it will be little surprise if they walk in the next fortnight."

48 On 7 October 2009, the South Gauteng High Court handed down its judgement, which is attached hereto marked Annexure "I", dismissing with costs Mr Gama's application to have his suspension set aside on the grounds of bias against him and faulty procedures. Paragraph 107 of the judgement reads: *"There is also no case made out of the perceived bias that can affect the legality of the process. Much less that of institutional bias"*.

49 On 4 June 2010, Mr Gama was found guilty on 3 out of 4 charges, namely, exceeding his delegated authority by approving a GNS Security Contract; failure to comply with the Board's stipulated condition for the 50 like-new locomotives contract, and unwarranted criticism of Transnet's Executives. Mr Gama was not found to have personally benefitted; however, he was found to have acted negligently by signing off on contracts without properly applying his mind.

50 The outcome of the disciplinary enquiry conducted into the conduct of Mr Gama, which is attached hereto marked Annexure "J", confirms in paragraphs 364 and 365 that,

"...A reasonable person in Gama's position would not in my view have been prepared to utter the criticisms which he did, some in public and others in correspondence, unless he had certain evidence in support of his claims which it appears Gama did not have. The statements are critical of Wells in particular, but also infer a wider criticism of Transnet executives and arguably even of the Transnet board for having an ulterior motive and conspiring in preferring the charges against Gama."

51 After Mr Gama had been found guilty, a separate, independent hearing on what sanctions should be applied, found that the charges were serious enough to warrant dismissal on each charge. Accordingly, on 28 June 2010, Mr Gama was fired from Transnet.

52 I, together with my Deputy-Minister, Mr Godongwana, proceeded to put together a Cabinet Memorandum (finally dated 27 October 2010), which is attached hereto marked Annexure "K" for the appointment of a new Transnet Board who would then commence a fresh search for a new CEO as the last proposed candidate had withdrawn. The Transnet Board, Acting GCEO and Chairperson at the time had shown remarkable resilience in keeping the show on the road, but they were approaching exhaustion: no-one should have to bear the level of abuse and government dysfunctionality which they endured.

53 In a letter to President Zuma dated 8th September 2010, attached hereto as Annexure "L", I thanked him for the telephonic conversation I had had with him the previous evening regarding the Transnet Chair, and I attached two CV's of my proposed candidates for his ease of reference and requested a meeting with him prior to submitting to Cabinet. I was targeting the Cabinet meeting of 15th September 2010. In the same letter I stated:

"Given the importance of Transnet to the SA Economy, and the need for stable leadership at the Board level, it is absolutely necessary to proceed with the appointment of a Chairperson and other Board members with the requisite skills. To this end my department has prepared a Cabinet Memorandum for discussion at Cabinet [15th September 2010] but which it has not yet submitted. This is because we agreed that we would discuss the matter first so that I can ascertain your final views on the composition of the Board and in particular the Chairperson."

54 On 10th September, and again on the 11th September 2010, my office sent reminders to the President's office regarding the request for a meeting, and providing times of my availability. I heard nothing.

55 The Transnet Memorandum (9/2010) (Cabinet Memo 9/2010) did not appear on the Cabinet Agenda of 15 September 2010 (Annexure "K").

56 On 27 October 2010, I sent a Letter to the Presidency requesting his assistance to expedite the placing of the Transnet Cabinet Memo 9/2010 onto the Cabinet Agenda. I did not get a reply.

57 Three days later, on Sunday 31 October 2010, the President's office called me to a meeting with him and in the presence of Gwede Mantashe, the Secretary-General of the ANC, President Zuma said that the NEC had decided to re-deploy me as the Ambassador to Finland. I declined the re-deployment and informed them that I would be resigning as a Member of Parliament.

58 I immediately packed up my office and left the following day, requesting a handover meeting with the incoming Minister, which is the norm in government. Minister Gigaba declined my request.

59 My Transnet Cabinet Memo 10/2010 appeared 3 days later as an Agenda item on the Cabinet ESEID Sub-Committee of 3 November 2010, and was withdrawn. (This meeting took place 3 days after President Zuma dismissed me.)

60 On 8 December 2010, Cabinet approved Mr Gigaba's recommendations for the Board at Transnet. Iqbal Sharma, a former business partner of Gupta associate, Salim Essa, was on that list and was later appointed as head of the procurement committee at Transnet.

61 On 16 February 2011, Cabinet approved the appointment of Brian Molefe as Group CEO Transnet and a little while later Mr Gama was re-appointed as CEO of TFR on the grounds that his misconduct had not been serious enough to warrant his dismissal.

62 On 16 March 2011, the Transnet Board approved the re-appointment of Mr Gama as CEO of TFR, justifying it on the grounds that the findings in his disciplinary hearing had not warranted a dismissal.

ESKOM

63 During a robust Eskom Board breakaway session on 26 October 2009, Mr Jacob Maroga, the CEO of Eskom, offered to resign and left the room so that the Board could discuss the matter. At that point, Mr Bobby Godsell, the Chairperson of Eskom, said that he too offered his resignation and left the room for the Board to consider both offers of resignation.

64 The Board agreed that they would accept Mr Maroga's resignation and delegated two directors to inform him of that fact. This was done at a dinner meeting that evening, and

arrangements were made to meet the following day to discuss the content of a communication informing the public of the CEO's resignation.

- 65 I came to the Eskom Head Office early the next morning on Friday 29 October 2009, and whilst meeting with Mr Godsell in his office, Mr Maroga walked in and handed me a letter which stated, amongst other things, that he had not offered to resign and that he was not offering to resign. This letter is attached hereto marked Annexure "M".
- 66 I thereupon met with the Board and requested each and every member of the Board to tell me their view of the account that Mr Maroga had offered to resign and that they had accepted his offer - a decision that Mr Maroga had accepted the previous night. I said that if any Board member were not in agreement, they should say so and there would not be any repercussions.
- 67 Every Board member confirmed that Mr Maroga had offered to resign and that they had accepted his resignation. They felt Mr Maroga was dishonest. They had accepted his resignation because of their deep frustration at his poor performance as a CEO, for example, failing to consistently appreciate the enormity of Eskom's financial crisis; a failure to re-negotiate long-term contracts with aluminium producers and long term coal contractors; and the development of a strained relationship with his executive team.
- 68 I thereupon sought legal advice from my Department and senior counsel and conferred with the Deputy-Minister, Mr Godongwana, at the offices of Eskom. I requested the Deputy-Minister to meet privately with Mr Maroga and try to persuade him to take an elegant exit to prevent further damage to himself, because it was clear that he was not going to easily win his argument with the Board, and Eskom could certainly not afford a public crisis of this order.
- 69 Mr Godongwana and Mr Maroga met the next day, Friday 30th October 2009, and the latter said that he would revert by the following Sunday on his proposed terms of exit. However, Mr Maroga did not revert back on the proposals and refused to meet with Mr Godongwana, stating that he would only meet with me.
- 70 Thereafter, the Board issued a letter to Mr Maroga confirming his resignation and stating that his incapacity as a manager constituted further grounds for terminating the relationship, should the resignation dispute not be settled. I was unaware that this letter had been sent.

- 71 I met with Mr Maroga on Wednesday 4 November 2009 and offered him a dignified exit, or mediation or arbitration as options to resolve the dispute. He refused all of those options, insisting that I confirm his appointment as the CEO of Eskom and return him to his office. I refused his request, because it was not my job to be interfering in a relationship between a CEO and a Board from a corporate governance point of view and because the employment contract was between Mr Maroga and the Board; not with me. After the meeting, I informed the Chairperson of the Board that there was nothing further that I could do to resolve the dispute, and that the Board should go ahead with whatever they needed to do.
- 72 The next day, 4 November 2009, I briefed Acting President Motlanthe on developments and informed him that Eskom would be announcing Mr Maroga's resignation that same day. President Zuma was abroad at the time.
- 73 The Chairperson of Eskom announced the resignation of Mr Maroga to a large gathering of senior managers at Eskom on the morning of Thursday 5 November 2009. Whilst this was happening, I was in my office and received a call from an enraged President Zuma asking me bluntly what did I think I was doing? (He was briefly in the country en route to Mozambique). He furiously instructed me to tell Bobby Godsell to stop immediately. I warned President Zuma of the dire consequences this would have, but he would not listen. He said he would speak to me again once he was in Mozambique, in an hour or so, but he did not take my repeated calls thereafter. I informed Acting President Motlanthe and said that, much against my better judgment, the President had issued me with an instruction which I was bound to obey. It made me deeply unhappy.
- 74 As a consequence of President Zuma's instruction, Bobby Godsell was forced to cancel the media briefing scheduled to announce Mr Maroga's resignation after he had finished briefing the staff; the media were already sitting waiting. This really put the cat amongst the pigeons: the media speculation about whether Mr Maroga was, or was not, the CEO of Eskom reached a crescendo, hitting headlines, newscasts and talks shows. There was great consternation in the country. This was not at all good for Eskom's reputation, given its financial and operational problems. Neither I, nor the Board, were in a position to provide any clarity whatsoever and the President was simply unavailable. I was lambasted for my silence.

- 75 I finally managed to get an appointment with President Zuma on the morning of Friday 6 November 2009. He had just finished breakfast and told me that he could only meet with me for 10 minutes. I briefed him and then he said he had to go to a NEC meeting in Kempton Park and would meet with me at lunchtime to continue our conversation. No meeting took place and, although I waited the whole day in Kempton Park, I was never summoned as he had promised.
- 76 That night, and the following day, I lodged my strongest objections with Jessie Duarte, who was Chief of Operations in the Presidency and made repeated calls to the Presidency to try and set up a meeting with President Zuma.
- 77 Finally, I got to see the President on Sunday 8 November 2009 in Kempton Park in the midst of a media uproar. He really did not want to discuss anything, he just informed me that he had decided that Mr Maroga will return to Eskom and, over a certain period, he would write his version of events and the Board would do the same and then I, the Minister, would decide. I was horrified. I said to the President that if that was the route he wanted to take then he, not I, should convey this to the Board and Mr Maroga, as I thought this was a disastrous path to take. We agreed, finally, that I would inform the Board of his decision, he would inform Mr Maroga and I would make arrangements for his meeting with Mr Maroga. Upon contacting the President's Housekeeper to make arrangements for Mr Maroga to meet the President that afternoon, my secretary was rather puzzled because she was told that Mr Maroga had already met with President Zuma earlier on, and asked if Mr Maroga wanted to see President Zuma again?
- 78 That same day, I met with the Board and informed them of the President's decision. They were not at all happy but finally agreed, in the interests of settling the media furor about the CEO position. But there was one condition: that they personally meet with the President. He very reluctantly agreed and they extracted a concession from the President that Mr Maroga would immediately go on leave once he returned to Eskom. They were very worried about his disruptive presence at Eskom.
- 79 I met with the Board later that night after their meeting with the President to plan the process going forward. In the middle of the meeting, I got a call from President Zuma saying that Mr Maroga does not accept the deal. The Board was furious and Bobby Godsell resigned.

- 80 The following day, 9 November 2009, President Zuma phoned me to say that he had given Mr Maroga permission to return to Eskom as the CEO and that Mr Maroga would then proceed to write out his version of events, as discussed before. President Zuma and I had a heated argument on the matter. On the same day, 9 September 2009, Mr Maroga arrived at Eskom, accompanied by Jimmy Manyi and a few others, and went upstairs to his office.
- 81 Mr Maroga then proceeded to send a letter, dated 9 November 2009, addressed to me, the Board, EXCO and the Chairperson of the Portfolio Committee in Parliament, which is attached hereto marked Annexure "N", announcing that he remained the CEO and Director of Eskom and that the shareholder at the highest level had confirmed that all decisions regarding his status must be formally requested from and granted by the shareholder, and all unauthorized actions taken by the Board since 28 October 2009 were rescinded.
- 82 Mr Godongwana and I were so shocked that we were both of a mind to resign. I was going to ask for a special slot in Parliament to make an announcement about the matter and prepared to leave for Cape Town, as Ministers are accountable to Parliament. Mr Godongwana took the letter to Luthuli House in an absolute fury and a little while later, the President phoned Mr Maroga and instructed him to immediately vacate his office at Eskom, leave the building and return only once I had given him permission to do so.
- 83 On the following day, I requested Yunis Shaik (at that time the labour advisor to DPE) and the Acting Chairperson of Eskom, Mr Mpho Makawana, to meet with Mr Maroga to negotiate his terms of departure. They reached a stalemate and, finally, Mr Maroga left Eskom with no package.
- 84 On 12 November 2009, I made an announcement in Parliament that Mr Maroga was no longer CEO of Eskom and Eskom did likewise.
- 85 Yunis Shaik informed me that the President had requested that I ask Mr Godsell to return as Chairperson of the Board, which I did. Later, however, the President phoned me and asked me to tell Mr Godsell that he will not return as Chairperson of the Board. Gwede Mantashe made a similar demand, although during this entire episode he had made it quite clear to me that he did not support what the President was doing.

86 As a consequence of this fiasco, Eskom, like Transnet, had an Acting Chairperson and an Acting CEO.

87 Later, Mr Maroga sued Eskom and I for R85 million compensation. He lost the case as well as the appeal.

SAFCOL

88 The South African Forestry Company Ltd (SAFCOL) was due to have its Annual General Meeting on 26 September 2010. In preparation therefor, I submitted a Cabinet Memorandum (7/2010) dated 26 August 2009 for the appointment of Non-Executive Directors, including the Chairperson, to the Board of SAFCOL, retaining some Board members and appointing new ones, including the Chairperson.

89 In a letter to the President dated 8th September 2010, attached hereto marked Annexure "O" and headed 'SAFCOL Chairperson', I thanked him for the telephonic conversation I had had with him the previous evening regarding the SAFCOL Chairperson and I attached the CV of my proposed candidate for the position of Chairperson.

90 In this same letter of 8th September 2010, I said to the President that,

"in order for us to have a more meaningful opportunity to discuss this position before taking it to Cabinet, early yesterday, I withdrew the item from the agenda of today's ESEID [Cabinet Sub-Committee] meeting. However given the urgency of the matter as a result of the AGM for SAFCOL[and] Parliamentary and other legislative reporting requirements, I trust then that you will revert to me with your views on the proposed candidate for Chairperson quite soon and before the next Cabinet meeting. Kindly note that I have written to your office for permission to submit the memo to the next Cabinet meeting. I am available to meet with you at any time....."

91 On 10th and 11th September 2010, my Personal Assistant, Ms. Nthabiseng Borothe sent follow-up reminders to President Zuma's office for the meeting and giving details of my availability. I heard nothing.

92 On 15th September 2010, Cabinet approved my Memorandum, despite an attempt by the President to have it withdrawn at the actual meeting itself.

ISSUES RELATING TO THE TERMINATION OF SOUTH AFRICAN AIRWAYS' SOUTH AFRICA – MUMBAI ROUTE

93 In early June 2010, I was part of an official South African state visit to India, led by President Zuma. Whilst I was there, I was informed by my special advisor, Ms F Hassan, that she had received information that South African Airways (SAA) intended to terminate its South Africa – Mumbai route. On receipt of this information, I sent a text message to the then Chairperson of the SAA Board, Ms Cheryl Carolus ("Ms Carolus"), enquiring whether this information was true. The text, which was sent on the 2nd of June 2010, stated as follows:

"Cheryl, I am in India with the President now. Is there any truth to the rumour that SAA is going to terminate its route to Mumbai? This is a rumour here and we need clarity".

94 It should be noted that as part of the same conversation, Ms Carolus stated:

"No, we will not be terminating Mumbai. It must be Jet Airways still lobbying for this. We remain on the route with full frequencies. All the best for India."

The abovementioned SMSs are attached hereto marked Annexure "P".

95 It should further be noted that during the course of my visit to India as part of President Zuma's state visit, the Chairperson of Jet Airways, Mr Naresh Goyal, was persistently following me around and attempting to arrange a meeting with me. I declined to engage with Mr Goyal as I did not have the authority to make any business decisions on behalf of the SAA Board.

96 It should be noted that during the state visit to India, referred to above, as part of the visit, we attended a fashion show. At the conclusion of the fashion show, I was walking out of the hall and Mr Goyal literally jumped over the chairs and came and stood in front of me and said "Minister I need to see you". I said to him "Before you meet with me you have to meet with the Board and with the CEO. I have nothing to say to you."

97 On the 30th of August 2010, Ms Carolus sent me another text message, attached hereto marked Annexure "Q" stating as follows:

"Note that the CEO from Jet Airways will be in South Africa for the India/South Africa meeting. He is lobbying hard for SAA to end the Mumbai flight. We reject this. Please let me know if he is trying to meet you, so that we can brief?"

98 On the 31st of October 2010, I was removed from office by President Zuma. SAA's Mumbai flight was later cancelled.

VYTJIE MENTOR

99 It should be noted that during the latter part of my tenure as the Minister of Public Enterprises, there were rumours circulating that I would be dismissed as the Minister of Public Enterprises. In this regard, on 7 June 2010 I received an SMS (A screen shot of which is attached as Annexure "R ") from my special advisor, Ms F Hassan, stating as follows:

*"Rumours
Dm becomes min
U Dm for health
VM the Dm for DPE"*

100 It is acknowledged that there were numerous rumours circulating at that time, however the specificity in mentioning Vytjie Mentor by name is worth noting.

101 On the 31st of October 2010, I was dismissed from my post as Minister of Public Enterprises by President Zuma.

CONCLUSION

102 The legal framework for the appointment of boards of SOEs and hence the CEOs of SOEs is comprehensively set out in the opinion of Michael Katz of Edward Nathan Sonnenbergs as well as Advocate Wim Trengove SC (Annexure D). Suffice to say that this information was conveyed to President Zuma on a number of occasions including in my memorandum to President Zuma on the 28th of July 2009 (Annexure D), wherein I state the following in paragraph 3.1.8:

"This was also confirmed by senior counsel's advice, attached as Annexure "A". Counsel advised that the Minister is the functionary who holds the shares and exercises the rights on behalf of the State. The Minister's exercise of the shareholder rights is part of her exercise of the State's executive powers. If Cabinet has formulated policy relating to such exercise, then the Minister should exercise the powers within the parameters of such policy. The Minister is not obliged to consult Cabinet in the exercise of his/her power, but may choose to do so as a matter of personal discretion or any protocol or custom developed in this regard. Counsel advised that the Minister's exercise of her shareholder powers on behalf of the State remain valid in law even if Minister does not adhere to any Cabinet policy developed on this issue."

- 103 The facts set out above bear testimony to my repeated, and unsuccessful, attempts to appoint a CEO at Transnet, over one and a half years, as well as those of the Board, which attempts by the Board to appoint a CEO of Transnet had commenced some time prior to my appointment as Minister. The conduct of President Zuma and certain members of his Cabinet in relation to Transnet and Eskom was not only negligent, it was reckless and designed to frustrate the sincere attempts of the boards of those state owned entities to exercise their fiduciary duties as directors and the exercise of sound corporate governance in their respective state owned entities.
- 104 The above course of conduct by President Zuma in relation to Transnet and Eskom was improper and irregular. His conduct revealed, at best, a fundamental misunderstanding and misconception of his role as President of South Africa, and the exercise of his presidential duties and functions. His actions not only undermined me as the Minister responsible for Public Enterprises, but undermined the efforts of the boards of Transnet and Eskom, and many of their senior management, who attempted to carry out their responsibilities and duties in a professional manner under very trying circumstances.
- 105 It is not for me to speculate as to what the motives of President Zuma were in unduly and improperly influencing the appointment of CEOs and board directors in certain of the state owned entities, referred to above. Suffice to say that, in my view, the actions set out above resulted in severe and extremely detrimental consequences for Transnet and Eskom, which consequences undermined and broke the morale of

Boards, staff and management, and also resulted in severe reputational damage to those entities and negative consequences for their efficient functioning.

- 106 It is submitted that the nature of the interventions described by me in Transnet and Eskom manifested the beginnings of the President, and certain members of his Cabinet, unduly influencing the appointments of key executives and board members in SOEs. We now know that this course of conduct escalated over the years and has resulted in a litany of maladministration, abuse of resources and theft from state owned entities in South Africa. The consequences of such actions are public knowledge, as are the disastrous economic effects on the state of the South African economy. They are the reason for this Commission of Inquiry.
- 107 Once there is collusion between the CEO of a state owned entity and the chairperson of the board of that state owned entity in order to influence the conduct of business of that entity, particularly the allocation of contracts and tenders, the decline and the effects thereof will be felt for years to come.
- 108 It is my firm belief that my resistance to the strong views of President Zuma in relation to the appointment of certain preferred candidates to the positions of CEO and members of boards of directors, including the CEO and Chairperson of Transnet, at the time that I was Minister, led him to the conclusion that I would not do his bidding and behave improperly and unlawfully. I believe that it was for that reason that I was dismissed by President Zuma as Minister of Public Enterprises on the 31st of October 2010.
- 109 I would like to place it on record that while my resistance to the attempts of President Zuma to improperly influence the appointments of CEOs and boards of directors at SOEs may have had a significant negative effect on my own career, I deeply regret that the actions of President Zuma and others during the course of the Transnet and Eskom sagas, set out in detail above, also had a significant negative impact on the careers and reputations of a number of fine South Africans who were only attempting to fulfill their responsibilities in terms of their appointments in the entities referred to above.

Dated at JOHANNESBURG on this 8th day of October 2018.


BARBARA HOGAN

ANNEXURE 'D'



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM

TO : MR J ZUMA
PRESIDENT

FROM : MS BARBARA HOGAN
DIRECTOR-GENERAL

FILE REF :

IDMS REF :

SUBJECT RECRUITMENT AND SELECTION OF THE GROUP CHIEF EXECUTIVE OFFICER

DATE : 28 JULY 2009

1. PURPOSE

To brief the President on the following matters:

- 1.1 the legal framework governing the appointment of a Group Chief Executive Officer (CEO) for Transnet Limited (Transnet);
- 1.2 the CEO the recruitment and selection process undertaken by Transnet's Board of Directors (the Board) to employ a CEO;
- 1.3 investigations into allegations of corruption at Transnet impacting one of the candidates for the position of CEO; and
- 1.4 assessment of the recruitment and selection process undertaken by the Board; and
- 1.5 the recommended process forward and the risks involved in the appointment of the CEO.

Lefapha la Dikgwabo tsa Puso • Lefapha la Dikgwabo tsa Mmuso • UMyango wezinkampani zikaHulumeni • Mhesho wa Mabindu a Muthuso
• Departement van Openbare Ondernemings • Kgomo ya Dikgwabo tsa Setshaba • Ndawulo ya Mabindzu ya Mhano • LiTiko leTembhizinku
aHukumende • ISebe lezaMashishini oMbuso

- Confidential -

PROCESS UNDERTAKEN BY THE TRANSNET BOARD REGARDING THE RECRUITMENT OF THE CHIEF EXECUTIVE OFFICER

2. SUMMARY

- 2.1 Following the resignation of Ms. Ramos, the Board initiated a CEO recruitment process to ensure continuity in Transnet's business operations. As a consequence of the withdrawal of the Board's unanimously recommended preferred candidate, Mr Pravin Gordon, the Board extended its search for a suitable candidate and has now recommended a further preferred candidate and two other shortlisted preferred candidates for appointment as CEO.
- 2.2. The recruitment and selection process conducted by the Board raised questions regarding the appropriate authority to appoint the CEO as well as the correct process to follow. Analysis of relevant legal and good corporate governance sources indicate that the Transnet CEO should be appointed by the Minister of Public Enterprises with the approval of Cabinet.
- 2.3 The recruitment process was initiated at an unfortunate time when the Board was also undertaking investigations into alleged corrupt activities against some of the senior executives at Transnet. This time overlap may have raised concerns regarding the process and criteria followed in the recruitment and selection of candidates. The process conducted by the Board has been assessed and found to be robust insofar as it was referenced to labour law compliant and internationally recognised candidate profiling.
- 2.4 Due to the delay in the appointment of the CEO and media speculation, it has now become critical for the shareholder to resolve on the appointment of the CEO and to re-establish leadership stability at Transnet. This memorandum serves to address questions and concerns raised with a view to agreement on the way forward in appointing a CEO for Transnet as soon as possible.

3. DISCUSSION

3.1 The Legal Framework

- 3.1.1 The legal framework regulating the appointment of the governing structures of a company is set out in various sources, which include the founding legislation of a SOE, the Companies Act (both old and new), as well as the King Codes on Corporate Governance.

PROCESS UNDERTAKEN BY THE TRANSNET BOARD REGARDING THE RECRUITMENT OF THE CHIEF EXECUTIVE OFFICER

- 3.1.2 The founding legislation of Transnet, the Legal Succession Act, 1989 does not include provisions on the appointment of Board members and executive management.
- 3.1.3 Company law provides the most instructive and meaningful guide and direction on the appointment of a company's governing structures. This is appropriate since company law is the law of general application to the incorporation and governance of companies and SOE are themselves commercial entities which should be regulated by company law similarly to other commercial entities.
- 3.1.4 Typically a company has two governing bodies, the shareholders in a general meeting and the Board of directors appointed by the shareholders. The Companies Act and the Articles of Association often regulate the distribution of powers and the roles and duties between these two organs. The Companies Act, similar to the Public Finance Management Act (PFMA), 1999, regulates the removal of directors, including the CEO of a company and does not specifically provide for the appointment of CEOs. This is so because the CEO is primarily appointed as an employee of the company. Oftentimes, the Articles of Association of the company provide for the appointment of the CEO for the specific company. However, where the articles are silent common law principles provide that the shareholders appoint the Board to direct and manage the company on behalf of the shareholders. The Board, in turn, and pursuant to this management function, appoints the CEO and executive of the company, who, in turn appoint the remaining management and employees of the company.
- 3.1.5 Transnet's Articles of Association do provide specifically for the appointment of the Board and the CEO. Articles 69 and 71 vest the power to appoint the CEO with the shareholder (the Minister) in a general meeting. Article 69 specifically addresses the appointment of Executive Directors i.e. the CEO, the Chief Financial Officer (CFO) and any other Executive Director whilst article 71 deals with Non-Executive Directors.
- 3.1.6 Given the practicalities of the Board having direct management and control over the company and thus exercising direct oversight of Transnet, it follows that the Board is best placed to initiate and direct the recruitment and selection process. However, disclosure and transparency of such processes must be determined and agreed in consultation with the shareholder to enable proper designation of the CEO by the shareholder in the general meeting. This practice is also encouraged by the King III

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Report on Corporate Governance which recommends that the Board must appoint an efficient and effective CEO.

- 3.1.7 Therefore, notwithstanding the fact that the Board may direct the recruitment and selection process of the Transnet CEO, the shareholder retains the power to appoint such CEO.
- 3.1.8 This was also confirmed by senior counsel advice, attached as Annexure "A". Counsel advised that the Minister is the functionary who holds the shares and exercises the rights on behalf of the State. The Minister's exercise of the shareholder rights is part of her exercise of the State's executive powers. If Cabinet has formulated policy relating to such exercise, then the Minister should exercise the powers within the parameters of such policy. The Minister is not obliged to consult Cabinet in the exercise of his/her power, but may choose to do so as a matter of personal discretion or any protocol or custom developed in this regard. Counsel advised that the Minister's exercise of her shareholder powers on behalf of the State remain valid in law even if Minister does not adhere to any Cabinet policy developed on this issue.
- 3.1.9 As part of the Cabinet collective, Ministers do, however, tend to involve Cabinet in the exercise his/her power to appoint the CEO, both as the Executive Authority in terms of the PFMA and as shareholder representative on behalf of the State. The Department of Public Enterprises conducted an assessment of the extent of Cabinet's involvement in order to establish the trend and the nature of its involvement in this regard. To this end, a review was conducted of previous decisions of Cabinet spanning from April 2002 to February 2009 relating to appointments of CEOs of a variety of State Owned Entities across the board, i.e, including those not falling under my portfolio. The results did not show conclusive dominance of any particular trend, with Cabinet's involvement varying between approval (10 times), concurrence (6), and sometimes noting (twice) of the relevant minister's decision, as the case may be.
- 3.11 This indicates that every CEO appointment has been dealt with on a case by case basis, having presumably considered the size, importance and circumstances facing the SOE at the time of making the appointment. My predecessors in the portfolio of public enterprises have followed both the route of Cabinet noting the appointment of a

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CEO (examples being past appointments of the CEOs of Eskom, Denel and SAA) as well as recommending a CEO for approval or concurrence by Cabinet (examples being the appointment of Ms Ramos and Mr Mkwanazi as CEOs of Transnet). The appointment of Ms. Ramos was a "formal cross-over" from National Treasury to Transnet as CEO designate so that she will be in a position to commence her responsibilities as CEO. Further, in 2000, the former Minister of Public Enterprises, Mr Radebe approached Cabinet to seek its concurrence on the appointment of Mr. Mafika Mkwanazi as the Managing Director of Transnet once the Board had recommended Mr. Mafika Mkwanazi as the best suitable candidate.

- 3.12 Although the Handbook on the appointment of persons to serve on Boards of State Controlled Institutions proposed by the Department of Public Service and Administration (which was approved by Cabinet in September 2008) does not contain provisions relating to the recruitment and appointment of CEOs specifically, it does recommend that Board appointments of significant enterprises be referred to Cabinet for approval; the Handbook does not define significant, however, considering the importance of Transnet to the economy, it may be considered to be significant.
- 3.13 In view of the aforementioned, it is considered prudent that the Board, in consultation with the relevant Minister conducts a recruitment and selection process for an CEO and recommends suitable candidates to the Minister for consideration and appointment, subject to approval by Cabinet.

3.2 Recruitment and Selection Process of Transnet CEO

- 3.2.1 Prior to the commencement of the recruitment process, the Board recommended to the former Minister of Public Enterprises in writing dated 5 December 2008, an appropriate process, job specification, selection criteria and time-line. The Minister was also requested to nominate potential candidates she wishes be considered for the position.
- 3.2.2 Thereafter, the Board conducted the recruitment process through its Corporate Governance and Nominations Committee chaired by Mr Bulelani Ngcuka. The Corporate Governance and Nominations Committee comprises of the following Board members, Messrs F.T.M Phaswana, B.T Ngcuka, Prof G.K Everingham, Dr N.D Haste, Ms N.B.P

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Gcaba and Ms N.N.A Matyumza.¹ The Committee enlisted the services of external service providers, including an Independent Counselling Psychologist to assist with screening process and competency assessments for the candidates to supplement Board's assessment of the suitability of candidates. All candidates were subjected to the same independent competency screening techniques that are labour law compliant and include, the Saville and Holdsworth advanced managerial test battery for managers and cognitive test profiling.

- 3.2.3 Members of the Transnet Group Executive Committee (EXCO) were invited to apply for the position, whilst the service provider conducted a search for potential external candidates. Internal candidates who applied for the position included Ms Moira Moses and Messrs Siyabonga Gama, Karl Sokiwa, Christopher Wells, Vuyo Kahla, Tau Morwe and Kgomoiso Phihlele. Messrs Christopher Wells and Karl Sokiwa subsequently withdrew their candidacies. The application, search and interview processes for internal and external candidates were conducted simultaneously.²
- 3.2.4 Interviews with shortlisted candidates were conducted from 09 to 11 February 2009 and thereafter on 13 February 2009 the Board unanimously recommended Mr Pravin Gordhan as the preferred candidate suitable for appointment. In its correspondence to the Minister of Public Enterprises of 13 February 2009, the Board indicated that "although its preference was to appoint a suitably qualified internal candidate, after consideration of the current global "meltdown" and the global recession, its current and future impact on Transnet Limited, and a thorough consideration of the shortlisted individuals, the Corporate Governance and Nominations Committee, fully supported by the Board, recommend the appointment of Mr. Pravin Gordhan on the basis of the strengths he displayed against the competency profile and in comparison with the other candidates who were interviewed".
- 3.2.5 In addition, the Board disclosed the names of all the candidates shortlisted for final interviews. The list was not presented in order of priority and comprised of the following names: Ms. Moira Moses (internal), Mr. Siyabonga Gama (internal), Mr. Thabo Dloti (external), Mr. Ketso Gordhan (external) and Mr. Pravin Gordhan (external). Regarding

¹ According to the records of the Transnet Company Secretary, all the members of the Committee were present during the meetings in the interview period.

² We are awaiting confirmation as to whether Messrs Morwe and Phihlele applied and were considered in the initial round of interviews.

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the assessment of the other candidates, the Board reported to the Minister that "the other candidates were found to be less suitable for the position or not suitable at all. The preferred internal candidate, Mr. Siyabonga Gama, was thoroughly considered but the Board is of a view that his assessment showed that there are important gaps, relative to the requirements for the position. According to the independent assessment and Board evaluation, he currently requires greater cognitive development to handle the complexity of this position.

- 3.2.6 On 20 February 2009, the former Minister was informed by the Board that its preferred candidate had withdrawn his candidacy; the Board also advised that it would proceed with an extended search to establish "whether there are any other prospective candidates not previously considered in the initial process". The Board was subsequently, on 2 March 2009, requested by my predecessor to provide detailed reports on the other shortlisted candidates for the Minister's consideration before embarking on an extended search.
- 3.2.7 On 9 March 2009, the Transnet Board provided the Minister with a summary of assessments of all the shortlisted candidates and, in addition, informed the Minister of allegations of misconduct involving one of the shortlisted candidates, Mr. Siyabonga Gama (a report on these allegations follows in 3.3 below). The Board cited the reasons why Mr. Siyabonga Gama was not recommended for appointment in the first place and the inherent pending uncertainty regarding the outcome of investigations against him as why he should not now be appointed to the position of CEO. The Board re-iterated its view that none of the other candidates shortlisted for final interviews were at the level required to fill such a key position and again expressed the need to extend the search for a suitable candidate.
- 3.2.8 I have been advised by the Board that, although they may have erred in continuing with an extended search in the absence of a formal go-ahead from the former Minister, the Board's motivation to establish stability in leadership at Transnet was a high priority in terms of its fiduciary duties to the company.
- 3.2.9 The Chairperson of the Board has also advised that the Board sought audience with the former President Kgalema Motlanthe to brief the President on the CEO recruitment process and to request the President to identify candidates for selection if any. In addition,

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the Board requested a meeting to brief former Minister Mabandla and Radebe on the recruitment process.

3.2.10 I have also been advised by the Board that at the time that the Board deliberated on the shortlisted candidates the Board was aware of the investigation of allegations relating to Transnet Freight Rail but was not aware of the findings thereof, particular in respect of the conduct of one of the shortlisted candidates, Mr. Siyabonga Gama. The Board was briefed on the findings of the investigation by Ms. Ramos following its deliberations on the appointment of the new CEO.

3.2.11 Upon the completion of the extended search, the Corporate Governance and Nominations Committee compiled a shortlist of seven potential candidates for interviews. All internal candidates were again considered for shortlisting. The process of the extended search delivered three additional candidates namely, Messrs Kgomoiso Phihlela (internal), Sipho Maseko (external) and Tau Morwe (internal). I have been advised by the Chairperson of the Board, Mr Fred Phaswana that Mr. Sipho Maseko is a former colleague of his and therefore he recused himself from the Board discussion regarding this particular candidate.

3.2.12 After the interviews were conducted the Corporate Governance and Nominations Committee recommended three preferred candidates who could fill the position of CEO, namely, Messrs Sipho Maseko, Mr Tau Morwe and Mr Kgomoiso Phihlela and with full and unanimous support of the Transnet Board recommended Mr. Sipho Maseko for appointment as CEO. Mr. Sipho Maseko is recommended on the basis of the strength he displayed against the competency profile and in comparison with the other candidates who were interviewed. According to the assessment provided by the Board, Mr. Sipho Maseko has also demonstrated the requisite track record to ensure the strategies and processes will be put in place to ensure the drive for efficiencies and growth in Transnet as well as the necessary linkages and support with the relevant role players and stakeholders. These recommendations were submitted to the Minister of Public Enterprises in writing on 18 June 2009 along with detail on the assessment of the preferred candidates. The recommendation by the Transnet Board is attached and marked Annexure "B").

3.3 Investigation of Procurement Irregularities at Transnet Freight Rail

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- 3.3.1 In December 2007, the Director-General of the Public Service Commission (PSC) informed the Department of Public Enterprises (DPE) of allegations of corruption reported on the National Anti-Corruption Hotline against Transnet. In compliance with the Prevention and Combating of Corrupt Activities Act No.12 of 2004, the PSC must report such allegations to the DPE for investigation. The allegations involved a R650 million locomotives tender against one of the Executive Committee ("EXCO") members of Transnet Freight Rail who was alleged to have granted a tender to an acquaintance long before the tender was made public. It should be noted that none of the candidates interviewed were identified as allegedly being involved.
- 3.3.2 Recognising the serious nature of the allegations due to their nature and in the context of Transnet and Government's wide and long-term infrastructure investment programme, the Minister requested the Board under the leadership of the Chairperson to investigate the allegations and assess the irregularities and to brief the Department on the outcomes of the said investigation.
- 3.3.3 The Board instructed the Transnet management to investigate these allegations as well as allegations made via Tip-Off Anonymous and in an anonymous undated letter to the former CEO, Ms Ramos. Transnet management instituted an internal investigation through Transnet's Internal Audit Forensic Department (Ernst & Young). In its correspondence of 9 March 2009, the Board provided the Minister with a summary report by Ernst & Young on the allegations related to Transnet Freight Rail (TFR). Ernst & Young found that::
- The Transnet Board granted approval for a contractor "to provide Transnet with 50 "Line New" locomotives and that the condition for the approval is that Transwerk would carry out all engineering on assembly and maintenance";
 - The contract for the supply of the 50 "Line New" locomotives was signed on 1 May 2007 by the Chief Executive Officer of TFR, Mr S Gama;
 - The Contract did not take into account the resolution passed by the Board in ensuring that "Transwerk would carry out all engineering on assembly and maintenance";

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- In terms of clause 7 [of the contract], the contractor had to procure sub-contractors prior to the Effective Date, and the agreements reached needed to be detailed and set out in the format described in Schedule 005 of the contract. The signed contract does not contain a schedule 005, and there was no contract in place between the contractor and Transnet Rail Engineering;
- As a result of not complying with the resolution passed by the Board, or alternatively not complying with clause 7 of the agreement, Transnet may incur significant additional direct and indirect costs.
- In respect of : the process followed in awarding the tender relating to 212 Class 40 Diesel Locomotives was flawed. These findings were validated through extensive consultations with Transnet own external legal counsel;
- the Chairperson of the Transnet Freight Rail Adjudication Steering Committee was conflicted in that he had a relationship with a tenderer which had not been disclosed at the time of the tender, and which at the very least created a perception of bias;
- the scoring of the tender had been incorrectly performed;
- there was no evidence of fraudulent activity; and
- there were other irregularities that were revealed with regard to another locomotive contract.

3.3.4 In respect of the allegations referred to by Tip-Off Anonymous and an undated anonymous undated letter, Ernst & Young found as follows:

- The original RFP (RFP 1) reference number for the supply of security services was incorrectly cancelled and replaced with a new process;
- Subsequent to the cancellation of RFP 1, an additional 3 security providers were identified;
- The process of obtaining the 3 further security service providers was not clearly documented nor communicated;

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- Confinement, evaluation and award of the security contract was made to General Nyanda Security Risk Advisory Services (Pty) Ltd. (GNS) with effect from 1 December 2007. However, there was no clear documentary evidence of the confinement, evaluation and award to determine that the process was fair, equitable, transparent, competitive, and cost effective as required by the Constitution and PFMA;
- The evidence indicated that GNS was only registered with PSIRA on 9 June 2008;
- In terms of Section 20(1)(a) of the PSIRA Act, no person except a security service contemplated in Section 199 of the Constitution may render security services for remuneration, reward, a fee or benefit, unless such person is registered as a security service provider in terms of the Act;
- It was confirmed that a company rendering services before being registered with PSIRA, would be in contravention of the PSIRA Act;
- The GNS confinement was approved on 5 December 2007 by Mr Gama;
- In accordance with section 5.4.2 of the Transnet Limited Delegation of Authority Framework dated 30 October 2007, Mr Siyabonga Gama did not have the authority to approve the GNS confinement; and
- The contract for security services was only signed by TFR management on 4 June 2008, although services commenced on 1 December 2007.

3.3.5 I have been advised by the Board that although one of the candidates interviewed, Mr Gama, was not directly implicated in the allegations made and, as yet, conclusions of fraud or criminality has not been reached, the findings raise concerns regarding negligence and/or poor judgement by Mr Gama. I have been assured that Mr Gama has had access to the findings of Ernst & Young to enable him to respond. In this regard, Mr Gama has been requested to respond to a number of questions in order to finalise the investigation and has been given an opportunity to determine the date of his response. Mr Gama's response was received on 20 July 2009 and is currently under assessment. In the Board's view, the materiality of these findings cannot be

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Ignored as doing so will be a breach of the directors' fiduciary duties both in terms of the Public Finance Management Act (PFMA) and the Companies Act.

3.3.6 In terms of section 51 of the PFMA, the Board must *"take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity."* The section further provides that the Board must *"take effective and appropriate disciplinary steps against any employee who makes or permits an irregular expenditure or a fruitless and wasteful expenditure"*. Failure by the Transnet Board to investigate and institute disciplinary proceedings, where necessary, may result in criminal liability on the Transnet Board under the PFMA.

3.4 Assessment of the Recommendations by the Transnet Board

3.4.1 As Executive Authority and Shareholder Representative of the State, it is incumbent upon the Minister of Public Enterprises to exercise the rights of the shareholder to appoint the CEO of Transnet in general meeting. In keeping with company law and corporate good governance codes such as King III, it is important that the shareholder engages in a meaningful and constructive fashion with the Board in selecting a CEO to lead the company. In this regard, finding a suitable candidate for appointment as Transnet CEO considering the company's impact on the economy, the magnitude of its infrastructure build programme and global economic context, is a task with high impact and potential risk.

3.4.2 In view of the recruitment process and consultations having been conducted during a transition in administration, I have ensured that I am as comprehensively briefed as possible to ensure that I am in a position to take an independent view of the recruitment process and recommendations made by the Transnet Board in order to decide whether the Board's recommendations should be endorsed.

3.4.3 I have also sought independent legal advice to ensure that the appointment is concluded with minimal risk to both Government and Transnet. Counsel advised that, although as the shareholder representative I have freedom and wide discretion in terms of the Transnet's Articles of Association to appoint the CEO, it is important to note that the Board is the most appropriate body to appoint the CEO since it is fully

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knowledgeable of the company's business and its needs as to who is best suited to be its leader.

3.4.4 Furthermore, the opinion highlights that the key criteria in deciding whether a candidate should be considered for appointment should be whether such candidate is the most suitable and best candidate for the position and any pending investigation against a candidate should only become relevant once that particular candidate is found to be the most suitable and best for appointment. Should the candidate under investigation be found to be most suitable and best for appointment, it is then my duty to establish whether the charges are "trumped-up" or trivial and should I find that the charges are not "trumped-up" or trivial, then to decide whether in these circumstances it would be appropriate to appoint the candidate under investigation. I am advised that the question asked is not whether the candidate is guilty of the allegations. I am further advised that should I find that charges against a candidate are "trumped-up" or trivial and such candidate is the best candidate, I should be able to evaluate the candidate in question against the other candidates, without reference or consideration to the alleged misconduct and make an appointment accordingly.

3.4.5 Based on my assessment of correspondence, reports and consultations with the Board, I have concluded as follows:

- Although the consultations between the Transnet Board and the Minister of Public Enterprises were not always ideal, the recruitment process conducted by the Board has been robust in assessing both internal and external candidates with reference to labour law compliant (confirmed through independent legal advice) and internationally recognised screening techniques for one of the top and most challenging executive management positions in South Africa today; and
- The investigation of alleged misconduct on the part of Mr. Siyabonga Gama is not "trumped-up" or trivial but potentially significant and the Board will be failing in its fiduciary duty if it does not complete the investigation in accordance with due process;
- The Board is confident that the substance and method of the recruitment and selection process were kept discrete from the investigation;

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- At no stage did the Board indicate that it has shortlisted Mr. Gama as a second-in-line preferred candidate to Mr. Pravin Gordhan and the Board embarked on an extended search after the withdrawal of Mr. Pravin Gordhan as it was not confident that the other candidates available, including Mr. Siyabonga Gama, were suitable for the position;
- I have had an opportunity to peruse the independent assessments in respect of all the candidates interviewed by the Board and have confidence in the recommendation by the Board that Messrs Sipho Maseko, Tau Morwe and Kgomoitso Phihlele are, in the order of preference, the most suitable candidates for appointment as CEO; I have not as yet taken a decision to discuss these assessment reports with the individuals who conducted the psychometric assessments. For ease of reference, I have attached these assessment reports as Annexure "C";
- In the interest of establishing leadership stability at Transnet, an appointment of a CEO be made without undue delay and that the ultimate criteria should be the confidence that the Board and shareholder has in the competence of the candidate to lead the organisation.

3.4.6 Accordingly, I intend approaching Cabinet via the Infrastructure Development Cluster, with a view to approving my recommendation to appoint Mr Sipho Maseko as the CEO of Transnet, as also recommended by the Board. I am particularly informed by the risk to executive management stability at Transnet at a time when it will be approaching the capital markets to fund its build programme, its ability to remain focused on delivery and the morale of its Executive Management. I have been advised that Mr Sipho Maseko may be re-considering his availability due to the protracted recruitment process and that Mr. Chris Wells is also expressed a concern about the impact of negative publicity regarding the appointment of the CEO. Regarding the position of Mr Siyabonga Gama, the Board has assured me that it will continue to ensure that due process is followed in the investigation involving him and that he is not prejudiced. Should any litigation follow from the investigation, it is best processed discretely from the appointment of the CEO. I have been informed that whilst the Board may be willing to work with Mr Siyabonga Gama, should he be appointed, senior management executives may opt to leave the company.

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3.4.7 In the event that Cabinet does not approve the appointment of any of the preferred candidates recommended by the Board, consideration should be given to commencing a new process of recruitment and selection conducted by the shareholder in order to immunize the process from any further controversy. However, in the interest of the company, this is not a preferred route to follow.

4. FINANCIAL IMPLICATIONS

None for this memo.

5. RECOMMENDATION

5.1 It is recommended that the President:

5.1.1 notes the contents of this memorandum; and

5.1.2 approves the submission of a Cabinet Memorandum recommending the appointment of Mr Siphosiso Maseko as Transnet CEO.

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Ms Sandra Coetzee
Department of Public Enterprises

MIK003/DM003/02/0282323

our ref
your ref

03 July 2009

Per E-Mail : Sandra.coetzee@dpes.gov.za

Dear Sandra

Appointment and Removal of Directors of State-Owned Entities

1. Introduction

1.1. We have been instructed to investigate the broad principles which should be applied to the appointment and removal of directors of state owned entities ("SOE's), with particular reference to the appointment and removal of Chief Executive Officers ("CEO's).

1.2. The governing provisions relating to the appointment and removal of directors of SOEs can be found in a number of sources -

1.2.1. In the first instance, provisions relating to the appointment and removal of the directors of a specific SOE may be found in the enabling legislation of that particular SOE in the event that such SOE was established by legislation;

1.2.2. In addition there may be other legislative sources and instruments which govern the appointment and removal of directors of SOE's including :-

1.2.2.1. the Companies Act, 61 of 1973 (the "Existing Companies Act");

1.2.2.2. the Companies Act, 2008 (the "New Companies Act");

1.2.2.3. the Public Finance Management Act, 1 of 1999 (the "PFMA"); and

1.2.2.4. the Protocol on Corporate Governance in the Public Sector (the "Protocol").

edward nathan sennenberg Incorporated registration number 2006/016200/21

directors &
executives

M.M. Katz (chairman) P.C. Fisher (chief executive) M. Mordue (deputy chief executive) R.I. Alcock A.D. Alexander B. Appelman G.C. Bantsheni* J. Bhatt A. Bensch
J.P. Bignard L. Bignard* A. Brand* J. Brumback* T. Buchter T. Ceballos V.O. Chaplin B.H. Cavada S.J. Coetzee* P.J. Cronk* P.J. Dachs C. Daniels M.S. David
G.E. de Smit P. Desobrykles L. Donskoff B. du Preez* L. du Preez* J.C. du Preez F. Ebrahim E. Ellis S. Faber H. Farman K. Finkel A.C. Finkelstein* M.J. Finkelstein*
J.B. Fennel A.F.M. Fennel J.M. Fennel J.M. Fennel D. Gossau M.J. Gordon C. Gubbard M.W. Gubbard C.L. Gross S.J.J. Hager S.W. Hendon S.R. Hoyer L. Hudson
J.B. Hubert A.C. Huchan Prof D.B. Huchan* G.B. Hyde* L.D. Innesman A.V. Innes Prof A.J. Kalkbrenner* G. Kalk C.W. Johnson M. Jordaan S. Kasper J. Kalk
L.C. Kalk G.P.J. Kalkbrenner* J.M. Langford P.J. Langford E.R. Le Grange S.C. Lederman J.D. Lee S.B. Lenton S.A. Lewis R. Lopez M.J. Mahomed S.A. Mackay
Donskoff S. Mordue K.W. Mordue G.P. Mordue K. Mordue M.N. Mordue* S.L. Mordue Y.A. Mordue A. Mordue* D. B. Mordue Mordue S.D. Mordue
C. Mordue M.G. Mordue M.N. Mordue C.M. Mordue G.I. Dotsel J.Y. Donskoff S.P. Oshman J.D. Pappas M. Pappas S. Pappas J.P. Pappas C. Pappas
M.V. Ratschke P. Ratschke A.D. Ratschke* R.S. Ratschke M.L. Ratschke B. Ratschke* B.J. Ratschke K. Ratschke C.A. Ratschke M.M. Ratschke S.J. Ratschke R.J. Ratschke
S. Ratschke A.W. Ratschke G.P. Ratschke J.M. Ratschke V.L. van der Ratschke L.M. van der Ratschke* M. van der Ratschke M.J. van der Ratschke T. van der Ratschke
C. van der Ratschke G.M. van der Ratschke G.C. Weyer* J. Weyer B. Weyer* S.R. van der Ratschke H. Weyer G.L. Weyer J.M. Weyer
* not attorney-at-law, * consultant

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1.2.3. generally the specific provisions relating to the appointment and removal of directors are found in the constitutional documents of each individual SOE and thus may well differ from one SOE to another;

1.3. In this memorandum we have undertaken a comprehensive review of all the general legislation and policy documentation referred to in paragraph 1.2.2 above. In doing so we deal not only with the appointment and removal of directors generally but also with the position of the Chief Executive Officer ("CEO").

2. Existing Companies Act

2.1. General

The Existing Companies Act does not distinguish SOEs from other categories of companies and accordingly, the provisions applicable to all companies also apply to SOEs. Section 9 of the New Companies Act does enable the Minister to make specific provisions for SOEs.

2.2. Appointment of Directors

2.2.1. Section 208 of the Companies Act provides that every public company shall have at least two directors and every private company shall have at least one director.

2.2.2. The Companies Act provides that prior to the appointment of any directors of the company, all of the subscribers to the memorandum of the company shall be deemed to be directors of the company and that the first directors may be appointed in writing by a majority of the subscribers to its memorandum.

2.2.3. The appointment of each director of a company shall be voted on individually, by ordinary resolution at a general meeting of the company. The general meeting of a company, may, however, unanimously agree to pass a motion to appoint two or more persons as directors in a single resolution before such resolution.

2.2.4. A person who is appointed as a director shall lodge with the company his/her written consent to such appointment in the prescribed form within twenty eight days, or such longer period as the Registrar may allow, after the date of such appointment.

2.2.6. Unless the articles of a company provide to the contrary, a casual vacancy arising from the removal or disqualification of a director of the company that is not filled at the same meeting at which the director is removed, may be filled as

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a casual vacancy in accordance with the procedures stipulated in the articles of the company.

2.2.6. Section 214 of the Existing Companies Act provides that the acts of a director of a company shall be valid notwithstanding any defect that may afterwards be discovered in his/her appointment or qualification.

2.2.7. If a director of a company is required in terms of its articles to hold a specified number of qualification shares and does not hold such qualification shares, the director will be required to vacate his/her office if he does not obtain such qualification shares within two months, or such shorter period as may be provided in the company's articles, from the date of his/her appointment and shall not be eligible for re-appointment until he/she has obtained such qualification shares.

2.3. Disqualification of Directors

In terms of sections 218 and 219 of the Existing Companies Act certain persons are disqualified from being appointed or acting as directors of a company. The persons who are *per se* prohibited from acting as directors of a company include a body corporate, a minor or any other person under legal disability. Unless a court otherwise authorises, an unrehabilitated insolvent, a person removed from office on account of misconduct, a person who has at any time been convicted of certain listed offences and a person who has, in terms of an Act of Parliament, been removed from office for not being a fit and proper person, shall be prohibited from acting as a director. Furthermore, there are certain circumstances in which a court may make an order directing that a person shall not, without the leave of the court, be a director of a company.

2.4. Removal of Directors

2.4.1. A company has a statutory right to remove a director, without cause, before the end of his/her period of office by passing an ordinary resolution at a general meeting. Section 220(1) of the Existing Companies Act provides that:

"A company may, notwithstanding anything in its memorandum or articles or in any agreement between it and any director, by resolution remove a director before the expiration of his period of office."

2.4.2. The following procedure for the removal of a director in terms of section 220 of the Existing Companies Act must be complied with:

2.4.2.1. special notice shall be lodged with the company of any proposed resolution to remove a director, or to appoint any person in the

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stead of a director so removed at the meeting at which the director is to be removed.

2.4.2.2. when the company receives the notice of the proposed resolution, the company shall immediately deliver a copy of the notice to the director. The director is entitled to be heard on the proposed resolution at the meeting, whether or not the director is a member of the company (s 220(2)).

2.4.2.3. the director is entitled to make representations regarding the proposed resolution for removal. If the director makes representations in writing which do not exceed a reasonable length and requests that the members of the company be notified of the representations, the company shall, unless such representations are received too late, state that such representations have been made in any notice of the resolution given to the company's members. The company shall also send a copy of the representations to every member to whom notice of the meeting is sent, whether the notice is sent before or after the company has received the representations (s 220(3)).

2.4.2.4. the director may require that the representations be read at the meeting, if a copy thereof has not been sent to the members for whatever reason (s 220(4)).

2.4.3. The effect of s 220(1)(a) is that directors do not have security of tenure. Control of the company may at any time be resumed by the shareholders. In Barlows Manufacturing Co Ltd and Others v RN Barrie (Pty) Ltd and Others, Conradie J stated:

"Save where, in terms of an agreement binding the members of a company and a director, the members are precluded from voting for the removal of the director from office; a director has no security of tenure. Section 220(1)(a) of the Companies Act 61 of 1973 provides that a company may, notwithstanding anything in its memorandum or articles, or in any agreement between it and a director, by resolution remove that director before the expiry of his term of office. If his removal occurs in breach of a contract with the company he may claim damages. That is provided in s 220(7). But, and this is the significant point, this is his only remedy. The shareholders may at any time resume effective control."

2.4.4. If a director's removal from office amounts to a breach of contract he may have a claim for damages against the company. In Nelson v James Nelson & Sons

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Lid the board of directors agreed to appoint a director as managing director for an indefinite period. In terms of the articles the directors could make the appointment "for such period as they deem fit, and may revoke such appointment." When the managing director was removed by a board resolution he sued for damages. It was held that the boards' power to make the appointment was not unfettered and their right to revoke the appointment in terms of the articles only existed if the agreement specifically so provided. The agreement contained no such provision and it was accordingly held that the dismissed director was entitled to damages.

2.4.5. Where a director has been appointed but his/her term of office has not been fixed, the company may at any time remove him from office. In Angel v Sher and Others, Clayden J said:

"The first question to be decided is whether the company has the power to remove from office a director appointed for no fixed term. If there is a company in which no provision is made by the Articles of Association that a director shall remain a director for a fixed period there seems to be no reason why the company which appointed him a director should not decide that he is no longer to be a director, apart from any question whether that act is in breach of an undertaking to the director as director and not as shareholder."

"There is then no variance of 'the contract entered into between the members', the Articles of Association, and no need first to alter that contract in accordance with itself so that what is done becomes an act consonant, and not at variance, with that contract. In the present case the Articles of Association are quite silent as to the term of office of a director. They only provide that there are to be directors. If the Articles of Association are read alone it seems to me that the company can appoint a director and then, when it pleases, remove that director" [at 228-9]. Notwithstanding the foregoing, and without derogating from same, a director may also be removed by resolution if so provided in the company's Articles of Association. Oftentimes an article is inserted in the company's Articles of Association which states that a director may be removed by resolution in writing signed by all his co-directors."

3. New Companies Act

3.1. General

3.1.1. The New Companies Act will repeal the Existing Companies Act on a date to be proclaimed. The New Companies Act was signed by the President on 8 April 2008 and Gazetted on 9 April 2009 under Gazette number 32121 (Notice No. 421). The New Companies Act comes into operation on a date fixed by the President by proclamation in the Gazette, which may not be earlier than one

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year following the date on which the President assented to the New Companies Act. It is expected to come into force in July 2010.

- 3.1.2. The New Companies Act recognises SOEs as a separate and distinct category of company, and defines them as follows:

"state-owned company" means an enterprise that is registered in terms of this Act as a company, and either-

- (a) falls within the meaning of "state-owned enterprise" in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or*
- (b) is owned by a municipality, as contemplated in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and is otherwise similar to an enterprise listed in paragraph (a); "*

- 3.1.3. Section 9 of the New Companies Act provides that all of its provisions that apply to public companies shall also apply to SOEs.

3.2. Appointment of Directors

- 3.2.1. Section 66(2) of the New Companies Act provides that the board of a public company shall comprise at least three directors. Section 66(11) provides that any failure by a company at any time to have the minimum number of directors required by the New Companies Act or its memorandum of incorporation (which is the document which replaces the memorandum and articles of association of the Existing Companies Act), does not limit or negate the authority of the board or invalidate anything done by the board or the company.

- 3.2.2. Each incorporator of a company shall serve as a director of the company. If the number of incorporators of a company is fewer than the minimum number of directors required for the company in terms of the New Companies Act or its memorandum of incorporation, the board is required to call a shareholders' meeting within forty business days after incorporation of the company to fill any vacancies on the board.

- 3.2.3. Directors of a company are to be elected by persons entitled to exercise voting rights in respect of such election, to serve for an indefinite term, or for such term as is specified in the company's memorandum of incorporation. The New Companies Act has introduced a measure of flexibility regarding the rights that may attach to a share. Therefore, shareholders need not necessarily have the same voting rights in respect of the election of directors.

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3.2.4. Each candidate for election as a director shall be voted individually at a general meeting and in each vote to fill a vacancy on the board, each voting right may only be exercised once. A vacancy will only be filled if a majority of the voting rights exercised support the candidate.

3.2.5. Unless the memorandum of incorporation of the company provides to the contrary, if a person ceases to be a director and a vacancy arises on the board, such vacancy may be filled by the board on a temporary basis, until such time as the vacancy is filled by election at a general meeting.

3.2.6. Section 20 of the New Companies Act deals extensively with vacancies on the board, including what constitutes a vacancy and how the various types of vacancies should be filled.

3.2.7. An entirely new feature of the New Companies Act is contained in section 66(4) thereof which allows for the appointment of directors other than by the shareholders. Section 66(4) of the New Companies Act reads as follows :-

"66 (4) A company's Memorandum of Incorporation -

(a) may provide for -

- (i) the direct appointment and removal of one or more directors by any person who is named in, or determined in terms of, the Memorandum of Incorporation;
- (ii) a person to be an *ex officio* director of the company as a consequence of that person holding some other office, title, designation or similar status, subject to subsection (5)(a); or
- (iii) the appointment or election of one or more persons as alternate directors of the company; and

(b) in the case of a profit company other than a state-owned company *must* provide for the election by shareholders of at least 50% of the directors, and 50% of any alternate directors."

The new feature that arises from the provision of section 66(4) of the New Companies Act is that it permits of the appointment as directors by persons other

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than shareholders. In the case of a company for profit other than a state-owned company at least 50% of the directors must be elected by the shareholders.

3.3. Disqualification of Directors

3.3.1. Section 69 of the New Companies Act provides that a person is ineligible to be a director of a company if that person is a juristic person, an unemancipated minor or under similar legal disability or does not satisfy any qualification set out in the company's memorandum of incorporation. Certain persons shall furthermore be disqualified from acting as directors, including an unrehabilitated insolvent, a person prohibited in terms of a public regulation from being a director, a person removed from office on account of misconduct and a person who has been convicted of certain listed offences.

3.3.2. A person so disqualified shall not be prohibited, however, from acting as a director of a private company if all of the shares in that company are held by such disqualified person alone or such disqualified person together with persons related to him who have consented in writing to his/her appointment as director.

3.4. Removal of Directors

3.4.1. Section 71 of the New Companies Act provides that:

"despite anything to the contrary in a company's memorandum of incorporation or rules, or any agreement between a company and a director, or between any shareholders and a director, a director may be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in an election of that director".

3.4.2. It is to be noted that the provisions of section 71 of the New Companies Act for the removal of directors by shareholders applies only in the case of those directors who are appointed or elected by the shareholders and not to other directors who, pursuant to the provisions of section 69(4), are appointed by persons other than shareholders.

3.4.3. The following procedure for the removal of a director in terms of section 71 must be complied with:

3.4.3.1. the director concerned shall be given notice of the meeting and the proposed resolution, at least equivalent to that which a shareholder is entitled to receive, irrespective of whether the director is a shareholder of the company; and

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3.4.3.2. the director shall be granted a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the proposed resolution is put to a vote.

3.4.4. If a company has more than two directors, and a shareholder or director has alleged that a director of the company has become ineligible or disqualified other than on the grounds set out in section 69, or incapacitated to the extent that the director is unable to perform the functions of a director and is unlikely to regain capacity within a reasonable time, or has neglected or been derelict in the performance of the functions of a director, the board may resolve to remove such director.

3.4.5. In the circumstances contemplated in paragraph 3.13 above, the director concerned shall be given:

3.4.5.1. notice of the meeting, together with a copy of the proposed resolution and a statement setting out the reasons for the resolution, with sufficient specificity to reasonably permit the director to prepare and present a response; and

3.4.5.2. a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to the vote.

4. PFMA

4.1. The PFMA is silent on the appointment of directors of SOEs, and only regulates their removal in certain circumstances, namely in cases where the "accounting authority" (i.e. the board, or the board of its holding company) is guilty of "financial misconduct" as contemplated in section 83(1) of the PFMA.

4.2. Section 83(2) of the PFMA provides that "If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority".

4.3. Where the board or particular members of the board are found to have committed financial misconduct, the board and/or the particular members should be suspended or dismissed. Section 83(4) of the PFMA stipulates that "Financial misconduct is a ground for dismissal or suspension of, or other sanction against, a member or person referred to in subsection (2) or (3) despite any other legislation".

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- 4.4. In terms of regulation 33.1.3 of the National Treasury Regulations¹ issued under the PFMA, the executive authority of the SOE (being the relevant government Minister responsible for the entity) is obliged, where a board member is alleged to have committed financial misconduct, to initiate an investigation into the matter. Should the director be found guilty of misconduct, then the executive authority must ensure that the appropriate disciplinary steps are taken. This can include the removal of the director from his/her position in terms of section 63(4).
- 4.5. Additionally, we note that the Regulations to the PFMA make provision for shareholder compacts, which are compulsory agreements entered into between the SOE and the relevant executive authority on an annual basis. Regulation 29.2.1 states that *"The accounting authority for a public entity listed in Schedule 2, 3B or 3D must, in consultation with its executive authority, annually conclude a shareholder's compact."*
- 4.6. Regulation 29.2.2 provides that the shareholder's compact must document the mandated key performance measures and indicators to be obtained by the public entity as agreed between the board and the executive authority. Thus, the purpose of the compact appears to be aimed at performance as opposed to formal procedures (such as the appointment or removal of directors).
- 4.7. While the Regulations do not expressly limit the scope of what matters may be agreed and provided for in the shareholder's compact and so it is technically possible for the compact to deal with the appointment and removal of directors, we are not currently aware of any SOE shareholder's compacts which do so.
- 4.8. Finally, the definition in section 1 of the PFMA dealing with "Ownership Control" does not detract from any of the foregoing observations. "Ownership Control" is simply a defined term and does not confer any powers on any party; on the contrary the converse is true in that the concept of "Ownership Control" presupposes the possession of the powers referred to in the definition but does not grant those powers.

6. The Protocol

6.1. General

The Protocol was published by Department of Public Enterprises in 1997 with a view to inculcating good governance in the SOEs in accordance with the King Code of 2002 (King II). The Protocol thus does not have legislative effect but sets out the principles of corporate

¹ GNR 225 of 15 March 2005.

governance for SOEs. The Protocol also deals with the appointment, disqualification and removal of directors.

5.2. Appointment of Directors

5.2.1. The provisions relating to the appointment of directors are found in Section 6.1.6. These are very general:

"5.1.6.1 The performance of the SOE depends on the capabilities and performance of its board. It is therefore imperative that when appointing directors, the shareholder should ensure that the board is properly constituted. In this regard, the board should, at all times, comprise of individuals with integrity and accountability, competence, relevant and complimentary skills, experience and expertise. This is aimed at avoiding possible dominance by any one director or blocks of directors and, above all, ensuring commitment to the success of the SOE and the satisfaction of the shareholder."

5.1.6.2 The board should, preferably comprise a majority of non-executive directors and each director's appointment should be in writing and limited to a maximum period of three years..."

5.3. Disqualification of Directors

Section 5.1.10 of the Protocol provides that any individual who holds the position of director in an SOE, may be disqualified on the grounds of legal disability, insolvency, misconduct requiring or justifying removal from the office of trust, or criminal record, for example theft, fraud or forgery. Any individual who is disqualified from being a director cannot hold (or continue to hold) the office of director. Any contravention of this principle may attract criminal liability for the individual in question and any other director who knows, or should have known that the said individual is or was so disqualified.

5.4. Removal of Directors

5.4.1. Section 3.1.6 states that "The shareholder may, however, at its discretion, subject to the terms and conditions of the employment contract, remove a director prior to the completion of this term of office."

5.4.2. The Section further provides that – "In the event of the SOE not performing satisfactorily, the shareholder may initiate prompt remedial action, including dismissal of the director, more particularly, in the case of failure to keep the

shareholder adequately informed and in situations of ongoing underperformance in respect of financial and other aspects of the operation of the business."

- 5.4.3. The Protocol recommends that directors be appointed only for periods of 3 (three) years. Section 5.1 provides that at the expiry of the three-year period of appointment or such other shorter period as the circumstances may demand, a director's term of office shall lapse. Subject to the directors' performance and their skills continuing to be relevant to the business, they may be re-appointed for a second term of three years.

5.5. Provisions relating specifically to the appointment and removal of the CEO

- 5.5.1. The Protocol provides that the board of an SOE has absolute responsibility for the performance of the SOE and is fully accountable to the shareholder for such performance.
- 5.5.2. The board therefore is responsible for, *inter alia*, giving strategic direction to the SOE concerned, ensuring that an effective succession plan is in place for all directors and key executives and, in concurrence with the shareholder, appoint the CEO.²
- 5.5.3. Section 5.1.3 provides that unless otherwise agreed in a shareholders' agreement or shareholder compact governing a SOE, the shareholder for such enterprise should appoint the CEO in consultation with the board about its preferred candidate for the position and allowing the board sufficient time to consider the candidate and to respond prior to the appointment being made. Section 5.1.6.1 further provides that when appointing directors, the shareholder should ensure that the board is properly constituted.
- 5.5.4. In terms of Section 5.1.6.3, in the event that a SOE is not performing satisfactorily, the shareholder may initiate prompt remedial action including dismissal of a director.

² Clause 5.1.1.1

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6. The Articles of Association of a Company

6.1. The Articles of Association of a company, together with a Memorandum of Association constitute the constitution of the company. The Articles of Association typically provide for the governance of the company, including :-

- 6.1.1. the allocation of powers as between the directors and the shareholders;
- 6.1.2. the method of appointment and removal of directors;
- 6.1.3. the procedure for the convening of meetings at director and shareholder level, the quorum for such meetings, the majority of votes required to pass a resolution.

6.2. There is considerable flexibility as to the provisions that may be contained in Articles of Association regarding matters relating to the governance of companies. In this regard the New Companies Act will provide even greater flexibility than the Existing Companies Act with regard to the governance of companies.

6.3. Having regard to the flexibility as to the provisions that may be contained in Articles of Association regarding matters relating to the governance of companies it may be pointed out that the Articles of Association may contain specific provisions relating to the appointment by a company of its CEO, including any one or more of the following :-

- 6.3.1. that the CEO must be appointed from one of the existing directors of the company or must be appointed as a director if the CEO was not already a director;
- 6.3.2. that the directors must appoint the CEO subject to the approval of the shareholders;
- 6.3.3. that the directors must nominate a CEO who must be appointed by the shareholders; and
- 6.3.4. that the shareholders must appoint the CEO without any nomination from the directors.

6.4. Hahlo's South African Company Law Through The Cases Sixth Edition states at page 252 :-

'A director may hold office under the articles; under a service contract entirely independent of the articles; or under a service contract which, expressly or by implication, embodies the relevant provisions of the articles. Should a service contract embody the relevant provisions of the articles, it is a matter of construction of the contract whether the company has retained

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the power to change the terms of the contract unilaterally by altering the articles. As a rule, part-time 'outside' directors hold office under the articles, which full-time 'inside' directors hold office under service contracts."

6.5. In the absence of any specific provisions contained in the Articles of Association of a company relating to the appointment of a CEO of that company, the following general principles of company law would apply :-

6.5.1. the shareholders would appoint the directors; and

6.5.2. the board, pursuant to its function of directing and managing the company, would appoint the CEO as an executive of the company as they would appoint all other senior members of management.

6.6. Notwithstanding anything to the contrary in the Articles of Association a director may at any time, in terms of the Existing Companies Act and the New Companies Act, be removed by an ordinary resolution of shareholders even without cause.

7. The Relationship Between The Articles of Association of a Company and a Shareholders' Agreement

7.1. In terms of existing company law principles it has been held by the Supreme Court of Appeal in Gohlke and Schneider vs Westies Minerale Eendoms Beperk 1970 (2) SA 685(A) that the Articles of Association of a company have contractual and not statutory effect. Thus, if a shareholders' agreement has been concluded and the parties to that agreement are the company and all the members of the company then the provisions of that shareholders' agreement would prevail over the provisions of the Articles of Association to the extent of any conflict between the two.

7.2. In terms of section 15(7) of the New Companies Act any provision in a shareholders' agreement that is inconsistent with the Memorandum of Incorporation will, to the extent of the inconsistency, be void.

8. Constitutional Aspects Relating to the Exercise of Powers by the Minister of Public Enterprises

8.1. You will recall that Advocate Wm Trengove SC previously gave us an opinion relating to the constitution law principles applicable to the exercise by the Minister of Public Enterprises of her powers as the representative of the State in its capacity as shareholder of an SOE.

8.2. As requested, I attach herewith a copy of the aforementioned opinion of Advocate Wm Trengove SC.

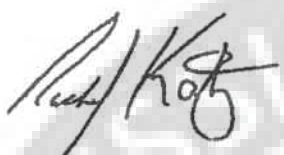
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8. Kindly acknowledge receipt.

Kind regards

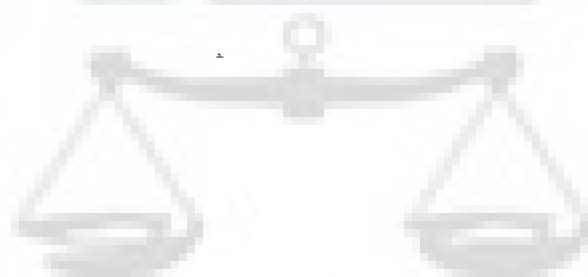
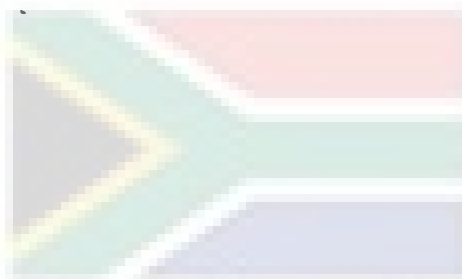
Yours sincerely



MICHAEL KATZ
Chairman

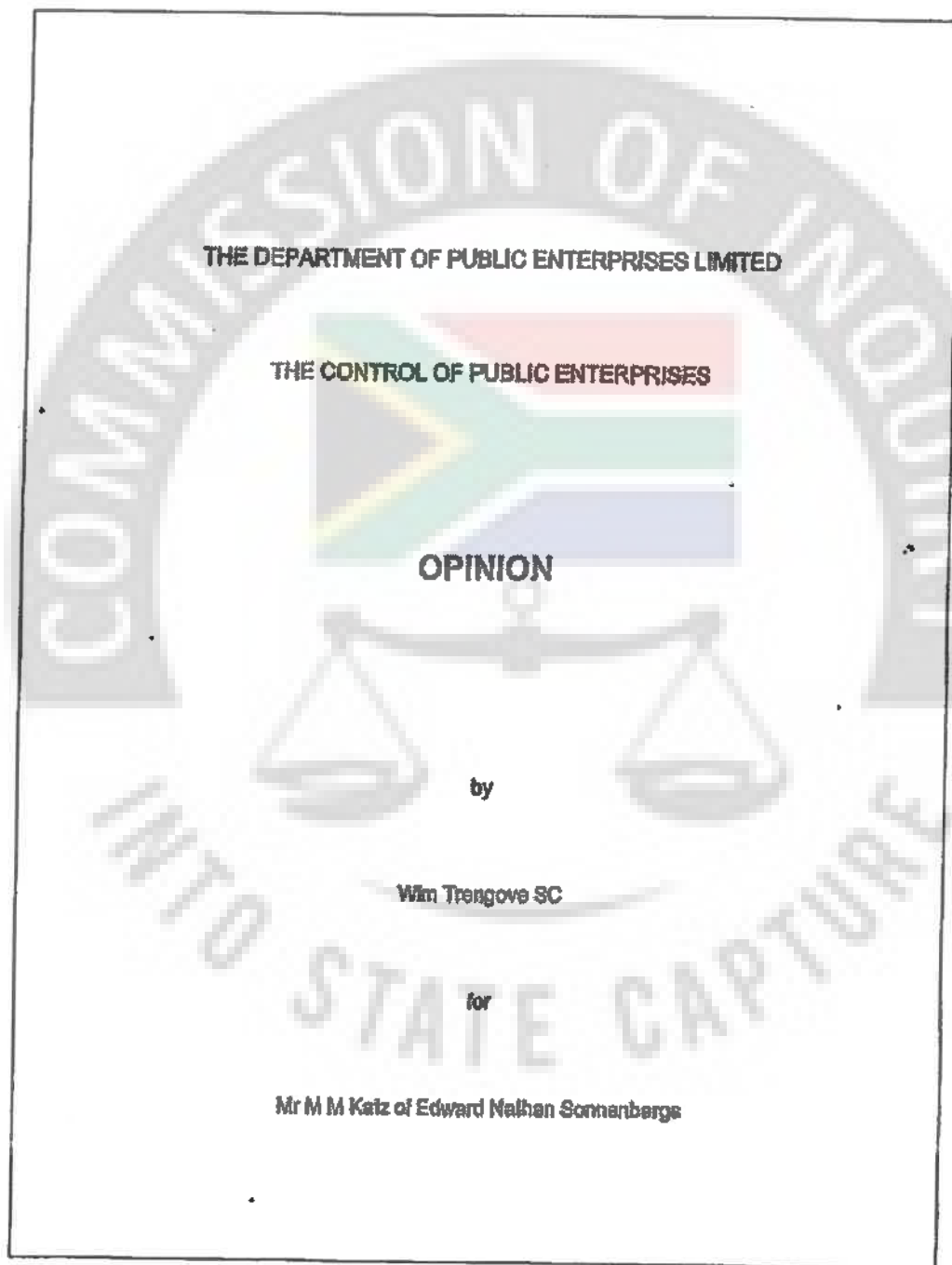
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COMMISSION OF INQUIRY
INTO STATE CAPTURE





INTRODUCTION

1. The Department of Public Enterprises seeks advice on a number of questions relating to the powers and functions of the Minister for Public Enterprises in relation to the control of state-owned enterprises. The Department is particularly interested in the Minister's powers in relation to the appointment, terms of office and removal of the Chief Executive Officers of SOEs. Its questions relate to SOEs generally but we have also been asked to focus more specifically on Transnet and South African Airways.
2. Mr Michael Katz has been asked to focus on the company law aspects and Mr Martin Brassey SC on the labour law aspects of the advice the Department seeks. I have been asked to focus on the constitutional law aspects. I shall do so and, where I stray into company law or labour law territory, it is only because these areas of law overlap with constitutional law and are not clearly demarcated. I obviously defer to Mr Katz and Mr Brassey on their areas of expertise.
3. I shall confine my discussion to the SOEs accountable to the Department. They are according to its website, Alexkor, Broadband Infraco, Denel, Eskom, PBMR, SAA, SA Express, Safcol and Transnet. The state of course owns a wide variety of other SOEs accountable to other departments of state.

THE STATE AS SHAREHOLDER

4. The SOEs are typically companies of which the state is the sole or majority shareholder. The Minister holds the shares and exercises the rights under them on behalf of the state.¹
5. The enabling statutes under which the SOEs were incorporated, generally do not define the powers and functions of the state as shareholder of the SOEs. Its powers

¹ See for instance s 4 of the Alexkor Limited Act 116 of 1992; s 3(3) of the Broadband Infraco Act 33 of 2007; s 3(3) of the South African Airways Act 5 of 2007; s 3(3) of the South African Express Act 34 of 2007; s 2(4) of the Management of State Forests Act 128 of 1992 and ss 2(2) and (3) of the Legal Succession to the South African Transport Services Act 9 of 1989.

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are accordingly those conferred on the state as shareholder under the memorandum and articles of association of every SOE read with the provisions of the Companies Act 61 of 1973:

- 5.1. The state's powers as shareholder typically include powers relating to the appointment, terms of office and removal of directors of the SOE including its CEO, but the nature and extent of these powers depend on the memorandum and articles of each company.
- 5.2. The Companies Act of course also includes very many powers vested in shareholders generally. They include the power to remove directors from office in terms of s 220 and the restriction on the payment of compensation to directors for loss of office imposed by s 227(1). These are however matters within Mr Kaiz's domain.

THE EXERCISE OF THE STATE'S RIGHTS

6. The Minister holds the shares in the SOEs and exercises the rights under them, on behalf of the state. The state is the shareholder. The Minister is merely the functionary who holds the shares and exercises the rights on his behalf. The Minister does so in the exercise of the executive powers of the state.
7. The exercise of all executive powers of the state, is regulated by the Constitution:
 - 7.1. The President has two capacities under the Constitution. He is both head of state and head of the national executive.²
 - 7.2. In his capacity as head of state, the President exercises a range of specified powers and functions entrusted to him in that capacity.³ He does so on his own and without participation of his cabinet.

² Sections 83(a) and 84(1).

³ Section 84(2)

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7.3. In his capacity as head of the national executive on the other hand, the President acts together with the members of his cabinet. Section 85(2) provides that they do so jointly by,

- (a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;*
- (b) developing and implementing national policies;*
- (c) co-ordinating the functions of state departments and administration;*
- (d) preparing and initiating legislation; and*
- (e) performing any other executive function provided for in the Constitution or in national legislation."*

7.4. The individual members of cabinet are responsible for the powers and functions of the executive assigned to them by the President.⁴ Even when national legislation entrusts powers and functions to a particular minister, the President may transfer them to any other member of cabinet.⁵

7.5. The members of the cabinet are accountable collectively and individually to Parliament for the exercise of their powers and performance of their functions.⁶

8. The implications of this constitutional scheme for the exercise by the Minister of the state's powers as shareholder of the SOEs, are as follows:

8.1. It is the prerogative of cabinet in terms of a 85(2)(b) of the Constitution, to develop national policy. Cabinet may, in the exercise of this power, develop a policy on SOEs. It may determine, not only whether there should be such a policy, but also what it is and to what level of detail it goes. The only limitation

⁴ Section 82(1)

⁵ Sections 97 and 98

⁶ Section 82(2)

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on this cabinet prerogative is that the policy must be consistent with and may not contradict national legislation.

8.2. It is in the first place for the Minister to determine how to exercise the state's powers as shareholder of the SOEs on its behalf. If cabinet has however formulated a policy on the matter, then she is bound to exercise her powers within its parameters.

8.3. The Minister may consult cabinet on the exercise of her powers but is not obliged to do so. Whether she does so, is in the first place a matter of cabinet protocol and custom but not law, and in the second place a matter of personal discretion.

8.4. The Minister is bound in law to exercise her powers in accordance with these rules. It does not follow however that, if she fails to do so, the exercise of her powers is invalid. Despite a High Court judgment to the contrary,⁷ I am of the view that the Minister's exercise of her powers remain valid in law even if she fails to adhere to national policy determined by cabinet. The external validity of the Minister's conduct does not depend on her compliance with the internal policy laid down by cabinet. The remedy for any failure by the Minister to adhere to cabinet policy, is for the President to dismiss her from cabinet in terms of s 91(2) or to strip her of her powers by transferring them to another member of cabinet in terms of s 97 of the Constitution.

THE PFMA

9. The Department asks whether the Public Finance Management Act 1 of 1999 has a bearing on the Minister's exercise of the state's powers as shareholder of the SOEs. The answer is that it does not do so directly. What it does though, is to impose a range of duties on the boards of the SOEs in relation to the control and management of their affairs.

⁷ President of the RSA v Elsberg & Associates 2005 (1) SA 247 (G) 258

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10. The PFMA makes different sets of rules applicable to different categories of organs of state. The SOEs are generally classified as "public entities" listed in Schedule 2 of the PFMA.⁸ Section 49(2)(a) provides that the board of such a public entity is its "accounting authority". Sections 46 to 62 impose a range of duties on the board of a public entity in its capacity as its accounting authority. They include the following:

- 10.1. Section 50(1) recognises that there is a fiduciary relationship between a public entity and its board. It provides that the board must,

- "(a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;
- (b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;
- (c) on request, disclose to the executive authority responsible for that public entity (that is, to the Minister in the case of the SOEs) or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decision or actions of the executive authority or that legislature; and
- (d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state."

- 10.2. In terms of s 51(1)(b)(ii), the board of a public entity must,

"take effective and appropriate steps to ... prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity."

- 10.3. Section 51(1)(e)(iii) provides that the board of a public entity must take "effective and appropriate disciplinary steps" against any employee of the public entity who "makes or permits an irregular expenditure or a fruitless and wasteful expenditure".

⁸ Schedule 2 classifies them as "major public entities".

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10.4. In terms of s 54(2) the board of a public entity must, before it enters into certain transactions, submit particulars of the transaction to its "executive authority", that is, to the Minister in the case of the SOEs, for approval. The transactions subject to this requirement are,

- the establishment or participation in the establishment of a company;
- any participation in a significant partnership, trust, unincorporated joint venture or similar arrangements;
- the acquisition or disposal of a significant shareholding in a company;
- the acquisition or disposal of a significant asset;
- the commencement or cessation of a significant business activity; and
- a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

10.5. If the board of a public entity wilfully or negligently,

- fails to comply with any of these requirements, or
 - makes or permits any irregular, fruitless or wasteful expenditure,
- then the board itself is guilty of financial misconduct in terms of s 83(1) for which every member of the board is individually liable in terms of s 83(2).

TRANSNET

11. Transnet is currently constituted in terms of the Legal Succession to the South African Transport Services Act 9 of 1988.
12. In terms of ss 2(1) to (3) read with s 4(1), Transnet is a public company, the state is its only shareholder and the Minister exercises the rights of the state as shareholder on its behalf.
13. The state's rights as shareholder exercised on its behalf by the Minister, include the following:
 - 13.1. The appointment and removal of the CEO and directors of Transnet are regulated by its articles. They vest the state as its sole shareholder acting as the company in general meeting, with the power to appoint all the members of

BH.

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its board including the CEO and to determine their remuneration and terms and conditions of appointment.⁶

13.2. In terms of s 220 of the Companies Act, the state as the sole shareholder of Transnet acting in its capacity as the company in general meeting, may by resolution remove any director before the expiration of his or her term of office. Such a resolution may only be passed by a prescribed procedure. It does not deprive directors so removed from office, of such claims for damages as they might otherwise have in law.

13.3. In terms of s 227(1)(a) of the Companies Act, Transnet may not pay any compensation to a director or former director for loss of office or as consideration for or in connection with his or her retirement from office, unless it is first approved by special resolution passed by the state in its capacity as Transnet's sole shareholder. In terms of s 227(6) this requirement does not apply to a payment to a director made in good faith, by way of damages for breach of contract or by way of pension.

SAA

14. SAA was a division and later a subsidiary of Transnet. The South African Airways Act 5 of 2007 provided for it to be transferred to the state and converted into a public company. We are instructed that the SAA Act has come into operation and has been implemented. The following analysis is based on this instruction.

15. In terms of s 3(3) of the SAA Act, the state is the sole shareholder of SAA and the Minister exercises its rights as shareholder on its behalf.

16. The state's rights as shareholder so exercised by the Minister, include the following:

16.1. SAA's articles vest Transnet and certain erstwhile minority shareholders with the power to appoint, determine the terms of office and remove the members

⁶ Articles 68 to 74

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of its board.¹⁰ These articles are however no longer applicable because they are based on the premise that SAA's shares are held by Transnet and the erstwhile minorities. Now that the state is the only shareholder of SAA, these articles are silent on the appointment, terms of office and removal of directors. In these circumstances, the power to appoint, determine the terms of office and remove directors, vests in the company in general meeting, that is, in the state represented by the Minister.¹¹

- 16.2. Article 21.1 vests the power to appoint and remove SAA's CEO, in its board and not in the state as its shareholder:

"The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration ... as they may think fit and may revoke such appointment subject to the terms of any agreement entered into in any particular case."

- 16.3. In terms of s 220 of the Companies Act, the state as the sole shareholder of SAA acting in its capacity as the company in general meeting, may by resolution remove any director before the expiration of his or her term of office. Such a resolution may only be passed by a prescribed procedure. It does not deprive directors so removed from office, of such claims for damages as they might otherwise have in law.

- 16.4. In terms of s 227(1)(a) of the Companies Act, SAA may not pay any compensation to a director or former director for loss of office or as consideration for or in connection with his or her retirement from office, unless it is first approved by special resolution passed by the state in its capacity as SAA's sole shareholder. In terms of s 227(6) this requirement does not apply to a payment to a director made in good faith, by way of damages for breach of contract or by way of pension.

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discuss*

¹⁰ Articles 17.1 to 17.8

¹¹ Appel v Shier 1950 (2) SA 224 (W) 228 to 229

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THE DEPARTMENT'S PARTICULAR QUESTIONS

17. *"Who is empowered to appoint the CEO and the board of directors, executive and non-executive (of an SOE)?"*

This is usually a matter regulated by the articles of the SOE. If they are silent on the matter however, the power vests in the state as sole shareholder of the SOE acting as the company in general meeting.

18. *"Who is the CEO contracted with?"*

The CEO's contract is with the SOE. It is represented in making the contract, by the body vested with the power of appointment, whether it be the state as the sole shareholder acting as the company in general meeting or the board of directors.

19. *"Is the CEO automatically a member of the board?"*

It is almost invariably the case but again depends on the articles.

20. *"Is assignment of decision-making powers to the Shareholder Minister the prerogative of the President or that of Cabinet?"*

The power to exercise the state's rights as shareholder, is typically in the first place vested in the Minister in terms of the underlying statute. The President may however transfer these powers to any other member of cabinet in terms of ss 97 and 98 of the Constitution.

21. *"What is the role of the Minister as a shareholder in accordance with the Companies Act and the PFMA amongst others? What are the exact decision-making powers bestowed on the Shareholder Minister?"*

The Minister's role and powers as shareholder of the SOEs on behalf of the state, are those discussed in the earlier parts of this opinion.

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22. *"In respect of which powers is the Shareholder Minister required to take decisions in consultation with Cabinet i.e. as a function of law as opposed to a function of protocol?"*

There is no rule of law which requires the Minister to consult with Cabinet on the exercise of her powers as shareholder of the SOEs on behalf of the state. Cabinet however has the power to require the Minister to do so. The nature and extent of its requirement is within its discretion. The Minister is obliged in law to comply with the requirement laid down by Cabinet. If she should fail to do so however, the exercise of her powers is not thereby rendered invalid. The remedy is for the President to dismiss her from Cabinet in terms of s 91(2) or strip her of her powers by transferring them to another member of cabinet in terms of s 97 of the Constitution, should he wish to do so.

23. *"Is it compatible with company law to have Cabinet as a shareholder of state-owned enterprises?"*

This is by definition a company law question but on my understanding it is the state and not Cabinet which is the shareholder of the SOEs. It is constitutionally competent for the state to be the shareholder of an SOE.

Wim Trengove SC

Chambers
Sandton
23 March 2009

BK

ANNEXURE "E"



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X100, Johannesburg 2000 Tel: 011 431 1111 Fax: 011 431 1000
P.O. Box 100, Cape Town 8000 Tel: 021 431 1111 Fax: 021 431 1000

President Jacob Zuma
The Presidency
Republic of South Africa
Private Bag X1000
Cape Town
0001

MEMO WITHDRAWN

Dear President Zuma

REQUEST PERMISSION FOR THE LATE AND DIRECT SUBMISSION OF CABINET MEMORANDUM NO. 7 OF 2009: APPOINTMENT OF MR SIPHO MASEKO TO THE POSITION OF GROUP CHIEF EXECUTIVE OFFICER OF TRANSNET

I hereby request the President's permission for the late and direct submission of the above Cabinet Memorandum to the Cabinet Meeting scheduled for Wednesday 26 August 2009.

There have been a number of issues raised by Cabinet relating to the recruitment process of the Chief Executive Officer position at Transnet. Following my brief to the President on this matter, I believe that it is imperative for me to brief Cabinet on the process thus far and, to request Cabinet's approval for the appointment of Mr Siphosiso Maseko, the preferred candidate for the position of Group CEO.

The late submission is regrettable but is necessitated by the sensitivity of the issues and the imperative to establish leadership stability and certainty at Transnet. Furthermore, the recent negative media reports surrounding the position of CEO at Transnet are affecting staff morale. Copies of the memorandum will be distributed at Cabinet on the morning of the meeting.

I trust that this submission will receive the President's favourable consideration.

Kind regards

MS B. HOGAN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE:

21 August 2009

NEED MORE NAMES FOR
THE CHAIRPERSON AS
SUBMITTED, MEETING
BETWEEN MIN + PRES.

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ANNEXURE 'F1'

ANC backs suspended Transnet boss

Sunday Times 30 Aug 2009 MOIPONE MALEFANE

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SUSPENDED: Siyabonga Gama was earmarked for top Transnet job

/ko

THE African National Congress has thrown its weight behind suspended Transnet executive Siyabonga Gama, with minister of justice Jeff Radebe describing his suspension as a "miscarriage of justice".

Gama, Transnet's chief executive of freight rail, was this week suspended over allegations that he breached procurement contracts — a move viewed by the ANC as an attempt to scupper his chances of becoming the parastatal's next chief executive.

Gama is believed to be among at least three candidates short-listed to take over as permanent CEO.

The Sunday Times can also reveal that the ANC national working committee (NWC) instructed minister of public enterprises Barbara Hogan about two months ago to appoint Gama as Transnet's CEO after the departure of the parastatal's former head, Maria Ramos, who joined Absa.

ANC insiders said Hogan was this week expected to submit Gama's name to cabinet for final approval.

She allegedly withdrew following what angry insiders said was "Transnet's manoeuvrings" by suspending him.

Hogan's spokesman, Ayanda Shezi, said the ministry could not comment on anything to do with the ANC.

ANC spokesman Brian Sokutu said Gama was "an executive who has been with Transnet for quite some years" and "credited for having turned things around both financial- ly and in terms of giving leadership".

"In other words, we say he has a track record. I am not aware of discussions about him at NWC or NEC level, but there is nothing stopping members of the ANC from discussing succession within parastatals," said Sokutu.

Speaking at the University of KwaZulu-Natal on Thursday, Radebe denounced the Transnet board and described the decision to suspend Gama as a "gross injustice".

Radebe lashed out at the board for suspending Gama without considering his testimony.

The Sunday Times could not confirm talk that a group of cabinet ministers had approached President Jacob Zuma to register their unhappi- ness with Gama's suspension.

On Thursday, Gama appeared before Pradeep Maharaj, the group executive for human resources, and the company's lawyers to give his side of the story after Transnet had served him with a letter on Monday informing him of its intention to suspend him following a board meeting.

Gama's lawyer, Themba Langa, said Transnet has been "working hard to get him suspended and there were no objective or reasonable grounds to have him suspended".

Allegations of impropriety against Gama apparently surfaced for the first time in June. His written responses, according to Langa, were not presented to the board.

According to NWC insiders, Gama was recommended by the party's deployment committee.

It is alleged the ANC was aware of "Transnet's intentions to ensure that Gama does not get the job".

ANC insiders said the contenders for the position at the time included Pravin Gordhan, who has since been appointed

minister of finance.

Both men were recommended for the job by the Transnet board selection committee at a meeting on February 13. Gordhan withdrew his candidature after being told he had been earmarked for a cabinet position.

An ANC deployment committee member said a very senior and long-serving cabinet minister, also a member of the deployment committee, was opposed to Gama's nomination. He was overruled by other committee members.

Another NWC member said some ANC officials had asked why Gama's appointment had not been implemented by Hogan.

A Transnet board member said Gama was not trusted by certain individuals in management, who thought he would reverse "multimillion contracts awarded to friends and families".

Transnet spokesman John Dludlu said "a disciplinary process" had been instituted against Gama.

"This relates to alleged serious breaches in certain procurement contracts. This is an internal company matter, and we don't wish to comment further at this stage."

moiponem@sundaytimes.co.za

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Annexure "L"



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X715, Hatfield, 0028 Tel: 012 431 1130 Fax: 012 431 1035
Private Bag X9073, Cape Town, 8000 Tel: 021 431 63707 Fax: 021 463 2381/464 1741

**Hon. J G Zuma
The President of the Republic of South Africa
Private Bag X 1000
PRETORIA
0001**

Dear President Zuma,

Re: Transnet Chairperson

1. Thank you for speaking to me telephonically last night about this matter.
2. For over a year now, Transnet's Board has been operating with an Acting Chair. At its AGM this year on 24 July 2010, the terms of Board members and the Acting Chair had to be extended until such time that a new Board is appointed. In my view, any extension of longer than two months would not be ideal as in these circumstances it would open the company and government to further reputational risk.
3. As discussed with you previously, Transnet's work has far-reaching consequences for the South African economy. Transnet has to focus on its build programme within the context of a constrained balance sheet, leveraging private sector investment capacity, attracting freight from road to rail and improving efficiency. The success of the implementation of Transnet's five year expenditure of ZAR84 billion clearly requires a strong Board.

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4. Given the importance of Transnet to the SA economy, and the need for stable leadership at the Board level, it is absolutely necessary to proceed with the appointment of a Chairperson and other Board members with the requisite skills. To this end, my department has prepared a Cabinet Memorandum for discussion at Cabinet but which it has not yet submitted. This is because we agreed that we would discuss the matter first so that I can ascertain your final views on the composition of the Board and in particular the Chairperson.
5. To confirm, in respect of the position of the Chairperson, I raised the following potential candidates: Mr Mandla Gantsho and Mr John Copelyn. Both of their CV's are attached for your ease of reference.
6. I kindly request an appointment at your earlier convenience to discuss this matter further with the Deputy Minister and myself in order that we are able to discuss your views on the preferred candidate for Chairperson and thereby expeditiously deal with this matter in the interests of Transnet, government and the country.

I look forward to hearing from your offices shortly.

Sincerely,



MS B HOGAN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 8 September 2010

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ANNEXURE "D"



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X18, Matfund, 0028 Tel: 012 431 0116 Fax: 012 431 3880
Private Bag X2676, Cape Town, 8000 Tel: 021 451 83767 Fax: 021 456 2361/451 1741

Hon. J G Zuma
The President of the Republic of South Africa
Private Bag X 1000
PRETORIA
0001

Dear *President Zuma,*

Re: Safcol Chairperson

Thank you for taking the time to speak to me about this matter last night. As discussed with you, in order for us to have a more meaningful opportunity to discuss this position before taking it to Cabinet, early yesterday, I withdrew the item from the agenda of today's ESEID Committee meeting.

However, given the urgency of the matter as a result of:

- the AGM for SAFCOL being scheduled for 28 September 2010
- new appointments to the Board that have to be made
- Parliamentary and other legislative reporting requirements

I trust then that you will revert to me with your views on the proposed candidate for Chairperson quite soon and before the next cabinet meeting.

Kindly note that I have written to your office for permission to submit the memo to the next cabinet meeting

I am available to meet with you at any time once you have had an opportunity to peruse the said CV.

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I trust that this is in order and look forward to hearing from your offices shortly.

Sincerely,



MS B HOGAN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 8 September 2010.



STATEMENT OF BARBARA HOGAN

THE PURPOSE OF THIS STATEMENT

1. The purpose of this statement is to set out the reasons for my dismissal as the Minister of Public Enterprises as well as my experiences relating to the conduct of the former President of South Africa, President Jacob Zuma ("President Zuma"), in respect of his involvement in the affairs of State Owned Entities ("SOEs"), which I believe influenced President Zuma's decision to remove me from office.

PERSONAL HISTORY

2. I was born and schooled in Benoni, and I obtained an Honours degree in Development Studies from the University of the Witwatersrand.
3. I joined the African National Congress ("ANC") as an underground political activist in 1977. In 1979, I enrolled for a Master's degree focusing on unemployment in South Africa.
4. In 1981, I was detained and sentenced to ten years imprisonment, having been found guilty of high treason. During my incarceration, I enrolled for a Bachelor of Commerce degree and midway through my degree, I was released, a week after the ANC was unbanned on 9 February 1990.
5. In April 1990, I was appointed by the Interim Leadership Core of the ANC to sit on the Interim Leadership Committee ("ILC"), which was mandated to set up the structures of the ANC in Gauteng. I was later elected as the full-time

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General Secretary of the Gauteng ANC, a position I held until the end of 1992.

6. In 1994, I was elected as an ANC MP in the National Assembly and served mainly on the Portfolio Committee on Finance (which I chaired from 1999 to 2004) and on the Standing Committee on Public Accounts. I also chaired the Audit Commission that oversaw the work of the Auditor-General.
7. I participated in the Finance Theme Committee that dealt with the financial aspects of the Constitution for the duration of the Constitutional Assembly, and I was later appointed to the Accounting Standards Board.
8. In September 2008, the former President of South Africa, President Kgalema Motlanthe, appointed me to cabinet as the Minister of Health.
9. In May 2009, following the national elections, President Zuma appointed me as the Minister of Public Enterprises and Mr Enoch Godongwana was appointed as the Deputy-Minister of Public Enterprises.
10. I served as the Minister of Public Enterprises until 31 October 2010, when I was removed from office by President Zuma. I have no knowledge of the reasons for my dismissal, as they were not explained to me. As such, I am only in a position to provide information relating to the events leading to my dismissal as the Minister of Public Enterprises, which are set out below.

SOEs FALLING UNDER MY JURISDICTION

11. A total of 9 (nine) SOEs and public entities fell within the jurisdiction of the Department of Public Enterprises ("DPE"), including Eskom, Transnet, SAA, SA Express, Denel, Infraco, PBMR, Alexkor, and SAFCOL.
12. The DPE also had several specialised units, which were headed mainly by Deputy Director-Generals under the supervision of a Director General - who

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at the time of my appointment was Ms Portia Molefe. The specialised units were responsible for the close monitoring of the SOEs that fell under the DPE's jurisdiction and would advise and report directly to me.

PRESIDENT ZUMA'S DIRECT INTERVENTION IN THE APPOINTMENT OF CHIEF EXECUTIVE OFFICERS ("CEOs") AT SOEs

13. President Zuma took a very active, and at times, inappropriate interest in who was to be appointed to the Boards of SOEs. I shall give two illustrations in relation to Eskom and Transnet.

Eskom

14. In 2009, Eskom's CEO, Mr Jacob Maroga ("Mr Maroga"), resigned during a Board meeting. Despite Mr Maroga's subsequent insistence that I reinstate him, I refused. Labour issues of CEOs in relation to their Boards fell outside my jurisdiction as the Minister, and also the Board of Eskom had unanimously refused his request for reinstatement after he had resigned.
15. President Zuma placed considerable pressure on me to persuade the Board to reinstate Mr Maroga. Finally on the day that the Board informed staff that Mr Maroga was leaving, President Zuma angrily phoned me to tell me to instruct the Board to cease this process immediately, just as the Board was about to address a press conference to communicate Mr Maroga's departure. The press conference was hastily cancelled, causing considerable embarrassment and huge press speculation about the actual employment status of Mr Maroga, and considerably diminishing the reputation of Eskom.
16. A while later, Mr Maroga returned to his office at Eskom in a much-publicised event, on President Zuma's instructions. On the same day, Mr Maroga released a letter to the Press, addressed to myself as Minister, which essentially stated that he was reinstated as CEO of Eskom at the behest of

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President Zuma and that, in future, he could be removed only with the approval of President Zuma. Under pressure, President Zuma was constrained to phone Mr Moroga to instruct him to immediately vacate his office in Eskom, saying he could only return with my approval.

17. Not only was President Zuma behaving inappropriately by actively intervening in matters that are essentially the prerogative of a Board, but it was also apparent that President Zuma had been privately meeting with Mr Maroga behind my back and finalising a deal with him without my knowledge or input. He exhibited no loyalty or honesty with a Minister in his Cabinet. Mr Maroga later sued Eskom and myself for R85million and lost with costs.

Transnet

18. President Zuma insisted that Siyabonga Gama ("Mr Gama"), an employee of Transnet, be appointed as the CEO of Transnet. At the time, there was an acting CEO. The Board had considered Mr Gama as a candidate but had nominated another excellent candidate to be CEO. Mr Gama was facing an inquiry regarding certain irregularities and the Board was also of the opinion that he was not yet CEO material. When I refused to put Mr Gama's name to Cabinet until the findings of the disciplinary process had been concluded, President Zuma prevented me from nominating both the Board's chosen candidate, as well as designating a new Chairperson of the Transnet Board, when the term of office of the latter expired. Transnet had to endure a considerable period of instability, having both an Acting Chairperson and an Acting CEO. Mr Gama was later found guilty on 3 out of 4 counts, each count warranting a dismissal, and was dismissed from Transnet.
19. Since my appointment, I, and my Deputy-Minister, refused to cooperate with President Zuma's inappropriate interference with the Boards of SOEs and his apparent disregard of proper corporate governance. I believe that our resistance to the Interferences of President Zuma was one of the factors that lead to my removal from office and the assignment of the Deputy-Minister to another Department.

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PRESIDENT ZUMA'S DISREGARD FOR CORPORATE GOVERNANCE

20. High standards of corporate governance in SOEs are essential, not only for the good governance of the company and its investors and borrowers, but also for the proper functioning of the economy, given the strategic position in the economy of many SOEs. As such, Boards are expected to adhere to the highest standards of corporate governance as exemplified in the King Code of Corporate Governance.
21. The Shareholder's Agreements that govern the relationship between the DPE and SOEs empower the Minister to hold SOEs accountable by providing certain key performance areas and requiring Ministerial approval for certain decisions taken by the Board. As the Minister of Public Enterprises, I engaged with the SOEs on strategies, policies, financial and operating results. My engagements with the SOEs were always through the Board or the Chairperson. I would only engage with the CEO of a SOE on issues delegated to them by the Board.
22. As the Minister of Public Enterprises, I was responsible for the appointment of the Board of Directors and the Chairpersons of each SOE that fell under my jurisdiction. Unless otherwise stipulated in legislation or Memorandums of Incorporation, it was my strong view, in line with KING III, that CEOs are appointed and accountable to their Boards. The practice was that Boards provided the Minister of DPE with a recommendation for their preferred candidate/s for a CEO position, and the Minister takes their proposal to Cabinet for approval. Once appointed, CEOs should not go over the heads of their Boards to a Minister on their issues; nor should they lobby Cabinet Ministers, ANC structures or political leaders or, similarly allow themselves to be lobbied by outside nefarious interests. Regrettably, this standard principle of CEO accountability was not universally honoured, and CEOs

would sometimes by-pass Boards, and even Ministers, in pursuit of their objectives.

23. Political interference is extremely damaging to a SOE, because it disempowers the Board and Senior Management, often forcing them to constantly second-guess proposals and approvals. In addition, no political authority or civil servant has the entire skill set or the resources to manage SOEs on a day to day basis, or to provide the requisite strategic direction and leadership to the SOE. In corporatized SOEs there has to be a respectful delineation of powers and authority between the SOE and the Board and its Senior Managers, otherwise proper management and leadership will fail.
24. It is crucial that politicians and civil servants provide an enabling environment for SOEs to accomplish their work. However, the manner in which President Zuma conducted himself in relation to constantly interfering with executive appointments to SOEs reflected a deep lack of understanding and disregard for corporate governance.

PRESSURE TO TERMINATE SAA'S SOUTH AFRICA-MUMBAI ROUTE

25. In June 2010, I was part of an official State visit to India, led by President Zuma. Whilst I was there, I heard rumours that SAA intended to terminate its South Africa-Mumbai route. As such, I sent a text message to then Chairperson of the SAA Board, Cheryl Carolus ("Ms Carolus"), enquiring whether the rumours were true. Ms Carolus responded to my text message, stating that the rumours were untrue, saying it must be Jet Airways still lobbying for this. However, it should be noted that during my India visit, the Chairperson of Jet Airways was persistently following me around, trying to meet with me. I declined to engage with him as I did not have the authority to make any business decisions on behalf of the SAA Board.
26. In August 2010, Ms Carolus sent me another text message informing me that the CEO of Jet Airways was in South Africa and would be lobbying for

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SAA to end its Mumbai flight, and that SAA rejected this. She also requested me to inform her if the CEO of Jet Airways requested to meet with me, so that I could be briefed accordingly. In October 2010, I was removed from office by President Zuma. My successor, Malusi Gigaba, later cancelled SAA's Mumbai flight.

CONCLUSION

27. In the circumstances, I am unable to provide definitive reasons for my removal as the Minister of Public Enterprises; however, the information set out herein serves to highlight some of the events leading up to my removal from office, as well as the inappropriate conduct of President Zuma in addressing issues relating to the governance of the DPE and the SOEs for which it was responsible.

Dated at JOHANNESBURG on this 30th day of July 2018.


BARBARA HOGAN

Meeting held between the Public Protector, South Africa & Mr Barbara Hogan
26 August 2016

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[Opening of Meeting // 26 August 2016]

Adv N Kanyane : Thank you, Madam. Today is the 26th of August 2016. We are interviewing Ms Barbara Hogan and with me is Mr Frans Lekubo and Mr Iubin Naidoo. Thank you, Madam, again for agreeing to see us. We value your time that you have given to us and we are hoping that you will be able to assist us in whatever form, in trying to get to a conclusion in this matter. As I explained to you briefly, we have received complaints regarding what has been said is "State capture". We have received complaints from three people.

One is from an association of Priests, of Catholic Priests. Their complaint is based on media reports that were circulated just before they did the ... I think it was a day before and the second complaint was lodged by the leader of the Democratic Alliance, Mr Mmusi Maimane and the significance of his complaint is that he lodged a complaint in terms of the Executive Members Ethics Act. I don't know if you know this, but ... oh, you should know, in terms of that Act the Public Protector does not have a discretion not to investigate.

She is compelled in terms of that Act to investigate if a complaint is lodged properly in terms of that Act, and it has been. The third complaint was lodged by a regular member of the public, Mr Kochman and all of the complaints are based on media reports, that the Gupta Family has some undue influence over the State, that they are influencing and offering Cabinet positions to people, specifically to individuals, Mr Mcebisi Jonas and Ms Vytjie Mentor, that it was the Gupta Family who offered them Cabinet positions and

Meeting held between the Public Protector South Africa & Ms Barbara Hogan
26 August 2016

1 you know that that is prerogative of the President. In all of the
2 Complainants the second complaint is that the ... it is wider and it
3 relates to the influence and contracts that are awarded to the Gupta
4 Family. The allegation there is that they are awarded contracts in
5 State-owned enterprises irregularly and it is due to their relationship
6 with the President. Now as I said it is based on media reports that
7 had been circulating and this has been going on for years, but this is
8 the first time I think we as the Public Protector we are receiving a
9 complaint to actually investigate.

10 As I said, after we received the complaint with Mr Maimane, it
11 was clear that we have to investigate, because there is no option, that
12 the Public Protector has to investigate. So I would like to ask you just
13 as a way of background Madam, to tell us the positions that you have
14 held in Cabinet? I know you have held two, am I correct?

15 Ms B Hogan : In Health.

16 Adv N Kanyane : Health and then Public Enterprises?

17 Ms B Hogan : And Public Enterprises.

18 Adv N Kanyane : The complaint really relates to ... would be relevant to your portfolio
19 as the Minister of Public Enterprises, because some of these State-
20 own enterprises, if not all, fell under ...

21 Ms B Hogan : Not all.

22 Adv N Kanyane : Not all?

Ms B Hogan : There were 9 I think that fell under.

Adv N Kanyane : Okay, just remind us then when did you become Minister of Public
Enterprises?

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1 Ms B Hogan : It was the 2009 elections. I don't remember the exact date.
2 Adv N Kanyane : Okay, 2009?

3 Ms B Hogan : Are you comfortable sitting like that? Would you like to sit at the
4 table?

5 Adv N Kanyane : No I'm fine, I'm fine.

6 Ms B Hogan : Are you fine?

7 Adv N Kanyane : Yes.

8 Ms B Hogan : Okay. Yeah, let me open this window as well. Are you okay?
9 Adv N Kanyane : Yes, thank you.

10 Ms B Hogan : Yeah, but Minister of Public Enterprises in 2009.

11 Adv N Kanyane : So you were appointed by Mr Zuma?

12 Ms B Hogan : Yes.

13 Adv N Kanyane : Okay. Okay and until when did you serve?

14 Ms B Hogan : The 31st of October 2010.

15 Adv N Kanyane : 2010.

16 Ms B Hogan : So it was about an 18-month period.

17 Adv N Kanyane : That was short?

18 Ms B Hogan : Yeah, you know the President and I had a short ...
19 Adv N Kanyane : Stint?

20 Ms B Hogan : ... stint together.

21 Adv N Kanyane : Joe.

2 Mr F Lekubo : Did you go to Health afterwards or you came ...

3 Ms B Hogan : I was in Health before.

Adv N Kanyane : She was in Health before.

Mr F Lekubo : Oh.

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1 Adv K Malunga : Okay, maybe just for completeness then, when were you Health
2 Minister?

3 Ms B Hogan : I was Health Minister ... that was even a much shorter period. That
4 was from September 2008 to that time ...

5 Adv N Kanyane : When you then went to ... 2009 when you became ...
6 Ms B Hogan : I had to take over from Manto, yeah.

7 Adv N Kanyane : Yes, was it after she died?
8 Ms B Hogan : No, when President Thabo Mbeki was removed I was asked to take

9 over that Health portfolio. That was under President Motlanthe.
10 Adv N Kanyane : Oh, so then you were appointed by President Motlanthe?
11 Ms B Hogan : Yeah.

12 Adv N Kanyane : Okay, then in 2009 after President Zuma was inaugurated in 2009,
13 she then reshuffled the Cabinet and then you were then Minister of
14 Public Enterprises?

15 Ms B Hogan : Yeah.

16 Adv N Kanyane : Okay, as you said it was a short ...

17 Ms B Hogan : Interlude.

18 Adv N Kanyane : What happened?

19 Ms B Hogan : You know I could go long, long, long stories. We were the
20 shareholder ... In effect the shareholder for a number of State-owned
21 enterprises. It was Denel, Eskom, SAA, SA Express, which was
22 separate, SA Express, Alexkor, Infraco, I-N-F-R-A-C-O, that was
23 Information Network and Transnet, and there was also a forestry
24 company, a very minor, minor forestry company. I forget its name.

Adv N Kanyane : So these were all the State-owned enterprises that fell under...

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1 portfolio?

2 Ms B Hogan : Yeah, under our purview.

3 Adv N Kanyane : And in all of them Government was a major shareholder?

4 Ms B Hogan : The shareholder. Government was the shareholder, yeah.

5 Adv N Kanyane : Are the ones where Government was the only shareholder?

6 Ms B Hogan : Uhm (positive).

7 Adv N Kanyane : Which one was it?

8 Ms B Hogan : Oh, I would have to go and just double check, but it is probably all of
9 ... most of them Government would be the only one and the only
10 shareholder.

11 Adv N Kanyane : Okay.

12 Ms B Hogan : I don't know if there are any shareholders in Eskom. You would have
13 to ... but you are the majority shareholder by far.

14 Adv N Kanyane : Alright.

15 Mr F Lekubo : I think the only one which Government doesn't hold ... it is not the
16 only ... I think all of them it is the sole shareholder. Express may
17 have ...

18 Ms B Hogan : May have had another one. In Infraco ...

19 Mr F Lekubo : Broadband Infraco they had some ... yeah, some ... but it is
20 (indistinct).

21 Ms B Hogan : Yeah, very minor ... yes, yeah.

22 Adv N Kanyane : But the major was Denel, Eskom, SAA and Transnet, Government is
the only ...

23 Mr F Lekubo : Is the sole ...

24 Ms B Hogan : You would need to double check that, but I don't remember other

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1 shareholders being at you know AGMs and stuff like that.

2 Adv N Kanyane : Okay.

3 Ms B Hogan : But it will so insignificant, it is ...

4 Adv N Kanyane : Yeah, Government had the controlling ...

5 Ms B Hogan : Yes.

6 Adv N Kanyane : Okay. Alright, we were saying what happened when you left?

7 Ms B Hogan : Well, what happened when I left, is that ...

8 Adv N Kanyane : The reason why?

9 Ms B Hogan : Well, the President removed me.

10 Adv N Kanyane : Yes.

11 Ms B Hogan : Yeah and what happened there?

12 Adv N Kanyane : Uhm (positive).

13 Ms B Hogan : I don't know why he removed me, so it is difficult to say. You know
14 the President just calls and says, "I'm replacing you", but I think that
15 for your purposes, because for ... you see I don't know if you want the
16 bigger picture or the smaller picture and you know I don't know if
17 you need to be taken down a lot of avenues, or ... maybe what I can
18 do is, I can focus on the SAA story, because that is the Vytjie Mentor
19 story, that resides in the public domain.

20 Adv N Kanyane : Okay, we can do it this way, I think for our purposes we need the
21 bigger picture, so that we can ...

22 Ms B Hogan : Okay, situate your information?

23 Adv N Kanyane : Yes.

24 Ms B Hogan : Okay.

25 Adv N Kanyane : Yes, but also we will then go to specific things, like the SAA route.

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1 **Ms B Hogan** : Okay. You know when I came into that portfolio it was almost very
2 clear right from the start that most of the State-owned enterprises
3 were in financial distress of one way or another and I took very
4 strong review that I wanted to maintain a proper corporate
5 governance arrangement with these companies. They had their
6 Boards, they had their Chair of their Boards, they appointed the
7 CEOs. I was holding the Board to account and I felt that it was not my
8 job to be micromanaging below a Board, and messing with the
9 company.

10 It was the Board that was my main ... because I was a
11 shareholder, had a Shareholders Agreement with the Board. The
12 Board has to deliver on certain things and I saw that as my
13 relationship, okay, but very quickly ... so firstly there was the issue of
14 financial distress and you know with stuff like Eskom we can
absolutely ... you know I came in just at the time that Eskom ...
remember there was the first blackouts in 2008, it was the first ever
blackouts and I came 2009.

18 Eskom was in a state of turmoil and quite frankly it didn't have
19 the funding to do the big build(7) that it needs to do, to do all sorts of
20 things. So it was very clear to me - because I had been a finance
1 person - that Government needed to address the issues of what was
2 the appropriate funding for the State-owned enterprises, did we
expect it to be self-generated revenue or does the shareholder
provide any further investment funds, to what extent do we allow
borrowing to take place, do you know what I mean, the indebtedness

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Eskom and Denel were probably some of our most precarious at that stage, Eskom in particular the most precarious and then the others were in various degrees of being precarious, but a disturbing pattern ... now I as a Minister was responsible for appointing Board Members and the Board would then appoint a CEO. As I came into Government at that stage many of those enterprises were requiring new Boards, you know the terms of office, so it was quite an intensive period. We did serious searches, we hired companies, you know (indistinct) struggles and spending ...

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1 with those, to go and do serious searches for Board Members and
2 they would come with a portfolio of people, and we would shortlist
3 them. You know it was very, very serious attempt to get decent
4 people on to those Boards, because that was extremely important

5 Adv N Kanyane : Yes, I also wanted to ask you, because I don't have an idea how a
6 Minister would then be advised to choose Board Members, I wanted
7 to ask about that, yeah.

8 Ms B Hogan : Yes. The department was divided into different ... a very small
9 department was divided into different divisions with different
10 specialities. So you would have the Transport Department that
11 would deal with airways and Transnet, you know and then you
12 would have you know the department that dealt with energy, and
13 then you would have a department that dealt with Defence Force,
14 you know Denel, those kind ... there would be specialities. Those
15 Deputy DGs under the leadership of the DG would be the liaison and
16 the people that would be monitoring and watching what was
17 happening, and be in contact continually with those particular State-
18 owned enterprises about what was happening in the world.

19 When it came to the time for appointing Board Members those
20 speciality teams would drive the process. They would give the brief
21 with my approval to a search agency, they would give me the
22 shortlist that they had preferred. I would go through it, I would look
23 at what else was there. We would work on that basis, okay.

24 Adv N Kanyane : Okay.

25 Ms B Hogan : It was their job to know who was who in the industry, that was their

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1 job, you know and we were very much seized with the issue of
2 transformation, which you know that you needed black leadership in
3 State-owned enterprises and also people with ... especially the skills,
4 because these are huge ... you know these are the backbone of the
5 economy. Now where the difficulty comes in is that you are then
6 bound ... and you know this was always a procedure that intrigued
7 me and I wondered where the ... because I couldn't find it anywhere
8 in terms of any Act or anything, but you then had to take your
9 proposals to Cabinet and Cabinet would then discuss it, and then
10 approve whoever you were ... doing it and my colleagues in Cabinet
11 would do the same thing.

12 I remember one Cabinet meeting where we spent four hours
13 fighting, not over ... one of the people. I proposed, someone else had
14 proposed ... there was all kinds of things going on and the President
15 took a very active interest of who was going to be on those Boards,
16 right from the start, a very, very active interest. Luthuli House took a
17 very, very active interest, Gwede Mantashe took a very, very active
18 interest and you knew that if you didn't get Gwede's backing or the
19 President backing you weren't going to get anything through.

20 **Adv N Kanyane** : So let me just get it clear, the process of you then sending the names
21 to Cabinet is that the one you say you are not sure what law ...

22 **Ms B Hogan** : Where the precedent was. You know I could understand that if you
23 were going to appoint a high-level person, you know it was just
24 intriguing to me that that was a precedent, that your fellow Cabinet
25 colleagues with no specialist understanding of your portfolio would

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be able to say who would be appointed or should not be appointed to those Boards.

Adv N Kanyane : In terms of the law it is the Minister who then appoints?

Ms B Hogan : Yeah.

Adv N Kanyane : Okay, I understand.

Ms B Hogan : It is the Minister who appoints.

Adv N Kanyane : Okay, so you say it was clear that if you didn't have the backing of Gwede Mantashe and the President, you are unlikely to then get Cabinet to ...

Ms B Hogan : True. Now the President wasn't interested in every Board Member, let me put that right, you know he really wasn't, but there were two spectacular issues in which the President and I came to very, very different points of view. In Eskom it arose very shortly after I came into Government, the CEO of Eskom resigned in anger and he had had an extremely difficult relationship with the Chair of the Board.

Adv N Kanyane : Who was the CEO at the time?

Ms B Hogan : Maroga, Jacob Maroga and Bobby Godsell was the Chair. I'm told that Maroga had resigned shortly after you know all the lights had gone out, but the then Minister had him reappointed. Now I was very critical of a person ... a Minister engaging on issues of the CEO. The CEO must engage with the Chair, not with ... but because Eskom is the backbone of the economy, if you don't have Eskom you don't have an economy, when I got the message from the Chair that the CEO had resigned, I immediately flew up from Cape Town or I was flying up from Cape Town and I immediately went to the Eskom Head Office,

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1 because I needed to be briefed, because this was very serious. The
2 Chair gave me a long history of a bad working relationship and the
3 Board, and everything like that and said that the entire Board had
4 spent several hours deliberating this resignation, and had
5 unanimously agreed that they would accept that resignation and had
6 called him in the previous day, you know several hours after he had
7 resigned and he had agreed or they just needed to negotiate the
8 package. As I was sitting there Maroga walked in, threw a letter on
9 the table and said to me, "I have not resigned, Minister".

10 **Mr F Lekubo** : I remember that spectacle there ...

11 **Adv N Kanyane** : I just remember that was an issue between Bobbie Godsell, but I
12 don't remember the particulars now.

13 **Mr F Lekubo** : But I remember he resigned, then he recalled his resignation or
14 (indistinct)?

15 **Adv N Kanyane** : He says he didn't resign.

16 **Ms B Hogan** : And then he denied that. So I then went ... so the Board was all there,
17 because it was a very serious incident and I said to Maroga, "Okay, if
18 you are alleging this, then I need to hear what the Board has got to
19 say, not the Chair", and I asked him to recuse himself. He tried to get
20 into that meeting. I said, "No, I need to speak confidentially with the
21 Board" and I said to the Board Members, "I want each and every one
22 of you to speak and tell me what your view is, and if anyone here has
23 a different view from the other, there will be no consequences for
24 you, if you had a different view, because I need to know the truth".
25 Every Board Member said, "He resigned, we accepted the

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1 / resignation, there is no doubt" and there wasn't a single Board
2 Member who was saying, "Well, you know it might be interpreted
3 differently even".

4 Adv N Kanyane : Was there a letter?

5 Ms B Hogan : There was correspondence. You know he had resigned the day
6 before. They were at a strategic planning session and he had just
7 stormed out and said, "I have resigned now".

8 Adv N Kanyane : Oh, okay, so it was verbally?

9 Ms B Hogan : So then the Board convened and went through several hours'
10 discussion around this, and you know how do they handle it and then
11 they called him in, and they say, "We have accepted your ... you know
12 your resignation is accepted now and we want to discuss the terms
13 of the agreement", and he said, "Fine". They said, "We will meet
14 tomorrow morning with the Chair and you can work out just what
15 your package would be". So I'm giving you this detail because it is
16 relevant for the way that the President started to behave in relation
17 to the State-owned enterprises, okay and I won't go into all the gory
18 details of all of this.

19 It then became a mammoth ... so then I was in a very difficult
20 position, because the CEO was putting himself ... putting me between
21 the Board and the CEO and I have got ... so now you know normally
22 you would say to the Chair, "Sort this out", but he was now
23 contesting the Chair. So in order to avoid me being the person being
24 involved in all the engage ... I asked my Deputy Minister to go and
25 please speak to Maroga and say to him ... this is going to be very, very

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1 difficult. I took legal advice and we had the Lawyers In, and they
2 gave us advice on this matter, to just speak to Maroga and say,
3 "Listen, can't we just have a gentlemen's agreement, you move on,
4 because this is not going to be good for you? You know the legal
5 advice is such that you are not going to win this case". He said ... the
6 Deputy Minister went quietly to speak to him and he refused
7 completely to even engage with what the Minister was saying, and he
8 said he wanted to speak to me, but he could not speak to me ...

9 Adv N Kanyane : At the time he was still insisting that he did not resign?

10 Ms B Hogan : Yeah. Okay, he then went off, he said he could not speak to me ...

11 would speak to me after the weekend, because he had to go up to
12 Limpopo. Lo and behold that weekend Julius Malema, who is the
13 ANC Youth League, holds a huge rally in Limpopo and starts selling
14 me as a racist Minister, who is trying to get rid of a black CEO. Then
15 it just went nonstop, these racist Ministers was trying to ... it became
16 a media story, it became everything. I then had to go and brief the
17 President, because you know this is a huge crisis.

18 Everyone is saying, "What is this ... up next ...
19 whatever, and so I had to go and brief the President, because I
20 needed the President to give me backing and whatever. I had great
21 difficulties getting a meeting with him and finally I got a breakfast
22 meeting with him, and he said he is going to the NSC, I need to come
23 with ... you know (indistinct) and I need to come and see him
24 afterwards. Well, I waited the whole day, he didn't ask to see me and
25 I phoned Jessie Duarte and I said, "This is really serious". To cut a

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1 long story short, Maroga was meeting privately with the President
2 behind my back. His housekeeper were reporting to my PA he was
3 trying to get a meeting with the President, saying, "But Maroga has
4 been meeting with him all the time", but he would not grant me
5 meetings. You know this was peculiar to me, because the National
6 Union of Mineworkers, the General Secretary was solidly behind me
7 on this matter, because his view was that Maroga was just not up to
8 the job, you know and so was Luthuli House, you know Mantashe
9 held a similar view.

10 So it was very peculiar to me that the President was
11 entertaining Maroga the whole time and it went on. It was very
12 bloody and ugly and whatever, and it went through various
13 situations. The President asked me now to persuade the Board that
14 Moraga come back and then an official Commission of Enquiry be
15 installed, instituted and once that enquiry has reported then we can
16 make the decision, and Maroga held me to ransom. He asked to meet
17 me privately. I met with him at the SAA offices.

18 He accused me of not providing leadership. You know I told
19 him I had offered him mediation, I had offered him arbitration, I had
20 offered him a whole series of ways in resolving the case and he was
21 just absolutely stubborn. He said, "I will not accept mediation,
22 arbitration, nothing. You, Minister, have to reappoint me" and I said,
23 "I am a Minister, I do not appoint CEOs. It is the Chair and the Board
24 is unanimous that you have resigned. I cannot go against the Board".
25 So Vytjie Mentor got into a whole thing and she was on radio shows,

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1 she was the Chair of the Portfolio Committee, she was summoning
2 me to Parliament to please explain the leadership gap and why am I
3 not doing ... you know it was built up and I was always aware that
4 there was something orchestrated here, you know that it wasn't just
5 a difference of opinion. It was very ugly and very orchestrated, you
6 know and so I was put under huge pressure, but I refused to
7 reinstate him.

8 Then the Board under much anger ... Mpho Makwana was there,
9 there was a whole lot of them. The Board accepted the President's
10 proposal that Moraga come back and a Commission of Enquiry be
11 done, and then lo and behold Maroga visited the President, and said
12 he is not accepting it.

13 Adv N Kanyane : Maroga now, he is not accepting the proposal the President was
14 making for him to be reinstated and for a Commission of Enquiry
15 to ...

16 Ms B Hogan : Uhm (positive). So the President phones me, I'm sitting with the
17 Board waiting for Maroga's response and the President says, "The
18 deal is off, Maroga is not accepting it".

19 Adv N Kanyane : What did he want, to be appointed, full stop, to be reappointed, full
20 stop?

21 Ms B Hogan : Just he ... well, his appointment confirmed that he had not resigned.
22 It was something along those lines. All I'm trying to say to you is, you
23 know here is a President getting himself ... what the President had
24 done was, during this period ... and you know there were lots of
25 incidents, but the Board resolved that they had to go ahead, remove

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Maroga and get a new CEO in place. This was before this compromise thinking and so the entire senior management of Eskom was summonsed to Eskom head quarters and I said to them, "You have got to go and do what you think is your role to do here". The entire senior management, the whole of the Eskom Corcourse was filled with management.

The Chair of the Board explained that Moraga had resigned, they accepted the resignation and a press conference was scheduled for two o'clock (14:00) that afternoon. As he was talking there I get a letter ... I get a phone call from the President who had been out of the country - and had been briefing the Acting President, Motlanthe, all the time - from the President saying, "What the hell are you doing? Stop everything".

Adv N Kanyane : Shoe.

Mr F Lekubo : You get a letter?

Adv N Kanyane : A phone call.

Ms B Hogan : A phone call from the President saying, "What the hell are you doing? You stop everything". So I said, "Mister President, the Acting President is President Motlanthe at the moment, he has given me the approval". He says, "I do not care, stop this". So I went to speak to President Motlanthe and I said, "I'm in a very difficult position. I had been given an instruction by the President to stop this. I'm going to have to do it, but I'm recording my displeasure with you at what is happening". So I phoned Bobbie Godsell. They had just finished briefing all these things and I said to Bobbie, "I just got an instruction

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1 from the President that you have got to stop with this". I'm giving
2 you the culture in how this was operating. Bobbie Godsell says, "But
3 we have just told the entire management" and so he had to call a
4 press conference and say, "There is nothing to report" and then of
5 course the whole thing got blown out of the sky. "Corporate
6 governance failed. Eskom, what is the Minister doing, who is running
7 Eskom? It has been run into the ground".

8 The President wouldn't give me a meeting after that, you know
9 it was an unholy mess and then finally we got this agreement that
10 Maroga would come back, and then Maroga says he is not going to
11 agree to that. So Maroga gets ... and of course Jimmy Manyi and the
12 Black Management Forum are all behind him. They drive with him
13 into the Eskom head quarters, they escort him in the lift to the top
14 floor and I can get you the letter that he wrote. He then wrote a
15 letter to me, which he cc'd to the media and he cc'd to ...

16 Adv N Kanyane : Manyi now?

17 Ms B Hogan : Maroga.

18 Adv N Kanyane : Maroga, okay.

19 Ms B Hogan : He cc'd it to everybody in town and he said, "Minister, I am here ... I
20 am back here in my position with the approval of the highest
21 authority in the land. Nothing can be done to me without the highest
22 approval of ... without the approval of the highest authority of the
23 land". There was a total defiance, in saying, "You, Minister
24 (indistinct). The President and I have now got an arrangement and I
25 will continue to operate". Well, the Deputy Minister was then so

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1 furious, my Deputy Minister. Both he and I were on the point of
2 saying, "We will resign" ...

3 Adv N Kanyane : Who was the Deputy at the time?

4 Ms B Hogan : What is his name? He is an economics person in the ANC, (Indistinct).
5 I now forget his name. I will get you his name.

6 Adv N Kanyane : Okay.

7 Ms B Hogan : He then went to ... there was a meeting at the leadership, you know of
8 the big 6 and he took this letter and he said, "Look at the monster
9 you have created", and to the President's credit he phoned Maraga. I
10 think the big 6 leadership freaked out at him as well. He phoned
11 Maraga and he said, "Get out of that building. You will only get back
12 in there if the Minister allows you back in" and Maraga was then
13 phoning me and saying, "Minister, when are you going to allow me
14 back into my building?", and you know all of that.

15 I then sent Eunice Shaik, who in the previous era had been the
16 Labour Advisor for the department, because he was very close to
17 Alec Erwin, but also because he was close to ... perceived to be close
18 to the President, to go now with Mpho Makwana, who we appointed
19 ... because the Chair of Eskom had resigned in the midst of all of this
20 and I then appointed Mpho Makwana as Acting Chair and Acting CEO
21 just to hold his place. So I asked our Legal Advisor, Eunice Shaik -
22 but because I knew he had some kind of Presidential aura around
23 him - to go with him to Mpho to now speak to Maraga and cut the
24 relationship. He fought for 5 hours, until finally Eunice said, "Okay,
25 we are offering you no package, you are leaving with your ..."

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1 salary that is owed you, and that is all". Then after that he sued me
2 for 80 million and he lost the case, and then he appealed the case and
3 he lost that case as well, but you can understand ... now I'm just
4 giving you a taste of the way that the President saw it fit to intervene
5 in this kind of stuff, you know that he was meeting with Maroga
6 behind my back at his private residence. That he wasn't even getting
7 the backing of Luthuli on this.

8 So it worried me what was there ... and I knew he was, because
9 Mantashe was speaking to me and Mantashe was saying, "I wash my
10 hands at this, you know this has got nothing to do with us here", but
11 it really worried me that the President was so involved in these nitty-
12 gritty details and behaving so deviously. The problem was when you
13 met with the President, when you met with ... when I met with
14 President Motlanthe when he was President, when I was Health
15 Minister, you would request a meeting with the President, most of
16 the times your DG would get a call from the President's Office saying,
17 "What is the meeting about, can you brief us?".

18 There would be briefings beforehand, so that the President
19 would know what you are coming there for. There would always be
20 an aid sitting in the meeting taking minutes and if you requested a
21 minute of the meeting, you could get it, a thing like this. With Jacob
22 Zuma I never met with him ... I think I met with him once in his office,
23 it was always at his home. It was almost like the Presidential Office
24 had completely collapsed. There was no proper Chief of Staff. I
25 know that Vavi ... Vavi told me afterwards that he had gone to speak

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1 to the President and saying, "You do not have an operating
2 Presidency here". The housekeepers making appointments for you
3 and so there is no record ... no, the housekeeper was making
4 appointments.

5 Adv N Kanyane : Because the meetings happened at home?

6 Ms B Hogan : At home and so you know it was like he was allowed to be his own
7 force completely. There was no aid who was sitting in on the
8 meeting, who afterwards could say, "Mister President, you said this,
9 but maybe we should say this, and maybe you weren't aware of this
10 law", or something. There was nothing, no advice, nothing and that
11 happened all the way through.

12 I won't go into the details of the other things, but the President
13 and I locked horns and also I locked horns with Luthuli on this, on
14 the question of Siyabonga Gama, the CEO of Transnet. You know the
15 thing that really upset me about all of these battles with the
16 President - and it was a protracted battle, the Siyabonga Gama issue
17 - was that I was always battling with him over issues over
18 individuals who had to be appointed to positions, and he would do
19 crazy stuff.

20 We would be in Cabinet and he would appoint me to Chair the
21 Cabinet Cluster on Energy, whereas you have a Minister of Energy.
22 You know that puts me at immediate loggerheads with the Minister
23 of Energy and in that meeting I would say to the President, I would
24 say, "Mister President, thank you very much for the honour, but can I
25 propose that maybe the Minister of Energy take the lead on this and I

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1 will assist her? No!". So I ran the entire energy process you know in
2 Cabinet, so it wasn't like he was worried about my policy stuff, but
3 you know he puts me at loggerheads with my ... and you know she
4 was furious, but the battles were always about who was to be
5 appointed. We never had a policy discussion. It was always about
6 who was to be appointed when. Siyabonga Gama had been ... had
7 given one of my Cabinet colleagues, one of his companies a security
8 contract for Transnet when there wasn't even a proper company, it
9 didn't even have employees, but he got the contract.

10 The Board, which was a very proper Board at that stage, had
11 had the whole thing properly, properly investigated and was going
12 through all kinds of processes, and they had outside people coming
13 in. It was a very proper corporate governance process and he was
14 found guilty, but the President and Luthuli House was absolutely
15 adamant that he would be the CEO of Transnet.

16 From Mantashe's point of view he was saying Gama is one of
17 our most exemplary Managers and I don't dispute that, I really don't
18 dispute that, and as Managers, black Managers don't have a
19 (indistinct) from Luthuli House it was from the point of view that this
20 was a very capable black Manager that I was screening in, but from
21 the President it was just "You will appoint Gama as the CEO". So I
22 said, "Mister President, I cannot appoint someone who is under
23 investigation for a serious infringement". So we had a year's stay-
24 away, an entire year in which I could not appoint ... he would not
25 allow me to appoint a CEO, a Chair, he would not allow me to do any

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1 appointments to Transnet, until the CEO question was resolved. So
2 he was making it difficult for me to do my job as a Minister.

3 Mr P Lekube : At the time when Siyabonga was ... there was these issues, was he
4 like the Acting CEO, was he having one of the (indistinct)?

5 Ms B Hogan : He was heading the rail division.

6 Mr F Lekube : He was the TFR at the time?

7 Ms B Hogan : Yes, yeah, he was heading that.

8 Mr F Lekube : Okay, so he was ... but then with the appointments of these CEOs, so
9 you would appoint obviously the Board and the Chair ... the Board
10 would appoint the CEO. Did they meet and come back to you for
11 ratification, for final approval as Minister? The appointment of the
12 CEO was it your direct appointment?

13 Ms B Hogan : No, no, the CEO was always appointed by the Board, but there has
14 been a convention in Government, that when it is a very serious
15 appointment, like a CEO, the Minister and the Chair would have a
16 discussion and the Minister would say, "Listen, I can't go with this or"
17 ... you know, but you wouldn't insist. It would be, "You know I never
18 said it will be this person or" ...

19 Adv N Kanyane : The authority still vested with the Board?

20 Ms B Hogan : With the Board, but you would discuss that ...

21 Mr I Naidoo : Just to brief you on the matter?

22 Ms B Hogan : Just to brief you and you would discuss, and you would be able to
23 say, "Listen, I have heard other stories about this person, you
24 know" ...

25 Adv N Kanyane : Make inputs?

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1 **Ms B Hogan** : ... "you know do that". You have got to give guidance, but you
2 wouldn't say that, but in the meantime Zuma's view was that I should
3 be appointing these people. So with the Gama issue it would be that I
4 would come and inform Cabinet that Gama was going to be
5 appointed, but of course there would all people in Cabinet who
6 would then be stacked up, you know that I would have to do that, do
7 you know what I mean?

8 **Adv N Kanyane** : Uhm (positive).

9 **Ms B Hogan** : He stopped me from appointing the Chair, the CEO, everything of
10 Transnet for over a year. He stopped me from appointing a DG to my
11 department. I was without a DG for many, many, many months and
12 even when the full Cabinet approved my proposal ... that was just
13 shortly ... close to the time that I was fired. Even at the point when
14 the full Cabinet approved my proposal of the DG for my department
15 and it was supposed to then just go through, because the Cabinet all
16 agreed. He was chairing the meeting and he gave his little giggle and
17 he said, "The Minister and I will have a discussion about this".

18 So that was the culture that I was working in and it was a very,
19 very difficult culture you know to work against, because you didn't
20 have a President who was backing you or understood corporate
21 governance, or valued corporate governance. It was really you know
22 "Who we want there will go there and bugger everything else". The
23 SAA story, SAA wasn't in as a big a crisis as it is now. We had
24 appointed a very good Board. Cheryl Carolus was the Chair, but it
25 was ... it had a lot of skills. We had Dave Lewis, who was Head of the

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1 Competition Commission, because remember the SAA was being
2 charged with competition irregularities. We had all sorts of people
3 there and it was a very strong Board, and I could basically rest and
4 allow them to do their job, and Cheryl Carolus would just keep me
5 informed all the time. I think the issue ... and I have kept my cell
6 phone from that period and all my emails and all my SMS' on the
7 period. So I made copies and you know if you ever need to verify it, I
8 have got it on my ... I have got everything, every email I ever got,
9 everything is on that.

10 Adv N Kanyane : Okay, wow.

11 Mr I Naidoo : Did you sense at the time that you might be asked about this in the
12 future?

13 Ms B Hogan : No, you know when you are locked in a war with the President like
14 that, you know that your time is short and you know that there can ...
15 you know that you can be charged, you know what is happening to
16 the Minister of Finance could well ... you know if they had been that
17 far down the line, it could have happened with me as well. So I just
18 kept everything.

19 Adv N Kanyane : Kept records, yeah.

20 Ms B Hogan : So I'm just giving you little bits of which I think is relevant to you. I
21 will give you the background.

22 Adv N Kanyane : Okay.

23 Ms B Hogan : Okay, so this is SMS' and I have got it there, so yeah, I just made
24 copies and it is on the 2nd of June 2010. We were all on a Presidential
25 visit to India. Now just as an aside, just as an aside on this, because I

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1 think you have also got to look at the Denel story. Just on the side of
2 this, Denel had tendered for a defence tender in India and because
3 the Indian Government had been involved in terrible Defence Force
4 irregularities, procurement corruption thing, they had brought in a
5 law that if you were tendering you are not allowed to use
6 middlemen, you know middlemen.

7 Adv N Kanyane : In India, okay.

8 Ms B Hogan : Okay and Denel had tendered and the Indian Government had
9 become aware that a middleman had been used in their tender. This
10 was before my time and it was handed over to ... It is not yourselves,
11 you know not the equivalent of yourselves. It is really their
12 investigative ... you know I think it is almost like their prosecutorial
13 investigative (indistinct).

14 Adv N Kanyane : Okay.

15 Ms B Hogan : And they had requested access to Denel files, they had made an
16 international request to have access to Denel materials and stuff like
17 that to further investigate. Alec Ervin, who was the Minister of
18 Public Enterprises at that time, had completely denied them all
19 access and it became a great war of attrition between the Indian
20 Congress Government and the ANC Government, it became really
21 (indistinct), because the Indian Congress movement ... the Indian
22 Congress Government is saying, "We are being lambasted in the
23 press for this and you are not allowing us to resolve this matter", but
24 Alec would allow them no access to Denel whatsoever. The Minister
25 of Trade and Industry from the Indian Government came to see me

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1 and he said, "Now that you are appointed Minister we really need
2 your cooperation on this. This is extremely embarrassing for us. We
3 need this resolved. It is sitting over our heads as a Government and
4 we would like your cooperation". The Denel Board resisted and
5 there was all sorts of stories and whatever.
6

7 Finally I got Wim Trengove in to give an independent opinion
8 and he then went and met ... you know I got all kinds of stories from
9 their Legal Advisor why they couldn't go in, the Board was resisting
10 and I then went ... sent Wim to please go and engage with them, with
11 my advisor and was all agreed now that ... and Wim was basically
12 telling them that it was in terms of international law and whatever, it
13 is absolutely illegal for them to withhold access.
14

15 So we went then as an advanced group before the President
16 arrived in India, it was my department went and I was given access
17 to the Prime Minister's Office and the Head of their thing, and we
18 discussed the matters and I brought the Chair of Denel with me to
19 the thing, because we wanted to clear this and it was an
20 embarrassment for our President when he was there, so this matter
21 would now be resolved between the respective things.
22

23 We got a good ... I was there several days in negotiations and
24 we got a good agreement, and at the opening banquet welcoming
25 South African delegation, the Prime Minister of India came to me and
he said, "I want to thank you very much for assisting us to resolve
these matters".

Adv N Kanyane : What was the resolution?

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1 **Ms B Hogan** : The resolution was that Denel would now open up its books and its
2 things, and would take whatever consequences came its way and the
3 Chair was very ... he is a very good man. The Chair of the Board came
4 with me on that trip and you know ...

5 **Adv N Kanyane** : He was no longer resisting, as the Board was?

6 **Ms B Hogan** : Well, the resistance was coming more from the senior management
7 and the Board was being kept more confused you know, but the
8 Chair came along with me. I didn't want to force anything. You know
9 this was a Board issue. I didn't want it to become a difficult issue for
10 them and he came with me on that trip, and it was all resolved and
11 the Indian Government, the Prime Minister personally thanked me.

12 So I don't know where the Denel story comes in with
13 yourselves, because there were two things that Vytjie Mentor
14 mentioned that was discussed with her with the Guptas, and the
15 Guptas said, "We hear that the Indian Government or that you have
16 got ... the Indian Government has problems with Denel or that Denel
17 has legal problems".

18 That was one of the things that they said to Vytjie, which she
19 reported and I was a little surprised, because all of this was done
20 very much under the radar. It wasn't a public event or anything like
21 that and I thought how did they know about that? Secondly, the
22 Gupta Family took over that trip and organised that trip.

23 **Adv N Kanyane** : The Presidential visit?

24 **Ms B Hogan** : Yeah, to the extent that the same Deputy ... the same Minister of
25 Trade and Industry, whilst I was still meeting with ... you know

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1 afterwards, when you know we were just finalising all the final
2 points, he said, "I would like you to convey to your Government the
3 Indian Government's deep displeasure at the way that this scurrilous
4 Gupta Family have determined the program of your Presidential
5 visit. This is a State program, it is not run by a scurrilous family".

6 Adv N Kanyane : Who said that?

7 Ms B Hogan : The Minister of Trade and Industry.

8 Adv N Kanyane : From India?

9 Ms B Hogan : From India and he then ... I then ... you know I can't go and say that to
10 the President, but the most senior Minister on that trip was Lindi
11 Sisulu and I reported that to Lindi Sisulu, and she didn't ... she just
12 looked straight through me, she didn't comment, she didn't say
13 anything and I never heard anything from that again.

14 Adv N Kanyane : Yeah, actually when you said that the Gupta Family took over that
15 trip, I wanted to say to you we have heard that narrative, that a
16 number of witnesses said that about this trip and another
17 Presidential trip, that the Gupta Family took over and I wanted to ask
18 what do you mean they took over? So you answered it partly,
19 because you say they were determining the program, as one of the
20 things.

21 Ms B Hogan : Well, there was one incredibly embarrassing evening and you know I
22 don't want to put you into trouble, and we would have to really,
23 really get the full details of it, but the Indian Government was hosting
24 a dinner for us with a cultural event and in the meantime we went to
25 ... and I was told that it was a Gupta arranged banquet beforehand.

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We went to two banquets beforehand, before we arrived at the Indian Government event and I was told by my PA that the Guptas had arranged these banquets. I'm not sure (*Indistinct*).

Adv N Kanyane : On the same night?

Ms B Hogan : On the same night. We arrived after nine o'clock (21:00) at that State banquet, when we should have been there roundabout seven (19:00).

Adv N Kanyane : Because you started at another?

Ms B Hogan : At other banquets that the Guptas had arranged with business colleagues and associates, okay. I would have to speak to my PA and other people, and my personal advisor who was there with me, so that they can recall the stories that were going on at the time, but the story within the delegation was that the Guptas had run that program, so that was that. During this entire time that I was in India the CEO of ... Is it Jet Airways or is it Jet Stars?

Adv N Kanyane : Jet Airways.

Ms B Hogan : Jet Airways was like stalking me. Now I just want to ... now on the 2nd of June I sent a SMS to Cheryl Carolus, the Chair of SAA Board and now you needn't copy this down, but it says:

"Cheryl, I'm in India with the President now. Is there any truth to the rumour that SAA is going to terminate its route to Mumbai? This is a rumour here and we need clarity."

Okay, so she replies regarding the Mumbai route, she replies and she says:

"No, it seems illogical and that is what we are assessing before

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any decision to terminate. Unfortunately I am at a meeting out of the office. There is some other mischievous backdrop to this, so best to say as little as possible on this at this point in time. Watch out for their" ...

She says "Jet Star approaches", but I'm sure she meant Jet Airlines. "Watch out for their approaches."

Okay, so she is warning me, "Just be careful". No, that comes ... sorry, I must give you the things. That note doesn't come from Cheryl Carolus. It comes from Sandra Coetzee, who is someone that you do need to speak to.

Adv N Kanyane : Sandra?

Ms B Hogan : Sandra Coetzee. She was our Corporate Legal Governance person in the Department of Public Enterprises and Fatima Hassan was my advisor, Fatima Hassan and Fatima had sent a note to Sandra to find out if she knew of this thing and this message that I sent you came from Sandra to Fatima, who forwarded it on to me. You can see ... you would be able to see it.

Adv N Kanyane : Yeah.

Ms B Hogan : Okay, so Cheryl Carolus' response to me, she says:

"No, we will not be terminating Mumbai. It must be Jet Airways still lobbying for this. We remain on the route with four frequencies. All the best for India".

Then later on, two months later, on the 30th of August I get a thing from Cheryl saying:

"Note that the CEO from Jet Airways will be in South Africa for

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the India/South Africa meeting. He is lobbying hard for SAA to end the Mumbai flight. We reject this. Please let me know if he is trying to meet you, so we can brief? I apologised for meeting with him and said he should talk to Siza," who was the CEO.

Adv N Kanyane : Siza Mzimela. What date was that?

Ms B Hogan : The 30th of August.

Adv N Kanyane : So it is now in June ...

Ms B Hogan : Yes, June we were dealing with the SAA story in India, but this is now ... there was a joint South Africa/India meeting where this now emerges again.

Adv N Kanyane : Tell me Miss Hogan, you said he was stalking you during the India visit?

Ms B Hogan : Yes, now he was stalking me and I can't remember ... I remember at one stage I was meeting with some people in a hall and there was this huge noise, and he came like crashing in and he came and he sat almost right in my line of vision. He had been sending requests apparently to meet with me and I said, "No, I'm not going to meet".

Adv N Kanyane : Through your PA?

Ms B Hogan : Yeah. I presume it is through my PA or might have gone through the Public Enterprises. I don't have that.

Adv N Kanyane : Yes. Okay, I'm just saying she was trying to reach you through your office to try and arrange a meeting?

Ms B Hogan : Yeah and I was saying no, because I hadn't been briefed on it and also it wasn't my job to be negotiating with Jet Airways in India without SAA present. I'm not the person who makes the decisions. This has

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1 got to be discussed with the Board, the CEO and they must advise me
2 and then I must give my opinion. I can't be the person negotiating.
3 Then there was some fashion show and you know with fashion
4 shows you have got rows and then the main thing is here. I'm sitting
5 here and it ends, and I'm moving to walk out the hall and he literally
6 jumps over the chairs, and comes and stands straight in front of me,
7 and says, "Minister, I need to see you". I said to him, "Before you
8 meet with me you have to meet with the Board and with the CEO. I
9 have nothing to say to you".

10 Adv N Kanyane : That is after you had been warned already?

11 Ms B Hogan : Yes, they needed to brief me first, but also I would not have met with
12 someone trying to do business with me, because I would have said
13 you know we would have brought the CEO or else I would have said
14 (indistinct) in Skype, you know or something like that and they
15 weren't with me on this journey and I had already been warned by
16 SAA that there was mischief here. So I wasn't going to get involved in
17 something that I had already been forewarned. I haven't got ... then
18 all the rumours started about how I was going to be dismissed and I
19 have got the thing here.

20 Oh, it was all kinds of configuration that my Deputy Minister
21 (indistinct). I have got one of those SMS' to me from my advisor. It is
22 over there, I will get it out for you, where it says, "The story is this,
23 that your Deputy Minister will now become Minister. You will
24 become the Deputy Minister of Health. Vytjie Mentor will become
25 the Deputy Minister of Public Enterprises". So I will get that for you.

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1 Adv N Kanyane : Okay, so before that ... when was this now, in 2010, you heard the
2 rumours that you will be replaced and that Vytjie Mentor will also
3 then be promoted?

4 Ms B Hogan : Uhm (positive).

5 Adv N Kanyane : Okay, before it happened?

6 Ms B Hogan : Uhm (positive). I have got here ... I printed it out for you.

7 Adv N Kanyane : Okay.

8 Ms B Hogan : I thought I put it in this lot, but I haven't and then on the 31st of the
9 10th I got this thing to please meet with the President and that is
10 when I was ... 31st ...

11 Adv N Kanyane : 31 October?

12 Ms B Hogan : Yeah, that is when I was ...

13 Adv N Kanyane : Okay, that is why you remember the date so well?

14 Ms B Hogan : Yes, I saw it here, yeah.

15 Mr F Lekubo : How long were you given (indistinct) to say you are leaving office,
6 you know (indistinct) DPE, was it like immediate effect or?

17 Ms B Hogan : Yes, from that ... when you get fired as a Minister it is immediately,
18 from the moment that the President speaks to you. Well look, there
19 is an interim period between the new Minister is appointed, which is
20 usually the next day and yourself going.

21 Adv N Kanyane : You are appointed just as quick?

22 Mr F Lekubo : No job security?

23 Ms B Hogan : No job security, no. No job security for politicians.

24 Adv N Kanyane : That meeting now where ... the India/South Africa meeting, which
25 month was it?

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1 Ms B Hogan : That was in August.

2 Adv N Kanyane : August?

3 Ms B Hogan : August 2010.

4 Mr I Naidoo : Tell me do you recall whether ... did they close that route on a
5 temporary basis?

6 Ms B Hogan : I spoke to Siza the other day. I was the phone with her, she was the
7 CEO and the person that ... she said it was closed.

8 Mr F Lekubo : Doesn't SAA do Mumbai anymore?

9 Ms B Hogan : What?

10 Mr F Lekubo : SAA doesn't do Mumbai anymore?

11 Ms B Hogan : I'm not sure, but she says it was ...

12 Mr I Naidoo : I think it reopened.

13 Adv N Kanyane : I think what is important for our purposes is, what happened
14 immediately at the time?

15 Ms B Hogan : Siza said to me ... I saw Siza for the first time ... she was the CEO of
16 SAA, a very capable woman and she said to me ... after I left as
17 Minister she said then it just became a case that the Minister would
18 just walk in and tell them what they have to do, and I think it is
19 very ...

20 Adv N Kanyane : Gigaba now?

21 Ms B Hogan : Yeah, and she said ... I think it is very important for yourselves ... I can
22 give you Sandra Coetzee's contact details, whether they will speak to
23 you or not, but I'm sure they will, but Sandra Coetzee has extensive
24 knowledge. She was one of our top people in the department, very
25 loyal, very capable and when I left the department she then joined

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1 Influence some of the contracts being awarded, or not just contracts,
2 any influence?

3 **Ms B Hogan** : You know it is very difficult for me to say that, because they had
4 emerged as a force that one would be on the alert for at that stage.
5 **Adv N Kanyane** : At that time, yes.

6 **Ms B Hogan** : Certainly around the Maroga affair I was deeply aware that there was
7 a network that was organising that and you know it also puzzled me
8 who the President was listening to, because he wasn't listening to his
9 own Aids. It often puzzled me, who is he listening to that he is just
10 making these decisions and who must he first go and talk to before
11 he talks to me, do you know what I mean?

12 **Adv N Kanyane** : Yes.

13 **Ms B Hogan** : But you know quite frankly I cannot say ... when I heard Vytjie talking
14 about the SAA story, it then all made sense to me, that they were
15 involved in this whole thing. You know before I was worried, why so
16 much pressure on me about a route to India, you know what is all
17 this about, do you know what I mean? It was only when Vytjie
18 revealed that that was one of the conditions of her being appointing
19 Minister, that I became aware that the Guptas were probably
20 retrospectively watching what was happening in that portfolio.

21 I have no doubt that probably in Eskom there were lots of
22 rogues involved there, but I never had a sense that Maroga was
23 engaged with the Guptas in any way, you know. For me it was just
24 his overweening ego.

25 **Mr F Lekubo** : Yeah, he is an ego guy.

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1 **Ms B Hogan** : Yeah, very egotistical and sad, because he is also capable.

2 **Adv N Kanyane** : Where is he now?

3 **Ms B Hogan** : Sasol.

4 **Mr F Lekubo** : Is he at Sasol now?

5 **Ms B Hogan** : I think he went to Sasol, yeah. It was very sad, you know. It was
6 more that the influences that I saw that were affecting my work was
7 Zuma and the people backing Zuma.

8 **Adv N Kanyane** : Yes, Zuma giving you instruction as to who to appoint and trying to
9 find who ...

10 **Ms B Hogan** : And Luthuli House. Luthuli House, Gwede around the Siyabonga
11 Gama issue, where Gwede refused to give me any support and just
12 said, "Gama must be appointed CEO and that is it". When I was
13 appointed Minister one of the questions Business Day asked me, and
14 said, "You know the State-owned enterprises are all in a really bad
15 state. What steps do you have to take?" and I think one of the things
16 that I said ... I can't remember exactly, I said, "Some of these are going
17 to need equity partners". I mean I still believe it, you know.

18 We don't have equity partners in the State-owned enterprises,
19 because we don't have ... Government doesn't have the money and it
20 was blown into a huge thing on Business Day, that I was asking for
21 privatisation and Gwede and Jessie summons me to Luthuli House. It
22 was a big public ... I had to now please explain myself to them and it
23 was very apparent to me that Luthuli was going to play a very central
24 role in Jacob Zuma's governance, that there wasn't ... you know when
25 I ... when Kgalema Motlanthe was President you would meet with the

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1 various ... like I was the Health Minister, I would meet with the ANC's
2 Health Subcommittee, which is proper. You meet with them and you
3 have discussions about national health insurance, but with Zuma it
4 was very clear to me that Luthuli House saw part of its role as
5 defining what was going to happen in the State-owned enterprises.
6 So for me it was more the Zuma ... and then of course Julius Malema,
7 who was at that stage Zuma's great supporter and he would go for
8 me every opportunity, (indistinct) racist Minister ...

9 Adv N Kanyane : Is that what you referred to earlier when you said there was no clear
10 distinction between Government and State?

11 Mr F Lekubo : When party and State ...

12 Ms B Hogan : Party and State.

13 Adv N Kanyane : Party and State, yeah, party and State.

14 Ms B Hogan : The party and State, you know that was always a great complication,
15 because why must I check with the General Secretary of the ANC
16 about appointments to ...

17 Mr I Naidoo : A CEO?

18 Ms B Hogan : You know you can go to someone, a General Secretary that you
19 respect and you say, "Listen, I'm thinking of this, just what is your
20 view?", you know seek guidance, do you know what I mean? But you
21 don't have someone telling you what you must do and you know
22 Gwede Mantasha was telling me, "Gama will be appointed, I don't
23 care, he will be appointed". Then when I was removed Gama was
24 immediately appointed, reappointed. He had been fired and he had
25 been reappointed and so there was that crossover between the party

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and the State, and so for me the players were really the Zuma backers, Gwede...

Mr I Naidoo : Jessie?

Ms B Hogan : Jessie didn't play such a big role, no. I did meet with her and so, but she wasn't that much, but it was really Gwede who was ... but there were times when Gwede gave tacit support, like "You didn't come and support Zuma on Maroga", but it became very clear to me that corporate governance was being undermined in the State-owned enterprises, because if you wanted to get your way you would just beat a path to Luthuli House and you would befriend yourself.

Now with the Maroga issue the people who were backing Maroga in Luthuli was Bathabile Dlamini. She had a family of friendship connection. So I mean my Deputy told me that the person who is really on the Maroga case with the President is Bathabile and she wasn't in Government at that stage, but she was based in Luthuli on the MEC, and so it was that coalition of forces.

Mr F Lekubo : Were you not on the MEC at the time, Madam?

Ms B Hogan : No, I wasn't on the MEC. I would go to tripartite meetings, alliance meetings and so, but I wasn't on the MEC.

Mr F Lekubo : Oh, okay, but those things would come up there?

Ms B Hogan : If they did I wasn't you know formally informed. They probably did come up at the MEC. So I think that is about as much as I can say to you about all of this. Let me just (Indistinct), but you see that difference between a party and a State, the lack of the party understanding what it should be doing.

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1 **Mr I Naidoo** : Because the minute you are in Government you are working for your
2 country, not for your own ... for your party anymore.

3 **Ms B Hogan** : Absolutely, but also when you are dealing with State-owned
4 enterprises that are the backbone of the economy, Transnet and
5 Eskom if they don't exist we can't move our goods and stuff. You
6 can't have anyone must coming in with their own ... go through it.
7 Was shortly ... I can't remember the exact date. I would have to get it,
8 but it was in 2010, the President called me in. It was towards the
9 beginning of 2010 and said, "You may not make a single decision in
10 regard to State-owned enterprises".

11 **Adv N Kanyane** : What?

12 **Ms B Hogan** : Yeah. "I have assigned Riah Phiyega to do a Commission of Enquiry
13 into State-owned enterprises and until she has reported you may not
14 make any policy decision about State-owned enterprises".

15 **Adv N Kanyane** : Where was Phiyega at the time?

16 **Ms B Hogan** : She wasn't a ... she apparently had gone to have dinner with the
17 President - that is what I'm told - and had persuaded him that she
18 had the answers for State-owned enterprises and he then called me
19 in, and said I'm not allowed to make any decision related to State-
20 owned enterprises.

21 **Mr I Naidoo** : You didn't have a job anymore then?

22 **Adv N Kanyane** : Yeah, I wanted to say then what are you going to do?

23 **Mr I Naidoo** : What are you going to do then as *(indistinct)*?

24 **Ms B Hogan** : Well, you see I had planned to resign at the end of November,
25 because you know I said to my own political comrades and everyone

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I'm actually just sitting here with no authority. The President will not back me, the party just chooses when it wants to back me or whatever. Actually I have no real authority and I'm undermined in every possible way, and so I cannot stay in this job. I mean my friends can give evidence. I mean it is my closest friend, I went and spoke to her and her husband, and I said I am now going to resign and then Zuma fired me, but he called me in. I think the Phiyega thing is quite important. He called me in and he said ...

Adv N Kanyane : You said it was at the beginning of January?

Ms B Hogan : I can't remember the exact ... but you would be able to get it from the news reports, because that Phiyega Commission of Enquiry into State-owned enterprises was (*indistinct*) and that Commission of Enquiry got R90 million to do a full-scale investigation into the state of State-owned enterprises and there were 7 ... I think they uncovered there were 7 500, you know right from Local Government level right to the top.

You know she approached me to assist, I said, "I'm very happy to assist in whatever way", but I never gave any active support, you know stupid (*indistinct*). Then that is when ... so you would be able to find out from the news reports when that thing ... and yeah, she was going to be the answer to State-owned enterprises.

Mr F Lekubo : Who was that?

Ms B Hogan : Riah Phiyega. The President told me I wasn't allowed to make any decision related to State-owned enterprises until Riah Phiyega's Commission of Enquiry is a report.

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1 Mr F Lekubo : How much did they get paid?

2 Ms B Hogan : 90 million.

3 Mr F Lekubo : Did they finish their work though or was she finished?

4 Ms B Hogan : Yes, they finished their work, but it was ... you know it was handed in
5 and ... I was already long gone.

6 Adv N Kanyane : You were already gone, so you didn't see what the documentations
7 came up?

8 Ms B Hogan : It was a bit silly and no one took it seriously, and she was (ir)distinct
9 made Minister. Here it says ...

10 Adv N Kanyane : A Commissioner?

11 Ms B Hogan : So here, this is this thing from my advisor. This was on the 6th of the
12 6th, this was while I was still in India.

13 Adv N Kanyane : Yeah.

14 Ms B Hogan : 6th of the 6th or maybe I have just returned and funny enough she just
15 sends me a report that Gama was found guilty on three or four
16 outcomes, and he signed off on a contract without the Board
17 authority. Then she says to me the rumours are that the Deputy
18 Minister becomes the Minister, I will become the Deputy Minister for
19 Health and "VM", Vytjie Mentor becomes the Deputy Minister for
20 DPE. I will give you that as well, okay.

21 Mr F Lekubo : Okay.

22 Ms B Hogan : I must give you Sandra Coetzee's numbers as well.

23 Mr F Lekubo : With all these difficulties you experienced with the President as the
24 Minister of DPE, was it just restricted ... just Eskom and Transnet or
25 were there other issues in other SOEs?

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1 **Ms B Hogan** : Oh, shoe, there were a lot of issues. The SOEs were in a lot of crisis,
2 there was no doubt. Yeah, just with the fruit ... with the forestry one
3 you had a Chair there who hardly ever did her work and you know to
4 replace her was a major issue, but let me just say SAA Express was
5 doing very well at that stage. Denel was completely floundering.
6 Denel couldn't get military contracts it needed. Denel was in a
7 complete state of implosion. I shut down the Pebble Bed Modular
8 Reactor, the PBMR program.

9 **Mr F Lekubo** : That was a lot of money spent on that program. So you are the
10 person who (indistinct)?

11 **Ms B Hogan** : Uhm?

12 **Mr F Lekubo** : Oh, you are the one who shut it down, with those foreign Nuclear
13 Scientists who earned quite a bit of money here?

14 **Ms B Hogan** : And our own Nuclear Scientist were making a lot of money, but I had
15 an independent review done of it and basically they didn't have a
16 product yet, they didn't have a customer, they didn't have a customer
17 in the queue and they were spending billions. You know I was
18 coming from the Health Sector where the Free State Health
19 Department ran out of money in August you know for antiretrovirals,
20 I mean and here is billions and billions on a Pebble Bed Reactor that
21 hadn't even been tested internationally, so I shut that down.

22 **Mr F Lekubo** : Do you still own that IP?

23 **Ms B Hogan** : Yes. What we did was we put into place enormous procedures to
24 secure the IP, all the documentation, we set up an archive, all sorts of
25 things we did.

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1 Mr F Lekubo : Okay.

2 Ms B Hogan : Yeah, I shut that down, but there was a lot of ... you know part of the
3 problem is that Government was not respecting corporate
4 governance either and you know like both Ministers who came after
5 me, Malusi Gigaba and Lynne Brown, started off saying, "I'm the
6 Minister and I say what happens at these public enterprises". Now if
7 you are looking at the model, that you appoint a Board, because as
8 Government you don't have the requisite skills or time to manage
9 these vast entities, then you have got to allow that Board to operate
10 and you have got to have a proper corporate governance relationship
11 between the shareholder and the thing.

12 So you have got to focus on your Shareholders Agreements and
13 make sure that they are tight, and they are properly monitored. You
14 have got to focus on accountability and transparency and
15 information, and whatever, but you can't go in there meddling with
16 what they are doing. So what I saw over that ... like with that Eskom
17 Board, which I didn't add, was a terrible demoralisation of Board
18 members who just felt that they no longer had any authority to do ...
19 and were just undermined and worked in an uncertain environment.

20 Finally by the time when I started looking for new Board
21 Members towards the end of my stay and now it is common
22 knowledge, "Don't go into a State-owned enterprise. If you want to
23 have a career, don't go into a State-owned enterprise because that is
24 a recipe for disaster". So it is really the corporate governance thing
25 that has really failed and imploded completely.

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1 Mr F Lekubo : Yeah, with the current political leadership, yeah, you almost get a
2 sense there is no Board in these SOEs, isn't it?

3 Ms B Hogan : No.

4 Mr F Lekubo : They get shuffled every ... frequently. What is the typical time of the
5 Board, it is 5 years, is it not?

6 Mr I Naidoo : 3 years.

7 Adv N Kanyane : 3 years, no?

8 Ms B Hogan : It depends, it is usually 3 years.

9 Mr F Lekubo : It is 3 years, yeah, okay.

10 Ms B Hogan : Yeah and what you do is, you work ... try and work on a thing of a
11 third remains ... a third is *(Indistinct)*, you know so that ...

12 Mr F Lekubo : That is the institutional *(Indistinct)*?

13 Ms B Hogan : Yeah, so that you retain institutional *(Indistinct)*.

14 Mr F Lekubo : Yeah.

15 Mr I Naidoo : *(Indistinct)* continuity and *(Indistinct)* the expenses as well?

Ms B Hogan : Yeah.

17 Adv N Kanyane : What happened to the Board of Eskom that was there at the time
18 when you were replaced?

19 Ms B Hogan : They were ... the Board of Eskom was replaced ... that was a sad story.
20 Mpho Makwana, who I think is one of our most superb ...

21 Adv N Kanyane : The one you had ... that you appointed to Chair?

22 Ms B Hogan : I appointed and then he remained as Chair and Brian whatever was
23 appointed ... Dames was appointed as CEO. They were all removed,
24 the Eskom Board, all my Boards were removed and he was just
25 removed just like that by Malusi Gigaba. I saw him afterwards and

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he said, "Barbara, you will not believe what happened to me. Malusi just removed me like that. Then a couple of weeks later I get a call from the President, who calls me in and then says, 'You know I must apologise, Malusi did that without me knowing'".

Adv N Kanyane : Oh.

Mr F Lekubo : You were still Minister by then?

Adv N Kanyane : No.

Ms B Hogan : No, it was after I had left.

Mr F Lekubo : Oh, okay.

Ms B Hogan : Malusi had replaced ... had remove Mpho Makwana as Chair and you know Mpho Makwana is a man of great gravitas and stature, and he is ... like he is not ... and you know he held Eskom together at a stage where it was imploding because of all of this crap around Maroga and stuff like that, and he didn't deserve to be just dismissed just like that.

Mr F Lekubo : So you get a call from the President saying?

Ms B Hogan : "I'm sorry, I didn't know that the Minister was doing this".

Mr F Lekubo : So you still maintain a relationship with him even today?

Mr I Naidoo : No, no, no, you mean Mpho got a call from the President, isn't it?

Adv N Kanyane : The President, yeah.

Mr F Lekubo : Oh, okay.

Adv N Kanyane : And the President said to Mpho that "Gigaba had fired you without me knowing".

Mr F Lekubo : I wouldn't trust that if (indistinct).

Adv N Kanyane : Madam, the number that you are using now is it the number you

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1 were using back in 2010?

2 Ms B Hogan : Yes, I have never changed it.

3 Adv N Kanyane : You never changed your number?

4 Ms B Hogan : Yeah. Let me just show you, so that you do have evidence - you will
5 have to come through - of the phone that I was using. The battery is
6 completely ... you know it was one of these old HTC's that I kept. So
7 this is where ...

8 Adv N Kanyane : And it still works?

9 Ms B Hogan : Well look, it only works if it is linked in.

10 Adv N Kanyane : Oh, you have to connect it?

11 Ms B Hogan : Yeah.

12 [Moving away from the microphone // Discussions amongst each other]

13 Ms B Hogan : So if ever you want access to this phone, it has got all the emails ...

14 Adv N Kanyane : The emails where you (indistinct)?

15 Ms B Hogan : Yeah. I can guarantee you that these are (indistinct), you know you
16 can see the ... you know, but if ever you need to have access you can
17 have that access and you know we can do searches for ...

18 Adv N Kanyane : Let's go to this one, 30 August.

19 Ms B Hogan : Yeah, we would have to look at the date, hey.

20 Adv N Kanyane : Yeah, this is when it is printed.

21 Ms B Hogan : So it is the 30th of August, you know.

22 [Discussions amongst each other]

23 Ms B Hogan : So those are the people that I sent the SMS to.

24 Adv N Kanyane : (Indistinct) she then replied?

25 Ms B Hogan : Yes, she replied here. You know you are quite welcome ... here, this

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1 is from Sandra Coetzee, this "SC", Sandra Coetzee. She replied to
2 Patima Hassan, my advisor, who forwarded that on to me and then I
3 got that reply from Cheryl, "I'm in India ... we will not be
4 terminating". So this would then be going into the SMS' that I sent

5 Adv N Kanyane : So this is ... you can search through "sent items" and the inbox?

6 Ms B Hogan : Yes.

7 Adv N Kanyane : It doesn't show a chain of conversations?

8 Ms B Hogan : You know I can't remember. You would really have to get your
9 technical people to go through that.

10 Adv N Kanyane : Yeah, it is good to know that the source of these are here (indistinct).

11 Ms B Hogan : Yes, you saw that, you saw (indistinct) here.

12 Adv N Kanyane : Yeah.

13 Ms B Hogan : It gives its current date, it is here. I can in the meantime probably
14 speak to a very good technical person and get it downloaded on to
15 my hard drive.

16 Adv N Kanyane : Yes.

17 Ms B Hogan : Andrew Shaw might be another person, because he was the DDG in
18 charge of Transport and Hennie might be another person who you
19 might want to speak to.

20 Adv N Kanyane : Okay. Do you have questions, gentlemen?

21 Mr F Lekubo : No, I think that is it from me.

22 Adv N Kanyane : You see if there is anything that we want to talk with you, we will
23 then make contact, Madam.

24 Ms B Hogan : Yes. Okay, I think that is the last number I had of his, okay, but
25 Sandra Coetzee might have his number as well, but you can also ...

1 | yeah.

2 Mr I Naidoo : So you were never offered anything in Government after ...

Ms B Hogan : When Zuma fired me Gwede was present, there were several Ministers. In fact Stoffie who has just died now, was fired as well and he offered me the Ambassadorship of Finland.

6 Mr F Lekubo : Oh, one of those things?

Ms B Hogan : So I said, "Thank you very ... Mister President, thank you very much, it was an honour to serve your country, but I'm not going to take up the Ambassadorship of Finland". I said, "You can't expect Comrade (indistinct) who had (indistinct) for 27 years to now go and work for 5 years in Finland".

12 Adv N Kanyane : In a strange country.

13 Ms B Hogan : Yeah, no, but I knew I was going to be -- you know after that you
14 know when you are not exceeding to what the President wants you
15 to do, you know you are going to be fired eventually, so I saved every
5 month like fury.

17 Adv N Kanyane : What is your view regarding ... now I just want to know what your
18 view is regarding what has been announced - was it the other day or
19 yesterday - regarding the President's approach to State-owned
20 enterprises now?

21 Ms B Hogan : It really, really worries me, because what I'm telling you is a start of
22 the process, which is almost like a President as an unguided missile
23 just getting involved in ...

24 Mr I Naidoo : Now he wants to make it official?

25 Ms B Hogan : And now there is a whole force. I am extremely worried about it. I

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1 would love to know what Cyril Ramaphosa has got to say, but a
2 President is taken over an Executive function here. I mean on what
3 authority is he doing this, you know? When is he going to have time
4 to govern and you know be a President when he is doing this? So
5 you know the State-owned enterprises are in real, real danger. Well,
6 you know it is not a pleasant space for them.

7 Mr F Lekubo : Yeah, that is abuse of authority, hey?

8 Ms B Hogan : It is abuse of authority.

9 Adv N Kanyane : Alright, let me ...

10 Mr J Naidoo : And what do you think of Pravin, how long does he have left?

11 Adv N Kanyane : Okay, let's finish off then. Thank you, Madam, for your time.

12 Ms B Hogan : Pleasure.

13 [Go off record // End of Meeting]

APPOINTMENT OF BOARD OF DIRECTORS IN STATE OWNED ENTITIES

South Africa

1. In addition to the Companies Act of 2008, the enabling legislation governing an SOE may regulate the board profile and composition, while the PFMA merely establishes the function of the Accounting Authority (or CEO depending on the Schedule the entity falls under). The Companies Act goes further to prescribe qualifying criteria for board membership.
2. The 'Handbook for the appointment of persons to boards of state and state-controlled institutions' (approved by Cabinet on 17 September 2008), issued by the Department of Public Service and Administration determines that those responsible for conducting the appointment process must be familiar with the statutory requirements that govern appointments to boards. The handbook, however, represents a stand-alone practical document which is not in any way prescribed in terms of any formal framework, regulation or legislation and few SOEs are aware of its existence.

International Best Practice

3. Boards of directors of state-owned enterprises (SOEs) play a fundamental role in corporate stewardship and performance. Over the last decade, OECD (Organisation for Economic Co-operation and Development) governments have sought to professionalise SOE boards, ensure their independence and shield them from ad hoc political intervention.

4. This synopsis seeks to shed slight on good practices drawing on national practices from over 30 economies who are member states of the OECD on the appointment of Boards of SOEs. The following are good practices adopted and implemented in the nomination and appointment processes of SOE boards:

4.1. Nomination framework and practices

- A robust nomination framework is one that clearly specifies the nominating power is transparent and is consistent in its application.
- Ministerial or executive powers normally have the ultimate responsibility for nominations. This brings legitimacy to the process, but it should not undermine the role of the ownership function.
- Where feasible, board appointments should be subject to co-ordination or consensus on a whole-of-government basis.
- Board appointments, even in wholly-owned SOEs, should be entrusted the annual general meeting of shareholders
- Establishing a transparent and consistent method to identify applicants from a wider pool of talent will improve board composition and bring uniformity in the assessment process.

- Specialised bodies in charge of advising or accrediting the nominations can bring further objectivity and transparency to the nomination process.
- The Board should be involved in the nomination process in an advisory capacity.
- Mechanisms should exist to facilitate non-government shareholders' participation in the board nomination process.

4.2. Board composition

- Persons directly linked with the executive powers should not sit on SOE boards. Other state representatives should be nominated based on qualifications, subject to specific vetting mechanisms.
- Independent directors should be independent from management, government and business relationships. Specific safeguards should be established to verify that nominees comply with requirements.
- Employee representatives can enrich board discussion; the appointment process should ensure that such persons are qualified, as well as representative of the SOE's staff.
- Certain eligibility requirements may be needed, but good practice increasingly relies on tailored approaches to identify the right mix between skills, experience and personal characteristics.

- For all other than direct ownership representatives, relevant commercial or financial expertise is viewed as essential qualifications.
- Reasonable limits on maximum number of board appointments are important to ensure that directors have sufficient time to carry out their duties.
- Diversity preferences may add value to boards, but should not rise to the level where the ability to attract candidates with the right skills and is imperilled.
- Restricting board membership to nationals should be limited to cases where there is a demonstrated need for such rules, considering that it can act as a barrier to attract the right talent

4.3. Examples of the appointment process in some member countries

- New Zealand operates a dual ownership model but with a centralised ownership support unit, the Crown Ownership Monitoring Unit (COMU). It has adopted a comprehensive approach to board appointments, from soliciting, vetting and recommending candidates through to conducting induction training after an appointment has been made.

COMU manages this process by advising the bodies responsible for appointment (i.e. the Minister after approval by a Cabinet Appointments and Honours Committee, and confirmation by Cabinet). It is responsible for developing a long and short list of candidates (with options) for

consideration by the minister; conducting due diligence on preferred candidates (including conflict of interest clearance, background checks); managing the cabinet approval process; and managing the formal appointment process.

- Finland apparently stands out in regards of modernising its selection procedures. The ownership agency outsources the development and maintenance of a database of pre-qualified candidates to a recruitment consulting firm. The outsourced contract is subject to competitive tender every four years.

This arrangement would appear to offer some advantages over maintaining an internal database: it provides access to the networks and resources of the recruiting firm, who have specialist skills in sourcing candidates for private sector boards, especially international candidates; it reduces the risk of political involvement in the selection process; and it provides for a cost-effective, transparent and consistent process for dealing with applications received from a wide variety of sources. A solidly structured process which is applied on a consistent basis has proved to be beneficial in avoiding a number of political sensitivities

Source: OECD (2013), *Boards of Directors of State-Owned Enterprises: An Overview of National Practices*, Corporate Governance, OECD Publishing, Paris, <https://doi.org/10.1787/9789264200425-en>

//attached is the full report of the OECD

CEO Appointment and Remuneration in State-owned Enterprises (SOEs)



	Appointment process		Remuneration		
	Structure of nomination process	Power of appointing CEOs	Who decides	Elements (fixed, performance related)	Level with respect to private sector
Austria	Notice of vacancy; one month to receive candidatures; evaluations even with consultants; after the choice publication.	Executives: Supervisory Board (joint stock companies); body representing the interests of the owners (Lini lab comp.).	Supervisory Board (joint stock companies).		Contracts modelled on the standards of the respective sectors.
Belgium		CEO: Government (in some cases consult with private shareholders); executives: Board on CEO's proposal.	Remuneration committee proposes to the board.	May be incentive elements in negotiation with the Minister.	
Czech Republic		CEOs designed by shareholders after selection process organised by boards.	In accordance with Commercial Code, Labour Code and SOE's statutes, Board signs the managements agreement.	Basic + rewards + long term rewards; sometimes a special reward on fulfillment of selected criteria.	
Denmark	Determined by Board.	Board.	Board.	Mainly fixed but most receive performance related bonuses.	Generally low.
Finland		Board of directors; State involved only as shareholder.	Board decides the bonuses schemes State as an owner takes step in the decision of incentive schemes.	Almost always performance related in some parts.	Should be competitive with but it is often slightly lower.
Germany	AGM	All the executives are elected by the supervisory board (except for smaller SOEs being limited liability companies).	Supervisory board (except for smaller SOEs being limited liability companies).	Fixed and performance-related elements.	Comparable to private sector except for (mostly smaller) companies in non competitive areas.

CEO Appointment and Remuneration in State-owned Enterprises (SOEs)

CESifo  DICE

	Appointment process		Who decides	Remuneration	
	Structure of nomination process	Power of appointing CEOs		Elements (fixed, performance related)	Level with respect to private sector
Greece	Established in each SOE's Statute elaborated by the Board.	In cases of Public Companies joint ministerial decision; in cases of SA the AGM.	Established in the SOE Statute elaborated by the Board.	Extra compensation, according to law if over performing firm.	
Hungary	Nomination according to ownership ratio, under company law.	GM	GM	Depending on the size of the company and performance related.	Generally lower.
Italy		State only as a shareholder.	Board upon proposal of the remuneration committee if any.	For nonlisted SOEs specific policies; almost always performance related.	
Netherlands		Supervisory board (selection and appointment).	Supervisory board with the approval of shareholders.		Comparable.
Poland		Supervisory board	The supervisory board decides according to remuneration law.		
Slovak Republic	There are selection commissions elected by the founder except at least one member that is elected by the employees.	Founders	Founders	Fixed with an annual bonus from the share of profit for directors.	There are upwards limits with respect to the average national wage.
Spain		Board under proposal of Dirección General de Patrimonio Estado and Minister of competence.		Most part fixed, some adopted the performance related part.	Generally lower.
Sweden	Ministry and chairman consult before appointments.	Board (one person representing the Ministry is there).	The board within specific public guidelines.	Salary, bonuses, sick insurance and pension schemes.	Guidelines state that remuneration should be competitive but not generally at a higher level than in corresponding private companies.

CEO Appointment and Remuneration in State-owned Enterprises (SOEs)



	Appointment process		Remuneration		
	Structure of nomination process	Power of appointing CEOs	Who decides	Elements (fixed, performance related)	Level with respect to private sector
United Kingdom	Open Competition, in accordance to the UK Government's "Code of practice for ministerial appointments to public bodies". Chair is on appointment panel.	Appointed by the shareholding minister after recommendation of appointment panel.	The shareholding Minister recommendation from remuneration committee.	Salary and performance related incentives.	Generally lower.
Norway		CEO: Board of directors with help of consultancy firms; leading executives: by CEO.	Board but Ministry circular with elements and level of remuneration.	Comprehensive of pension rights.	Competitive but not leading.
Switzerland	Established in the SOEs' Statute elaborated by the Board.	Board	Board	Fixed and performance related.	Less than the private sector pay.
Turkey		Appointed by the collective decision of the relevant minister, prime minister and president.	High Planning Council decides.	Fixed not performance related (salary + bonuses + pension + health insurance).	Less than the private sector pay level.
Australia	Established in the Entity Constitution or in the Legislation.	CEO: Board with review of Government.	CEO: Board in consultation with remuneration tribunal and shareholders ministers.		

CEO Appointment and Remuneration in State-owned Enterprises (SOEs)



	Appointment process		Remuneration		
	Structure of nomination process	Power of appointing CEOs	Who decides	Elements (fixed, performance related)	Level with respect to private sector
Canada	Most appointed by the State on the recommendation of the Minister responsible for the corporation and after consultation with the board of directors; new appointment process announced in 2004, requires the corporation to initiate the appointment process by identifying suitable candidates and making recommendations to the state.	With rare exceptions, rests with the state but the new process started in 2004 requires the corporation to initiate the process and Parliament has a new role to review recommended candidate.	State sets remuneration ranges and maximum annual bonuses, usually after a review by an independent advisory committee; movement in the salary range and bonuses decided annually by the state on the recommendation of the board and minister responsible for the corporation.	Salary plus an annual bonus; non-remunerative benefits set by the board of directors, taking in consideration the norms of the public and private sectors, and must be communicated to the state.	Must take into consideration practices in both public and private sectors.
Japan		Board, motion of selection approved by Finance or Public Management Minister.	For JT the board within specific limits; for NTT the company itself.	Performance related is not common.	
New Zealand		Board (government expectation on requisites).	Board (government expectations of up and down limits).	Performance related not uncommon.	Competitive but below private sector.
AGM: Annual General Meeting GM: General Meeting SA: Corporation (inc.) JT: Japan Tobacco Inc. NTT: Japanese Telecom Corporation.					

Source: OECD, Corporate Governance of State-owned Enterprises, Paris 2005, pp. 175-178.

NGOAKO ABEL RAMATLHODI



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

STATEMENT BY ADVOCATE NGOAKO ABEL RAMATLHODI

- 1 I am a senior member of the African National Congress (ANC) I have over the years been appointed to serve in Government. I was appointed as:
 - 1.1 The 1st Premier of Limpopo and served in office from 10 May 1994 to 22 April 2004.
 - 1.2 Deputy Minister of Correctional Services from 1 November 2010 to 25 May 2014.
 - 1.3 Minister of Mineral Resources from 25 May 2014 to 23 September 2015.
 - 1.4 Minister of Public Service and Administration from 23 September 2015 to 31 March 2017
2. Following my appointment, I received many congratulatory messages including one from Duduzane Zuma.
3. What was peculiar about Duduzane's message was that he asked to meet me and convey his message personally. At the time I responded by saying I was very busy in Cape Town, and that during weekends I would still be busy because of my political appointments.
4. Then after a few months I got a frantic call from Duduzane who was demanding to meet me. I arranged to see him at St Georges Hotel where we were having a National Executive Meeting. In that meeting he said to me he was sorry to meet me under those circumstances where he had to lodge a complaint against me, instead of meeting me in order to congratulate me.

NR

5. He went on to tell me that he had received information from two sources that reported that I have been going around bad mouthing him and his business associates, saying that they were involved in criminal activities.
6. I asked him who his sources were.
7. He mentioned two names, one from India and other from South Africa.
8. I do not remember those names because he promised to furnish me with the names in writing. That never happened.
9. He also mentioned that he told his father, the President, about these allegations. My response was that he grew up in front of me, so I was one of his uncles, as we were referred to those days by children in exile.
10. I went on to say that as his uncle, I do not need to run around reporting on him doing crime. I would simply summon him and ask him if he was doing crime and if he was, I would order him to stop or report him to the police. I went on to tell him that I will tell his father about our conversation.
11. His response was to ask me to meet Ajay Gupta in order to explain the situation to Ajay Gupta. I told him I don't know Ajay and I owe him nothing. He left the meeting on that note.
12. In the mean time I received a report from Adv. Mahlodi Mofhe that there was a request from the Guptas to meet me, and that he had told them that he did not think I would agree to meet them. I confirmed that I did not want to meet them. Please see the article attached hereto as Annexure A in particular paragraph 7. I confirm the contents of the article.
13. Around the same time the Director General ("DG") of the Department of Mineral Resources ("DMR"), Dr. Ramontja told me that there was a request from Guptas that we increase the order volume of the New Age Newspaper that was supplied to the department. I refused to authorize the request.
14. Dr. Ramontja also told me that during Minister Shabangu's term the Guptas would host the department in their Cape Town home during the Mining

Indaba. I indicated to the DG that this would not happen under my leadership of the department

15. A few months later I got a call from Duduzane who wanted to meet me on a Friday. I told him that I would meet him on Monday as he sounded desperate.
16. I then asked the DG Dr. Ramonija to inquire into what the issue could be. It emerged that one of the Gupta owned mines was non-compliant with safety regulations. Mr. Msiza who was then head of Safety confirmed to me that they had closed the mine because of non-compliance.
17. I was shown pictures of people working without protective clothes in that mine
18. I then decided to meet the President the following Monday instead of meeting Duduzane. In the meeting with the President I advised that the President should tell his son to lodge whatever complaints he might have with the Department and not with me, as that would compromise procedural protocols. The President promised to do so.
19. The next event had to do with Mr. Brian Molefe, who had suspended the Optimum mine contract to supply Hendrina Power Station with coal.
20. The reason as provided by Mr. Molefe (then Eskom Chief Executive Officer) (CEO) was that Eskom was owed ± Two billion Rand by Glencore. Mr. Molefe was refusing to meet with Glencore to resolve the issue. I had a meeting with Mr. Molefe to persuade him to meet with Glencore to resolve the matter.
21. The same evening Mr. Molefe called me to say Dr. Baldwin Ben Ngubane, his Chairperson wanted to meet with me. We then met in the office in the presence of some officials. At that meeting Dr. Ngubane basically instructed me to shut down all Glencore owned mines. He said that he needed a decision to be made in the meeting so that he could report to the President, who was leaving on a foreign mission on that day. I informed him that I was unable to take a decision like that without due processes being followed as these processes would enable me to make an informed decision.

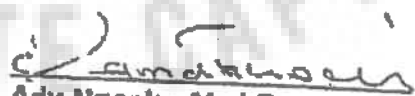
V2

- 21.1 Please See attached hereto the media report from Independent Media in which I confirmed that I was prepared to tell a judicial inquiry that Mr Molefe and Dr. Ngubane tried to force me to suspend mining company Glencore's licenses. This appears on paragraph 2 of Annexure B (Hand labeled purely for the purposes of the Commission's ease of reference). I confirm this media report
22. On paragraph 9 of the same article referred to in paragraph 21.1 herein above I confirmed that I advised that "I am not going to shut the mine". On paragraph 13 of the above mentioned article, I went on to confirm that "I will tell the truth in front of anybody"
23. I then asked them to supply me with the list of Glencore mines that was supplying Eskom with coal. I advised that in the meantime they must engage in negotiations with Glencore as agreed with Mr Molefe. The meeting ended on that note.
24. When the President returned from his trip he called me to Mahlabisa Ndlopfu and thanked me for having served the Department very well. He advised that he has decided to "promote" me to the Department of Public Service and Administration (DPSA).
25. While at the DPSA I received an application from the Department of Mineral Resources (DMR) requesting the DPSA to appoint Mr. Mzwanele Jimmy Manyi as Director General for the DMR. Mr. Manyi did not qualify, and therefore, the application was declined.
26. Mr. Manyi then went to Adv. Mofhe and asked why I had declined his application. Adv. Mofhe told me that his response was that we are bound by the rules of Public Service.
- 26.1 I would like to refer to my response and report to the Sunday Times regarding the appointment of Mr Mzwanele Jimmy Manyi. Please see paragraph 4 of Annexure C where I confirmed to the media that "I stopped that thing of Manyi" because he did not meet the requirement of a post graduate degree.

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- 26.2 I confirm that my other reason for declining his Application was further based on, and in line with, the contents of the Directive on Compulsory Capacity Development, Mandatory Training Days and Minimum Entry Requirements for Members of the Senior Management Services (SMS) which is attached hereto as Annexure D
- 26.3 I further point out that in paragraph 15 of Annexure B, it is recorded that after leaving the public service, Manyi worked for the Gupta's ANN7 TV station
27. On the 1st of April 2017, I woke up to the news that I was fired as Minister. Ironically in the last Cabinet meeting that I attended I had made a joke about April fool's day.
28. I was never formally (either personally or telephonically) informed of my removal from the cabinet post that I had been appointed to.
29. On the 16th May 2017 and at 11h58, during the interview with Lameez Omarjee and Mathew Le Cordeur of the ENCA, which is the 24 hours television news broadcaster owned by e.tv, I confirmed, as recorded in paragraph 5 of Annexure E hereto, that "I did not co-operate with the Gupta family members". Please see the article attached hereto as Annexure E.

Dated at Pretoria this 07 day of November 2018.


Adv Ngoako Abel Ramatlhodi


10/31/2016

Ramathodi: I told the Guptas to back off | Fin24

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All time to date (ZAR)

ZAR/USD

= 14.41 (-0.33%)

ZAR/GBP

= 18.82 (-0.11%)

ZAR/JPY

= 4.43 (-0.22%)

ZAR/USD

= 14.41 (-0.33%)

ZAR/RMB

= 18.43 (-0.31%)

Ramathodi: I told the Guptas to back off

May 16 2017 11:38 Emma Swanepoel and Matthew Le Grange

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1. **Joburg story** — During his time as minister of mineral resources, Ngwenyama Ramathodi said he was asked to meet with the Guptas, but refused to do so.

2. Ramathodi was speaking to eNCA when he revealed how he was asked by the president's son Duduzane Zuma to meet with Ajoy Gupta, his business associate at Tega Exploration and Resources.

3. "Since I became the minister of mineral resources, the Guptas tried to have meetings with me. I refused to have those meetings. I simply told them to back off," Ramathodi told eNCA.

4. He had reported this to President Jacob Zuma, who said it was not a problem. Ramathodi confirmed to eNCA that there was no continued pressure to meet with the family thereafter.

5. **"I did not cooperate with the Gupta members," Ramathodi revealed.**

6. This comes following a report by eNCA that Ramathodi said he was pressured in 2015 by Eskom CEO Edouard Molefe and chairperson Ben Ngwenyama to help the Guptas take over Gardiner's coal mine in 2015.

7. **READ: Ramathodi splits brass on how Molefe 'helped' Gupta**

Ramathodi said he was asked to suspend the licences of Gupta's mines. He refused to do so and was later removed as mineral minister by Zuma and redeployed to public service.

8. The president had told Ramathodi he had done a good job as mining minister, and that with his background he could manage public service. "I accepted these reasons and I will do," said Ramathodi.

9. However, Ramathodi added that he was willing to "share more" on a different platform, such as a judicial commission of inquiry as proposed by former public protector Thuli Maseko in her State of Gupta report.

10. Molefe was implicated in the report over procurement of coal contracts with Optimum Coal from linked to Gupta-owned Tega.



Ngwenyama Ramathodi: eNCA

COMPANY SNAPSHOT

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1/2

MAHLODI SAM MUOFHE



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

STATEMENT OF ADVOCATE MAHLODI SAM MUOFHE

1 INTRODUCTION

1.1 I, Mahlodi Sam Muofhe, am an adult person with full legal capacity.

1.2 I live in Sharonisa suburb, Randburg, Johannesburg.

2 EMPLOYMENT

2.1 My current employer is the Special Investigating Unit (SIU).

2.2 My designation is Chief Governance Officer.

2.3 In 2014 at the commencement of this current 2014-2018 Government Administration, former State President, Mr JG Zuma appointed Adv Ngoako Ramatlhodi as Minister: Department of Mineral Resources ("the DMR").

2.4 After his appointment Adv Ngoako Ramathodi appointed me as his Special Advisor.

2.5 I remained Special Advisor to Adv Ngoako Ramathodi throughout his deployment period from the DMR to the Department of Public Service and Administration ("the DPSA").

2.6 My employment as Special Advisor to former Minister Ramathodi, terminated by operation of the law, as my contract of employment was linked to his term of office, when former State President, Mr Zuma dismissed him from his Cabinet post on 31 March 2017.

3 GUPTA FAMILY

3.1 After my appointment in 2014 as Special Advisor to former Minister Ramathodi, I received a letter from the Gupta business, I cannot remember which one since they traded using different companies, directing that former Minister Ramathodi and I had to go to Saxonwold, i.e. the Gupta family residence, for dinner with the Gupras.

3.2 The purpose of the dinner was to discuss 'business' and a 'working relationship with them'.

3.3 Before I could respond to the directive, I received a telephone call, purportedly from one of the Gupta brothers. I cannot remember who, among them, it was, since to date I do not remember their names properly nor am I able to attach names to each one of them.

3.4 The telephone discussion centred on reminding me that 'there was a dinner date' the Minister and I had to honour with the Guptas. I responded to the caller in the negative in that I said I would not honour the directive personally, as I was not keen to meet the Gupta family. I however assured the caller that in reality it was not so much the two of us they wanted but probably former Minister Ramathodi. I said I would oblige and pass the directive to Minister Ramathodi.

3.5 I informed former Minister Ramathodi that the Gupta family directed us to report for dinner at their compound in Saxonwold. I informed him that I, for my part, told the caller that I was not interested in dining with or meeting them for that matter.

3.6 Former Minister Ramathodi said he was not available to meet or dine with them. He told me to decline the directive as well because he too was not keen to meet the Gupta family.

3.7 At the commencement of former Minister Ramatlhodi's term as Minister: Mineral Resources, the AMCU platinum belt strike which had been running for almost five (5) months and was unresolved, was at its peak. Under the guidance of former Minister Ramatlhodi we became engrossed in it and focussed on resolving it. We had no time for meetings or dining with people who had no bearing in resolving the strike. Thankfully former Minister Ramatlhodi, working collaboratively with all the affected stakeholders, succeeded in resolving that strike.

3.8 Former Minister Ramatlhodi, to the best of my recollection, never met with the Guptas or any member of their family.

4 MR DUDUZANE ZUMA

4.1 Former Minister Ramatlhodi informed me that Mr Duduzane Zuma called and wanted to meet him purpose of which was to 'congratulate him' on his appointment as Minister: Mineral Resources. I cannot remember the date since it was not essential that I record it.

5 MR BRIAN MOLEFE AND DR NGUBANE

5

5.1 Former Minister Ramatlhodi informed me about his engagements with Mr. Molefe and Dr. Ngubane, where they wanted to influence him to take decisions in his Ministry against a certain mining house. He told me that he declined to execute their instruction.

6 FORMER MINISTER RAMATLHODI'S VIEWS AND MINE DURING OUR STAY AT DMR

6.1 We refused to go to Saxonwold for 'a working relationship dinner' with the Guptas. Former Minister's refusal to do what he told me Mr. Molefe and Dr. Ngubane wanted him to do, led us to conclude that our stay at the Department of Mineral Resources will not last for too long.

6.2 We both resolved that we would rather be out 'begging on the streets' than allow anyone, the former President included, to corrupt us.

7 FORMER STATE PRESIDENT MR. ZUMA RESHUFFLES MINISTER RAMATLHODI

7.1 As anticipated by former Minister Ramatlhodi and I, former President Mr. Zuma on Tuesday 22 September 2015 reshuffled

his Cabinet and moved former Minister Ramatlhodi from the DMR to the DPSA.

8 OUR FEELINGS ABOUT THE RESHUFFLE

- 8.1 Former Minister Ramatlhodi was displeased by the decision, albeit long overdue in our view, in that it impacted heavily on the rhythm of the DMR, which he had put so much effort into, and service delivery. The mineral resources sector is one of the key drivers of our economy. Not only that, it is one of the biggest employers of labour in our country. It requires stable political leadership at all times.

9 MR NATHI NHLEKO

- 9.1 Mr Nathi Nhleko at the commencement of the current 2014-19 Administration was appointed by the former President Mr. Zuma as Minister: South African Police Service (SAPS).
- 9.2 Sometime in September 2014, former Minister Ramatlhodi informed me that he received a request from then Minister of SAPS, Mr Nathi Nhleko, that I serve as a member of a 'REFERENCE GROUP' which he was going to set up at SAPS.

9.3 My area of focus on the 'REFERENCE GROUP' was going to be advising the then Minister: SAPS on various matters not limited to, but including matters relating to the NKANDLA PROJECT.

9.4 On 30 September 2014 I received a letter of appointment to serve on the 'REFERENCE GROUP' from Minister Nathi Nhleko.

9.5 By the time I accepted the appointment, I had already started working in the 'REFERENCE GROUP'.

9.6 Attached herewith is (a) my letter of appointment; (b) a legal opinion I wrote on THE NKANDLA PUBLIC PROTECTOR FINDINGS AND REMEDIAL ACTION and (c) a memorandum I authored on THE VARIOUS REPORTS CONCERNING THE NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICES. Inclusion of these documents serves to highlight some of the work I did during the period I served in the REFERENCE GROUP set by former SAPS Minister, Mr Nathi Mhathwa.

9.7 On Thursday 28 February 2015, former Minister Nathi Nhleko requested me to meet him in Cape Town.

9.8 I flew down to Cape Town and held a meeting with former Minister Nhleko in his Cape Town office.

9.9 Former Minister Nathi Nhleko informed me to ready myself any time for an audience with the former President, Mr. Zuma because he wanted to appoint me as the Director of the troubled NPA.

10 MEETING FORMER STATE PRESIDENT MR ZUMA

10.1 I cannot remember the exact date in March 2015 when my meeting with the former President took place.

10.2 On numerous occasions I would be called by former Minister Nhleko's PA to be around Pretoria either at Sheraton Hotel or at former Minister Nhleko's official Pretoria residence.

10.3 After all these postponements, one evening at the former President's residence in Mahlabandlopfu Pretoria, the meeting finally took place.

10.4 By the time this meeting took place it was already in the air that I was the 'incoming' Director. NPA.

- 10.5 I had even given up in trying to rebut that rumour as senior journalists close to me at the time kept on requesting me to give them the earliest first bite for obvious reasons about my imminent appointment.
- 10.6 In attendance at the meeting were (a) former President Zuma; (b) former Minister Nhleko and (c) myself.
- 10.7 We discussed various matters of interest especially the ANC in general, since what bound us together in reality was the ANC.
- 10.8 I was keen to hear the real reason for the call to meet the former President. The former President, at a personal level, is such a personable person and protocol constrained me from asking him what the real purpose of the meeting was until he himself got to the point.
- 10.9 Former President opened the discussion on the real reason for the meeting. He wanted me to go and direct the NPA.
- 10.10 During question time, amongst a few that I asked him was (a) Why me? (b) What wrong did the person, Mr Nxasana, I was going to replace do as Director: NPA so that I do not 'commit' the same

10

wrongs? and (c) Mr President what will happen if I were to charge you personally as President for criminal offences?

On why me, the former President said he needed an excellent experienced senior disciplined government official like me who will not cow down to undue pressure.

On Nxasana, the former President said Nxasana charged Ms. Jiba unnecessarily and his reckless act unsettled the NPA in no small measure.

On criminally prosecuting the former President, he assured me that he will not interfere with my prosecutorial independence.

10.11 I then informed the former President that I thought, much as I probably possessed the requisite skills he saw in me, maybe it will be better for him to look for a Director from within the NPA itself. He warmed up to it greatly.

10.12 Within me as I came up with that proposition which he himself also told me that there was another stream of thought which expressed the same sentiment to him, that it would be better to appoint someone from within, I was already disturbed by the reason he gave me on why Mr Nxasana was fired. I felt that the

11

former President, much as he assured me that he would not interfere with my prosecutorial independence, simply wanted me to be the de jure Director of the NPA with Ms Jiba as the de facto Director and that I was not going to accept.

11 DMR

11.1 Over and above refusing to meet with the Guptas and refusing to bow to pressure which Mr. Brian Molefe and Dr. Ben Ngubane wanted to exert on former DMR Minister Ramatlhodi, our quest to regulate the mining industry in a just manner affected some mines' bottom line adversely.

11.2 On 3 August 2015 DMR issued Optimum Mine, then a subsidiary of Glencore Global Resources, with a Section 93(b) notice in terms of the MPRDA.

11.3 We suspended their trading licence for non-compliance.

11.4 Our action legally correct as it was irked some people.

11.5 We only lifted revocation after they had given us a satisfactory plan on how they were going to cure their non-compliance problems.

12 DPSA

12.1 On Tuesday 22 September 2015 former President, Mr Zuma, reshuffled Cabinet and moved former Minister Ramathodi from the DMR to the DPSA.

12.2 Former Minister Ramathodi, once at DPSA, restarted the process of reviewing the Ministerial Handbook.

12.3 Former Minister Ramathodi drastically altered the manner in which public servants in particular used to be employed to senior positions in government. Some who were appointed were often ill qualified for senior positions.

12.4 Former Minister Ramathodi came up with a stringent employment directive which stipulated requirements needed especially for senior positions in government e.g. DGs and DDGs.

13 DMR FORMER MINISTER MOSEBENZI ZWANE

13.1 Dr Thibedi Ramontja, a distinguished scientist who was the Director-General: DMR resigned.

13.2 DGs and DDGs are appointed by Cabinet.

13.3 The Minister of the Department of Public Service and Administration processes the appointment by Cabinet of DGs and DDGs after satisfying himself or herself that the candidates brought to him or her for processing, meet the requirements as set out in the advertisement.

13.4 During our period at DPSA with former Minister Ramathodi, a submission from former DMR Minister Zwane was brought in 2016 to process the appointment of Mr. Mzwanele Manyi as DG: DMR. Former Minister Ramathodi, on perusing the advert and Mr. Mzwanele Manyi's curriculum vitae, concluded that the panel of ministers who interviewed Mr. Mzwanele Manyi erred in proposing that Mr Mzwanele Manyi be appointed as DG: DMR because Mr. Mzwanele Manyi did not possess the qualifications which were stipulated in the advert for the post. The former Minister thus rejected the submission.

13.5 Mr. Mzwanele Manyi failed to make it as the DG simply because he did not have the qualifications needed for the post.

13.6 Failure to get the appointment which Mr Manyi felt he deserved did not go down well with him.

13.7 During that time in 2016 my late wife, may her soul rest in peace, was in hospital at Olivedale Clinic diagnosed with stage 4 cancer and I spent time in hospital. I received a call from Mr Mzwanele Manyi during one of my visits to the hospital.

13.8 Mr Mzwanele Manyi and I know each other well and I thought perhaps he had heard that my late wife was terminal in hospital hence the call.

13.9 The call was completely unrelated to what I thought Mr. Mzwanele Manyi wanted to come and see me about urgently, even though by then I had told him that I was at Olivedale Hospital. He insisted that he had to come and see me for a very urgent message he needed to convey, and said that it was not going to take time.

13.10 I obliged and Mr. Manyi came and met me at Olivedale Clinic.

13.11 He told me that the former President was extremely perturbed with me and former Minister Ramatlhodi because we did not support and process his (Mr. Manyi's) appointment as DG.

13.12 I was lumped in because of my position as Special Advisor to former Minister Ramatlhodi,

13.13 I told Mr Manyi that much as the former President was angry with former Minister Ramathodi. In particular, because I was not the Minister, I advised him that former Minister Ramathodi was not going to deviate from the requirements clearly stated in the advert simply to appease the former President by appointing Mr. Manyi as DG, DMR, a position he was clearly not suitable for.

14 MR THEMBA MASEKO AND "RETIRED FORMER DGs"

14.1 Mr Themba Maseko testified at this Commission that attempts by the "retired DGs" to meet with the former Minister Ramathodi failed.

14.2 True, they addressed a letter to former Minister Ramathodi in which they directly wanted him to "reign in the former State President for mismanaging the country".

14.3 I engaged personally with some of the retired DGs on their letter as we know each other very well.

14.4 I informed them that former Minister Ramathodi comprehended fully their concerns on the mismanagement of the resources of

government as a consequence of the lack of quality ethical leadership on the part of the former President.

14.5 Fact of the matter was, they shopped at a wrong forum, wanting former Minister Ramatlhodi to intervene and reign in the former President.

14.6 Former Minister Ramatlhodi simply did not have any jurisdiction over the former President.

14.7 Former Minister Ramatlhodi himself was a victim of former President's irrational reshufflings.

15 FORMER STATE PRESIDENT ZUMA DISMISSES FORMER MINISTER RAMATLHODI

15.1 Former State President Zuma subsequently dismissed former Minister Ramatlhodi as Minister: DPSA.

15.2 Former Minister Ramatlhodi and I anticipated here as well that by not appointing Mr. Manyi, the former President was once more going to use his sharp axe to chop former Minister Ramatlhodi completely from his Cabinet.

17

18 CONCLUSION

SA lost a professional Cabinet Minister in Advocate Ramatlhodi, simply because he at all material times refused to execute irrational instructions either from former President himself or by extension, those who purported to have been sent by him with dubious mandates.

Signed on the 16th day of November 2018 at SIU offices, PRETORIA.



Signed by: Advocate MS Muofhe

FIKILE MBALULA



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

BEFORE THE HONOURABLE DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF
SOUTH AFRICA: MR RRM ZONDO

AFFIDAVIT

I, the undersigned,

FIKILE MBALULA

do hereby make an oath and state the following:

1.

I am an adult male person, currently employed by the African National Congress ("ANC"), a political party, as the National Head of Elections for the party. The ANC's principal place of business is situated at Chief Albert Luthuli House, 54 Sauer Street, Johannesburg.

F.R.

L.M.

2.

The facts contained herein are, save where I state the contrary or the contrary otherwise appears from the context, within my own personal knowledge. To the best of my belief, they are both true and correct. To the extent that I make submissions of a legal nature in this affidavit, I do so upon the advice of my legal representatives, which advice I believe to be true and correct.

3:

NATURE AND PURPOSE OF THIS AFFIDAVIT:

This affidavit is intended to serve before the Judicial Commission of Inquiry into allegations of State Capture and corruption in the public sector ("Commission"). I am advised that the Commission's mandate, so far as is relevant to the contents of this affidavit, is to investigate and assess, *Inter alia*, the following:

"1.3. whether the appointment of any member of the National Executive, functionary and/ or office bearer was disclosed to the Gupta family or any other unauthorised person before such appointments were formally made and/ or announced and if so, whether the President or any member of the National Executive is responsible for such conduct"

4.

I depose to this affidavit at The Commission's request. So far as I am aware, the reasons why I have been invited to depose to this affidavit may be summarised as follows:

4.1. On or about October 2018, I understand that a notice in terms of rule 3.3 of the Commission Rules was sent in order to invite me to attend at the proceedings before the Commission on the 27th of November 2018. I pause to point out that I did not receive this notice on or around the date that it was sent. The reason for this appears to be that it was sent to an incorrect address: I no longer reside at the address to which the correspondence was sent. I last resided there in 2009.

4.2. The reasons for my invitation to attend at the proceedings before the Commission were twofold:

4.2.1. to answer to certain allegations made by Retired General Siphwe Nyanda ("General Nyanda"); and

4.2.2. to answer to certain allegations made by Mr Trevor Andrew Manuel ("Mr Manuel"), in both oral testimony before the Commission on 28 February 2019, and in a written affidavit.

4.3. I have had the opportunity to peruse and consider the allegations I refer to above. The allegations pertain to me and to my conduct, particularly as it relates to the Gupta family. I am advised that, if they were permitted to go unanswered, they have the potential of implicating me unfairly and adversely. I am therefore grateful for the opportunity to respond.

4.4. My response to the allegations is set out below. It will be apparent from my response that there are certain allegations made by Mr Manuel which conflict with the version of General Nyanda, and which are in fact not correct. I shall elaborate upon the specific errors in the paragraphs that follow. To this end, I shall organise the remainder of this affidavit as follows:

4.4.1. First, I shall set out the correct version of the events that are relevant to the allegations I have referred to above;

4.4.2. Secondly, I shall address the allegations of General Nyanda; and

4.4.3. Thirdly, I shall address the allegations made by Mr Manuel, and I shall specify those of Mr Manuel's allegations that are incorrect.

5.

THE CORRECT VERSION OF EVENTS:

- 5.1. At the NEC meeting of August 2011, I informed the members of the NEC of an incident in which I had received a call from Ajay Gupta congratulating me for being appointed as the Minister of Sports before the appointment had taken place or at least before it had been communicated to me by the President;
- 5.2. Although, I had appreciated the subsequent appointment as Minister I felt angered and perturbed by the fact that such news of my appointment had been leaked to Ajay Gupta, or were otherwise known by him, in a way which seemed to suggest that there were persons who were improperly privy to knowing the appointment of other persons in cabinet posts, before such appointments had been formally announced even to those persons, themselves.
- 5.3. This occurred at a time that the country, its security services and the media were focused on rumours or allegations concerning the influence of the Gupta family on government generally and, specifically, on the President.
- 5.4. At that time, the same debate was ongoing within the structures of the NEC, which is the highest decision-making body of the ANC. In light of the above and the values I hold as a member of the ANC, I felt an obligation to inform the other members of the NEC about my undesirable experience, and I did so.
- 5.5. I was extremely troubled that Ajay Gupta had acted as he did, and I was emotionally distraught that my appointment to my position, which I considered

a great honour, might be tainted by circumstances that were beyond my control. The reason for me doing the above was to express my anguish and distaste at the conduct of Ajay Gupta.

5.6. My purpose in doing the above was to alert the other members and promote consciousness about such issues. I also did this in the interests of transparency, and to seek a political intervention from the NEC, which seemed to me to be the appropriate body to address the issue.

5.7. I address the versions advanced by General Nyanda and Mr Manuel on the above basis.

THE VERSION OF GENERAL NYANDA

5.8. General Nyanda's version of events is contained in an affidavit dated 2 November 2018, which has been furnished to me. In summary, General Nyanda avers as follows:

5.8.1. He confirms that the NEC meeting to which I have referred took place, and that he attended the meeting:

5.8.2. He confirms that I told the meeting that I "had been told by the Gupta brothers or one of them before (my) actual appointment that I would be elevated from the position of Minister of Sports"

5.8.3. He confirms that given that I was subsequently so appointed, I "made the conclusion that the Gupta brothers had prior knowledge of the cabinet reshuffle" that led to my appointment and

5.8.4. He states that "[remarkably] President Zuma did not address this important input by Fikile Mbalula, which touched on the astounding claim".

5.9. It is apparent from my summary of the correct version of events that General Nyanda's version of events accords with my own factual version. I confirm that it is correct. The version of Mr Manuel stands on a different footing. I shall explain why in more detail below.

6.

THE VERSION OF MR MANUEL:

6.1. In Mr Manuel's testimony, he appears to make the following relevant assertions:

6.1.1. I had been called or summoned to the Gupta family's Saxonwold home to be congratulated on my appointment as a Minister of Sport;

6.1.2. I had met with the Gupta brothers at their home in Saxonwold;

6.1.3. I had a pre-existing relationship with the Guptas prior to my informing the NEC of the call I received from Ajay at the meeting of August 2011;

6.1.4. My appointment as Minister of Sport was suspicious, because I did not have the requisite skills and experience to be appointed as a Sports Minister;

6.1.5. I have never publicly denied the allegations made by Mr. Manuel in letters he wrote to me which were published in the media; and

6.1.6. My outburst and reporting on the conduct of Ajay Gupta was triggered by the intense discussions with regard to the influence of the Gupta family on the Government.

7.

I wish to state on record that none of the allegations I have set out above are correct. I address each of them specifically, as follows:

7.1. In regard to the allegations of being summoned to the Gupta family house:

F.A.

L.M.

7.1.1. I never said (during the meeting in question) that I was summoned or invited to the Gupta family house.

7.1.2. What I said was that I received a call from Ajay Gupta congratulating me for being appointed a minister approximately 24 hours before the president advised me of the appointment;

7.2. In regard to the allegation that I had been informed by Atul Gupta about my appointment as Minister:

7.2.1. This is factually incorrect.

7.2.2. The person whom I said he called me was Ajay Gupta.

7.3. In regard to the allegation that I never publicly denied Mr Manuel's account of what I informed the NEC meeting in August 2011:

7.3.1. I have indeed denied Mr Manuel's allegations in the letters which we exchanged. These letters were published in the Daily Maverick, as one example. I attach a copy of the relevant Daily Maverick article hereto marked "FM1".

7.3.2. In the letter of the 17 June 2019, I stated that *"Manuel decided not to deal with the substantive issues I raised in my opinion but carry on at tangent..."*.

7.3.3. In the same letter, I stated that *"Manuel did not understand what my tears were about"*. My pain and anguish, as I have explained above, concerned in particular the manner in which the Guptas were perceived to be conducting themselves.

7.4. In regard to the allegation that my appointment as Minister of Sport was suspicious because, in the view of Mr Manuel, I did not possess the necessary skills and experience for the post:

7.4.1. Mr Manuel should himself appreciate that prior experience in a post is not a necessary condition for an appointee to be successful.

7.4.2. Mr Manuel has for instance praised Mr Pravin Gordan, who had a pharmaceutical qualification but succeeded at SARS. Mr Manuel himself had no qualification in Finance when he was appointed as Finance Minister.

7.5. In regard to the allegation that my outburst was triggered by the intense discussion of the influence of the Gupta family:

7.6. There was no intense discussion at the NEC meeting in regard to the Guptas. General Nyanda's summary of the meeting bears this out.

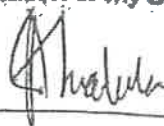
7.7. The true reason for my outburst was due to my anguish against the conduct of the Gupta member for phoning to congratulate me for an appointment as Minister before the president announced it formally which gave an impression he had access to the information prior to it being formally announced. I felt it necessary to inform the other members of the NEC. In fact, I was the first to denounce the actions of the Guptas in an NEC meeting.

8.

CONCLUSION

8.1. Even in his statements and record Mr. Manuel does not confidently assert that he has a full recollection of what I said at the NEC meeting of August 2011. I do not know the reason for his erroneous recollections, and I do not wish to speculate as to why the errors I have set out above were made.

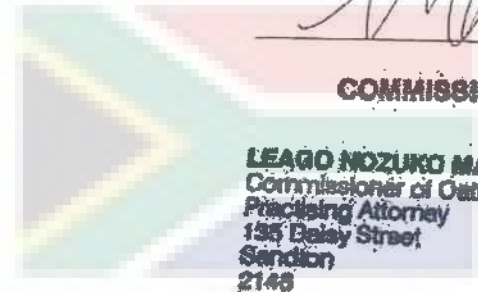
8.2. I would, however, be happy to make any further clarifications that the Commission may deem necessary at the presentation of my evidence.



FM-013

DEPONENT

SIGNED and SWORN to before me at SANDTON on this the 18th day of MARCH 2019, the deponent having acknowledged that he/she knows and understands the contents of this Affidavit which was deposed to in accordance with the regulations governing the administration of an oath as more fully set out in Government Notice No. R1268 of July 1972 as amended by Government Notice R1648 dated 19th August 1977.


COMMISSIONER OF OATHS
LEAGO MOZUKO MATHABATHE
Commissioner of Oaths
Practising Attorney
135 Daisy Street
Sandton
2148

ANGELO AGRIZZI



AFFIDAVIT OF ANGELO AGRIZZI

I, the undersigned,

ANGELO AGRIZZI

declare under oath as follows:

Introduction

1.

1.1 I am an adult male businessman. I live in Johannesburg. I was born in Germiston, Gauteng. I am a South African Citizen.

1.2 I am married with children.

1.3 The facts contained herein fall within my own personal knowledge, unless the contrary appears from the contents hereof, and to the best of my belief are both true and correct.

2.

I understand that in my statement that I will incriminate myself in respect of potentially serious offences. In addition, I failed to report these acts as apparently required in terms of the provisions of Sec 34 of the Prevention and Combating of Corrupt Activities Act, Act 12, 2004 (PRECCA). I give this evidence freely and voluntarily. I have been offered no incentive or reward.



3.

I point out that during my employment at Bosasa Operations (Pty) Ltd ("Bosasa"), I was exposed to many unlawful actions over a long period of time. It is possible that I may not for purposes of this affidavit or even when giving evidence, recall every such incident or every such incident in full detail. Should additional unlawful incidents or further detail not dealt with herein be brought to my attention or should specific aspects, circumstances, or questions trigger my memory, I request an opportunity to supplement my affidavit to deal with such allegations.

4.

I also need to point out that when I was employed at Bosasa, I became entangled in a web of corrupt activities and deceit, to the extent that I became blunt in my perception of and resistance to the offences. I fully understand that this is no excuse. I merely seek to explain the context of my unlawful conduct. Once I was outside the Bosasa employment circle the full impact of the Bosasa group of companies' and my unlawful activities gave me direction not to sit back and to pretend that nothing unlawful had happened. I decided to cooperate with and to disclose to the law enforcement agencies and agencies relevant thereto all the unlawful conduct I can remember to lay bare the web of unlawful activities at Bosasa in which I participated. I have pointed this out to explain that the culture of unlawful activities at the Bosasa group of companies and the income I received as a result blunted my morality and caused an inability to timeously break out of my self-created comfort zone.

5.

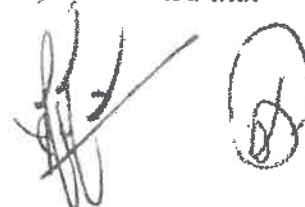
With the above in mind I deal with the unlawful activities that I am able to recall and recount herein.

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My Personal History

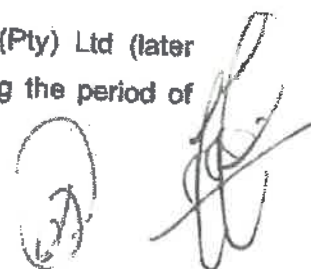
6.

- 6.1 I matriculated from Germiston High School in 1985. During my school years I worked in a local bakery to fund studies and learn how to manage a business.
- 6.2 I registered and enrolled for a three-year catering diploma (full-time) at Wits Hotel School in 1986. I paid for my studies by working after hours as a chef at Jordan's restaurant. After my first year of studies I received an award as the best student. Then I unfortunately realised I was not able to work and study and therefore had to leave my studies.
- 6.3 I continued to work for Jordan's restaurant until 1988. In 1989, I was employed as a project manager for industrial catering by Hospitality Food Services.
- 6.4 I left Hospitality Services. I obtained employment from Gencor Mining in Evander at Winkelhaak Mine as a project catering manager.
- 6.5 During 1993 I accepted a position as project manager in catering at Supervision Food Services at Western Platinum Mines in Marikana, Rustenburg. I relocated with my family. I was then promoted to the Nissan Rosslyn site in 1994 and again I relocated with my family.
- 6.6 In 1997, I applied for a position at Grantham Integrated Food Services and was stationed at Oryx Mine, Welkom for a period of 8 months. I was then promoted to Impala Platinum Mines in Rustenburg. In 1998 I was promoted to Inland Regional General Manager and was stationed at Woodmead regional inland office. My wife was employed and worked with



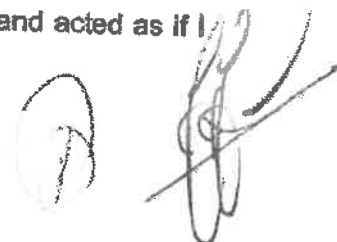
me as my personal assistant. I received numerous promotions.

- 6.7 Grantham Integrated Food Service then became Molohe Foods.
- 6.8 As part of my work for Molohe foods I was, amongst other things, tasked with the oversight of the contract at Scott Hostel at a mine in Klerksdorp. It was here that I worked with Danie Liebenberg who was the hostel manager. He told me about a company called Dyambu (Dyambu Operations (Pty) Ltd) and a person called Gavin Watson. He told me that Dyambu was exploring the possibility of replacing Molohe as the caterer at the Scott Hostel. In order to gain the support of the workers residing in various hostels, Gavin Watson was providing T-shirts and caps (branded Dyambu) to the workforce to protest against the current catering contractors (being Molohe) and to support Dyambu in obtaining the catering contract. It was at the same time that I became aware of the fact that Dyambu had also approached the other mine hostels where I managed catering contracts on behalf of Molohe.
- 6.9 During February or March 1999, I was in Port Elizabeth on business. At the airport, travelling back to Johannesburg, I incidentally overheard a gentleman in my vicinity having a telephone conversation in English and Xhosa. I heard references to: "Dyambu", "mining" and "catering". It later turned out that the gentleman was Gavin Watson, whom I had been told about.
- 6.10 Although I was not unhappy at Molohe, I was looking for a new challenge. Dyambu had good BEE credentials and therefore good growth prospects. I had also received my share options and wanted to encash them.
- 6.11 I was employed by the company Dyambu Operations (Pty) Ltd (later known as Bosasa Operations (Pty) Ltd) ("Bosasa") during the period of



1999 to 2017, in various positions. I set out below a summary of my employment history at Bosasa.

- 6.12 I obtained the contact particulars of Dyambu and called them to speak to Gavin Watson. Although I did not know whether there were any vacant positions, I wanted to introduce myself to Gavin Watson and specifically to discuss with him what I believed I could offer the company in an attempt to possibly be employed by the company. They wouldn't let me speak to him and transferred the call to David Sadie (he was the Human Resources Manager). A meeting was set up with Danny Mansell (herein after referred to as Mansell), who at the time was the managing director. This meeting was held at their Randfontein offices.
- 6.13 At the meeting I introduced myself and informed Mansell of my experience in the field of catering. I indicated that I was available to accept a position at the company should I be offered a post. During this meeting we discussed the procedures and contents of tenders for catering with specific reference to hostels at mines. I pointed out flaws in Dyambu's tender submissions and we discussed the possible improvement thereof informally.
- 6.14 The following day I received a call and arrangements were made for me to meet with Gavin Watson the day after being Thursday, 7 May 1998.
- 6.15 At this meeting, I met Gavin Watson. Mansell was also present. Gavin Watson offered me a position as marketing co-ordinator at the same salary I earned at Molohe, and informed me that if I accept the position, my employment would commence the next day. To my surprise, and before I responded to the offer, I was handed a company tie and jacket. Mansell raised his concern about the financial implications of my appointment to the company but Gavin Watson insisted and acted as if I

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had already accepted the position. He took me around the office and introduced me to the staff as his "new right-hand man". I was also told by Gavin Watson that I would be receiving a new company car and I could choose what I would like. My mind was made up. I wasn't going to decline the offer and we all continued as if I had formally accepted the offer.

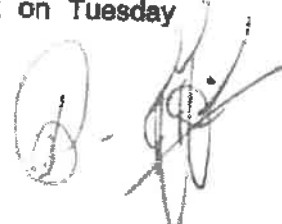
- 6.16 After being introduced to everybody Gavin Watson discussed the catering contract at Leeudoring Goldfields Mine with me. I informed him that I was responsible for the catering proposal, which had been submitted by Molope. That proposal was accepted and the agreement with Molope was to be signed the following Monday at 13:00. Gavin Watson convinced me to terminate my employment at Molope with immediate effect and to accompany Dr Jurgens Smith the following Monday to meet with Mr Patrick Mayne and a union representative, Mr Charles Freeland, to offer them an alternative to Molope Foods.
- 6.17 The reason for this was that there were three Goldfield Mines which had invited catering proposals, and whoever was awarded the one would be awarded the others. Gavin Watson for some time had been interested in doing the catering at Kloof Mine (which is a Goldfields Mine) and had submitted a proposal for that contract.
- 6.18 That afternoon, the 7th of May 1998, I proceeded to the office at Molope and resigned with immediate effect. I handed my resignation letter to Mr Gregg Lacon-Allin.
- 6.19 I started my employment at Dyambu Operations (Pty) Ltd on 10 May 1999. I accompanied Dr Jurgen Smith to Leeudoring Mine and convinced them not to sign the agreement with Molope.



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- 6.20 Initially, I was employed by Bosasa in a marketing position. From very early on, I worked very closely with Gavin Watson. I accompanied him to various meetings. I reported directly to Gavin Watson. I would be involved with him on a daily basis and I had to be available at all times. As time went by, I got the impression that he would bounce all his decisions off me. It made me feel very important and valued.
- 6.21 Gavin Watson told me that he had paid money to certain members of unions in exchange for them to arrange the support of their members pertaining to Dyambu tenders. Previously he had told me he helped "comrades" financially, for example, for funerals, for studies and other things. Later on, I was present when money was given to some of these individuals. Jackson Mafika, the regional head of the NUM would often attend to meetings with Gavin Watson at our offices. I was present at some of these meetings where money was handed to him by Gavin Watson. His vehicle was also maintained by Dyambu.
- 6.22 In October and November 1999 Dyambu was awarded catering contracts at Kloof and Libanon mines. It was then decided to rebrand Dyambu as Bosasa.
- 6.23 Within a year I was responsible for marketing, procurement and human resources. I was tasked with getting the Bosasa brand out into the market. I would do presentations, brochures, costing models and proposals. I later also became responsible for operations.
- 6.24 As part of my duties, I also became responsible for the management and submission of tenders.
- 6.25 Right from the outset, Gavin Watson would openly identify himself as a Christian. He would arrange prayer meetings at work on Tuesday



mornings. The invitation to attend was extended to everyone but only a select few would attend these meetings. Between 12 to 15 people, of which I was one, would attend these prayer meetings which were led by Gavin Watson. He would share a verse from the bible, it would be discussed and everyone would have to pray out loud. I, as Gavin Watson's right-hand man was expected to attend these meetings. During approximately 1999, at the suggestion of another employee, Leon Van Tonder, these prayer meetings were eventually held every day from 06:30 to 08:00. Gavin Watson told us that if any one needed to know what was happening in the company they should attend the morning prayer meetings. Pastors and prophets would be invited to lead the prayer meetings on occasion. From approximately 2009, an all-night prayer meeting would be arranged every alternate month. I would attend and show face for the staff. Gavin Watson was a charismatic leader and exercised a high degree of influence over his employees.

- 6.26 A schedule of people I dealt with (including government officials) and the positions they held from time to time is attached as Annexure "A".
- 6.27 I resigned from my employment during August 2016.
- 6.28 On or about 25 August 2016, I entered into a "Settlement Agreement" with Bosasa Operations (Pty) Ltd, Consilium Business Consultants (Pty) Ltd, Daniel John Watson, Gavin Joseph Watson. This agreement was entered into to secure my re-employment with the business for a period of ten (10) years after I had resigned. I attached the agreement as Annexure "B".
- 6.29 I attach as Annexure "C" a copy of a second agreement headed, "Incorporating Provisions Regarding Consultancy Agreement" which was entered into on or about 18 March 2017. This agreement was concluded between Bosasa Operations (Pty) Ltd, Consilium Business Consultants



(Pty) Ltd, Leading Prospects Trading 111 (Pty) Ltd, Gavin Watson and myself. This agreement was a separation agreement. It served to replace the settlement agreement, Annexure "B". The agreement accepted my resignation from Bosasa Operations (Pty) Ltd subsequent to my serious health issues and secured me as a consultant for Consilium Business Consultants (Pty) Ltd and Leading Prospects Trading 111 (Pty) Ltd.

6.30 My income and other benefits from my employment at Bosasa from 1999 to 2016 appear from the table below. I attach hereto the IRP 5 forms and proof of earning for myself and my wife marked Annexure "D1" to Annexure "D22". I wish to explain the following:

6.30.1 My salary between the period 1999 to 2004 was partly in my name and partly in that of my wife's. The total of the sum was however, paid directly into my account. This was done on the advice of Dr Jurgen Smith in order for me to obtain a pension benefit and for tax purposes. Also relevant is the fact that my wife was my Personal Assistant at Molohe. She had now been dismissed as I had joined an opposition company. This information is supported by the information on the IRP5's.

6.30.2 Subsequent to 2004 and until 2016, the payment of my salary was split between Bosasa Operations (Pty) Ltd and Consilium Business Consultants (Pty) Ltd. This information also appears from my IRP5's.

6.30.3 Additional to my income, I received monthly cash payments from Gavin Watson. I was informed that Gavin Watson had made the PAYE payments on the amounts.

6.30.4 I also received gifts from Gavin Watson. These included from



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expensive clothing, holidays and other perks.

6.30.5 In 2013, certain book entries were made indicating payments received by myself and other individuals. These amounts were never paid over and were mere book entries.

TAX YEAR	ANNUAL EARNING: A Agrizzi	ANNUAL EARNING: D. Agrizzi	ADDITIONAL BENEFIT AND VALUE (my estimates)		CASH PAYMENT RECEIVED
1999	R187 000-00	R400 000-00	R45 000-00	Holiday to Mauritius	R60 000-00
2000	R190 000-00	R480 000-00	-	-	R60 000-00
2001	R192 000-00	R517 670-00	R65 000-00	Holiday to Mauritius	R240 000-00
2002	R202 341-00	R700 000-00	R78 000-00	Holiday to Italy	R240 000-00
2003	R234 382-00	R720 000-00	R85 000-00	Holiday to Mauritius	R240 000-00
2004	R406 206-00	R720 000-00	R30 000-00	House painted	R240 000-00

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TAX YEAR	ANNUAL EARNING PAID BY BOSASA	ANNUAL EARNING PAID BY CONSILIUM	ADDITIONAL BENEFITS AND VALUE (my estimates)	CASH PAYMENT RECEIVED
2005	R647 065-00	R420 000-00	R70 000-00 Holiday to Zanzibar	R240 000-00
2006	R665 705-00	R435 000-00	R170 000-00 Assistance vehicle trade-in	R240 000-00
2007	R1 882 008-00	R435 000-00	-	R240 000-00
2008	R1 120 538-00	R445 000-00	R350 000-00 2nd hand Audi Q7	R240 000-00
2009	R963 969-00	R780 000-00	-	R300 000-00
2010	1 127 312-00	R300 000-00	R110 000-00 Holiday to Italy	R300 000-00



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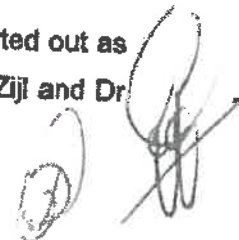
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TAX YEAR	ANNUAL EARNINGS PAID BY BOSASA	ADDITIONAL VALUE (my estimates)	BENEFITS AND	CASH PAYMENT RECEIVED
2011	1 644 692-00	R170 000-00	Holiday Mauritius	to R300 000-00
2012	1 968 964-00	-	-	R300 000-00
2013	5 119 209-00	2 400 000-00	Bonus	R300 000-00
2014	R3 406 643-00	R120 000-00	Tour Ferrari	R300 000-00
2015	R3 964 960-00	R110 000-00	Holiday Italy	R300 000-00
2016	R4 308 867-00	R75 000-00	Grand Prix Abu Dhabi	R300 000-00
2017	R27 391 651	R22 000 000-00	Payments in terms of retention and separation agreements	-

The Structure of Companies And History of Bosasa

7.

- 7.1 To the best of my knowledge Dyambu Operations (Pty) Ltd started out as Meritum Hostels (Pty) Ltd. The shareholders were Fanie Van Zijl and Dr



Jurgen Smith. Its main operations were the contracts at a Youth Development Centre (Mogale Youth Development Centre previously known as Meritum Youth Development Centre) and Lindela where youth awaiting trial and undocumented migrants were detained. It also provided catering to Blyvooruitzicht Mine and Leslie Gold Mine hostels. I was informed by Gavin Watson that the shares in Meritum Hostels (Pty) Ltd were later sold to himself, Mansell and Dyambu Holdings (Pty) Ltd.

7.2 An organogram of the structure of the Bosasa group of companies and its affiliates and associates as it appeared at the time that I left Bosasa is attached as Annexure "E1" to Annexure "E2". I did not compile this document. I do not know who drafted this document. I cannot verify the veracity of the information that appears therein but I submit that it will provide a good overview to understand the references to various companies and people referred to in this affidavit. From this document, it appears that the parent company is Bosasa Empowerment and Management Services (Pty) Ltd (Registration No. 1999/020406/07), with various companies and entities as shareholders. Various companies operated as part of the Bosasa group of companies. Throughout my employment with Bosasa, the structure, shareholders and directors of all of these companies changed so often that it was difficult to keep track. For purposes of this affidavit, the following companies will be specifically referred to:

7.2.1 Bosasa Operations (Pty) Ltd which is now African Global Operations (Pty) Ltd;

7.2.2 Bosasa Security (Pty) Ltd which later became Black Rox Security Intelligence Services (Pty) Ltd;

7.2.3 Bosasa Youth Development Centres (Pty) Ltd;

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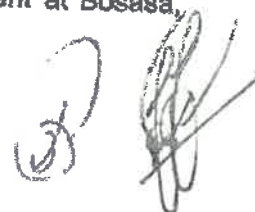
- 7.2.4 Leading Prospect Trading 111 (Pty) Ltd t/a Lindela;
- 7.2.5 Sondolo IT (Pty) Ltd which is now Global Technology Systems (Pty) Ltd;
- 7.2.6 Phezulu Fencing (Pty) Ltd (which does not appear on the organogram); and
- 7.2.7 Consilium Business Consultants (Pty) Ltd (which does not appear on the organogram). This is a company in which the late Dr Jurgen Smith previously had an interest which will be later referred to in this affidavit.
- 7.3 I wish to point out that I will in this affidavit refer to various entities. At this stage I cannot recall the full particulars of all these entities and will refer to them to the extent to which I can recall their details.
- 7.4 The person with the responsibility for establishing the companies in the Bosasa group of companies was the Company Secretary of the Bosasa group of companies, Tony Perry.
- 7.5 From time to time Gavin Watson and Seopela mentioned names to me of those involved in the Bosasa group of companies. He also mentioned names of government officials who I understood to be shareholders of companies in the Bosasa group of companies. I cannot vouch for the accuracy or veracity of these reports. I am willing however to disclose what was told to me should the Chair wish me to do so.
- 7.6 The name of Meritum Hostels (Pty) Ltd was changed to Dyambu Operations (Pty) Ltd.



- 7.7 Initially, Gavin Watson was not actively involved in the day-to-day running of the company. This was Mansell's responsibility. Gavin Watson, in another capacity, was a casino licence consultant to Sun International. Subsequent to his contract with Sun International being terminated he became actively involved in the running of the Dyambu Operations (Pty) Ltd. This was during 1999.
- 7.8 When I was employed at Dyambu Operations (Pty) Ltd, the shareholders of the company were Mansell and Gavin Watson. Each owned 50%.
- 7.9 During 1999 / 2000 the name of Dyambu Operations (Pty) Ltd was changed to Bosasa Operations (Pty) Ltd. This was after the company was awarded the Kloof Goldfields Mine as well as the Libanon Goldfields Mine catering contracts. The name "Bosasa" means "the future". It was chosen by Lindie Gouws, with whom Gavin Watson had a close relationship and trusted.
- 7.10 During approximately December 2001, the Bosasa group of companies moved into the Mogale Business Park situated in Gauteng at 1 Windsor Road Luipaardsvlei near Krugersdorp.
- 7.11 At the same time an acrimonious power struggle between Mansell and Gavin Watson resulted in Mansell selling his shares to Gavin Watson, who then owned 100% of the shares. These shares would later be divided amongst various entities for, amongst other things, fronting for BEE status purposes. Mansell later returned as a consultant. He had been involved in a failed farming venture in the Eastern Cape.

8.

- 8.1 During the first approximately four years of my employment at Bosasa,



the main business of the company was to provide catering services, and full facilities management services at various mine hostels for the Department of Home Affairs Lindela Repatriation facility (Leading Prospect Trading 111 (Pty) Ltd t/a Lindela) and for Youth Centres of the Department of Social Services. The services to the Youth Centres were provided by Bosasa Youth Development Centres (Pty) Ltd.

8.2 During 2001 to 2003 Bosasa also entered into agreements with amongst others the following entities:

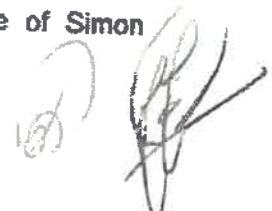
- 8.2.1 a catering contract with Sasol SA;
- 8.2.2 a full facilities contract with Kloof and Libanon mines operated by Goldfields in Carletonville;
- 8.2.3 a full facilities and catering contract with Hartebeesfontein Gold Mine in Klerksdorp;
- 8.2.4 a full facilities contract with Randfontein Estates in Randfontein;
- 8.2.5 a full facilities contract with Harmony Gold Mines in the Free State;
- 8.2.6 a catering contract with Goedehoop Collieries in Witbank;
- 8.2.7 catering contracts with Oryx and Beatrix Mines in the Free State which formed part of Goldfields Gold mines;
- 8.2.8 an agreement with the South African Post Office to provide security at post offices; and



8.2.9 a guarding agreement with the Airports Company South Africa at O.R. Tambo International Airport.

9.

- 9.1 As referred to above, I became aware at a very early stage of the fact that Gavin Watson was paying off trade union members and National Union of Mineworkers regional officials. This was done to ensure the support of the particular union's in order to obtain catering and Full Facilities Management agreements at various mine hostels.
- 9.2 During late 1999 I was instructed by Gavin Watson to attend to the Sasol catering tender. Dyambu Operations (Pty) Ltd had submitted a tender before I became an employee of the company. Someone at Sasol SA informed Gavin Watson of short-comings in the tender and wanted the company to address these short-comings after the submission date of the tender. I had to attend to this in a meeting with a Sasol procurement official, which I did. Lindie Gouws attended this meeting. The matter was resolved. The procurement official was annoyed that she had been instructed to meet with ourselves by certain Sasol management.
- 9.3 Shortly thereafter and at Secunda, Gavin Watson and I had a meeting with Simon Mofokeng. Simon Mofokeng was the head of CEPPAWU (Chemical, Energy, Paper, Printing, Wood and Allied Workers Union). Gavin Watson told me that he had arranged with Simon Mofokeng that as the head of the trade union he was to put pressure on management at Sasol SA through a threat of a strike or work stoppage to ensure that Dyambu Operations (Pty) Ltd would be awarded the tender. Simon Mofokeng also gave information regarding SASOL pricing to Gavin Watson to assist Gavin Watson to procure the SASOL tender. I then realised that the lady who was heading up the newly established training team at Dyambu was in fact Maureen Mofokeng the wife of Simon



Mofokeng.

- 9.4 Dyambu Operations (Pty) Ltd was awarded the tender. On request, Sasol acceded to a name change to Bosasa.
- 9.5 Shortly thereafter, on instruction of Gavin Watson, I arranged for purchasing and delivery of goods (such as cold drinks and meat) to Simon Mofokeng on a regular basis:
- 9.5.1 An employee, Sydney Manthatha (the unit leader) would attend at my office with an order request. He indicated that the order was for Simon Mofokeng.
- 9.5.2 I would sign the order request and allocate it for marketing expenses.
- 9.5.3 Sydney Manthatha would then file the order at the service providers on Dyambu Operations (Pty) Ltd's account and to my knowledge, Sydney Manthatha would then deliver the goods ordered to Simon Mofokeng in accordance with Gavin Watson's instruction.
- 9.5.4 From time to time, the deliveries would be confirmed by Simon Mofokeng. At other times he would complain to Gavin Watson if he had not received his delivery. I knew this because Gavin Watson would request that I sort the problem out.
- 9.5.5 At this stage the contract was managed by Daniel van Tonder and Johan Viljoen who were employees of Bosasa, and who had knowledge of the arrangements in respects of Simon Mofokeng.



9.5.6 Each order was approximately R15 000-00 in value.

9.6 As far as I can recall, Bosasa held the contract from 1999 to 2002. It then sold this and other contracts to Equality Foods (Pty) Ltd, which was owned and managed by Gregg Lacon-Allin.

9.7 After the sale of the contracts, Gregg Lacon-Allin contacted me to say that Simon Mofokeng indicated that he wanted the benefits as before and asked me if this was standard practice. I explained to Gregg Lacon-Allin that this was specific to Simon Mofokeng as he had always received this undue benefit from Bosasa.

South African Post Office (SAPO)

10.

10.1 A tender was awarded to Bosasa Security (Pty) Ltd in approximately June 2002 to provide security at the South African Post Office (SAPO). I was responsible for the submission of the tender. A while before this tender was awarded, Gavin Watson issued an instruction that we had to start logistical preparations to implement the contract. It was originally a three-year contract that was extended by an additional two years at the instance of the CEO Maanda Manyatshe.

10.2 After the awarding of the tender Gavin Watson would often name-drop. Two of the names mentioned were:

10.2.1 Siviwe Mapisa (hereinafter referred to as Mapisa), who at the time was the Head of Security employed by the South African Post Office; and

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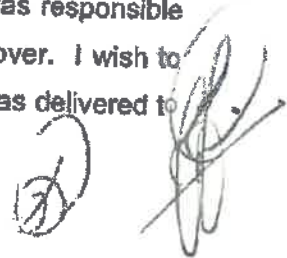
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- 10.2.2 Maanda Manyatshe (hereinafter referred to as Manyatshe), who at the time was the CEO for the South African Post Office (SAPO).
- 10.3 Mapisa held shares in a company called Vulisango, which was owned and managed by Valance Watson (brother of Gavin Watson).
- 10.4 Gavin Watson would inform me that he was paying Mapisa and Manyatshe for the SAPO contract and looking after them.
- 10.5 During a Dubai security trade show on technology which took place over a few days and attended by myself, Johannes "Joe" Gumede (hereinafter referred to as Gumede), Johnson Vovo and Gavin Watson, we spent one of the days shopping. On this day, Gavin Watson bought jewellery for his family and specifically bought a Cartier pen and cuff-links for Mapisa and a Mont Blanc pen and cuff-links for Manyatshe. Various other gifts were purchased. I specifically recall the gifts for these two persons because Gavin Watson asked my advice on what to buy as premium gifts.
- 10.6 Gavin Watson specifically told me that he had bought these gifts for Mapisa and Manyatshe and later told me that he had given the items to them. When I met with Mapisa again, he mentioned how much he appreciated the gift.
- 10.7 Mapisa attended hunting trips at Ronnie Watson's (the brother of Gavin Watson) game farm in the Eastern Cape. I had to arrange trucks to transport the meat from the Eastern Cape to Mapisa's house in Gauteng at the expense of the company.



Airports Company South Africa (ACSA)**11.**

- 11.1 During approximately 2001, Bosasa Security (Pty) Ltd was awarded the tender for guarding the multi-story parkade at O.R Tambo International Airport. This agreement was extended in scope and time on various occasions.
- 11.2 I was responsible for the submission of the tender
- 11.3 When drafting the tender bid, I was informed by Gavin Watson and Johnson Vovo that Bosasa Security (Pty) Ltd would be awarded the tender. At that stage Gavin Watson knew Thele Moema who was responsible for the security contract at the Airports Company South Africa (ACSA).
- 11.4 On or around the same time, Gavin Watson informed me that he was in contact with Siza Thanda and Thele Moema who assured him that Bosasa would be awarded the tender. Thanda at the time was Head of Security for ACSA. Moema was at the time the Head of Risk for ACSA.
- 11.5 After the tender was re-awarded in 2009 or 2010 to Bosasa, I often accompanied Gumede (a director of Bosasa Security (Pty) Ltd and Bosasa Operation (Pty) Ltd) to O.R. Tambo on official business. At some point during these visits, we met with other individuals from Airports Company South Africa, during which meetings, grey security plastic bags were handed to them by Gumede. I initially suspected that money was handed to the various individuals in those bags. Later, I was responsible for preparing the grey security plastic bags to be handed over. I wish to point out that, as will appear later in this statement, cash was delivered to

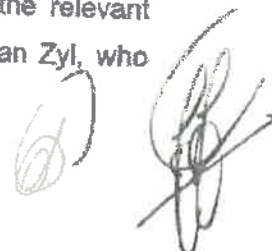


them in these grey security plastic bags. This practice continued up to when I left the company. These individuals were Reuben Pillay and Joe Serobe as well as the Procurement Officer Mohammed Bashir, who all received bribes from Joe Gumedé. I packed the amounts and was in attendance when they were handed out on many occasions.

12.

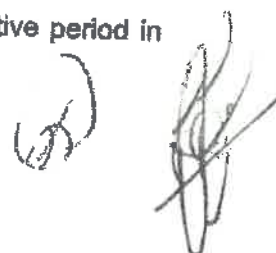
Black Book

- 12.1 Often directors would come to my office whilst Gavin Watson was there. They would ask Gavin Watson for large amounts of cash in my presence. Gavin Watson would then go to what was referred to as "Gavin's Safe", a walk-in vault behind the main boardroom and return with a grey security plastic bag. This was done in the full view of people in the offices. It became evident to me that payments would be arranged for various people and this was a regular occurrence.
- 12.2 This practice became the norm after a period of time. I was tasked with recording the information and the amounts required, which I recorded in what became known as "The Black Book." The reason I was asked to do this was because of the number of withdrawals. I could not remember them all, I would have to account for any funds that were passed on to me, should I be questioned on the reconciliations by Watson.
- 12.3 Watson had started to involve me with managing the cash – not with its delivery to the end person. My task was to prepare and package the cash. I was required to keep a record. Normally I would attend to the directors who would provide me with a list and sometimes the names of the individuals they were going to pay. I would communicate the relevant amounts to Watson. I would then issue a list to Jacques Van Zyl, who



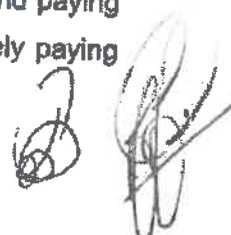
would then, on my instruction, pack the amounts. I would provide Jacques van Zyl with a code. For instance, ELF30PLC: ELF would denote Elford Mayixele, the 30 would denote R30 000.00 and the PLC would denote Patrick Littler Catering.

- 12.4 I had absolutely no authority to decide on who should be paid, and how much. On occasion I would be asked by Gavin Watson for my opinion on who should be paid. Such a decision would depend on the usefulness of the intended recipient to the organisation. The majority of the time however the decision had already been taken by Gavin Watson. He merely informed me out of courtesy, so that I could keep a record thereof as changes were frequent.
- 12.5 Records were initially kept on loose pages to facilitate packing of cash. Later on and because loose pages kept going missing, I kept records in various A6 books. However because the books were always kept in the safe of Gavin Watson, it was necessary to make notes on pieces of paper and later transfer the information into the books. Sometimes books went missing after they had been submitted to Gavin Watson. Eventually more than one book would be used and kept in rotation. It must also be noted that we could never collate and account for the full expenditure because Gavin Watson made his own drawings of which we were not always made aware. Numerous payments were made without my knowledge.
- 12.6 I have available a video relevant to this evidence (Exhibit "1"), and the transcription thereof (Exhibit "2") I did not take this video. However I know the procedures shown, the premises shown and the persons who appear and speak on the video.
- 12.7 In the case of certain very high-profile officials Gavin Watson would deal with the deliveries himself. This was prevalent over the festive period in



month of December. Gavin Watson would visit special people and make special deliveries himself. At one stage I asked Gavin Watson to keep more detailed records. He simply ignored me. When I enquired again he made it clear that he doesn't like paper and that is why he does not sign anything. On numerous occasions Watson would openly boast that he didn't have a secretary, he didn't write anything down, he never signed anything and he only had a briefcase and a car as an office.

- 12.8 If Gavin Watson referred someone to me for any favours, I would call Gavin Watson and confirm any arrangement. I would confirm if he was aware of it and supported it. If he was concerned about it he would then call the person, call me back and tell me it was approved.
- 12.9 Quite simply I don't believe that Gavin Watson even knew the extent of the payments going out and not recorded. I recall one day taking a refuse bag out of his vault, only to find about R70,000 in R100 notes in the refuse bag. I alerted Gavin Watson to this. Access to the vault was in a separate building. In the vault was a drop safe. The only one who had access to the drop safe was Gavin Watson. In the event that he urgently needed a refill of cash, we would be instructed to drop the money in the drop safe. I would drop the banknotes with a reconciliation paper or the black book into the safe. I would always make sure that one of the trusted people accompanied me and would count whilst I deposited in the drop safe.
- 12.10 In all the time I was instructed to handle the cash I was never questioned and shortages did not occur.
- 12.11 Apart from the cash payments, numerous favours being done included settling school fees, having vehicle repairs done, and making and paying for special travel arrangements. Initially this was done by merely paying

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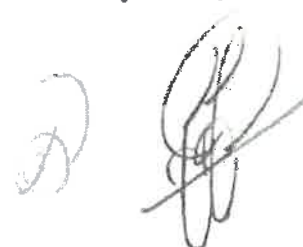
the invoice through the books, disguised as an operational expense. After the SIU investigation, the preferred method was cash or to use a filtering company or private individual that Watson had instructed us to use.

- 12.12 I am also aware that vehicles were serviced for people. One matter that comes to mind is that of Reuben Pillay. I would authorise the servicing of his vehicle. This servicing was done in a Bosasa workshop, called Technical Main. I have further direct evidence in this regard.

Money Laundering – Tax Evasion and Bribery

13.

- 13.1 One of the methods of concealing cash transactions was to simply issue a cash cheque and cash the cheque at the bank. Then a fictitious invoice would be created to justify the cash transaction. The fictitious invoice would be created in the name of a company in liquidation or a company about to be placed in liquidation.
- 13.2 Fake invoices were also issued in the name of small or start-up companies with no VAT numbers, or companies that had delivered a product and service and were not used again. Specifically, I recall a company called Kgwetlo Events which belonged to a Mr. and Mrs. Gwebu, where false invoices for hiring and catering requisites were used. Carlos Bonifacio the then Chief Accountant would draw up the invoices, issue cash cheques and draw the money accordingly. The reason for this system was to avert any potential questions from SARS or the auditors. It replaced a previous system used where cash would be drawn ostensibly for the payment of casual wages and sponsorships, but in reality for the payment of bribes.



- 13.3 At one stage Carlos Bonifacio, the former chief accountant in the Bosasa group of companies, had decided to cooperate with law enforcement agencies. He was in the process of preparing an affidavit for this purpose. He forwarded me a portion of a draft affidavit together with emails relevant to his intended disclosures. However after discussions with Gavin Watson, Carlos Bonifacio changed his mind and his communications to me ceased. I have made these documents available to the Commission investigators.
- 13.4 Numerous payments went through various other standalone arm's length companies created on instruction of Gavin Watson. These companies would be liquidated at a later stage.
- 13.5 Another way that cash would be withdrawn was via a contractor called Riekele Construction's Riaan Hoeksma. Hoeksma had a relationship with a large wholesale liquor outlet in Randfontein called Jumbo Liquor Wholesalers, which would invoice Bosasa for alcohol. This alcohol was actually not purchased. The invoice would be paid by EFT transfer. The agent (in this case Hoeksma) would then collect the amount of the invoice paid in cash from the company (In this case Jumbo Liquor Wholesalers) and deliver it to Bosasa employees. The agent (in this case Hoeksma) would then receive between 5% and 7.5% of the total cash as commission.
- 13.6 Initially when cash cheques were drawn up, these were reflected on the bank statements as cash drawings. A concern was raised by the auditors. The explanation given was that payments were being made to small and start-up companies that Bosasa had to accommodate.
- 13.7 At one stage it was decided to utilize the payment of death benefits to enable the generation of cash. When an employee or an employee's



family member died, two cheques would be issued: the first cash cheque in an amount reflecting the value of the death benefit (underwritten by Metropolitan); the second cash cheque was recorded as a donation to the deceased's family from Bosasa. However the amount of the second cash cheque would not be paid over to the family. It would be kept by Bosasa and then used for unlawful payments. I am aware that records of these transactions were kept. I estimate approximately R300,000.00 per month was derived using this methodology.

13.8 The system then changed. I received advice from Petrus Venter (known as Peet Venter of D'Arcy Herman Auditors, consultant to Bosasa) and Jacques Van Zyl, the Bosasa accountant who handled cash drawings.

13.9 In the manner set out in this affidavit an estimated R4,000,000.00 to R6,000,000.00 a month in cash drawings was generated and used for bribery and corruption. The full extent would have to be collated and accounted for. By accounting for these cash payments as company expenses, Bosasa's company tax liability was unlawfully reduced. I estimate the loss to SARS to be in excess of R 100 000 000.00.

13.10 A rough calculation based on simple averages follows;

13.10.1 R4,000,000.00 (Per Month) X 12 Months X 9 Years =
R432,000,000.00; and


13.10.2 R432,000,000.00 (Absorbed into Cost of Sales) X 28% =
R120,960,000.00 Tax Evasion.

13.11 At this stage I cannot give an accurate and final figure. This would require a complete forensic analysis with which I will gladly assist. The practice was never really uncovered because the methods used appeared




plausible.

- 13.12 Another method used to generate cash was the following: Bosasa bought shares in a fuel station in Belfast. Bosasa would collect cash paid to the fuel station by motorists for fuel purchases. Bosasa would then reimburse the fuel station by EFT transfer. This payment was reflected as fuel expenses in the books of Bosasa.
- 13.13 As the erstwhile Operations Officer of Bosasa I am very well versed in all the aspects of the Bosasa group of companies' businesses. I am in a position to assist in a more detailed investigation, into fraudulent transactions, money laundering and racketeering. I will gladly tender my time and resources in the recovery of unlawful proceeds.
- 13.14 Another method used is the following: Clients would be offered an incentive bonus. For instance, a youth centre required a software programme. The supply of this programme would entail no cost for Bosasa, alternatively it would already have been paid for under general expenses. This programme would nevertheless be invoiced out to the relevant department at an inflated cost. Payment would be received by Bosasa. Part of the monies paid would be paid in cash to the official who facilitated the transaction. The remainder would be retained by Bosasa. I myself facilitated such a transaction in the North west province. This method was used to provide cash to officials on their request.
- 13.15 This happened on numerous occasions especially at the North West Youth Development facilities where pre-opening expenses were levied, equipment was charged for, and in certain cases costs of fencing and security systems were inflated. The person who would negotiate these payments was a Director of the Bosasa Youth Development Centres by the name of Syvion Dlamini. I am not sure who the payees were as these



were dealt with by Dlamini. I would merely verify that the payment to Bosasa had occurred before the cash payments were released.

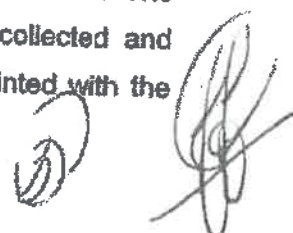
- 13.16 I was told that these transactions were necessary because funds were required by individuals for elections. I was at a meeting where this was communicated to me. I will provide further information if asked.
- 13.17 In my previous paragraphs I have explained a few of the mechanisms used to launder cash out the business. The majority of the funds would be put through as operational expenses – as run-of-the-mill costs. This would not attract any attention as the cash expenditure was easily absorbed into the expenses of the company as a whole.
- 13.18 The average purchases and expenditure of Bosasa (including the salaries and wages) amounted to about R88,000,000.00 per month. The cash drawings referred to above averaged about R4,500,000.00 per month. This amount was spread amongst the various companies in the Bosasa group and represented perhaps 5.5% of nett profit. This was further masked by the fact that the actual margins attained by the operations especially the Catering Services to Corrections was on average 35%, which in effect meant that the contracts would still reflect a 28% to 30% average nett profit. The auditors wouldn't pick up fluctuations in the margins because they remained constant throughout the year. The practices I have referred to were consistent. In November and December when additional cash was required, the percentage would be perhaps a further 2% or 3% but this would be explained in terms of Public Holiday costs and special functions costs.
- 

Cash Sales Lindela**14.**

- 14.1 Initially cash was obtained from the Lindela Repatriation Facility tuck-shops and canteens, especially when the facility was at capacity of about 5,000 people. Because it was a concentrated population with nowhere else to procure, the only mechanism deportees had to buy additional foods and groceries was at the canteen, and for cash.
- 14.2 In 1999 and after, the average takings per month were well over R300,000.00. The cost of sales would be incorporated into general running costs and the cash was banked at the office in Gavin Watson's vault. A certain amount would be declared as revenue. This amount was perhaps 10% to 15% of the actual.
- 14.3 A further means of cash generation was the pay cell phones. Detainees were not allowed to have cellphones in the facility. However Lindela provided for a cash payment system to make calls. Once again these calls were logged as operational expenses, and the majority of the revenue taken into the vault.

Cash Bars and Canteens**15.**

- 15.1 Bosasa managed numerous hostels for the mining industry. Bars and canteens in the various hostels were a major source of cash revenue. Only a certain amount of the cash takings was in fact declared. The balance was used for the payment of bribes and was collected and placed in the vault. Ryno Roode, an employee, was appointed with the



task of counting the cash and balancing it before putting it for safekeeping in the vault.

- 15.2 This practice dwindled in 2003/4 when Bosasa sold the mining contracts to Equality Foods – Gregg Lacon-Affin.

Cash Drawings

16.

- 16.1 During the period 2003/2004, as a result of the fact that the bars and canteens had been sold as part of the mining contracts, special arrangements were required to sustain the cash income that needed to be paid out.
- 16.2 At that stage cash was generated through the establishment of "ghost workers" on a payroll who would be paid wages in cash.
- 16.3 Andries Van Tonder and others were instructed to draw up fake payroll sheets on Excel and attribute work to builders and others. These expenses were allocated to the facilities being constructed at the time at Luipaardsvlei and 2 North Hostel where work was being done, albeit by a contractor Riekele.
- 16.4 I recall Andries van Tonder raising an objection to this, but being compelled to continue. On a few occasions I warned them that this practice was in fact risky, as they would draw cash cheques at the local bank and collect the cash themselves. I accompanied them on one occasion to the bank. The amount drawn was made up of three cheques which totalled R720,000.00 which they would have to pack in a bag, leave Key West FNB and drive to the office.



16.5 This practice was a weekly occurrence.

Casual Wages

17.

- 17.1 In 2003, the Department of Labour made the payment of casual wages subject to all types of scrutiny. Workman's Compensation and UIF had to be paid for casual labour. It was then decided that the practice of Bosasa in this regard would cease. The requirement for the amount of cash had increased as well especially with the new Department of Correctional Services (DCS) contract.

Equal Trade

18.

- 18.1 The delivery of large amounts of cash via Jumbo became somewhat obvious to the accounting general staff. Further the fact that Bosasa did not actually use liquor and did not need a relationship with Jumbo proved to be an area of concern. Hence Jacques Van Zyl then approached me about changing the methodology. The fact of the matter was that I didn't want to get involved. Jacques van Zyl then approached Gavin Watson with the idea of utilizing an existing supplier that was supplying frozen poultry portions to the various catering operations on a national basis.
- 18.2 I am aware that the process and the methodology used was coordinated by a few of the accountants as Gavin Watson insisted that they be remunerated in cash. I would have to give them each R10,000.00 cash per month. These were:

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18.2.1 Jacques Van Zyl;

18.2.2 Carien Daubert;

18.2.3 Rika Hundermark; and

18.2.4 Carlos Bonifacio

18.3 Because the accounting system "Great Plains" would from time to time need to be manipulated, Gavin Watson also instructed me to make a monthly payment to Gavin Hundermark of R20,000.00. I would record all the payments made to the employees as these were monthly occurrences.

18.4 Whilst I didn't actually order or arrange for the cash, I am well aware of the process used and payments made.

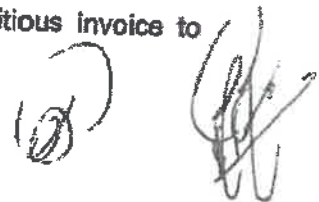
18.5 Gregg Lacon-Allin has a business called Equal Trade that supplies only frozen chicken portions to various correctional facilities nationally.

18.6 The standard procedure differs from the fraudulent procedures used by Bosasa.

19.

19.1 The standard process involves: the ordering of goods; the delivery and receipt of those goods; a comprehensive recordal system; the generation of an invoice issued to Bosasa and payment.

19.2 The fraudulent system involves the generation of a fictitious invoice to



Bosasa for no goods delivered or received. Payment for this invoice is done by Bosasa by means of EFT. The recipient of this payment, in this case Equal Trade, then and in return delivers an equivalent cash amount (minus its commission) to Bosasa.

- 19.3 In order to avoid SARS scrutiny for VAT, fictitious invoices would often reflect zero-rated items such as: beans, maize meal, oil and rice, even though these items were not standard stock items in correctional services facilities or on the menu plan.
- 19.4 Investigating this fraudulent process is a detailed and complex task but it can be done. I tender my assistance in this process.
- 19.5 Equal Trade would obtain the cash from various sources. These would include tattersalls for horse racing and, I believe, cross-border liquor sales. For them the benefit was that they would not have to bank the cash, and it could be moved inter-company.

AA Wholesalers

20.

- 20.1 Peet Venter, Bosasa's tax consultant at the auditing firm, D'Arcy Herman had a client (AA Wholesalers) whom he dealt with in Lenasia, a wholesaler and retailer of various consumer goods, fridges, stoves, mattresses, as well as other homeware goods. Peet Venter understood the difficulties with trying to deal with the cash requirements in the company. Initially the introduction to AA Wholesalers was with Peet Venter and Andries Van Tonder. A second meeting was arranged with Peet Venter, Andries Van Tonder, Gavin Watson and myself at their facility at Lenasia.



20.2 During 2017 Peet Venter was cooperating with me in making full disclosure of unlawful activities at Bosasa. In December 2017 he attested to an affidavit disclosing his involvement and instructions he received related to these unlawful activities. I annex a copy of the affidavit marked Annexure "F"

20.3 We were at the stage anticipating the acquiring of a company that would do retail cash sales to alleviate the burden of trying to gather cash reserves for Gavin Watson. Pursuant to the complete tour of the facility, it was decided that we could work with them, but that doing an acquisition would be far too complicated, even if we had agreed to a part shareholding, as we didn't actually understand the industry.

20.4 The only potential opportunity would be for AA Wholesalers to let us know how much cash they collected weekly, then invoice out for certain items at inflated rates. Certain of the transactions were legitimate and others were inflated to ensure that the balances (over-payments) could be returned to Bosasa in cash. In all these schemes Gavin Watson did not want all directors to know the detail.

21.

21.1 On 7 July 2000, my wife and two children, while visiting family in Port Elizabeth, were in a serious car accident. Gavin Watson had made all the arrangements to ensure that I got to my family as soon as humanly possible. He often visited my family in hospital. He also made arrangements with his wife to visit them in hospital when I was unable due to my work obligations. He acted in an exceptionally caring manner.

21.2 From about 2003 the business of Bosasa Operations (Pty) Ltd started to change. This will be discussed in more detail below.



Nomvula Mokonyane**22.**

- 22.1 Mokonyane was a shareholder of Dyambu Holdings (Pty) Ltd who in turn, at some stage, was a shareholder of Dyambu Operations (Pty) Ltd.
- 22.2 During 2002/2003 she was the MEC for Safety and Security, Gauteng (as far as I can remember). I met her at the Bosasa office while she was there on a social visit.
- 22.3 Subsequent thereto, towards the end of every year, I was tasked by Gavin Watson to see to her family's Christmas needs. This would include (approximately):
- 22.3.1 120 cases of cold drinks;
 - 22.3.2 4 cases of high-quality whiskey;
 - 22.3.3 40 cases mixed beer;
 - 22.3.4 8 lambs;
 - 22.3.5 12 cases of frozen chicken pieces;
 - 22.3.6 200kg beef (as well as various braai packs); and
 - 22.3.7 numerous cases of premium brandy and speciality alcohol.
- 22.4 Initially, I sourced the products on account and processed it as a special order through the books. I then arranged for delivery. Later, I merely



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oversaw the process of providing benefits to her but did not physically have much to do with it.

22.5 Soon after 2002, I was tasked by Gavin Watson to supply her and her family or friends with provisions during the course of the year. I was instructed to contact her personal assistant Sandy Thomas. This included:

22.5.1 Paying and organising funerals in respect of deceased family members;

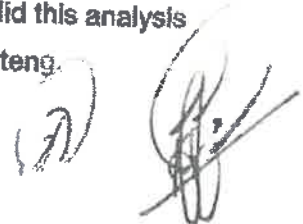
22.5.2 arranging for the rental of a vehicle for periods of three months at a time (through Blakes Travel, a premium vehicle such as an Audi A3) for her daughter when she visited from China where she was studying;

22.5.3 catering for several ANC rallies on her instruction;

22.5.4 providing catering for supporters at President Zuma's birthday parties at amongst others Luthuli House and for his private birthday parties (by way of example I annex as Annexure "G" a photograph of a cake that I arranged for President Zuma's 72nd birthday party); and

22.5.5 maintenance at her house in Roodepoort, which included maintaining her electric fencing, generators, CCTV and gardening, pool, gates, lighting.

22.6 In 2008 / 2009 Mokonyane approached Bosasa to do an analysis of security at hospitals. On instruction from Gavin Watson, I did this analysis and supplied her with a report after visiting hospitals in Gauteng.



- 22.7 I was told by Papa Leshabane (hereinafter referred to as Leshabane) that this would be given to her to be given to someone else to submit as their own. The analysis report cost Bosasa approximately R 2 000 000.00. However Bosasa did not receive payment for this report. I believe that the report was used by an ANC Youth League executive official in order to bid for the relevant work. This will require further investigation to obtain the original evidence. I am prepared to cooperate in this task.
- 22.8 In 2014, Mokonyane again approached the company to do an analysis report for securing the dams in South Africa for the Department of Water Affairs. At this time Mokonyane was the Minister of Water and Sanitation. The same procedure was followed as the analysis done for the hospital report. I did a generic overview. I gave the report to Gavin Watson, who would give it to her. I do not know what happened with the report but I do know that the company did not get paid for the report. This analysis report cost Bosasa approximately R1 300 000.00.
- 22.9 I believed this report was being done in order to tender for the job. I was instructed by Gavin Watson to recommend a consultant to the Department of Water Affairs who would award the tender to Bosasa.
- 22.10 A meeting was scheduled with Chiefton Consultants. I had previously worked on other contracts with them. At the meeting we (Gavin Watson and I) informed them about the following aspects:
- 22.10.1 the specifications of the project;
 - 22.10.2 they were to be appointed as consultants to the Department of Water Affairs;
 - 22.10.3 that they would have to ensure that one of the companies in the



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Bosasa group would be awarded the tender; and

22.10.4 that Gavin Watson was "seeing to" the Minister and that we would need their registration form to submit to the Minister.

22.11 At the meeting the following persons were present:

22.11.1 Angelo Agrizzi (myself);

22.11.2 Gavin Watson;

22.11.3 Paul Silver, Head of Facilities Management to Chiefton; and

22.11.4 Raymond Moodley, co-founder of Chiefton.

22.12 I do not know what happened but Chiefton consultants were not appointed, as they did not comply with specifications. As a consequence Bosasa did not bid for the tender.

22.13 Shortly after this incident I discussed the issue with Gavin Watson. I pointed out that a lot of money had been paid to Mokonyane with no return to Bosasa. He indicated that she had "clout" and that if he did not do what she wanted, we would not have protection and we needed her support to avert possible prosecution. In this discussion I tried to indicate to Gavin Watson that it served no purpose to conduct the business in the manner in which it was being done, as the corruption or pay-outs would eventually compromise the livelihood of 6,000 families. I also said that it made no sense to run this business "politically".



Sesinyi Seopela**23.**

- 23.1 During 2005/2006 I was introduced to Sesinyi Seopela (hereinafter referred to as Seopela) on a Saturday morning at Tasha's at Hyde Park shopping centre with Mansell, Gavin Watson and one or two other people. Seopela had been a long -time friend of Leshabane (a director of Bosasa). When he was introduced to me, I was told that he was very well connected politically and that he had been a bodyguard for Peter Mokaba (a previous ANC Youth leader).
- 23.2 I was told that Seopela had completed an LLB degree but had never practised as an attorney. Initially, my involvement with Seopela was limited to when he visited Leshabane at the Bosasa offices.
- 23.3 During or about November 2004, Gavin Watson involved Seopela as a consultant (on the payroll of Consilium Business Consultants (Pty) Ltd in which Dr Jurgen Smith had an interest) earning about R100 000-00 per month. At a later stage, Seopela was allowed to use the Bosasa VIP travel account at Blakes Travel for personal use which expenses would be deducted from his income paid by Consilium Business Consultants (Pty) Ltd.
- 23.4 Around 2011, Gavin Watson instructed me to make the necessary arrangements for Bosasa to supply Seopela with a new vehicle (Audi S5) in Bosasa's name (Registration Number BF51GMGP), a petrol card and a company credit card.
- 23.5 Through Seopela, Gavin Watson became aware that the Department of Justice and Constitutional Development was investigating the implementation of access control and surveillance equipment.




23.6 Seopela informed me that he was well connected with high ranking officials in the National Prosecuting Authority (hereinafter referred to as the NPA), the Hawks and the erstwhile Scorpions. It always amazed me how Seopela would be able to verify information that we had received particularly in relation to the investigation into Bosasa.

23.7 Seopela accompanied Gavin Watson and other directors on overseas trips and to meetings and appointments with high ranking government officials. He interacted with government departments on ministerial and director-general level on how Bosasa could benefit in various lucrative tenders. Although I was aware of the fact that money was paid to Seopela for unlawful payments to government officials in turn, I only supplied him with cash for this purpose from 2009 onwards (as will be discussed in further detail below). Seopela merely requested an amount of money from me, and was not prepared to supply me with a comprehensive list of individuals and the amount per individual. I raised this with Gavin Watson, who instructed to do as Seopela said. The cash handed to Seopela was distributed by him and he from time to time confirmed payments to some individuals. The money I handed to Seopela on a monthly basis from 2008 to 2016 was the following:

23.7.1 R500 000-00 for payment to the Department of Correctional Services. This was later increased to R750 000-00 when Tom Moyane (hereinafter referred to as Moyane) was appointed as the National Commissioner to accommodate payments to Moyane and other officials. This was told to me by Seopela. But I mention it here because this evidence is consistent with other evidence including the fact that at this time Bosasa was able to retain lucrative contracts with the Department of Correctional Services.

23.7.2 2.5% of all payments received from the Department of Justice and



Constitutional Development in respect of the 2013 tender (awarded to Sondolo IT (Pty) Ltd) to establish secure systems in various courts was paid to Seopela for distribution to officials of that Department. This amount added up to R15 000 000-00 (fifteen million rand) over the period. I was informed by Seopela that these were for senior officials at the Department of Justice and Constitutional Development. One of the names mentioned to me was that of the present Secretary of the Commission Dr De Wee. At the time he was Chief Operations Officer in the Department of Justice and Constitutional Development. Apart from this verbal report I have no other information to confirm the correctness of this report.

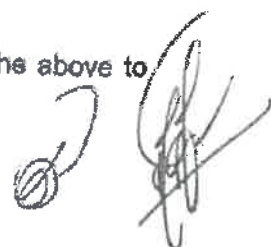
23.7.3 R300 000-00 a month for the Department of Transport in respect of a contract held by one of the companies in the Bosasa Group for the administration of the Senior Management Services (SMS) Fleet for government. At times these monies were given to Leshabane. I can assist in the provision of further details in this regard.

23.8 When the money was to be delivered to Seopela, I would inform him and he would indicate to me where I should meet him. This was always at a different place. Sometimes we met in parking areas, other times at Monte Casino, Nicol-Way Shopping Centre, alongside roads and at fuel stations where I would then follow him to an undisclosed place. At times when I was not available, Leshabane or Gumede would deliver the money to Seopela.

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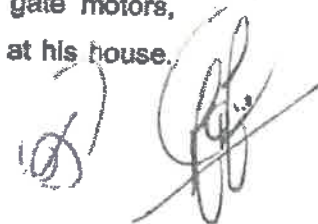
Vincent Smith**24.**

- 24.1 Although I had met Vincent Smith earlier, I attended a meeting at a hotel on Rivonia Road Johannesburg during 2011 with Gavin Watson and Seopela. Vincent Smith and two other parliamentarians, Magagula (whose first name I do not know) and Winnie Ngwenya were present. During this meeting it became evident to me that those individuals were all members of parliament and members of the Standing Committee on Correctional Services. Vincent Smith also alluded to a previous discussion with Gavin Watson relating to the working relationship between the Department of Correctional Services and Bosasa.
- 24.2 During this meeting it was decided that these individuals would ensure at the parliamentary committee meetings, that the negative media coverage against Bosasa would not preclude further tenders being awarded to Bosasa. In return they received the following monthly payments in cash:
- 24.2.1 Vincent Smith – R45 000-00;
- 24.2.2 Magagula – R30 000-00; and
- 24.2.3 Winnie Ngwenya – R20 000-00.
- 24.3 Initially these payments were made to these individuals by Gavin Watson and Seopela. I assisted him in preparing the packages. But during 2016, I was entrusted to occasionally make these payments when Gavin Watson was unavailable.
- 24.4 I am able to provide details of further meetings relevant to the above to



any investigation.

- 24.5 At some stage, Vincent Smith intimated a reservation in regard to the credibility of Seopela and he insisted on dealing directly with myself or Gavin Watson. We then excluded Seopela from all arrangements.
- 24.6 At some stage the members of the standing committee were reviewed. Magagula and Winnie Ngwenya were no longer members of the committee and were therefore no longer part of the process. The payments to them stopped.
- 24.7 During 2016, the payments to Vincent Smith increased to R100 000-00 per month. These payments were made by Gavin Watson and were handed to Vincent Smith at meetings. When Gavin Watson was not available the money was given to me to deliver to Vincent Smith. At that stage, frequent meetings were held with Vincent Smith where he would brief Gavin Watson on the activities within the Department. He would also intervene when Zach Modise (hereinafter referred to as Modise) was appointed as the National Commissioner of Correctional Services to put pressure on the National Commissioner to ensure a favourable attitude towards Bosasa. He informed us during meetings that he would also assist during committee meetings in parliament to ensure favourable decisions towards Bosasa.
- 24.8 It was during this time that a crime incident occurred at Vincent Smith's house in Constantia Kloof in Roodepoort. Gavin Watson offered to instal a security system and a camera system at his house. I instructed Richard Le Roux (hereinafter referred to as Le Roux) to implement a Cathexis video system, an alarm system, electric fencing and various other security infrastructural hardware at his house. At a later stage, gate motors, electrical fencing and perimeter control were also installed at his house.



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The equipment was paid for in cash and was installed by Sondolo IT (Pty) Ltd. I have further documentary evidence in regard to the above which I am happy to provide to the Commission.


- 24.9 Gavin Watson supplied me with a printout of an amount payable to Aberswyth University for the university fees of Vincent Smith's daughter. Vincent Smith indicated that this amount was to be paid via a cash deposit in an account called Euroblitz. This payment was made by Jacques Van Zyl at FNB on instruction by Gavin Watson (See Annexure "H", a proof of payment).
- 24.10 Subsequent to this payment, I became aware of the fact that Vincent Smith had an interest in Euroblitz (Pty) Ltd. The payment for Vincent Smith's daughter's following year of study was paid to Euroblitz.
- 24.11 Pursuant to the Smith matter being raised in Parliament, Smith made a claim that I had arranged a loan to him. This is totally devoid of the truth. I would never have arranged a personal loan in cash, nor could I on behalf of the Bosasa arrange a loan for Vincent Smith. Everything I did was on instruction of Gavin Watson.
- 24.12 On one occasion Smith requested a loan from me. I refused. At the same time he offered to sell to me his shareholding in a hospital at Waterfall Estate. I refused the offer.

Department of Correctional Services

25.

- 25.1 Prior to meeting Gillingham at Lindela in 2003, I was not aware of his involvement with Bosasa and/or Gavin Watson.



- 25.2 I was aware that there was a contract with The Department of Correctional Services Boksburg Management Area for the supply of beef to prisons by Bosasa's butchery which was operated under Dyambu Trading (Pty) Ltd. I received, saw and filled the orders for delivery but I had no connection with this contract. I later learnt that this agreement was arranged between Gillingham and Paul (Vossie) Vorster. When Paul Vorster died, Mansell on his return took it over and developed a relationship with Gillingham.
- 25.3 In late 2003 I met Gillingham at Lindela Repatriation Centre. I was introduced to him by Gavin Watson who informed me that we would be working closely with him. I did not know the specifics of how we would be working closely with him.
- 25.4 It was shortly after this that Gavin Watson informed me that he wanted to abandon the catering contracts with the mines and venture into catering and security contracts for government and state owned enterprises.
- 25.5 Gavin Watson informed high ranking Bosasa employees including me, that he wanted to get out of mining because it had become too expensive having to pay bribes. It was a very competitive market and getting payment from the mines was difficult and delayed due to the fluctuation in the gold price.
- 25.6 During the course of 2004, Bosasa was awarded a training contract by the Department of Correctional Services. I had nothing to do with the awarding of this contract. I found out about this contract when Dr Jurgen Smith invited me to a function for the awarding of the contract. This function appeared to be co-ordinated by Dr Jurgen Smith and Mark Taverner (hereinafter referred to as Taverner), a Bosasa employee. Mark Taverner is the brother-in-law of Gavin Watson.
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25.7 At that stage I was not aware that Taverner would be involved in the furnishing of officials' houses.

25.8 At the beginning of 2004, I met Gillingham for the second time. Gavin Watson had informed me on the previous day that I, together with other employees of Bosasa Operations (Pty) Ltd, were to attend a tour of prisons around the country with Gillingham to evaluate the catering needs and concerns of the Department of Correctional Services and to create a blueprint for catering and services as to how the Department could deal with the problems identified. We, as employees of Bosasa, were further informed not to wear anything that would identify us as employees from Bosasa and that the tour would be co-ordinated by Mansell and Gillingham.

25.9 The following people were on this tour of Department of Correctional Services prisons:

25.9.1 Myself;

25.9.2 Frans Vorster (logistics);

25.9.3 Hennie Viljoen (maintenance and technical);

25.9.4 Mansell (business consultant); and

25.9.5 Patrick Gillingham.

25.10 We visited prisons in:

25.10.1 Johannesburg;

A handwritten signature in black ink, appearing to be 'D. Gillingham', is located at the bottom right of the page.

25.10.2 Port Elizabeth;

25.10.3 Durban;

25.10.4 Cape Town;

25.10.5 Pretoria; and

25.10.6 Modderbee.

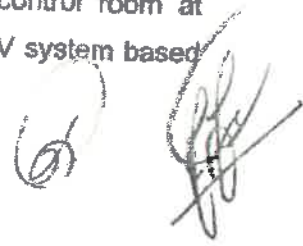
25.11 The first meeting took place at Johannesburg Management Area, where I met with the Area Commissioner at the time Mr Hento Davids, who led the tour of the facilities and the catering operations.

25.12 On these tours we talked to people on the ground in order to compile an analysis report. This report was compiled by myself in the evenings after touring each facility.

25.13 The flights and hotel accommodation were pre-booked by Bosasa. It could possibly have been booked via Blakes Travel but I do not have first-hand knowledge of the booking or payment of the invoices.

25.14 All extra hotel expenses for the Bosasa employees who attended the tour were paid for by me. I did not pay for any of the additional hotel expenses on behalf of Gillingham.

25.15 After arriving back at the office and as part of the report to be filed, I instructed an employee, Johan Helmand (herein after referred to as Helmand), who at the time was the manager of the control room at Bosasa, to draw up a diagram with explanation of a CCTV system based



on the design of Lindela and the Youth Centres that could be used in the correctional services environment. I supplied him with some information we had obtained from the people on the ground.

- 25.16 The report was finalised after comment and final approval by Gavin Watson. I was then instructed by him to send the report to Mansell. Gavin Watson supplied me with two email addresses, namely:

25.16.1 kobus@bfn.co.za

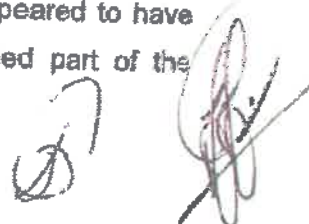
25.16.2 stokkies@bfn.co.za

- 25.17 I believed, at the time, that Bosasa was acting as a consultant for the Department of Correctional Services to assist them to determine what was necessary in their facilities. At that stage I did not know that this document would become the specifications documents used as part of the invitation to bid for the catering tender, dealt with hereunder.

- 25.18 The first time that I saw that the report was used for the specifications of the tender was when I was supplied with the invitation to bid and given an instruction by Gavin Watson to respond to the invitation and bid for the tender. (I cannot remember all the specific dates and have used the Special Investigating Unit's Report to assist me with dates of events. The report is attached hereto as Annexure "J" (herein after referred to as the SIU Report.))

- 25.19 The bid was advertised on 21 May 2004.

- 25.20 I pointed out to Gavin Watson that large portions of the analysis report I had submitted to Mansell, as well as its conclusions, appeared to have been used as the specifications document, which formed part of the



invitation to bid for the catering tender. His response to me was that he had it under control and told me that we were going to be awarded the tender and that I must just do the paper work.

25.21 I, together with a team, compiled the response to the invitation to bid. The contract was awarded to Bosasa on 20 July 2014. It was for rendering of services for a period of three years. The contract value was R239 427 694-00 per annum. Bosasa was informed that it was the successful bidder on 27 July 2004.

25.22 The costings in the bid documents were deliberately understated. Actual costs eventually charged and paid were 35% higher. I can provide detail on request.

25.23 On approximately 29 September 2004, on instruction of Gavin Watson, I made a proposal to Gillingham that seven satellite correctional centres be included in the catering tender. I know that at the time Mansell had discussed and negotiated this with Gillingham, as Mansell had told me about it and I was present whilst Gavin Watson issued the instruction to me. This expansion was authorised by Richmond Linda Mti (hereinafter referred to as Mti) on 17 May 2005. Mti was the National Commissioner of Correctional Services. To the best of my recollection, the value of this expansion was approximately R14 000 000-00 per month. This expansion was not authorised by the original tender documents. Nor did this expansion go out to tender.

26.

26.1 After the award of the contract I, together with a number of employees (if not all) received substantial salary increases.



- 26.2 After the catering tender had been awarded to Bosasa, in November 2004, a presentation meeting was arranged at SuperSport Park in Centurion. This was a presentation on the progress of the tender award Bosasa had received, as well as expanding on other services that could be offered by the Bosasa Group. This was the first time that I met Mti and the third time I encountered Gillingham.
- 26.3 I, and a number of directors of Bosasa attended this meeting. Mansell and Gavin Watson were not present. In total around 40 people attended the presentation. They were from both the Bosasa Group and the Department of Correctional Services.
- 26.4 Mti introduced himself to everyone in the group as everyone else did. On this occasion I had no further interaction with him.
- 26.5 The following day, Gavin Watson informed me that he had received good feedback from Mti on the presentation we had given. I was further informed that an access control contract would be in the pipeline shortly.
- 26.6 Gavin Watson and Mansell instructed me to draft the specification document for an access control tender that would be advertised. I was further instructed to draft the specifications in such a way that it would be a foregone conclusion that Bosasa and no one else would meet the requirements. The Department of Correctional Services supplied Mansell with an overview of their needs and I used Johannesburg Prison as a model as I previously had access to it.
- 26.7 I did as I was told, showed it to Gavin Watson who approved it and again sent the document to Mansell at:

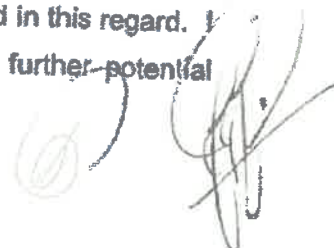
26.7.1 kobus@bfn.co.za



26.7.2 stokkies@bfm.co.za

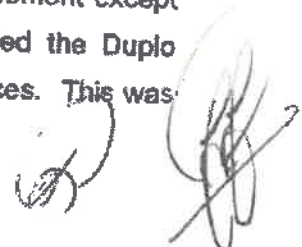
- 26.8 The Invitation to Bid was advertised on 4 February 2005. The instruction came from Gavin Watson to respond to the Invitation to Bid for the tender under the name of Bosasa Security (Pty) Ltd. I together with a team compiled the response application to the invitation to bid. Before we submitted the document, Gavin instructed Tony Perry (Bosasa Group company Secretary) to establish a new company under which the bid could be submitted. Sondolo IT (Pty) Ltd was established. The necessary amendments were affected and the application was submitted.
- 26.9 Sondolo IT (Pty) Ltd was awarded the contract on 11 April 2005. As far as I can recall it was a two-year contract. This contract was later expanded to include the staffing of the control rooms at 66 sites. The expansion took place after the awarding of the initial contract. Its cost was R236 997 385.31.
- 26.10 After the award of the contract, I was called into a meeting by Gavin Watson with Ishmael Dikane (at the time his surname was Mncwaba hereinafter referred to as Dikane), Gumede and Leshabane (all directors of Bosasa) and was told that I was doing a good job. I was also told to trade in my old Audi A6 for the new Audi A6 and that the company would cover the shortfall which was around R174 000-00. Dr Jurgen Smith completed the requisition for the cheque for the car.

27.

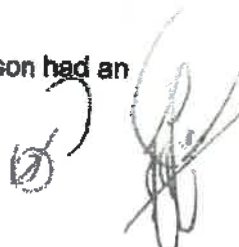
- 27.1 During 2005, I had informal discussions with Gavin Watson regarding the high-security fencing at the Department of Correctional Services facilities. These discussions were initiated by him. It was evident to me that he was aware of the fact that the Department had a specific need in this regard. I was not aware of this. Gavin Watson saw this as a further potential
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business opportunity. We were both under no illusion that Bosasa did not have the internal capacity to venture into this opportunity.

- 27.2 It was clear to me that he had already given this some thought and had discussed it with individuals in this field. He indicated to me that he had discussed commercial viability with Michael Roodenburg from Beta Bastion (which later became Beta Fence) during which the procurement of 26 percent shareholding of the South African branch of the company as a BEE deal was raised.
- 27.3 Beta Fence sent some test panels to the Bosasa offices, together with a taut wire system to be installed as a "test fence". This was done before any discussions of a potential tender.
- 27.4 I later became aware of the fact that such an agreement had been concluded.
- 27.5 Soon thereafter, I attended a meeting with Gavin Watson, Mansell, Michael Roodenburg (managing director of Beta Fence, South Africa), JP Hobbs (an engineer) and another gentleman called Riaan. During this meeting, it appeared that JP Hobbs and Riaan were involved in companies called Teq-con and Modutec. The discussion dealt predominately with working with these companies on a project with the Department of Correctional Services. One of the possibilities that was raised was for them to sub-contract with Sondolo IT (Pty) Ltd. Later these two companies became suppliers.
- 27.6 Gavin Watson negotiated the purchasing of a company called Phezulu Fencing (Pty) Ltd. I do not know the specifics of the agreement except that the sale would only go through once it was awarded the Duplo fencing contract from the Department of Correctional Services. This was



done to hide the fact that the Bosasa Group would be awarded another Department of Correctional Services tender contract.

- 27.7 It was agreed that Gloria Josephs who was a shareholder with Roodenburg's wife in Phezulu Fencing, would be paid a nominal fee of a few million rands and would be allowed to subcontract as Gordian (Pty) Ltd (another company they had). Gloria Josephs would still have to appear in meetings as the CEO of Phezulu Fencing but in name only.
- 27.8 At around the same time, Gavin Watson entered into a supply agreement with Beta Fence, whereby, upon Phezulu Fencing being awarded a Department of Correctional Services contract for the Duplo fencing, Beta Fence would supply the fencing material to Phezulu Fencing at a lower cost than it would supply the materials to any other company. In turn Beta Fence would transfer 26 percent of its shares at no cost to two trusts controlled by Gavin Watson, Bopa and Phafoga.
- 27.9 In approximately 2005 I accompanied Mansell to Bloemfontein to meet with Geoff Greyling from SA Fence and Gate (Pty) Ltd. The goal of this meeting was to make arrangements for SA Fence and Gate to become subcontractors to Phezulu Fencing after it had been awarded the Duplo fencing contract for the installation of the fences. A similar arrangement was made with a number of other companies including:
- 27.9.1 Live Wire (Pty) Ltd;
- 27.9.2 Gordian (Pty) Ltd
- 27.9.3 Mavundla Iron Clad (Pty) Ltd;
- 27.9.4 LJ Civils (Pty) Ltd (a company in which Mansell and his son had an
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interest); and

27.9.5 Jaco Pfitzer, who represented a company whose name I cannot recall.

27.10 The aforementioned arrangement required each of the aforementioned companies to submit separate tender applications for the Duplo fencing tender. These tender applications were compiled at Bosasa Operations (Pty) Ltd offices.

27.11 Mansell compiled a specifications document for 47 Department of Correctional Services sites for fencing and security, including the specification for taut wire and sensors as well as Duplo fencing. He asked me to scrutinise the document which I did. I was told by Mansell that Phezulu Fencing (Pty) Ltd was positioned to be awarded the tender. He further informed me that he and his son were already working at various correctional sites, doing surveys with a theodolite and an engineer and plotting out various correctional centres. This happened long before the tender documents were even issued. He said that this advantage would allow Phezulu Fencing (Pty) Ltd's costing to be more accurate (a benefit which other bidders did not have).

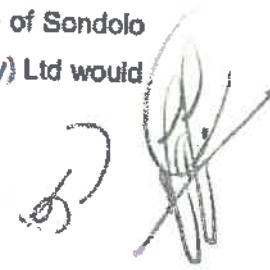
27.12 I was to oversee the bidding process and to put a team together to draft the tender bid. I requested that another team be placed on the project as I was extremely busy and was spending weeks on the various catering and security installation sites. Gavin Watson agreed, but insisted I maintained oversight. I later learned that this was done by the team in conjunction with representatives of the various sub-contractors referred to above, on instruction by Gavin Watson and Mansell. I had very little to do with the drafting of the bid.



- 27.13 I observed representatives of the various companies referred above working together at the Bosasa premises compiling their respective bids in collusion. They were relaying information to Gavin Watson and Danny Mansell. I raised my concern at this with Gavin Watson and Danny Mansell. Gavin Watson told me that he had matters under control.
- 27.14 The fencing tender was advertised on 14 October 2005. It was awarded to Phezulu fencing (Pty) Ltd on 29 November 2005. The tender contract value was R486 937 910.00.
- 27.15 The project ran its course and culminated in a maintenance contract which was managed by Sondolo IT (Pty) Ltd. Sondolo IT (Pty) Ltd also supplied security equipment in respect of this project.
- 27.16 Subsequent to the tender being awarded to Phezulu Fencing (Pty) Ltd, I, on instruction of Gavin Watson, attended meetings of Beta Fence (Pty) Ltd, as a representative of the 26% shareholders.
- 27.17 On the instruction of Gavin Watson, I arranged with Beta Fence (Pty) Ltd to pay the dividends in respect of these shareholders into the trust account of attorney Biebuyck. I instructed attorney Biebuyck to in turn transfer this money to Bosasa.
- 27.18 Tony Perry, as the company secretary, saw to the arrangements for the transfer of the shares in Phezulu Fencing (Pty) Ltd into the names of Bopa and Phafoga.
- 27.19 The manner in which this contract was structured, involving as it did trusts, assisted in concealing the real beneficiary, Bosasa.



28.

- 28.1 In late 2005 I met Gillingham for the fourth time. I bumped into him at Bosasa's offices. Mansell was present. We had a 5-minute informal discussion about problems with televisions in correctional facilities. He requested me to design a solution which would include an integrated television distribution system with centralised management for every prison cell. The unit had to be internationally rated as Ingress Protection 65, which included the unit to be waterproof and vandal resistant.
- 28.2 Mansell and Gavin Watson indicated to me that the Department of Correctional Services had surplus funds in their budget that they needed to spend and that I must design a system where a television was placed in every cell and which was centrally distributed. The system had to incorporate a networked interface which would be able to be used to integrate future data transmission in each and every prison cell in the country, so that at a later stage security applications such as cell phone detection, cameras and other Internet Protocol compatible devices could be incorporated with ease. At the same time there were talks about developing an integrated computerised offender management system.
- 28.3 I consulted with various role players in the industry and designed such a system, which was submitted to Mansell and Gillingham.
- 28.4 I was then instructed by Gavin Watson to have a specifications document drawn up. The specifications document was drafted by myself and Elandre Fourie from Pinnacle Micro (Pty) Ltd.
- 28.5 The invitation to bid was advertised on 14 October 2005. The instruction from Gavin Watson was to bid for the tender under the name of Sondolo IT (Pty) Ltd. It was a foregone conclusion that Sondolo IT (Pty) Ltd would be awarded the contract.
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- 28.6 Sondolo IT (Pty) Ltd was awarded the contract on 3 March 2006. It was a once-off service delivery agreement. The contract value was R224 364 480.00.

29.

- 29.1 In 2006, Mti wanted a company registered in his mother's name, Leonora. Gavin Watson instructed Tony Perry to register such a company on behalf of Mti. I did not know why Mti wanted the company registered.
- 29.2 During July 2007, the catering tender was extended for a further year as it was to expire at the end of September 2007. This contract was later extended by a further 6 months. The contract was extended by Nontsikelo Jolingana (hereinafter referred to as Jolingana) the acting head of the bid adjudication committee of DCS.
- 29.3 Mti resigned as Commissioner in November 2006. Up to this point I had no direct contact with Mti although I assisted with things that had to be done for him, on instructions I had received from Gavin Watson.
- 29.4 The first media publication relating to Bosasa and the aforementioned tenders was published during 2005. It was a publication in the Beeld and Die Burger. I attach copies of the relevant articles marked as Annexure "K"
- 29.5 After Mti's resignation, during approximately 2007, I met Mti for the second time. I accompanied Gavin Watson to a meeting at Mti's house in Savannah Hills. I was informed by Gavin Watson that Bosasa had paid for the house and the furnishing in the house. Subsequently, the following was explained to me:



29.5.1 Riekele Construction (Pty) Ltd, operated by Riaan Hoeksma, did not only build his house but also that of Gillingham. They had previously done construction work for Bosasa and were at that time busy with work for Bosasa. The payment of the costs of the houses was done by Bosasa via a company set up by Mansell called Grande Four (Pty) Ltd. Subsequently false invoices were submitted by Grande Four (Pty) Ltd to Bosasa. The invoices of Riekele Construction (Pty) Ltd for Bosasa were also inflated to incorporate some of the costs of the houses.

29.5.2 The house of Mti was registered in the name of Autumn Storm Investments 119 (Pty) Ltd, a company in which Riekele Construction (Pty) Ltd had an interest.

29.5.3 Bosasa paid for the furnishing and décor of Mti's house. Mark and Sharon Taverner owned and operated a company, which saw to the furnishing and décor and invoiced Bosasa for payment thereof.

29.5.4 Mti's house was rented by the Department of Correctional Services for Mti subsequent to some sort of tendering process (this was done to avert any undue attention). Rent would be paid by the Department of Correctional Services directly to the Autumn Storm Investments 119 (Pty) Ltd and Riaan Hoeksma then paid the money to Mti. It was agreed that the house would later be transferred to Mti.

29.5.5 After Mti had resigned as National Commissioner he remained in the house for a period of approximately 18 months and continued to pay the rent knowing he was going to get the money back from Riaan Hoeksma.



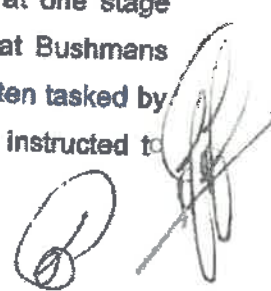
29.5.6 Mti then relocated to a house in Savannah Hills owned by him, which was renovated and furnished by Bosasa.

29.5.7 Later, when Riaan Hoeksma was supposed to transfer the house to Mti, he however, registered a bond over the house and used the rent to pay this bond.

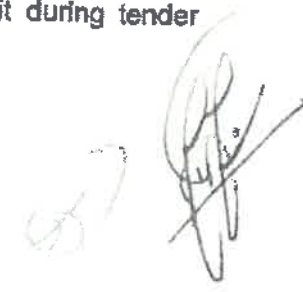
29.5.8 I, together with Andries Van Tonder, on instruction from Gavin Watson, attended a meeting with Riaan Hoeksma to ensure that he did not present a version of the events which might incriminate any of the parties. At that stage he had not yet been interviewed by the SIU.

29.6 At a meeting between Gavin Watson, myself and Mti we discussed the media attacks on Bosasa and Mti. Mti wanted me to assist him with the security proposal to be presented for security at the 2010 World Cup. I was to assist with a security plan and presentation to be presented by Mti. Gavin Watson handed Mti a grey security bag. On the way back, Gavin Watson told me that he had given Mti money, and jokingly commented that this was like "monopoly money" but that Mti had always delivered on his promises. I later learnt that the amount paid to Mti on a monthly basis was R65 000-00. I would often accompany Gavin Watson to meetings with Mti.

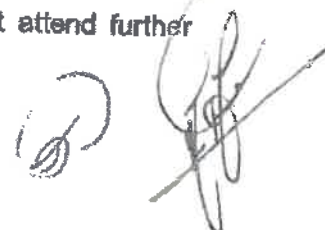
29.7 It was during this time that I also became aware of the fact that holiday trips and travelling costs for the Mti family were paid for by Bosasa. Initially I came to learn that Mark Taverner and Gavin Watson would make holiday arrangements for Mti. Mark Taverner complained at one stage about a booking he made during a December one year at Bushmans River and there were issues regarding the booking. I was often tasked by Gavin Watson to arrange flights for the Mti family. I was instructed to

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open up a fictitious account with Blakes Travel. This account was in the name of JJ Venter.

- 29.8 Bosasa also paid for the studies of two of Mti's children from his previous marriage and for the provision of security services at his home. Gumede assisted Mti when he was charged with driving under the influence of alcohol. Gumede requested money to be used to bribe an official. I provided the money and was later told that the bribe was successful. At some stage, money was raised for payments to Mti by the submission of false invoices for electrical services rendered to Bosasa by my brother, Claudio Agrizzi. My brother became very uncomfortable with this arrangement and this practice was terminated.
- 29.9 During mid 2007, Vernie Petersen was appointed as National Commissioner. I attempted to communicate with him about possible future ventures, but he would have nothing to do with any of the companies in the Bosasa group.
- 29.10 Around the same time, a meeting was arranged between myself, Gavin Watson, Khulekani Sithole (Ex Commissioner of the Department of Correctional Services), and Sbu (I cannot recall his surname. I think he was at the time the General Secretary of POPCRU). They offered a solution to Vernie Petersen's refusal to communicate with me. It was agreed that they (including M Nxele, Regional Commissioner of the Department of Correctional Services) would be paid R1 000 000-00 per month. They would invoice Bosasa Operations (Pty) Ltd and Sondolo IT (Pty) Ltd through various entities for services rendered. One such entity was a company called Vieissentraal (Pty) Ltd. In exchange, they would ensure that Bosasa would always receive undue benefit during tender processes in the Department of Correctional Services.
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- 29.11 These payments were made on a monthly basis and continued for some time. Initially, the gentlemen were unhappy that the R1,000,000-00 was inclusive of VAT but this was merely a misunderstanding on their part. The sum was later reduced to R700 000-00 per month as Sondolo IT (Pty) Ltd lost the staffing contract in the control rooms at Correctional Services facilities.
- 29.12 During approximately 2008, the agreement eventually ceased with Sithole and Sbu but continued with Nxele. An amount of R57 500-00 was paid to Nxele on a monthly basis for his influence in the KwaZulu Natal Region of the Department of Correctional Services. He was unhappy with the amount and wanted it to be increased.
- 29.13 Around the same time, I accompanied Gumede to a meeting with Nxele at the Inter-Continental Hotel at OR Tambo. This was my first meeting with Nxele. Prior to this meeting, both Gumede and I were present while Gavin Watson packed R57 500-00 into a grey security bag.
- 29.14 During lunch it was discussed with Nxele that we were aware that he was unhappy with the agreed amount payable to him. We explained that Bosasa was not in a position to increase the agreed upon amount. The security bag was handed over to Nxele by Gumede.
- 29.15 Nxele was still not satisfied and conveyed this dissatisfaction to Gavin Watson. I was instructed to accompany Trevor Mathenjwa (hereinafter referred to as Mathenjwa), a director of Sondolo IT(Pty) Ltd to the Beverly Hills Hotel to meet Nxele and again explain that Bosasa was not in a position to increase the agreed-upon amount. He was not happy with the explanation and left without taking the grey security bag from Mathenjwa. A while later he contacted Mathenjwa to make arrangements for the collection. I did not accompany Mathenjwa and did not attend further



meetings with Nxele.

- 29.16 At some stage, Gavin Watson instructed Frans Vorster to purchase a new E-class Mercedes Benz vehicle for Gillingham from Constantia Kloof Motors and Andries Van Tonder to purchase a new Polo VW from Volkswagen The Glen for Megan Gillingham (Gillingham's daughter).
- 29.17 Gavin Watson's instructions were that the payments for these vehicles were to be made by electronic transfers from personal accounts and that Consilium Business Consultants (Pty) Ltd would refund us by means of a bonus.
- 29.18 However an issue arose and Mercedes Benz had to be paid immediately, which Frans Vorster could not do at that stage. Gavin Watson instructed me that I would be receiving a bonus in the amount of R150 000-00 which was to be paid over to Carlos Bonifacio, a Bosasa employee, as a loan. I would then be reimbursed via Consilium Business Consultants (Pty) Ltd. I received the bonus. I then paid the money to Carlos Bonifacio, who in turn paid Constantia Kloof Motors.
- 29.19 Vernie Peterson suspended Gillingham during September 2008. Attorney's fees to assist Gillingham were paid by Bosasa and later by other Bosasa related companies.
- 29.20 Sometime thereafter (during the course of 2008), the SIU raided Gillingham's house. Gavin Watson called and told me that the SIU had come across a Bosasa laptop in the possession of Gillingham with specification documents on it. He instructed me to meet with Gillingham. I immediately left the office and met up with Gillingham at his house.
- 29.21 Gillingham informed me that the SIU had also found a business card
- 

printed for him by Dr Jurgen Smith, which showed he was a consultant for Consilium Business Consultants (Pty) Ltd. He further informed me that he was instructed by Gavin Watson to accompany Dr Jurgen Smith to a meeting with manufacturers for items for the Department of Correctional Services and that they had to believe that he was a director of Consilium Business Consultants (Pty) Ltd.

29.22 Gavin Watson instructed me to assist Gillingham with the legal ramifications the raid might have had.

29.23 Due to the exposure, Gavin Watson insisted:

29.23.1 that fictitious loan agreements be drafted and concluded between Gillingham and various Bosasa employees for all monies and benefits received by him; and

29.23.2 that I prepare a declaration in general terms on behalf of Gillingham declaring the money and benefits he received as loans to Mti and backdated the declaration, which Mti was to approve and sign. I took the declaration to Mti at the Protea Midrand, who after speaking to Gavin Watson signed the backdated declaration. I annex a copy of this declaration marked Annexure "L".

29.24 During late 2008, Vernie Paterson was moved to the Department of Sports and Recreation and Xoliswa Sibeko was appointed as National Commissioner, Department of Correctional Services.

29.25 After Xoliswa Sibeko was appointed as the National Commissioner, a rumour did the rounds that Sondolo IT (Pty) Ltd's control room contract with the Department of Correctional Services was going to be cancelled. Xoliswa Sibeko was adamant that she did not want the Bosasa group



involved with the Department of Correctional Services. I was tasked by Gavin Watson to accompany Papa Leshabane to a meeting at the Inter-Continental Hotel OR Tambo with Modise, who was in charge of correctional care and security at the Department of Correctional Services. At this meeting I explained the benefits of outsourcing and Leshabane handed Modise a parcel wrapped in newspaper. Earlier that day, myself and Gavin Watson packed a grey plastic security bag with cash to be handed to Modise. I gave this bag to Leshabane. At the time I presumed that Leshabane had wrapped the grey plastic security bag in newspaper before presenting it to Modise. When I questioned Leshabane later he confirmed that he had given the money to Modise.

30.

- 30.1 At this time, a media report was published, which indicated that a journalist had copies of documents from Blakes Travel, which apparently showed that Bosasa used Blake Travel to facilitate travel arrangements of amongst others government officials. A copy of the media report is attached as Annexure "M".
- 30.2 Flights, travel, accommodation and on occasion car hire would also be booked by me on the Bosasa VIP account at Blakes Travel for Mti and his wife. I have supporting documentation.
- 30.3 Gavin Watson instructed Andries Van Tonder and me to attend to Blakes Travel and collect all documents and computers and to destroy them. We then met with Brian Blake (hereinafter referred to as Blake) at Blakes Travel and informed him of what was to be done. He obliged and handed to us documents and computers.
- 30.4 After collecting all computers and documents, we drove to Luipaardsvlei hostel (it was a property which belonged to Bosasa and at that stage was

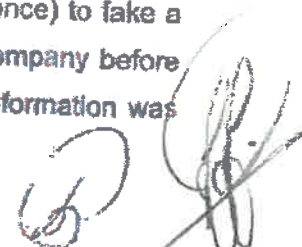


being revamped and was a construction site), opposite Bosasa offices. There was already an existing hole. We threw all the collected items into the hole. Ryno Roode, an employee of Bosasa, brought us petrol, which we poured over the items and set them alight. After the fire had burnt out, Gerhard Van Der Bank, another Bosasa employee, operated a front-end loader to close up the hole.


- 30.5 An employee at Bosasa, was instructed by Gavin Watson to re-write the travel orders, using fictitious names. This was done.
- 30.6 Thereafter, on instruction of Gavin Watson, all travel arrangements for VIP clients of Bosasa would be booked under the account Venter (my father-in-law). I opened a bank account in the name of Venter and paid Blakes Travel out of this account. Dr Jurgen Smith (via Consilium Business Consultants (Pty) Ltd) would reimburse me as cash drawings. A few of my personal trips were also arranged and paid for in this manner.
- 30.7 Subsequent thereto, Blake was subpoenaed to testify in a matter instituted by the SIU in the Pretoria High Court. Gavin Watson instructed Biebuyck to attend to a meeting with Blake and his attorney to ensure that Blake would not implicate Bosasa in his evidence. I was instructed to attend this meeting. The meeting took place but I was not convinced that we were successful in our endeavour. I do not know whether Blake ever testified.

31.

- 31.1 As a result of information that Gavin Watson received in respect of the progress of the SIU's investigation, Gavin Watson at some stage instructed one of the IT specialist (in my and others' presence) to fake a server crash and destroy files which could implicate the company before the investigators could gather evidence. Before certain information was



destroyed on the servers, copies were made of the hard drives. Based on the disaster log of the server (Annexure "N") I circulated a memo in the company informing every one of the "crash" of the system.

- 31.2 Gavin Watson told me during a telephone call (on a Sunday afternoon while I was in Madikwe) that Seopela informed him that he had received information that the Bosasa offices were going to be raided the following Monday morning. He also told Gavin Watson that they were looking for specific documents and transactions. Gavin Watson instructed me to meet him at the office. I immediately proceeded to the office.
- 31.3 Gavin Watson and Andries Van Tonder arrived ahead of me. We were instructed to go through all the offices and look for possible incriminating evidence. The information Gavin Watson received from Seopela included reference to documents regarding the sale of shares agreement in respect of Phezulu Fencing (Pty) Ltd as well as the agreement between Gavin Watson and Mti for the payment of money in return for an undertaking from him that he would ensure that Bosasa would be given preference in the awarding of tenders. I knew the latter document actually existed as I had seen it. We were instructed to specifically look for those documents.
- 31.4 We removed the documents that we found.
- 31.5 Sometime later when newspaper reports were published rehashing the SIU investigation, Gavin Watson approached Andries Van Tonder and me to destroy the documents.
- 31.6 Save for the agreement between Gavin Watson and Mti, the documents were then burnt.
- 

31.7 I later handed the agreement to Gavin Watson at his house. He was visibly relieved. He took the document, shredded it, put it in a plastic bag, filled it with water and then proceeded to flush the contents down the lavatory.

32.

- 32.1 On 6 January 2009, the Department of Correctional Services awarded Bosasa Operations (Pty) Ltd a new catering contract (HK 14/2008). This was a three-year contract. All the documents used in the tender process in respect of the prior catering contract were again used for the second catering contract to be awarded to Bosasa.
- 32.2 During this time a meeting was arranged between representatives of the SIU and representatives of Bosasa. This was subsequent to a letter written by attorney Biebuyck to the SIU in which Bosasa tendered their assistance. At this meeting, a date was arranged when representatives of the SIU would image the hard drives and laptops of various people at Bosasa.
- 32.3 This meeting was later postponed on the instruction of Gavin Watson. This allowed the Bosasa IT specialist to remove potentially damaging information.
- 32.4 Representatives of the SIU eventually did make the mirror images of the hard drives and certain laptops.
- 32.5 The Bosasa main server is linked to another server. When something is done on the one it can be monitored on the other. Gavin Watson arranged with William Brandon and Max Leeson to monitor what the representatives of the SIU did. They also had to ensure that they removed



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information, which might damage or implicate Bosasa prior to the mirror image being made.

33.

33.1 In 2009, I obtained a copy of the SIU Report. It was sent to me by Biebuyck. I was in Paris at the time with Andries Van Tonder and Gavin Watson. The trip was paid for by Bosasa. The report contained information that I was previously aware of, amongst other things:

33.1.1 furniture bought for Gillingham and Mti;

33.1.2 architectural fees;

33.1.3 certain holiday trips paid for;

33.1.4 certain cash deposits;

33.1.5 certain vehicles purchased;

33.1.6 certain sponsorships for children's varsity fees and/or tuition;

33.1.7 provision of forex for travel allowance;

33.1.8 certain repairs and maintenance on houses;

33.1.9 construction of certain houses;

33.1.10 purchasing of imported kitchens;

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33.1.11 retirement village concession for Gillingham's father;

33.1.12 numerous other favours such as rugby season tickets, computers and printers, and a matric dance dress for Megan Gillingham; and

33.1.13 trading-in of certain vehicles, where the person could not obtain a lucrative settlement. These were bought by individuals and subsidised by Bosasa.


33.2 I discussed the content of the SIU Report with Gavin Watson. He did not go into specific details but blamed, *inter alia*, Mansell, Mark Taverner and Tony Perry for not taking precautionary measures. He simply assured me that he had everything under control. I was advised that I had to stick to Gavin Watson as any other options were in **fact bleak**.

33.3 Subsequent to the release of the SIU Report, Mark and Sharon Taverner received subpoenas in a case brought by the SIU. I was instructed by Gavin Watson to meet with them and to take steps to delay their appearance as much as possible. I was to attend meetings with them and attorney Biebuyck to ensure that Bosasa was not compromised and to insist on seeing their statements before they were submitted. I did this. They eventually appeared in compliance with the subpoenas.

34.

34.1 From approximately 2009 I was tasked by Gavin Watson to become involved with the arrangements regarding the obtaining, handling and delivering of cash for the purposes of bribery and corruption.

34.2 Gavin Watson stated that a more convenient method of handling cash for the payment of junior officials at the Department of Correctional Services



should be implemented. For this purpose, he wanted a safe to be installed in the office of Jacques Van Zyl.

- 34.3 Gavin Watson, Gumede, Leshabane and Ishmael Dikane made payments to the following Department Correctional Services officials on a monthly basis from shortly after Mti's resignation in 2007 until approximately the end of December 2016:

34.3.1 Josiah Maako (R15 000-00);

34.3.2 Maria Mabena (R10 000-00);

34.3.3 Shishi Matabella (R10 000-00);

34.3.4 Mkabela (R10 000-00);

34.3.5 Dikeledi Tshabala (R15 000-00);

34.3.6 Zack Modise (R20 000-00); and

34.3.7 Mollet Ngubo (R15 000-00).

- 34.4 The following system was implemented for the handling of the cash:

34.4.1 Gavin Watson and I, on a monthly basis, would identify and calculate the cash that would be needed for the bribery and corruption as well as for Gavin Watson's personal use.

34.4.2 This sum would then be transferred from the safe in Gavin Watson's office to the safe in Jacques Van Zyl's office.

- 34.4.3 I would then receive instructions from Gavin Watson, other directors, and senior management staff who needed to be paid.
- 34.4.4 I then compiled a list of who needed to be paid and what amounts and got Gavin Watson's final approval for those payments.
- 34.4.5 Once I received this approval, I would encode the list and submit it to Jacques Van Zyl, either by hand or by e-mail, who would then pack the cash into grey sealable security bags, identify each bag with the code on the list and hand it to me with the list supplied to him.
- 34.4.6 I would then give the grey sealable security bags to the applicable director or senior management staff member, whoever requested the cash, for them to deliver it to the relevant person.
- 34.4.7 I attach hereto copies of such cash lists compiled by me marked Annexure "P1" to Annexure "P4". I would normally throw the list away, as it was of no more use to me. The originals of the annexures attached hereto were found in between my belongings. I still have these.
- 34.5 On the instruction of Gavin Watson, I delivered to Seopela payments to be handed to officials from the Department of Correctional Services, which, according to Seopela, included senior government officials.
- 34.6 Gillingham resigned from the Department of Correctional Services in November 2010. He then insisted that he be paid for the salary which he had lost. I was given an instruction from Gavin Watson to ensure that Gillingham be paid an amount of R110 000-00 per month. He was paid this amount.



35.

- 35.1 During approximately 2009 / 2010, I accompanied Gavin Watson to a meeting with Mti at his house. An informal discussion pertaining to the investigation against Bosasa and himself ensued. Mti was aware of the fact that the NPA was involved in the investigation. He suggested to us that we have to "sort out" certain individuals in NPA. He indicated that a secretary, who previously worked for him, Jackie Lephinka, was working for Nomgcobo Jiba and Lawrence Mrwebi and that they were handling the investigation at the NPA.
- 35.2 Mti met weekly with the persons for whom he gave code names. "Snake" was for Nomgcobo Jiba, "J" was for Jackie and "Snail" was for Lawrence Mrwebi. At these meetings they provided him with details of the status of the investigation and the prosecution and in return they received cash on a monthly basis. Mti received the cash from either Gavin Watson or myself and it was marked as follows:
- 35.2.1 "Snake" - R100 000;
- 35.2.2 "J" - R20 000-00; and
- 35.2.3 "Snail" - R10 000-00.
- 35.3 These amounts were paid and received on a monthly basis.
- 35.4 At a stage Gillingham had expressed anxiety about these arrangements to me. After this Gavin Watson called Gillingham and told him that he (Gavin Watson) had matters under control.
- 35.5 Approximately a week after this meeting I was instructed by Gavin.



Watson to take to Mti cash earmarked for him as well as cash to be delivered to a number of other officials (as was done on a monthly basis). Gavin Watson informed me that I was to take extra cash for the people at the NPA. He explained that he had packed security bags for Nomgcobo Jiba in the amount of R100 000-00 and marked it "Snake", Lawrence Mrwebi in the amount of R10 000-00 and marked it "Snail" and Jackie in the amount of R20 000-00 and marked it "J". I took these bags together with the other bags to Mti. These were added to the regular monthly payments made to Mti. These bags included cash in the following amounts:

35.5.1 for Mti (R65 000-00);

35.5.2 for Jolingana (R100 000-00) (the acting commissioner DCS); and

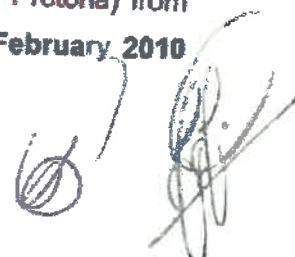
35.5.3 for Grace Molatedi (R100 000-00) (an area commissioner DCS).

35.6 In execution of this arrangement, Mti, over a period of time, supplied me with the following documents which he indicated he had received from either Jackie Lephinka, Lawrence Mrwebi and / or Nomgcobo Jiba:

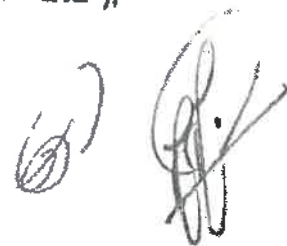
35.6.1 Affidavit: Hendrik Andries Truter commissioned on 7 July 2009 received by Angelo Agrizzi in 2013 (see Annexure "Q1");

35.6.2 Affidavit: Willem Hendrik Jacobus Pretorius commissioned on 20 July 2009 received by Angelo Agrizzi in 2013 (see Annexure "Q2");

35.6.3 Memo from the Office of the DPP Pretoria (SCCU Pretoria) from Glynnis Breytenbach to Adv M Simelane dated 4 February 2010 (see Annexure "Q3");



- 35.6.4 Internal Memorandum from Adv M Simelane to Adv G Breytenbach dated 8 February 2010 (see Annexure "Q4");
- 35.6.5 Minutes (NPA/Extended Ministerial Meeting) dated 9 March 2010 (see Annexure "Q5");
- 35.6.6 Report from Adv M C de Kock to the National Director of Public Prosecutions: Adv M Simelane dated 17 November 2010 (see Annexure "Q6");
- 35.6.7 Information Note (marked SECRET) to the Commander: Anti-Corruption Task Team 17 October 2011 (see Annexure "Q7");
- 35.6.8 Confidential document by Adv M C de Kock SCCU Pretoria dated 28 October 2011 (unsigned) (see Annexure "Q8");
- 35.6.9 Document titled "Annexure A" "Bosasa Investigation" signed by Adv M C de Kock and Adv A G J Van Rensburg dated 1 November 2012 (see Annexure "Q9");
- 35.6.10 Memorandum from Adv L S Mrwebi to SCCU: Adv Mokgathe, Adv de Kock and Adv Janse Van Rensburg dated 2 November 2012 (see Annexure "Q10");
- 35.6.11 E-mail chain from Jackie Lepinka to Silas Ramalite and Lawrence S. Mrwebi dated 22 November 2012 (see Annexure "Q11");
- 35.6.12 Progress report on Bosasa Investigation from Adv de Kock to Adv Mokgathe dated 26 November 2012 (see Annexure "Q12");



35.6.13 Progress report on Bosasa Investigation from Adv de Kock and Adv AGJ Van Rensburg to Adv L Mrwebi dated 30 April 2013 (see Annexure "Q13");

35.6.14 Draft Charge Sheet: POC Gillingham dated 30 April 2013 (see Annexure "Q14");

35.6.15 Proposed Racketeering Memorandum (marked CONFIDENTIAL DOCUMENT) dated 8 August 2013 (see Annexure "Q15");

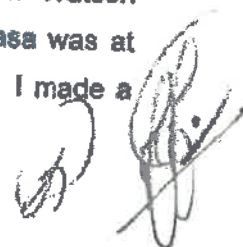
35.6.16 Undated handwritten note from Mti (in Mti's handwriting) received by Angelo Agrizzi in 2013. The note is what Jiba told him they should use (see Annexure "Q16"); and

35.6.17 Undated handwritten note by Angelo Agrizzi made while Mti was speaking to him and giving him instructions (see Annexure "Q17").

35.7 I was told that the above documents came from the files of the NPA concerning the investigation into Bosasa. I speak later of the actual police docket that was shown to me.

35.8 Lawrence Mrwebi, Nomgcobo Jiba and Jackie Lephinka continued to receive these monthly payments until such time as I left the employment of Bosasa. I do not know if they received any subsequent payments.

35.9 On 8 May 2015, when it became apparent through media reports that Jiba and Mrwebi were compromised, I accompanied Gavin Watson to a meeting with Mti at his house. During this meeting Gavin Watson emphasised to Mti that Jiba was compromised and that Bosasa was at risk. He made proposals as to how this should be handled. I made a



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recording of this discussion and this recording is available as Exhibit "3".
I annex a transcript of this recording as Annexure "R".

36.

36.1 I became aware of the fact that the cash for these unlawful payments was generated by service providers, who supplied false invoices to Bosasa for services rendered and goods delivered (which were never rendered or delivered). Bosasa paid these service providers in accordance with the false invoices. The service providers then repaid Bosasa in cash but deducted a percentage thereof for their own account. The cash was then delivered directly to Gavin Watson. The following service providers were involved in this scheme:

36.1.1 Jumbo Liquor wholesalers;


36.1.2 AA wholesalers;

36.1.3 Equal trade; and

36.1.4 Kgwetlo Events.

36.2 At a stage I started working closely with Andries Van Tonder. He indicated to me that this practice had been in operation for some time. He also indicated to me that cash for these payments was also generated in the following manners:

36.2.1 The sources of cash always included cash received from the canteens and bars at hostels and Lindela. However, this did not produce enough cash needed by Gavin Watson;



36.2.2 Dummy invoices were created for companies that didn't exist in order for Bosasa to draw the cash for the purported payment of these invoices. Those invoices were created by Carlos Bonifacio and Jacques Van Zyl; and

36.2.3 Cash was also generated through Belfast Toyota in which Gavin Watson had an interest.

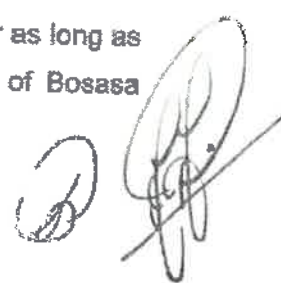
Danny Mansell

37.

37.1 During 2012, during a report back to parliament on the Bosasa investigation by Willie Hofmeyr, Danny Mansell became very nervous. He met me at the office at 05:00 insisting I call Gavin Watson. Danny Mansell was uncontrollable, and insisted I call Gavin Watson as he felt that Gavin Watson had arranged this so all the blame fell on Danny Mansell. Danny Mansell insisted that he wanted to get out of the country and that Gavin Watson should arrange everything and fund the process, as Gavin Watson had caused the predicament that Danny Mansell had found himself in. Danny Mansell confided in me that this was the nature of Gavin Watson and he had done the same to him when they defrauded the Small Business Development Corporation (SBDC) in Port Elizabeth years ago. The following was agreed between him and Gavin Watson:


37.1.1 I together with Andries Van Tonder (on instruction from Gavin Watson) made the necessary arrangements for Mansell to relocate to the USA.

37.1.2 Bosasa paid Mansell 7 000 USD on a monthly basis for as long as he stayed in the USA and didn't divulge any details of Bosasa



affairs (this was done through Mansell invoicing from a company called Safe As Fences (Pty) Ltd on the pretext that this was a Bosasa subsidiary). Supporting documents have been submitted to the Commission.

- 37.2 Mansell provided me with documentation I had to sign and agree to, in order to facilitate his residency application in America.
- 37.3 A meeting was held with Gillingham, Gavin Watson and myself where I was tasked to take over the role Mansell had played.
- 37.4 I was also tasked by Gavin Watson to ensure that the Mansell invoices were always paid timeously, as Gavin Watson didn't want any issues. Although the invoices specify work done on behalf of Sondolo / Bosasa, there was no work actually done. (Annexure "S")
- 37.5 I was also tasked to provide oversight on the management of the Gillingham family, attending to various issues from arranging a tax consultant to dealing with personal matters.
- 37.6 I was instructed to use Peet Venter from D'Arcy Herman, who would do both Mti and Gillingham's tax submissions and make the relevant payments if need be.
- 37.7 I recall that the first payment I had to make to Gillingham whilst he was employed by DCS (when Mansell and Gavin Watson decided I must take over from Mansell) was R47,500 per month in cash which Gavin Watson would provide to me to give to Gillingham. For some or other reason this amount would equate to Gillingham's earnings, I don't know what the idea was only that Gavin Watson and Mansell had agreed to the amount.



37.8 On 29 January 2013 Andries Van Tonder accompanied Mansell to the USA. Mansell's family left earlier.

37.9 The payments referred to above were made to Mansell until I left Bosasa in December 2016. I do not know if subsequent payments were made.

38.

38.1 During approximately 2013, an incident occurred where Gumede and I saw cash and lists lying around in Jacques Van Zyl's walk-in-safe. Gumede reported this to Gavin Watson in my presence who at the time expressed his doubts as to Van Zyl's loyalty.

38.2 Gavin Watson then issued an instruction to Van Zyl, Andries Van Tonder and myself that the cash duties should be taken away from Jacques Van Zyl and that I should take it over. I now had to manage it. Jacques Van Zyl was still involved in creating the false invoices. I was not prepared to handle the cash alone and brought Andries Van Tonder in to assist me.

38.3 From then on, I kept, what I called, my "little black book". The method of handling the cash was similar to that referred to above when it was under control of Jacques Van Zyl, with the exception that I now recorded the lists in these black books. It was used as a short-term recall in the case that I may need to confirm and explain any of these payments made. It was not a full reconciliation but it was a record kept of payments made and an estimation of cash on hand. These black books were kept in Gavin Watson's safe. Attached hereto are copies of extracts from one little black book which I unknowingly retained in a folder section of my briefcase, marked Annexure "T1" to Annexure "T 56".

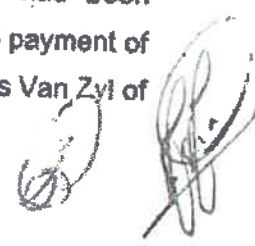
38.4 The amount of money paid by Bosasa to various officials and other

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individuals to ensure Bosasa enjoyed preference in tender contracts amounted to approximately between R4 000 000-00 and R6 000 000-00 per month. I recorded the amount of cash taken from Gavin Watson's safe and put into mine. The amounts requested by any of the directors for payments they had to make were also recorded. Thereafter, I packed the cash in the grey sealable security bags for distribution. These bags were collected by whoever requested the cash. I recorded the cash I delivered to Ishmael Dikane, Joe Gumede, Seopela, Mti, Thandi Makoko, Papa Leshabane, Syvion Dlamini, Gillingham, and others. Whatever surplus cash there was, was then returned to Gavin Watson's safe.

39.

- 39.1 During approximately 2013 Sondolo IT (Pty) Ltd was awarded the contract of secure systems at various courts across the country with the Department of Justice and Constitutional Development. The value of this contract was R601 000 000-00. Seopela played a major role in ensuring that Sondolo IT (Pty) Ltd was awarded this tender. He knew strategic officials in the Department of Justice and Constitutional Development. I was instructed by Gavin Watson to co-ordinate the submission of the tender bid with Seopela. In my mind it was a foregone conclusion that Sondolo IT (Pty) Ltd would be awarded this contract based on the payment of the 2.5% of money received by certain individuals in the Department of Justice and Constitutional Development. I attach a spreadsheet in which the calculation of the 2.5% was made. (Annexure "U")
- 39.2 At that time, Bosasa had already been providing security guarding services in various regions for the Department of Justice and Constitutional Development in terms of a contract which had been awarded during approximately 2006. I became involved in the payment of cash during approximately 2009 and submitted lists to Jacques Van Zyl of

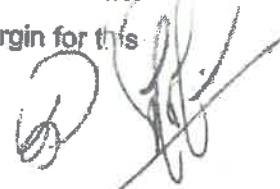


money requested by directors of the Bosasa Group of Companies for payment to third parties. I became aware of the fact that Gumede requested R40 000-00 for Mams Nyumbuse and R30 000-00 for Norman Thobane. I packed these cash amounts. Their names and payments are recorded in code in the black book referred to above. Payments in respect of rentals, furniture and repairs of vehicles on behalf of Nyumbuse and Thobane were also made by Bosasa (on the request of Gumede).

- 39.3 Seopela arranged for Bosasa to supply security upgrades to the Department of Justice and Constitutional Development to the value of approximately R20 000 000-00 when the SALU building in Pretoria was renovated. No tender processes were followed. This was apparently met with some resistance from The Billion Group from whom the Department of Justice and Constitutional Development rented the building. The Billion Group was liable for the payment for the security upgrade to the building. Seopela informed me that he could obtain the approval of the Billion Group if money were to be paid to individuals in the Billion Group who were responsible for payments. Seopela requested the amount of R1 900 000-00 which I then supplied to him in cash. I do not know if the money was ever paid over.

40.

- 40.1 During or about 2013, a third catering contract for Correctional Services was awarded to Bosasa. The same tender specifications as previously used were used in the advertising of the tender. A new tender application was submitted. However, the award to Bosasa was not a foregone conclusion, as it no longer had substantial influence in the Department of Correctional Services.
- 40.2 This contract was for a three year period and the value of this contract was R420 000 000.00 per annum. The approximate profit margin for this

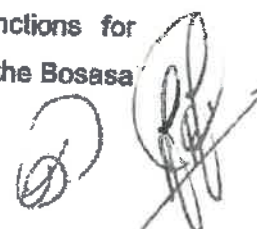


contract was 40%. Similar profit margins existed for other Bosasa Group contracts.

Dudu Myeni

41.

- 41.1 Dudu Myeni was first introduced to me at the Sheraton Hotel in Pretoria. It was an informal introduction as I was with Gavin Watson coincidentally at the time.
- 41.2 I was well aware that Gavin Watson had committed to paying R300,000.00 a month in cash to Myeni for onward payment to the "Jacob Zuma Foundation". On occasions, I would have to pack the money for him in this regard. At this time Dudu Myeni was the Chair of the Jacob Zuma Foundation.
- 41.3 One morning (I can't remember the date), Gavin Watson asked me how he could impress Myeni. He asked for my wife's advice. My wife said he should purchase her a nice handbag. She arranged with Louis Vuitton Sandton to procure one. The handbag was delivered. R300,000.00 in cash was placed in the bag. The bag was then given to her by Gavin Watson. I know this because of my discussions with Gavin Watson and because Dudu Myeni thanked me personally.
- 41.4 These payments continued regularly on a monthly basis. I was well aware of them because I was at times present when the cash was packed by Gavin Watson for her. I was present at a few deliveries to Myeni.
- 41.5 Myeni would often call on Gavin Watson to arrange functions for President Zuma and his family. Gavin Watson and directors of the Bosasa



Group Companies would be invited. The cost of these functions extended to millions of rand per function. A functions coordinator, Alistair Esau, the Bosasa Group of Companies executive chef, was appointed to manage arrangements. I attach hereto a thank-you letter from Dudu Myeni relating to one such function (Annexure "V")

- 41.6 Bosasa had been approached by Aneel Rahadkhrishna to become involved in the Karoo fracking transaction. Falcon Oil and Gas chairman, Phillip O'Quigley, had expressed an interest to an attorney Lizel Oberholzer who was a friend of Rahadkhrishna. He then brought the opportunity to Bosasa. I believe the reason that the opportunity was brought to Bosasa was that Rahadkhrishna had been told by me that Myeni was close to Gavin Watson. Myeni's influence over President Zuma was an important factor. Certain amendments to regulations were required to facilitate the transaction.
- 41.7 It transpired that Dudu Myeni coordinated a meeting at Nkandla between Gavin Watson, O'Quigley and Oberholzer. It was the intention that at this meeting President Zuma would be persuaded to advise the Minister of Mineral Resources to effect the legislative changes. As far as I know the meeting was successful. Subsequently the Minister's legal advisors were instructed to meet with Oberholzer to make amendments to the regulations. I do not know if these amendments were in fact effected.
- 41.8 President Zuma favoured the use of the Bosasa group of companies.
- 41.9 Myeni would coordinate numerous meetings at President Zuma's Nkandla residence to discuss matters with President Zuma. On one such occasion Gavin Watson was concerned that the R300,000.00 per month he was giving to Myeni was in fact not being delivered to President Zuma in full. He arranged to meet with President Zuma at Nkandla, and there he




personally handed the bag of R300,000.00 in cash to President Zuma. This was confirmed to me by both Gavin Watson and Gumede who had attended the meeting.

41.10 At the same Nkandla meeting, Gavin Watson raised the issue of the criminal investigation into Bosasa. I note that this meeting took place shortly prior to a trip by President Zuma to Russia. At this meeting President Zuma agreed to make a call to a senior official at the Hawks so that a meeting could be arranged between the Hawks and Gumede. Gumede confirmed to me that this meeting eventually took place. There is further corroborating evidence of this meeting having taken place. I have handed to the Commission a recording of a meeting where Gumede confirmed the facts set out above. The transcript of the recording is attached as Annexure "W". The recording is attached as Exhibit "4". I have handed to the Commission a further recording confirming the contents of this meeting. This recording is of a meeting arranged by Joe Gumede and attended by a director Jacky Leyds and the Human Resources manager Johan Abrie. The recording transcript is attached as Annexure "X". The recording is attached as Exhibit "5".

41.11 One afternoon (again I cannot remember the date) Gavin Watson asked that I attend a meeting with Myeni. He told me that she had important information regarding the Hawks investigation. She apparently also had had discussions at the NPA. She had told Gavin Watson that she had had long meetings at the NPA. Once more Gavin Watson prepared the R300,000.00. We proceeded to the Sheraton, where we were escorted to a private lounge area with stringent access control. I think it was a member-only lounge on the 6th floor.

41.12 At the meeting Myeni briefed us. She said she was trying to arrange that the investigation be terminated. She produced a police case docket. She



was insistent that I do not make copies. I asked Gavin Watson and Myeni if I could be excused to study the docket quietly and if I could make notes in my journal. Myeni conceded reluctantly on the basis that I would not make copies or photos. She said that that the docket had been obtained from the NPA.

41.13 I took the docket to a quiet spot and took a few photos on my cell-phone. I was interrupted by Myeni who seemed very nervous. I thought it best to appease her and return the docket to her.

41.14 Attached as Annexure "Y" are the photographs I took of the documents in the docket. I point out that on one of the photographs the carpet in the hotel is visible. I have been informed that the Commissions investigators have confirmed this as correct.

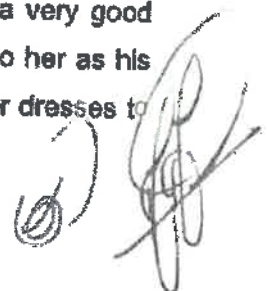
41.15 At the meeting Gavin Watson requested that the matter "be put to bed and shut down". He also requested that Myeni speak to President Zuma as a matter of urgency.

President Jacob Zuma

42.

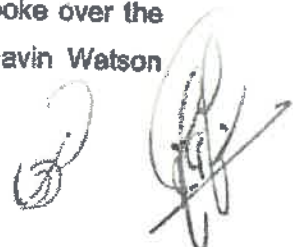
42.1 Gavin Watson had been introduced to President Zuma at his Forest Town home one evening by a certain lady by the name of Zuki. My recollection was that it was Zukiswa Madonga who was introduced to Gavin Watson at our offices by a director Thandi Makoko.

42.2 Zuki Madonga ran a guest lodge in East London, and had a very good relationship with President Zuma. They specifically referred to her as his "prayer warrior". I also recall making arrangements to pay for dresses to



be made for Zuki Madonga. I also arranged for goods to be bought for her guest lodge by Thandi Makoko.

- 42.3 Pursuant to being introduced to Dudu Myeni, Gavin Watson invited Dudu Myeni to visit the Bosasa office park. Tours would normally take up to 4 hours. Visitors would be shown all aspects of the business, and staff had been rehearsed to provide explanations on what they were doing and would give a rendition to visitors. President Zuma also visited the Bosasa office park on one occasion.
- 42.4 Dudu Myeni would have frequent meetings with Gavin Watson as well as Trevor Mathenjwa, whom Gavin Watson had seconded to deal with her. One of the primary focus areas that would always be raised was the NPA and the Bosasa prosecutions matter. I would be present when the matter and its urgency would be raised for discussion. This is the predominant reason that Myeni needed to set up the meeting with President Zuma and Gavin Watson.
- 42.5 One such meeting was just after the Nkandla R250,000,000.00 expose that was published in the Sunday Times. Gavin Watson commented on the fact that he had been to Nkandla and had seen the shoddy workmanship. He also attended to the Bosasa investigation with President Zuma. We were told in an open meeting at Bosasa that Gavin Watson had basically instructed President Zuma how to call in Anwar Dramat and shut down the investigation against Bosasa. In a meeting with Gavin Watson and Mti at which I was present, Gavin Watson said that Mti must tell Jiba that he is waiting for her to make a move on the process to shut the Bosasa investigation down.
- 42.6 I recall being present at a meeting when Gavin Watson spoke over the telephone to President Zuma. During the conversation Gavin Watson



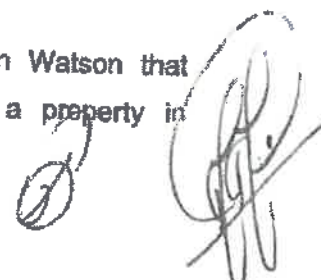
handed the phone to Mti. Mti spoke to President Zuma in Xhosa but I recall the words in English by Mti, "I am ready to be deployed".

- 42.7 Any requests forwarded on behalf of President Zuma would be granted by Gavin Watson. It was clear to me that Gavin Watson believed that he had the support and protection of President Zuma. I can provide detail if necessary. Gavin Watson would often praise President Zuma at length at the morning meetings referred to above.

Kevin Wakeford and George Papadakis

43.

- 43.1 Kevin Wakeford is a long-standing friend of Gavin Watson.
- 43.2 At one stage Bosasa was encountering constant audits by the South African Revenue Services (SARS). Kevin Wakeford would often be consulted by Gavin Watson on issues that Bosasa was facing. Kevin Wakeford would be paid a monthly fee for services provided.
- 43.3 On various occasions Kevin Wakeford would offer advice with regard to how Bosasa should respond to the media attacks.
- 43.4 Kevin Wakeford approached Gavin Watson whilst we were undergoing a major SARS investigation. Kevin Wakeford told us that George Papadakis could resolve all the issues at SARS. Bosasa entered into an agreement with Kevin Wakeford to pay him the amount R 100 000.00 per month as a fee for providing services in relation to the SARS investigation.
- 43.5 Kevin Wakeford had made an arrangement with Gavin Watson that Bosasa would provide both wet and dry cement to a property in

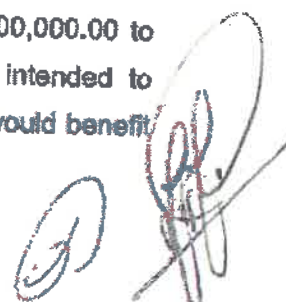


Meyersdal which was owned by George Papadakis. Frans Vorster would receive orders on a weekly basis in this regard and often complained to me of the wastage of costs. Some of the relevant delivery records are available.

Department of Home Affairs-Lindela Renegotiations

44.

- 44.1 The Lindela Repatriation Centre is a facility owned by Bosasa Properties (Pty) Ltd, a subsidiary of Bosasa. Lindela is managed by Bosasa. It is a facility for the detention and repatriation of undocumented migrants. This takes place on the authority of the Department of Home Affairs (DHA). The tender for the management of Lindela was granted by DHA to Leading Prospect Trading (Pty) Ltd, another subsidiary of Bosasa.
- 44.2 At a time the Lindela contract was under review by the DHA. It employed Fever Tree Consulting for this purpose. The person appointed by Fever Tree Consulting to conduct the review was Aneel Rahadkhrishna. Aneel Rahadkhrishna conducted negotiations with me to reduce the contract price. The Minister responsible (Nosiviwe Mapisa-Nqakula) had instructed the DHA to reduce costs at Lindela.
- 44.3 DHA wanted a review of the minimum-fee clause of the Lindela contract. Gavin Watson was concerned that it would affect profits. Gavin Watson called a meeting with myself and Kevin Wakeford. It was decided that Aneel Rahadkhrishna could be "managed". Gavin Watson, Kevin Wakeford and Aneel Rahadkhrishna agreed on a deal. I was informed later by Rahadkhrishna that payment of an amount of R7,000,000.00 to him was discussed. The payment to Rahadkhrishna was intended to facilitate a renegotiation and extension of the contract that would benefit



Bosasa.

- 44.4 The outcome was that the contract was extended for a further five years without the need for further tender processes and Treasury approval. The price was reduced by R860,000.00 per month. However more favourable contract terms were included in the contract. The annual gross value to Bosasa was in the region of R 93 600 000.00.
- 44.5 At a stage I confronted Gavin Watson as Rahadkrishna was annoyed that he had extended the contract period and yet no payments were forthcoming to him as apparently promised. My concern then was that I could not understand why an agreement to pay Rahadkrishna had been reached in the light of the reduction in the price of the contract amounting to R 860 000.00 per month. I note that at this stage I had not yet examined the extended contract in detail.
- 44.6 Kevin Wakeford explained the benefits of the extended contract to Bosasa to me. An important benefit was that opposition to the contract on the part of opposition political parties and SCOPA had been mitigated.
- 44.7 Gavin Watson's instruction was very clear. He said that Bosasa was not in a position to transfer a lump sum to Rahadkrishna but would make a monthly retainer payment on production of an invoice.
- 44.8 Rahadkrishna was not happy. He started putting in invoices in the name of a "Wine Merchant Company" in Cape Town. I cannot recall the name or the exact details of the invoices. I think it was about R75 000.00 per month that was invoiced. The payments were effected by Carlos Bonifacio.
- 44.9 I stopped the invoicing from Aneel Rahadkrishna in 2015. The Bosasa

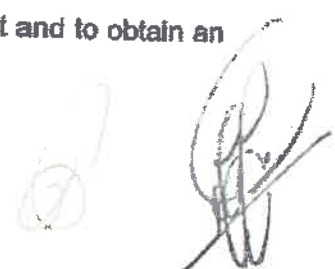


group of companies was under severe scrutiny. I instead offered to help Rahadkhrishna with branding and marketing resources for his company "Akhile". I used this as an excuse for not making further payments to him. I told him payments would resume when the heat was off. I arranged that the internal design team of Bosasa to provide him services at no charge to re-brand his company and to design and create websites. Gavin Watson was informed.

Irregular Payments

45.

- 45.1 I was introduced to the current ANC Youth League treasurer, Mr. Reggie Nkabinde by Gavin Watson. At one stage we utilized our design studio to assist Nkabinde to develop a brand for a company he had established.
- 45.2 On occasion I would meet Nkabinde with an associate of his by the name of Sam Segote. I was aware that Reggie Nkabinde had relationships with various politicians, more specifically with Tom Moyane and others at the Department of Correctional Services.
- 45.3 In 2016 I was called into a meeting in the small boardroom at the Bosasa offices by Gavin Watson. It appeared that he had been busy with a meeting with Reggie Nkabinde, Patrick Monyeki and Sam Sekgota. In the meeting I was asked if I knew that the tender specification for the catering services for DCS had been leaked. I was surprised.
- 45.4 It was decided by Gavin Watson that we best work with Sekgota and Nkabinde in order to retain the existing catering contract and to obtain an extension. I did so.



45.5 An extension of the contract was successfully negotiated. A payment of R5,000,000.00 was made to a company controlled by Sekgota. I cannot remember the name of the company. The money was paid on receipt of an invoice from this company for consulting services relating to the extension of the contract.

45.6 A second agreement with Sekgota was entered into in order to obtain a renewal of the catering contract. The agreement provided for the payment of R10 000 000.00 to Sekgota's company. Gavin Watson refused to pay this amount. As a result, Sekgota did not secure a renewal of the whole catering contract.

Further Irregular Favours for Office-bearers and Officials

46.

46.1 On a regular basis Bosasa provided full security solutions at the residences of Ministers, senior politicians and senior government officials. These security solutions included specialized electric fencing, Internet Protocol camera systems with off-site monitoring capability, generators (at times), alarm systems, detection beams, automated gates, specialised lighting and other items. This would include installation and maintenance of the systems. This was done at no cost to the recipient or the state. Beneficiaries of this practice are named in the affidavit of Richard le Roux annexed hereto. I will refer to this affidavit in evidence. Annexure "BB"

The Bosasa Group of Companies and BEE

47.

47.1 The Bosasa group of companies and related entities were and remain

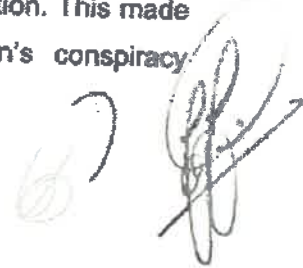


a complex network of corporate and other entities. Part of the reason for the design and implementation of the network was to allow BEE fronting and manipulation of the BEE status of the Bosasa group of companies. As a result, in all tender documents referred to above the true BEE status of the Bosasa group of companies was misrepresented. The evidence in this regard is lengthy and complex. I am happy to provide detail on request. I was an integral part of the relevant processes.

The Gavin Watson Pact and Instruction to Silence

48.

- 48.1 In 2010 after my return from vacation I had to go to a meeting with the Watson brothers at the Michelangelo Hotel. This was at the pinnacle of the negative press articles directed at Bosasa involving the SIU investigation. At the meeting it was made clear by Gavin Watson that there should be an unbreakable pact between the Watson brothers, Andries Van Tonder and myself. Gavin Watson reiterated that if at any stage anyone of us was to turn against the pact, including him, and spoke out on the goings-on at Bosasa, we would be dealt with and that severe consequences would ensue for ourselves and our families. We were specifically told that the "problem child" would be dealt with by his high ranking contacts in government. We had no reason to disbelieve him.
- 48.2 At this stage there were numerous visits to the Bosasa office park, by industry leaders and politicians. The fact that Bosasa was negatively portrayed in the press did not stop the continuous flow of politicians and industry leader to the premises of Bosasa, even on invitation. This made people think that there was validity to Gavin Watson's conspiracy theories.



The SIU Report Release

49.

- 49.1 A regular morning occurrence during the exposure of Bosasa in the press about the SIU probe during 2009, was to take a walk in the park to have discussions regarding the matter.
- 49.2 Gavin Watson insisted that he, Andries Van Tonder and myself go overseas on a trip together. At that stage we were under severe scrutiny and Gavin Watson was aware that both Andries Van Tonder and I were concerned about how he had involved us in the various shady transactions. I confronted Gavin Watson in the boardroom after he had made a suggestion (he told me on advice received) that I "take the fall" on behalf of Bosasa in the SIU investigation. I voiced my discontent with this approach and felt betrayed by Gavin Watson.
- 49.3 He called me numerous times that evening and apologised and I accepted his apology. Although I accepted his apology, I raised this matter on numerous occasions with Brian Biebuyck who agreed with my concern about Gavin Watson's suggestion that I take the fall for Bosasa.
- 49.4 Gavin Watson invited Andries van Tonder and myself to accompany him overseas. He insisted that no costs be spared. We toured Italy and France.
- 49.5 During the trip Watson did absolutely everything to appease us. During the trip Gavin Watson would consistently remind us of the fact that we had to be inseparable as we were implicated and if one went down all would go down. My stance at the stage was a personal debate with what Gavin Watson's assertion that he had it all under control politically.

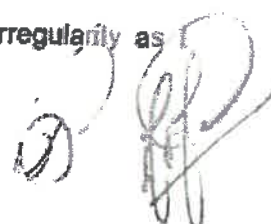
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- 49.6 Brian Biebuyck told me that the matter would never get to trial, as long as we stood together. Biebuyck said we were a formidable team.
- 49.7 The welfare of the employees of Bosasa aroused a deep personal sense of responsibility to rather keep quiet and trust in Gavin Watson and Biebuyck. The Bosasa directors were all of the view that we had to fight this and not give up. Eventually I started believing that without Gavin Watson I would be left to the wolves and be eliminated. The real threat of leaving Gavin Watson was re-iterated in a meeting held with Gavin Watson and Brian Biebuyck at his offices in Sandton. I was well aware of the ramifications if I was left to defend the matter alone. The costs of the involvement of Brian Biebuyck and the various counsel had already been well over R17,000,000.00. Furthermore we had placed R30,000,000.00 in trust with Brian Biebuyck and a further R10,000,000.00 in another attorney's trust account. Gavin Watson reminded me that without the availability of funds, I would be prosecuted on my own.
- 49.8 Whilst in Paris, we got wind of the SIU report that had come out. We managed to print a copy of the document which had been sent to us via an associate. Gavin Watson asked me to arrange a meeting to discuss this with Brian Biebuyck which I did on my return. The meeting resolved that Gavin Watson would attend to the politics, Andries van Tonder would attend to the finance and the banks and I would attend to the legal fight with the SIU together with Biebuyck. I played an active role in manipulating information to stymie the SIU investigations.

Resignation from Bosasa Group

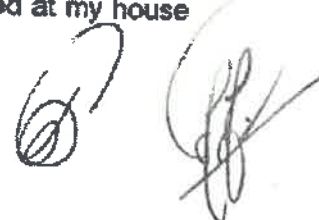
50.

- 50.1 Gavin Watson started denying any involvement in any irregularity as

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have set out. This concerned me as it was evident that as before he would attribute blame to others.

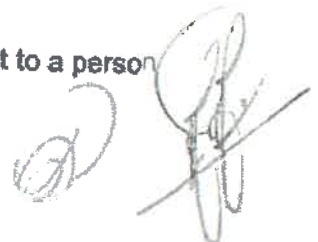
- 50.2 In August 2016 I resigned from the Bosasa group of companies after having raised my discontent at the way the Bosasa Group had been managed. As a result of ongoing corruption within the Bosasa group as dealt with in this statement, I realised that this was not a life to live. For 19 years I had been committed to Gavin Watson and had supported him. Gavin Watson continuously compromised people and hurt families in the manner he was conducting his business. People were easily disposed of and I no longer wanted part of this. Lies and dally manipulation had become the order of the day shrouded under the cloak of religion and political agendas. It was unbearable.
- 50.3 As early as then I knew something was amiss with my health. I had visibly aged in the last year before my resignation. The burden of the Watson's pact for loyalty had become untenable. I decided to share my unhappiness and concern with Dr Jurgen Smith who I trusted implicitly and whose counsel I valued. I also shared many personal issues I had with Gavin Watson. Dr Jurgen Smith was also very concerned. This culminated in me making a final decision to resign knowing the consequences of my actions.
- 50.4 The day after I had left Bosasa, Gavin Watson and Brian Biebuyck started calling me incessantly. At first I did not take their calls but due to Gavin Watson bombarding me with cell phone messages, emails, voice messages and calling on my wife's phone, I decided after about two weeks to accept a call from Brian Biebuyck. Biebuyck pleaded with me to have a meeting with Gavin Watson and cautioned me as he always did that we had to stick together because we will all end up in jail. I refused to meet with Gavin Watson. Daniel "Cheeky" Watson arrived at my house



a day after accepting Biebuyck's call.

51.

- 51.1 I was confronted by Cheeky Watson who insisted that I take the reins of Bosasa as the wellbeing of the 4 500 employees were dependent on my return. Gavin Watson would from now on remedy his old ways. Cheeky Watson said to me that should I return, a substantial retainer and a shareholding agreement would be entered into. The shareholding agreement would facilitate and allow me carte blanche to re-engineer Bosasa.
- 51.2 Convinced that Gavin Watson had resolved to put an end to the old ways I was advocating to stop, I accepted the offer without further negotiations. I was content that Gavin Watson was prepared to change. I withdrew my resignation and returned. Gavin Watson seemed sincere when he tasked me to work with a renowned professor from Wharton in developing a business strategy to re-engineer Bosasa.
- 51.3 Within a week of my return to Bosasa I presented a business and awareness turn-around strategy to all management and directors in two separate sessions. This was well received and applauded by Gavin Watson.
- 51.4 In November 2016 I realised that Gavin Watson was not sincere in what he had promised and I demanded that the shareholding due to me be registered. He was not happy as he knew that as soon as my shareholding was implemented I would have legal ground to challenge any decision of Gavin Watson.
- 51.5 At this stage Gavin Watson requested me to make a payment to a person



whose name I can no longer remember. I remember the amount involved being R 265 000.00 in cash. He gave me the money and I put it in the boot of my car. I did not want to confront him at this stage.

- 51.6 I went on leave on the 15th December 2016.
- 51.7 On the 16th of December 2016 Dr Jurgen Smith called me. I had become close to him and assisted him personally during his terminal illness. I agreed to see him at his home.
- 51.8 Dr Jurgen Smith, re-iterated a dream to me and he opened up to me for about five hours where he discussed numerous issues with me. One of the issues was his concern about Bosasa's pension funds and that he did not trust Gavin Watson. He was concerned at that stage about the people who were entitled to pensions. He mentioned that the only thing standing in Gavin Watson's way was my recent ability to stand up to Gavin Watson. He also said that although Gavin Watson had pleaded for me to come back, he was not being honest with his family. Dr Jurgen Smith made it clear to me that Gavin Watson was planning to pin all the corruption onto myself.
- 51.9 I fell ill and was hospitalized on the 25th December 2016. I had major surgery, was resuscitated and placed on life-support.
- 51.10 When I came out of the coma, I was shocked to hear that Gavin Watson had attempted to claim life insurance on a policy in my name. I resolved finally resign from the company once I had recovered fully.
- 51.11 I went on a family break to recover. On my return, I was contacted by Brian Biebuyck and told that Gavin Watson had insisted I leave the employ of the Company and had cancelled what was a ten-year



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agreement. I later received a significantly reduced amount in comparison to the settlement value of the original agreement.

51.12 I was retained on a quasi-consultancy agreement which Gavin Watson. He did not always adhere to the terms.

51.13 I started receiving threats and messages from unknown people saying that if I spoke out that I would be dealt with. I reported the matter to the police in an affidavit which I attach as Annexure "Z"

51.14 At the beginning of November 2017, I was called by Brian Biebuyck to resolve a matter with a group of my previous colleagues who wanted to whistleblow as they had been subjected to the same treatment meted out to me by the Watsons and the Bosasa directors. I was forced into agreeing that I would assist. I arranged for the parties to reach a separation agreement with the assistance of an attorney. This was a quasi-retrenchment type agreement.

51.15 I insisted that the gentlemen sign whatever was placed before them. I had been warned as indicated in the SAPS statement referred to above that I was in danger if I did not get them to sign the separation agreement. A further witness will confirm the threats that have been made.

51.16 I decided to set up an appointment with Willie Hofmeyr to enquire on how I could take the matter forward, as I and Andries van Tonder were concerned. We met Hofmeyr and I related my issues to him. He said he would revert back to me which he never did.

51.17 I approached Adv Glynnis Breytenbach in June 2018 for advice. She advised me to see an attorney which I did.

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51.18 I approached several others for advice.

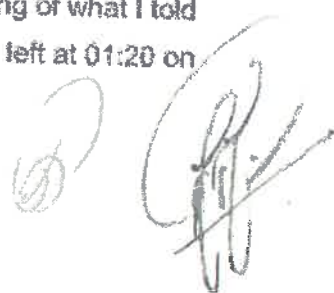
51.19 During this period, I was approached by a family, some of which had previously worked for me at Bosasa who had lost a brother under suspicious circumstances on the 29th July 2018. I was told that the deceased, who I do not know, had been coerced and paid by Bosasa whilst having been accommodated in a Krugersdorp guest lodge to manufacture statements about me. The family provided me the original statements that had been prepared by the deceased and invoices paid by Bosasa. I handed this over to the SAPS. The family told me that Bosasa paid for the immediate cremation of the deceased and provided proof of payment.

51.20 The family was also threatened that if they raised the issue they would be dealt with.

51.21 I received telephonic threats on the evening of the 21st August 2018, and advised my immediate family that I have carried this burden long enough and would ensure that this now stopped.

51.22 I prepared a press statement and within minutes of its release I was inundated by calls and messages from Gavin Watson, Brian Blebuyck and various other Watsons wanting to meet with me urgently. I did not take any of their calls. The press statement is annex hereto marked Annexure "AA"

51.23 Both Ronnie and Valance Watson arrived at my house with Brian Blebuyck and Jarrod Watson at 21:30 on the 22nd of August 2018. They were extremely apologetic and stated that they knew nothing of what I told them. I briefed them of the actions taken against me. They left at 01:20 on 23rd August 2018.



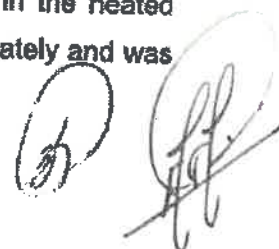
- 51.24 Ronnie, Valence and Jarrod Watson together with Brian Biebuyck met me on the 23rd August 2018 at my house. They said that they had confronted Gavin Watson who denied the allegations raised by me and would do anything to rectify the situation. They said that they had been mandated by Gavin Watson to make offers to me regarding the marketing of Royalston Wildlife Residential Estate which they would fund. I refused this.
- 51.25 Knowing that they were in fact trying to ensnare myself and a colleague, I said that Brian Biebuyck should draft an agreement, which he agreed to. I was requested to draft the parameters of the offer. In this offer I specified that the signed offer should be sent to myself. The Watsons left my premises at 01:00 on the 24th August 2018, believing I would succumb to an offer.
- 51.26 At 10:00 Mr. Valence Watson and his son Jarrod arrived at my house, requesting that I look at the offer in the presence of Andries Van Tonder. I looked at the offer and suggested changes. The response from Valence Watson was that they would accept any changes I would make in the offer. So I made changes accordingly. I even sent it to my attorney to peruse the offer made.
- 51.27 The Watsons sat in my office and debated and questioned what went wrong at Bosasa, now African Global Operations, and kept insisting that I sign the offer. It was as if they were trying to tire me out, knowing that I had only slept about 4 hours in the preceding two days.
- 51.28 Andries Van Tonder who was with us on request of the Watsons, was exhausted and said he had to get some sleep.

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Meeting Requested by Watson's / Jarrod / Roth / Lindsay

52.

- 52.1 At 15:00 on 24th August 2018, Valance and Jarrod Watson left my house. Jarrod insisted that he bring the two children of Gavin Watson, Roth and Lindsay, to make amends with myself. The meeting was not confirmed. I then had a few gins and tonic. I am diabetic and should not have had a drink and failed to take my insulin shot. I mentioned this to all present during supper. I was extremely agitated having been constantly harassed by the Watson's wanting me to retract my statement and keep quiet about all the corruption. All I wanted was an early evening as I had less than 4 hours sleep over the last two days.
- 52.2 Jarrod Watson was insistent that I tell the Watson children the facts about their father as they evidently did not know the truth and the lead up to the issue. I explained I was exhausted but he continually insisted I attend, so I obliged.
- 52.3 I welcomed Lindsay, Roth and Jarrod Watson into my home at 18:30, and my daughter arrived home at 19:30 after I had asked her to fetch take-away meals.
- 52.4 The meeting that eventually took place with Roth, Lindsay and Jarrod Watson was in the privacy of my home. I at no stage gave anyone consent or permission to unlawfully and intentionally record my conversation and discussion and to intercept and monitor same at all material times. I at the time was unaware that the Watson children had planned to entrap me in a heated discussion. I state further I never had any intention to injure the feelings of persons mentioned in the heated discussion. Further, whatever was discussed was done privately and was



not to be disseminated to other persons.

52.5 We discussed various topics, ranging from how things had gone wrong, how they were not aware of what their father had done and how they also wanted the bribery and corruption ended.

52.6 Pursuant to having the meal, we sat in the TV Lounge and discussed the breakdown. I was told how this had adversely affected their father, we went into details but the discussions were cordial. I then raised the points regarding the corrupt activities again, the laundering of cash.

52.7 The racial slur which I deeply regret, occurred whilst sitting in the lounge discussing a video that was sent to me by Gavin Watson about Dr Manning an African American preacher that condemns the actions of black people.

52.8 I also discussed a video that was sent to me by Gavin Watson about IQ averages around the world.

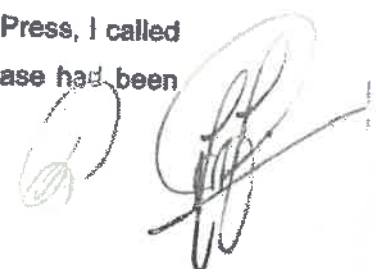
Attempt to Entice Me into a Silence Agreement

53.

53.1 On Saturday 25 August 2018 I received a draft agreement. It offered me in excess of R50 million to comply with the Watsons request. I responded by saying that I was not happy with the fact that there were no signed suretyships. I was told by Brian Biebuyck in an email that the family would stand surety. I was also told in the email that he wanted my bank account details to deposit a good faith payment of R10 000 000.00 but I had to sign the agreement quickly.



- 53.2 I wasn't about to sign anything or agree to any payment. This I caucused with Andries Van Tonder and my attorney.
- 53.3 Knowing the Watsons, and what we were up against, we wanted a signature on the proposed Gavin Watson agreement. However Brian Biebuyck countered this by saying that it could be signed in counterpart.
- 53.4 I was not interested in any offer to secure my silence and advised the Watsons and Biebuyck in writing.
- 53.5 I have all the relevant documentation and the cell phone messages, and will provide them to the Commission on request.
- 53.6 On 25 August 2018 I received a WhatsApp message from Lindsay Watson to say that she couldn't understand why I wouldn't sign as they were confident that we could resolve the matter. I did not respond to her.
- 53.7 I started receiving numerous calls on the 25th August 2018 from the Watsons and Biebuyck. I did not answer the calls.
- 53.8 At about 19:30 on the 25th August 2018, after not taking calls from anyone, I received a call from the security on the estate where I live. Roth Watson was on the phone at the gate requesting access to see me with Jarrod Watson. My wife answered and told Roth that I will not be seeing them as I was taking the matter further with the Hawks. Roth Watson pleaded to be allowed to see me just for five minutes and that there had been a major misunderstanding. They insistently called for access to no avail.
- 53.9 On 31 August 2018, after receiving questions from the City Press, I called the Douglasdale police station, and was informed that a case had been

A handwritten signature in black ink, appearing to be 'P. Biebuyck', is written over the bottom right of the page. The signature is stylized and cursive.

opened by Johannes Gumedé and Papa Leshabane on the 31st August, regarding the alleged racial comment I had made. The recording which Jarred Watson had made when they had met with me in my private residence was circulated on the 1st September 2018 on social media (Facebook and Twitter) and print media. This is an attempt to discredit me further.

53.10 The threats that I have been receiving have continued.

54.

54.1 Having reviewed this statement I realise that I have not included all the facts and records at my disposal. This was entirely due to the time pressures under which the statement was prepared. The events of the past almost 20 years are too voluminous to have been recorded in this statement in the circumstances in which it has been prepared. I have no intention of withholding any information from the Commission. For this reason, I will cooperate fully with the Commission's investigators in the further investigations regarding my conduct. I have also tendered my assistance to law enforcement agencies in their investigations. I have handed all relevant documentation in my possession relating to the above matters to the Commission's investigators.


ANGELO AGRIZZI



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ANGELO AGRIZZI

THUS SIGNED AND SWORN TO before me at PARKTOWN on this the 15TH day of JANUARY, 2019 by the deponent who acknowledges that he knows and understands the contents of this affidavit; that it is the truth to the best of his knowledge and belief and that he has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.


0432311-4 w/o
COMMISSIONER OF OATHS

EX OFFICIO:

FULL NAMES:

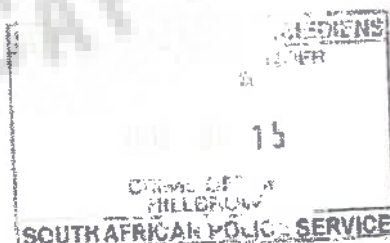
Dawid Jacobus Pieterse

PHYSICAL ADDRESS:

No.1, Clarendon Place SAPS, Hillbrow

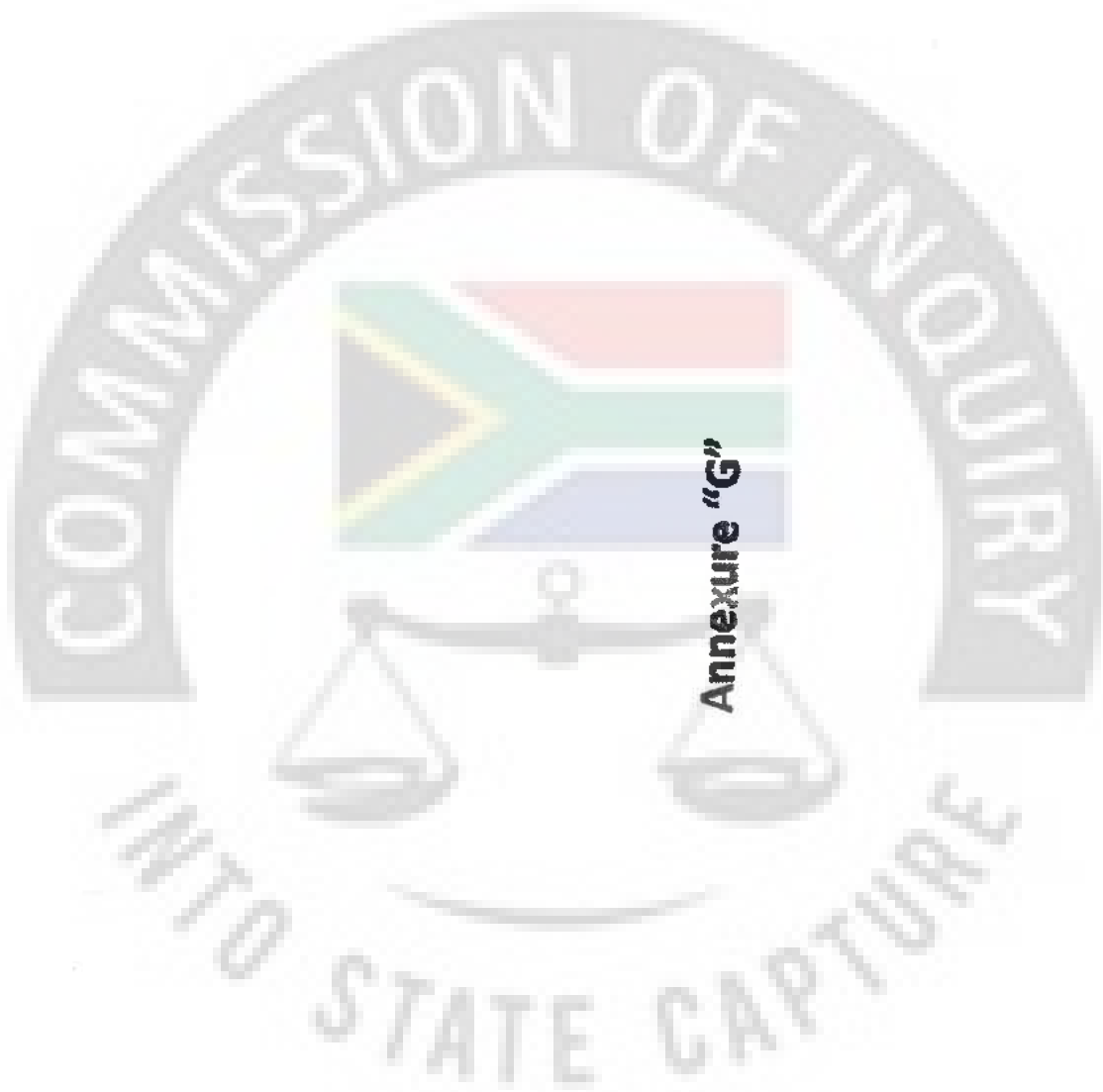
DESIGNATION:

Warrant Officer SAPS



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EXECUTIVE SUMMARY

The Special Investigating Unit (SIU) functions within the statutory framework set out in the Special Investigating Units and Special Tribunals Act 74 of 1996 (the Act). The SIU may only investigate matters referred to it for investigation by the President in terms of section 2(i) of the Act. The SIU's intervention in this investigation is authorised by presidential proclamation R44 of 2007 gazetted on 28 November 2007 (the Proclamation).


In 2006, various allegations surfaced in the media relating to the allegedly irregular awarding of contracts by the Department of Correctional Services (DCS) to Bosasa Operations (Pty) Ltd (Bosasa) and its affiliated companies.

Later in 2006, the Public Service Commission (PSC) and the Office of the Auditor General (OAG) referred specific allegations relating to contracts awarded to Bosasa to the SIU for investigation. Some of the more serious allegations are that:

- An irregular relationship existed between Bosasa or members of the Bosasa Group of Companies and two DCS officials, namely, the former Commissioner of Correctional Services, Mr L Mti (Commissioner Mti) and the DCS Chief Financial Officer (CFO) Mr P Gillingham (Gillingham)
- Commissioner Mti and Gillingham may have unduly received benefits as a result of the award of some of the contracts awarded by DCS to Bosasa and its affiliates
- Two tenders, namely, the kitchens tender and the access control tender, were irregularly extended
- Bosasa and its affiliates were responsible for drafting the bid specifications for these tenders.

Shortly after the publication of the proclamation, the SIU commenced with the investigation of the contracts awarded to Bosasa and its affiliates, namely, the kitchens, access control, fencing and television contracts.

The purpose of this report is to refer in terms of section 4(1)(d) of the Act, the evidence gathered by the SIU relative to the abovementioned contracts which, in its view, points to the commission of an offence by Bosasa and its affiliates and the persons mentioned in this report, to the Acting National Director of Public Prosecutions (NDPP) and further, to advise the DCS in terms of section 5(7) of the Act, that the evidence gathered by the SIU justifies the institution of legal proceedings by it against Bosasa and its affiliates and the persons mentioned in this report.



Findings in respect of the kitchens tender: HK2/2004

This contract was awarded to Bosasa on 20 July 2004.

The evidence gathered by the SIU, shows that there were clear deviations from the *National Treasury Supply Chain Management: A Guide for Accounting Officers/Authorities (SCM: Guide for Accounting Officers)*¹, more particularly, in that the end user departments were not included in the bid process. There was also no proper financial planning for this tender in that there was no feasibility study nor needs analysis conducted.

The evidence clearly shows that Gillingham, outside the course of his normal duties, played an integral role from the outset in the procurement process and was irregularly instrumental in developing the tender specifications.

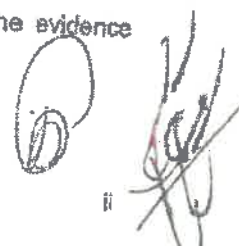
On the evidence of a whistleblower, a former employee of Bosasa (the witness), Bosasa irregularly participated in drafting the specifications for this tender. On the evidence of the witness, the specifications were drafted in such a manner that the security aspects of the tender provided Bosasa with a clear advantage over other bidders.

During the course of a search and seizure operation conducted at Gillingham's residence, a document containing the bid evaluation criteria and guidelines for evaluating the kitchens tender was found in the form of electronic data. Mr J Malan (Malan) the SIU cyber forensic expert, determined that this document originated from the computer of Mr A Agrizzi (Agrizzi), Bosasa's Chief Executive Officer/Managing Director. According to Malan, the document was last saved by Agrizzi on 26 June 2004. The evidence shows that this was on the same day that the DCS commenced with its screening of the bids received in respect of the kitchens tender. Whilst, Malan could not determine the date of first creation of the document on Agrizzi's computer, the evidence raises two concerns: first, whether Agrizzi (and as such Bosasa) was in possession of the document at the time that Bosasa's tender was submitted for the kitchens tender, and second, whether Bosasa was a party to the drafting of the evaluation criteria and guidelines for evaluating the tender. Obviously, if this were so, it would not only have subverted the entire procurement process because it would have placed Bosasa in an unduly advantageous position with reference to its competitors, but it would also have exposed the DCS to civil suits from unsuccessful bidders.

The evidence clearly indicates that Gillingham and Commissioner Mti received financial benefits from Bosasa after the award of this tender. The SIU was unable to find any lawful cause for such benefits being made to Gillingham and Commissioner Mti. The evidence

¹ Issued to all Accounting Officers on 26 February 2004; attached as Annexure 1

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further shows that Mr WD Mansell (Mansell) and Mr J Smith (Smith)², both employees of the Bosasa Group, were instrumental in effecting these benefits to Gillingham and Commissioner Mti. The timing of the benefits appear to be sufficiently linked to the awarding of the kitchens tender. In the circumstances, it was unlawful for Gillingham and Commissioner Mti to have received these benefits.

The kitchens contract was extended by Commissioner Mti on 17 May 2005. In light of the irregular benefits received by him the extension of this contract was irregular and unlawful.

Recommendations in respect of the kitchens tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by the DCS on account of the award of the kitchens tender to Bosasa
- the DCS considers instituting disciplinary proceedings against Gillingham (Commissioner Mti no longer being in the employ of DCS) arising from his irregular conduct relating to the procurement process involving the kitchens tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Bosasa, the latter's office bearers and to the extent that Mansell, Agrizzi and Smith may not be office bearers of Bosasa, that they also be considered for prosecution in their personal capacities.

Findings in respect of access control tender: HK2/2005

This contract was awarded to Sondolo IT (Pty) Ltd (Sondolo), an affiliate company within the Bosasa Group, on 11 April 2005.

The evidence shows that there were clear deviations from the *SCM: Guide for Accounting Officers*, more particularly, in that the end user departments were not included in the bid process. According to the evidence, there was no proper financial planning for this tender in that there was no feasibility study nor needs analysis conducted. The budget for this tender was also significantly exceeded.

The evidence shows that Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process and was irregularly instrumental in developing the tender specifications.

² Mr WD Mansell is a consultant to Bosasa; Mr J Smith is the Bosasa Financial Administrator



According to the evidence of both the witness and Malan, Bosasa was irregularly involved in drafting the bid specifications for this tender.

On the evidence of the witness, Agrizzi requested him to prepare specifications in line with the technology Bosasa was employing in the kitchens contract. According to him, the specifications prepared by him were drafted in such a manner that the security aspects afforded Sondolo a clear advantage over the other bidders. The witness subsequently identified a number of similarities between the specifications prepared by him and those in the advertisement for this tender.

On the evidence of Malan, a document titled "cctv bid.doc" was retrieved from the DCS and Bosasa systems. The document contained specifications for the access control tender. Version 2 of the document was found on the Bosasa system, whilst version 4 thereof was emailed by Gillingham from an email address belonging to Bosasa, to Mr S Mlombile (Acting Chief Deputy Commissioner: Corrections) (Mlombile) of DCS.

Given the fact that the evidence disclosed that there was a close association between Gillingham and Bosasa, the probabilities point to the fact that he must have been aware of Bosasa's irregular participation in drafting the specifications. In the circumstances, Gillingham and Bosasa's involvement in the drafting of the specifications seriously undermined the fairness of the procurement process.

Despite the fact that the Department of Public Works (DPW) had previously been engaged by the DCS to assist in drafting specifications for tenders involving technical detail, the evidence showed that DPW was excluded by Gillingham and Commissioner Mji from the procurement process for this tender, even though technical detail was involved.

The evidence further showed that the bid submission period was reduced from 30 to 21 days, without any apparent or justifiable cause. Given the technical nature of the tender and Bosasa's participation in the drafting of the specifications for the bid, the shortened period for submission of bids allowed Sondolo to enjoy an unfair advantage over the other bidders.

Given the fact that Bosasa operated the kitchens contract and therefore had knowledge of the correctional centre environment, the probabilities point to the fact that Sondolo enjoyed a significant advantage over its competitors because of its relationship with Bosasa.

Despite it being a bid requirement that bidders should have five years' experience, Sondolo was only registered 7 days before the closing of bids but was still awarded the tender. This was obviously irregular.



The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of this and the previous tender. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham. The evidence also shows that Gillingham failed to disclose the benefits received by him to either the BEC or the NBAC. Aside from it being unlawful for Gillingham to have received these benefits, it was further irregular for him not to have disclosed this fact before or during the deliberations related to this tender.

The SIU did not conduct a comprehensive financial investigation as in the case of Gillingham, into benefits Commissioner Mti may have received from Bosasa, because of various limitations experienced during the SIU's investigation. However, the limited evidence gathered by the SIU, indicated that he received benefits from Bosasa, a few months before the access tender was granted to Sondolo.

The access control contract was extended by Commissioner Mti on 4 August 2005. In light of the irregular benefits received by him the extension of this contract was irregular and unlawful.

Recommendations in respect of the access control tender: HK2/2005

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by DCS on account of the award of the access control tender to Sondolo
- the DCS considers instituting disciplinary proceedings against Gillingham arising from his irregular conduct relating to the procurement process involving the access control tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Sondolo, Bosasa, their office bearers and to the extent that Agrizzi, Mansell and Smith may not be office bearers of either Sondolo or Bosasa, that they also be considered for prosecution in their personal capacity.



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Findings in respect of the fencing tender: HK24/2005

The fencing tender was awarded on 29 November 2005 to Phezulu Fencing (Pty) Ltd (Phezulu), an affiliate company within the Bosasa Group.

The evidence shows that there were clear deviations from the DCS SCM User Manual: Directives³ (DCS procurement directives) in that the end user departments were not included in the bid process. There was also no proper financial planning for this tender in that there was no feasibility study or needs analysis conducted, which resulted in the initial budget being significantly exceeded and in addition being further increased by variation orders valued at R 100 million⁴.

As in the case of the previous two tenders, the evidence shows that Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process and was irregularly instrumental in the developing of the tender specifications.

In this tender, there was a heavy weighting in the evaluation criteria in favour of the integration of the fences with the computer software system, namely, the ON-IMIS system, which Scudolo introduced through the access control tender. This weighting accordingly favoured Phezulu on account of it being an affiliate of Bosasa.

An issue of concern to the SIU was the fact that substantial payments were made to Phezulu at the outset of the contract without adequate performance. The SIU examined payments made to Phezulu in respect of this tender. In terms of the contract provisions, 90% of the contract price was payable on delivery of the raw materials to the construction sites. The structure of this contract resulted in DCS making very large payments to Phezulu at a very early stage of the contract. Since this payment was shortly before the end of the financial year, the SIU concluded that this was a case of fiscal dumping, that is to say, when departments spend large amounts of money just prior to the financial year end to use up their budget, irrespective of whether the department gets value for money for such spending.

A further issue of concern is the fact that the bid conditions stipulated that fences be erected by 17 March 2006. At the compulsory briefing session for this tender, Gillingham confirmed that the erection of the fences was to be effected by 17 March 2006. Two bidders submitted project plans that complied with this deadline. However, Phezulu submitted two project plans

³ Came into effect in May 2005

⁴ The budget for the project was R 340 million, the contract awarded to Phezulu was R 486 million; in addition R 100 million in variation orders were authorised after the conclusion of the contract.

in terms of which they undertook to deliver raw materials to the sites by 17 March 2006, but would install the fences at a much later date.

In the BEC, Gillingham scored the two service providers referred to above, 0 out of 6 for time and Phezulu a full 6 points, despite the fact that its projected plan did not comply with the timelines. The SIU finds this approach by Gillingham incomprehensible, since on the face of it, Phezulu's project plans clearly did not comply with the tender requirements.

The evidence clearly indicates that Gillingham had received financial benefits after the award of this and the previous two tenders. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith, with close connections to Bosasa, were instrumental in effecting these benefits to Gillingham.

As previously observed, the SIU did not conduct a comprehensive financial investigation as in the case of Gillingham, into benefits Commissioner Mti may have received from Bosasa, because of various limitations experienced during our investigation. However, the limited evidence gathered by the SIU, indicates that he received benefits from Bosasa, a few months before the fencing tender was granted to Phezulu.

The evidence also shows that Gillingham failed to disclose the benefits received by him to either the BEC or NBAC. Aside from it being unlawful for Gillingham to have received these benefits, it was further irregular for him not to disclose this fact before or during the deliberations related to this tender.

Recommendations in respect of the fencing tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that may have been sustained by DCS on account of the award of the tender to Phezulu
- the DCS considers instituting disciplinary proceedings against Gillingham arising from his irregular conduct relating to the procurement process involving the fencing tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Phezulu, Bosasa, their office bearers and to the extent that Mansell and Smith may not be office bearers of either Phezulu or Bosasa, that they also be considered for prosecution in their personal capacity.

Findings in respect of television tender: HK25/2005

This contract was awarded on 3 March 2006 to Sondolo.

The evidence shows there were clear deviations from the DCS procurement directives, in that the end user departments were not included in the bid process. Furthermore, according to the evidence, there was no proper financial planning for this tender in that there was no feasibility study or needs analysis conducted and the budget for the contract was significantly exceeded.

As in the case of the previous three tenders, Gillingham, outside the course of his normal duties played an integral role from the outset in the procurement process and was irregularly instrumental in the developing of the tender specifications.

Sondolo's first invoice for payment was submitted on 13 March 2006, three days after the contract had been signed. The invoice was for R106 million and it was paid on 23 March 2006. This, as in the fencing tender, was once again a case of fiscal dumping.

The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of this and the previous tenders. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham. The evidence also shows that Gillingham failed to disclose the benefits received by him, to either the SEC or the NBAC. Aside from it being unlawful for Gillingham to have received these benefits, it was further irregular for him not to have disclosed this fact before or during the deliberations related to this tender.

As previously observed, the SIU did not conduct a comprehensive financial investigation as in the case of Gillingham, into benefits received by Commissioner Mti from Bosasa, because of various limitations experienced during our investigation. However, the limited evidence gathered, indicates that he received benefits from Bosasa, some months before the television tender was granted to Sondolo.

Recommendations in respect of the television tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any loss that may have been sustained by DCS on account of the award of the television tender to Sondolo



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- the DCS considers instituting disciplinary proceedings against Gillingham arising from his irregular conduct relating to the procurement process involving the television tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Sondolo, Bosasa, their office bearers and to the extent that Mansell and Smith may not be office bearers of either Sondolo or Bosasa, that they also be considered for prosecution in their personal capacity.



TERMS OF REFERENCE

The SIU functions within the statutory framework set out in the Act. The SIU was established by the President in terms of section 2(1)(a)(i) of the Act and by Proclamation R118 of 31 July 2001. The SIU may only investigate matters referred to it for investigation by the President in terms of section 2(1) of the Act.

In June 2006, various allegations surfaced in the media relating to the allegedly irregular awarding of contracts by the DCS. The allegations specifically involved the Bosasa Group of Companies and two DCS officials, namely the former Commissioner Mti and the DCS CFO Gillingham.

Later in 2006, the PSC and the OAG referred to the SIU various allegations relating to the allegations made in the media. The PSC and OAG expressed particular concern around the regularity of the procurement processes relating to contracts awarded to Bosasa and two affiliated companies, Sondolo and Phezulu as well as to the nature of the relationship between the said companies and Commissioner Mti and Gillingham.

Some of the allegations the SIU was requested to investigate:

- involved whether Commissioner Mti and Gillingham may have unduly benefited from some of the contracts awarded by DCS to Bosasa
- concerned the problem that in relation to two tenders (access control and fencing) the DCS procured services involving technical detail without involving the Department of Public Works
- involved whether the kitchens tender was irregularly extended to include seven extra kitchens – the contract value grew to over R800 million, which included the adding of the additional kitchens resulting in additional expenditure of R82 million
- involved whether the access control tender may have been irregularly extended to include the staffing of the control rooms – the contract value grew from R237 million to almost R437 million, as Sondolo became responsible for monitoring the CCTV control rooms
- related to whether one of the bidders may have drafted the specifications for one or more of the relevant tenders – there were particular concerns around the specifications of the access control and television tenders
- concerned whether Commissioner Mti may have been involved with a company called Lianorah Investments, which had a relationship with Bosasa
- related to the supply of allegedly inferior quality goods in the access control tender.

The SIU requested a proclamation authorising its investigation of the allegations and was accordingly mandated by the President in terms of the Proclamation to investigate any irregularities perpetrated in connection with the procurement of services by the DCS.

In terms of the Proclamation, the SIU was mandated to investigate:

- 1 The procurement of goods and services by or on behalf of the Department without compliance with the Department's –
 - (a) policies, procedures, prescripts, directives, guidelines or standing instructions (hereinafter collectively referred to as the "prescripts"); and
 - (b) procurement and provisioning systems or supply chain management systems prescribed by applicable legislation;
 in a manner that was not fair, competitive, transparent, equitable and/or cost-effective and payments made in respect thereof.
- 2 The failure by officials and employees of the Department to disclose that they had a direct or indirect interest in the suppliers and service providers used by the Department, which represented a conflict of interest.
- 3 The failure by the officials and employees of the Department to disclose to the Department that they were engaged in unauthorised business activities for remuneration outside the scope of their employment under the Public Service Act, 1994 (Proclamation 103 of 1994) or the Correctional Services Act, 1998 (Act 111 of 1998).
- 4 The conduct of –
 - (a) suppliers and service providers to the Department; and
 - (b) officials and employees of the Department,
 which has resulted or may result in a loss of, damage to or a lack of control over public money, public property or other resources of the Department and any conduct directed at or promoting the aforementioned.
- 5 False or inflated claims by, or on behalf of officials and employees of the Department from certain medical aid schemes.
- 6 The theft or misuse of property and resources of the Department by officials and employees of the Department.

- 7 Illegal or irregular practices in terms of which officials and employees of the Department received or solicited benefits from other officials and employees of the Department or from members of the public in connection with the execution of their duties or the failure to execute their duties.
- 8 The conduct of officials and employees of the Department, which was aimed at influencing or hampering any investigation or the destruction of evidence.
- 9 The intimidation of officials or employees of the Department or members of the public by officials or employees of the Department with the aim to conceal corrupt or other unlawful practices within the Department.
- 10 Acts of undue influence and extortion committed by officials and employees of the Department with regard to members of the public and other officials or employees of the Department.
- 11 Fraud committed by officials and employees of the Department to the detriment of the Department.

The SIU's investigation focussed on the procurement processes related only to the kitchens, access control, fencing and television tenders.

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LIST OF ABBREVIATIONS

BEC	Bid Evaluation Committee
CCTV	Closed Circuit Television
CEO	Chief Executive Officer
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CSIR	Council for Scientific and Industrial Research
DCS / the Department	Department of Correctional Services
DPW	Department of Public Works
EFT	Electronic Funds Transfer
eNaTIS	National Traffic Information Systems
HCC	Head of Correctional Centre
IT	Information Technology
JHB	Johannesburg
NBAC	National Bid Adjudication Committee
NCC	Network Computing Consultants
OAG	Office of the Auditor General
ON-IMIS	Open Network Intelligent Management Information System
PFMA	Public Finance Management Act
PSC	Public Service Commission
RAMP	Repairs and Maintenance Project
SAPS	South African Police Service
SCMU	Supply Chain Management User
SETA	Sector Education and Training Authority
SIU / the Unit	Special Investigating Unit
VPN	Virtual Private Network

PROMINENT ROLE PLAYERS

Individual	Position
Mr Angelo Agrizzi	Chief Executive Officer/General Manager, Bosasa Operations
Mr Carlos Bonifacio	Auditor / Consultant: Consilium
Consilium (Pty) Ltd	Company linked to Bosasa
Ms Megan Gillingham	Mr Gillingham's daughter
Mr Patrick O'Connell Gillingham Jr	Mr Gillingham's son
Mr Patrick O'Connell Gillingham	Chief Deputy Commissioner: Finance
Mr Ryan Albert Gillingham	Mr Gillingham's son
Mrs Theresa Gillingham	Mr Gillingham's spouse
Grande Four Property Trust	A trust linked to WD Mansell
Mr P Leshabane	Executive Director, Bosasa Group of Companies
Mr William Daniel Mansell	Consultant: Bosasa & Consilium
Mr Jarrod Mansell	Mr Mansell's son
Mrs Lisa Mansell	Mr Mansell's daughter-in-law
Mr Linda Mii	National Commissioner: DCS
Dr Jurgen Smith	Director: Consilium Financial Administrator: Bosasa
Andries van Tonder	CFO: Bosasa
Frans Vorster	Fleet Manager: Bosasa

LIST OF AFFIDAVITS OBTAINED

Name	Current Occupation	No. of Affidavits obtained
Mr C Aries	DCS Secretariat: Bid Adjudication Committee	Applicable to all Tenders
Mr JDE Basson	DCS Deputy Director: Contract Management	HK2/2004
Mr J Breylenbach	Chief Director: Norms and Standards, National Treasury	Applicable to all Tenders
Dr JJ Coetzee	DCS Deputy Commissioner: Operations and Management Support	HK2/2004, HK25/2005
Mr W Damons	DCS Deputy Commissioner: Facilities and Security	HK2/2005, HK24/2005
Mr P Du Preez	DCS Deputy Director: Security Support	HK2/2005, HK24/2005
Mr F Engelbrecht	DCS Deputy Regional Commissioner: Gauteng	HK2/2004
Ms B George	Legal & Compliance Manager: Construction Industry Development Board	HK24/2005
Mr L Gqili	DCS Director: Formal Education	HK25/2005
Mr CJ Haak	Director: Correctional Services, National Treasury	Applicable to all Tenders
Mr P Leslie	DCS Deputy Director: Budget Control	Applicable to all Tenders
Mr J Lethoba	DCS Director: Systems Development	HK25/2005
Mr J Maako	DCS Director: Contract Management	Applicable to all Tenders
Ms M Mabheba	DCS Director: Health Services	HK2/2004, HK25/2005
Mr T Mapasa	DCS Director: Procurement	Applicable to all Tenders
Mr F Mocheko	DCS Director: Building and Maintenance	HK2/2005
Mr M Ngubo	DCS Deputy Commissioner: Supply Chain Management	HK2/2005
Mr W Pretorius	DCS Deputy Director: Tender Management	HK2/2004, HK24/2005
Mr P Ramorotho	DCS Deputy Director: Nutrition and Hygiene Services	HK 2/2004
Ms J Sishuba	DCS Chief Deputy Commissioner Development and Care	HK2/2004, HK25/2005
Mr HB Steyn	DCS Director: Security Management Services	HK2/2005, HK24/2005
Mr H Truter	DCS Assistant Director: Professional Services Procurement	Applicable to all tenders
Ms S Truter	DCS Assistant Director: Procurement Policy Formulation	Applicable to all Tenders
Mr AJC Venter	DCS Area Co-ordinator: Corrections: Gauteng	HK2/2005 and HK24/2005
Mr F Venter	DCS Assistant Director: Risk Profile Management	Applicable to all Tenders
Mr JP Venter	Principal Engineer: Council for Scientific and Industrial Research	HK25/2005

Name	Current Occupation	No. of Affidavits obtained
Mr M Woilela	DCS Deputy Commissioner: Communications	HK25/2005
The witness	Former Bosasa Employee	HK2/2004 and HK3/2005

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1 INTRODUCTION

1.1 Subject of report

The SIU's findings in the investigation in terms of its terms of reference are set out in this report. The SIU investigated the kitchens, access control, fencing and television tenders. The report addresses the SIU's specific findings in relation to these four tenders.

1.2 Background to report

The SIU and the DCS entered their first investigation partnership on 1 October 2002. This partnership was extended for a further 3-year period on 9 June 2006 and terminated on 31 March 2009. As part of its service offering to the DCS, the SIU was requested to conduct procurement investigations.

Fairly early in the renewed partnership various allegations were raised in the media regarding possible irregularities in the procurement processes followed by DCS in procuring the services of Bosasa, Sondolo and Phezulu. Sondolo and Phezulu form part of the Bosasa Group of Companies. Further information pertaining to the formation and directorships of these companies is contained in section 6 (The Bosasa Group of Companies Structure) below.

This matter was then referred to the SIU in late 2006 by the PSC and the OAG. The SIU was requested to investigate various allegations in respect of these service providers (as set out in the terms of reference) and two specific officials within DCS, namely, Gillingham and Commissioner Mti.

The SIU obtained the Proclamation⁵, authorising this and other investigations in the DCS context, which meant the SIU was then in a position to fully investigate these tenders. The SIU then accordingly proceeded with its investigation.

1.3 Objectives of report

Section 4(1)(d) of the Act⁶ allows the SIU to refer evidence which points to the commission of an offence to the relevant Prosecuting Authority.

⁵ Proclamation R44 of 2007, attached as Annexure 2

⁶ The Special Investigating Units and Special Tribunals Act 74 of 1996, attached as Annexure 3

Section 5(7) of the Act provides that if during the course of an investigation, any matter comes to the attention of the Head of the SIU which, in his/her opinion, justifies the institution of legal proceedings by a state institution against any person, he/she may bring such matter to the attention of the State Attorney or the institution concerned, as the case may be.

Bearing the aforesaid provisions in mind, the objectives of the report are to:

- give an exposition of the evidence gathered during the investigation
- provide a summary of the findings based on the evidence
- make recommendations on the institution of legal proceedings.

2 METHODOLOGY

The SIU conducted the investigation as authorised by the Proclamation. The SIU employed a multi-disciplinary team consisting of forensic lawyers, forensic accountants, forensic investigators and cyber forensic experts to conduct this investigation. The SIU applied a uniform methodology across the investigation, involving the following:

- A review of all relevant documentation related to the tenders listed above
- Determining the level of compliance with DCS procurement policy, the relevant procurement legislation and standards set by Treasury
- Conducting interviews with and obtaining affidavits from officials within the DCS involved in the procurement process
- Conducting interviews with officials within Treasury and where necessary obtaining affidavits from them
- Conducting interviews with other witnesses that could shed light on the investigation
- Conducting a financial analysis into the affairs of Gillingham and a more limited analysis in respect of Commissioner Mti
- Conducting search and seizure operations to obtain evidence related to the investigation
- Obtaining and analysing of computer images obtained from Bosasa and various persons who featured in the procurement process
- An analysis of the documentary and electronic evidence obtained by the multi-disciplinary team.

The SIU's conclusions rely on the facts established from the documentary and electronic information obtained during the course of the investigation.

3 OUTLINE OF RELEVANT POLICIES AND SPECIAL LEGISLATION APPLICABLE TO INVESTIGATION

3.1 The DCS procurement policy

A summary of the key steps in the procurement processes in the DCS are set out below.

Identification of a need

A need should be identified for the acquisition of a service or goods. A need is based on a strategic plan of a department within the DCS that serves as a basis for the identification of resources needed to achieve set objectives. The particular department's operational plan specifies the timelines for the acquisition of the resources and the achievement of its set goals. A budget estimate is prepared which expresses the need for funds necessary to acquire the resources.

Availability of Funds

All financial matters must first be finalised before bids are invited, i.e. bids should not be invited if funds are not available.

Drafting of specifications

Specifications should promote the broadest possible competition while simultaneously assuring that critical elements of performance are achieved. Specifications should be based on relevant characteristics and / or performance requirements. The end user is responsible for the drafting of the specifications of tenders, and may obtain assistance from the private sector when preparing the specifications. However, the involvement of the private sector should involve as many role players in the specific sector as possible to ensure that the specifications are as broadly drafted as possible and that they encourage competition.

Site inspection and Explanatory meetings

Where it is necessary to invite prospective bidders to a site inspection or explanatory meeting, it should be indicated in the invitation to bidders whether this is compulsory

or not. An attendance register should be completed by all attendees. Minutes of such meetings should be taken and distributed to all prospective bidders that attended.

Maintenance

Bidders are requested to indicate the maintenance structure and cost for the resource that is being tendered for. This information is used for evaluation purposes and budgeting.

Preferential Points System

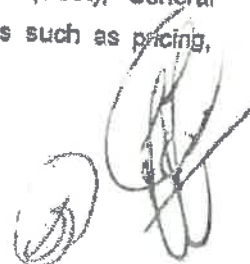
The Preferential Points System (80/20 or 90/10) was designed to promote the socially desirable aim of Black Economic Empowerment (BEE). Depending on the value of the contract, either the 80/20 or the 90/10 points system is applicable. There is a set threshold for government contracts that determines which of the two points systems applies in any given tender. Assuming for argument's sake that the threshold is R5 million, then contracts below that value will be assessed according to the 80/20 system; if the contract is valued at above R5 million, the 90/10 system applies. Thus in dealing with a tender of R5 million or less, 20% of the bid evaluation points should be allocated to the assessment of the bidder's BEE profile, and conversely, when dealing with a tender above R5 million, the 90/10 principle applies and only 10% of the bid evaluation points are allocated to the evaluation of the bidder's BEE status. The particular points system applicable, whether 80/20 or 90/10, should be indicated in the bid documents.

Evaluation Criteria

In all four tenders referred to above and reviewed by the SIU, the price and functionality evaluation criteria were adopted by the DCS. National Treasury Regulations and Practice Notes set out the circumstances in which the price and functionality criteria should be applied.

Compiling bid documents

Bid documents are compiled and issued to prospective bidders by the Procurement Unit (PU) and consist of Specifications, Terms of Reference (TOR), General Conditions and other standard documents which address issues such as pricing, price adjustments, declarations of interest, etc.



Communication with bidders

Before bids close, communication between the officials of the department and prospective bidders may take place to clarify issues about the bid. During the evaluation of bids, delegated officials of the PU may communicate in writing with the bidders to obtain information where it is incomplete for clarification.

Approval to procure and appointment of Bid Evaluation Committee (BEC)

The BEC members are recommended by the end user and approved by the accounting officer of the relevant department seeking to acquire the resource. This committee evaluates bids according to given criteria, supplied at the commencement of the evaluation process. The process remains confidential. All members are required to declare any interests beforehand.

Appointment of the Bid Adjudication Committee (NBAC)

The members of the BAC are appointed by the accounting officer of the relevant department seeking to acquire the resource. There is a national BAC (NBAC) that considers recommendations in all cases with an estimated value of above R5 million. All members are required to declare any interests beforehand. No member of the BAC is appointed to the BEC or vice versa.

Invitation to bid

The PU is responsible for the compilation of the tender invitation based on detailed specifications and available funding. The bid is advertised in the government tender bulletin and in other media. The minimum period of 30 days between the publication date of the bid invitation and the closing time of bids may be extended for longer periods for tenders that are more complicated or shortened in appropriate circumstances. In terms of the advertisement, interested parties are invited to uplift the bid documents from the Department.

The bid documents contain comprehensive details of the procedure to be followed in submitting bids, qualifying criteria, forms to be completed, how the bids would be scored, special bid specifications etc. The bid documents form the sum total of all the information supplied to bidders to enable them to submit their bids. In the bid documents, the BEC may reserve the right to call for presentations from bidders, should this need arise.

Receiving bids and opening of bids

Bids must be opened in public as soon as possible after closing time by officials authorised in writing. Bids are given a registration mark of authenticity and all bids received must be listed. The names of the bidders and their individual total prices should be recorded when bids are opened. All bid documents must be scrutinised and initialled to prevent unnecessary criticism.

In all four tenders investigated by the SIU, the bid documents required bidders to submit their proposals in two separate parts – the one dealing with functionality and the other with price – each part to be contained in a different envelope. The first envelope had to contain the technical proposal (bid relating to functionality) and the second, the price proposal.

Evaluation criteria of bids by BEC

The threshold score for functionality in respect of each of the bids was set at 70%. Only those bidders whose functionality proposals met or bettered the threshold score, qualified to have their price proposals considered.

Once the scoring for the pricing proposals is complete, the scores for the functional and pricing proposals are applied to prescribed formulae to determine which of the bidders scored the highest points.

BAC assessment based on BEC recommendations

All relevant information must be placed before the NBAC to enable it to take an appropriate decision. To this end, all documentation relevant to the BEC's evaluation/scoring of the bidders, as well as the consolidated scoring of points by SCM/PU, is required to be placed before the NBAC.

Should the NBAC have any questions around any of the issues regarding the scoring and evaluation, they should obtain clarification from the bodies concerned that is to say, BEC, PU etc.

Awarding of contract

After the NBAC has approved the awarding of a contract, the successful bidder is advised of the acceptance of its bid by letter/facsimile. The successful bidder is allowed seven days within which to conclude a standard written contract, which must be signed before the validity period of the bid has expired. Bid results are then advertised in at least the government tender bulletin.

Further phases of contract

The further phases of the procurement process - placing an order, payments and contract management - are dealt with peripherally in this report, and therefore they are not set out here.

3.2 Treasury guidelines regarding budgeting for the tender process

Within the DCS, there was a substantial monetary saving in the compensation on employees' budget for the 2005/2006 financial year. Money from this saving was applied to fund some of the tenders under discussion.

The SIU obtained information relevant to the employment of the savings referred to above from Mr CJ Haak⁷ (Haak) from National Treasury. Haak holds the position of Director: Correctional Services.

According to Haak, there are specific rules in the Public Finance Management Act (1 of 1999) (PFMA) and regulations which permit funds already budgeted for to be moved across to different programmes. It is only when, within the virement rules - moving funds from one programme to another, provided that such movement does not exceed 8% of the total allocation of the transferring programme - the budget from which funds are sought to be transferred is increased, that approval from National Treasury would be required.

Accordingly, the DCS was entitled to re-prioritise funds for the 2005/2006 financial year, and was thus entitled to use the compensation of employees' funds for projects such as fencing, television and other tenders, provided the budget from which these funds were being transferred was not increased.

The DCS accordingly used section 43 of the PFMA to transfer R769 million from the Compensation of Employees programme to the Machinery and Equipment programme under Capital Assets.

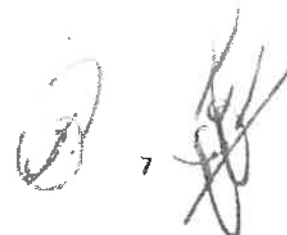
The information imparted to the SIU by Haak was confirmed by Mr P Leslie⁸ (Leslie), the DCS Deputy Director: Budget Control.

According to Leslie, the fact that the funds for the fencing and television tenders were utilised towards the end of the financial year, resulted in the procurement process being rushed. For this reason, according to Leslie, the costs of the fencing and

⁷ See affidavit of Mr Haak, Annexure 4

⁸ See affidavit of Mr P Leslie, Annexure 5

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television tenders, taken together with a further project relating to information technology and the purchasing of government vehicles, amounted to more than the initial saving of R641 million. Additional funds were subsequently sourced from "white paper" funds in the following year.

Lastly, according to Leslie, National Treasury had complained about spending such large amounts close to the end of the financial year and commented that it was equivalent to "fiscal dumping", i.e. where departments spend large amounts of money just prior to the financial year end to exhaust their budget, ignoring whether the department gets value or not for such spending.

The SIU interviewed Mr J Braytenbach⁹ (Breytenbach) of National Treasury with a view to obtaining clarity on a number of aspects applicable to the procurement process and to enable the SIU to appraise the procurement processes followed by the DCS and those prescribed by National Treasury.

According to Breytenbach, all goods and services procured by State Departments were required to be procured through the State Tender Board. The amended State Tender Board Regulations now make it possible for accounting officers of national state departments to procure goods and services either through the State Tender Board Act, or alternatively, in terms of the PFMA. On 6 December 2003, National Treasury issued a circular to all accounting officers confirming that they now had this option available to them and, in addition, issued a number of practice notes in terms of the 2003 regulations.

According to a Ms S Truter¹⁰ (S Truter), Assistant Director Procurement Policy Formulation, on 8 March 2004, Commissioner Mti, opted for the DCS procuring goods and services in terms of the PFMA. As an interim measure, the DCS used the prescripts of the ST37: User Manual: Directives from March 2004 to May 2005, after which its own DCS SCM User Manual: Directives came into effect.

According to Breytenbach, in the event of inconsistencies between the prescripts of the ST37 and the SCM prescripts, the prescripts of National Treasury prevail. Furthermore, section 3(3) of the PFMA provides that if there are inconsistencies between any other legislation and the PFMA, the PFMA prevails.

⁹ See affidavit of Mr Breytenbach, Annexure 6

¹⁰ See affidavit of Ms S Truter, Annexure 7

Further, according to Breytenbach, planning plays an integral part in SCM, and any irregular, unauthorised or fruitless and wasteful expenditure, is regarded as an act of financial misconduct in terms of section 38(1)(h)(iii) of the PFMA.

Paragraph 4.1.1 of ST37 provides that the department with a requirement for a product will usually initiate the drafting of the specifications or identify an existing specification that meets the requirement.

However, paragraph 4.1.1 only prevailed until 26 October 2004. Thereafter National Treasury's circular entitled 'Implementation of Supply Chain Management of 27 October 2004', provides for the appointment of a Bid Specification Committee (BSC), a BEC and a BAC. Paragraph 4.1(a) of the circular, provides that the BSC is responsible for compiling the bid specifications and that the specifications should be written in an unbiased manner to allow all potential bidders to offer their goods and/or services.

The position regarding the drafting of bid specifications changed with effect from 15 March 2005 when a new set of Treasury Regulations (the 2005 Treasury Regulations), issued in terms of the PFMA, came into effect. Regulation 16A6.2(b) of the 2005 Treasury Regulations, prescribes that a supply chain management system must, in the case of procurement through a bidding process, provide for the establishment, composition and functioning of bid specification, evaluation and adjudication committees. As from 15 March 2005, failure to establish a BSC constitutes irregular expenditure in terms of the PFMA.

Treasury Regulation 6.3(c) of the 2003 regulations provides that procurement through a bidding process, must provide for bids to be advertised for at least 30 days prior to closure, except in urgent cases when bids might be advertised for a shorter period as decided by the accounting officer. The shortening of the closing date for a complex tender may also be regarded as unfair to potential bidders in terms of section 217(1) of the Constitution.

According to Breytenbach, there are no specific prescripts regarding the drafting of evaluation criteria, but ideally the criteria should be drafted by the same person/s or committee that drafted the bid specifications.

In respect of the bid evaluation process, regulation 16A8.3(d) of the 2005 Treasury regulations, provides that a SCM official or other role player must ensure that they do not compromise the credibility or integrity of the SCM system through the acceptance of gifts, hospitality, or any other act. Sub-regulations 16A8.4(a) and (b) provide that if

a SCM official or other role player, or any close family member, partner or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must disclose that interest and withdraw from participating in any manner whatsoever in the process relating to that contract. Failure to do so may be regarded as an act of abuse of the SCM system and the official may be charged in terms of Regulation 16A9 of the 2005 Treasury Regulations.

Further, practice note SCM 3 of 2003 introduced the concept of the evaluation of bids based on functionality and price. The evaluation of bids in terms of functionality and price, however, only applies to bids where the services of consultants, such as consulting firms, engineering firms, auditors and research agencies (professional services), are procured.

Paragraph 1.1 of practice note SCM 3 of 2003, specifically provides that the evaluation of bids on the basis of functionality and price, do not apply to general services such as construction works, manufacture of goods, operation and maintenance of facilities or plants, surveys, catering, cleaning and security in which the physical aspects of the activity predominates.

According to Breytenbach, the evaluation method involving the application of functionality and price, which was applied in the four tenders referred to above, was incorrectly applied and its application was contrary to Treasury Regulations. According to him, the evaluation method that should have been applied to these tenders was where price was the most important factor.

Breytenbach also explained that there is a duty on the BEC to inform the BAC if the tender price of the recommended bids exceeded the available budget. Section 38(1)(h)(iii) of the PFMA, provides that the accounting officer must take effective and appropriate disciplinary steps against any official in the service of the department, who makes or permits unauthorised, irregular, fruitless and wasteful expenditure. In addition, there is a duty on the BEC to ensure that a recommended bidder's price is reasonable prior to recommending to the BAC that the bid should be awarded to their preferred bidder.

With regard to contract administration, and in particular, upfront or advance payments to contractors, regulation 15.10.1.2(c) of the 2005 Treasury regulations, provides that prepayments for goods or services must be avoided, unless required by the contractual arrangements with the supplier.

Section 38(1)(a)(i) of the PFMA prescribes that an accounting officer must ensure that his/her department has and maintains an effective, efficient and transparent system of financial and risk management and internal control.

Paragraph 16.1.1 of practice note SCM 3 of 2003, provides that any changes to a contract that would in aggregate increase the original amount of the contract by more than 15%, is subject to the approval of the accounting officer or his/her delegate. Variation orders should also not infringe on the provisions of section 217(1) of the Constitution of the Republic of South Africa (Act 108 of 1996) (Constitution).

Paragraph 16.1.1 of practice note SCM 3 of 2003, deals with modifications to and extensions of contracts. Although the accounting officer has the authority to approve modifications to and extensions of contracts, such approval should not infringe the provisions of section 217(1) of the Constitution.

Paragraphs 21, 22 and 23 of the practice note SCM 1 of 2003, govern the contractual provisions regarding delays in the supplier's performance, penalties and the determination of default procedures to be followed, when a contractor fails to complete a contract by completion date.

The SIU also interviewed S Truter¹¹, Assistant Director: Procurement Policy Formulation in the DCS. S Truter explained the DCS policy pertaining to the submission of tax clearance certificates. According to her, practice note SCM 3 of 2006, provides that if the Department is in possession of an original tax clearance certificate, it is not necessary to obtain a new tax clearance certificate each time a price quotation is submitted from that specific supplier.

Lastly, it needs to be observed, that section 217(1) of the Constitution provides that when an organ of state contracts for goods and services, it must do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective.

3.3 The Construction Industry Development Board legislation and regulations

The SIU approached the Construction Industry Development Board (CIDB) to obtain information regarding the legislative framework that was applicable to construction tenders. This is specifically relevant to the fencing tender that was advertised in 2005. The purpose of the initial contact with the CIDB was to determine whether the

¹¹ Ibid

relevant CIDB prescripts had been complied with when the DCS advertised and awarded the tender.

The CIDB was established in April 2001 in terms of the Construction Industry Development Board Act (38 of 2000) (CIDB Act), to regulate and develop the construction industry for improved performance in infrastructure delivery. A further aim of the CIDB, is to promote uniform application of policy with regard to the construction industry throughout all spheres of government.

The SIU interviewed Ms B George¹² (George), the CIDB Legal and Compliance Manager. George advised the SIU on the provisions of the CIDB Act, its regulations and its application to the construction industry. Further details regarding the application of the CIDB Act and its regulations as regards the fencing tender are discussed later herein in sections 8.3.1 and 8.3.2.

4 LIMITATION ON THE INVESTIGATION

The report is based on the review and analysis of documentary and electronic evidence, interviews conducted and affidavits obtained by the SIU. The investigation, however, was constrained by litigation as explained hereunder.

Bosasa has sought by way of application proceedings in the North Gauteng Division of the High Court of South Africa, to interdict the SIU from investigating the full scope of Bosasa's activities regarding the awarding of the four tenders to it by the DCS. As a result of the application, the SIU gave an undertaking not to interrogate material witnesses pending the finalisation of action proceedings for a final order. The SIU has accordingly not interrogated various Bosasa officials, its auditors and other witnesses, who could impart material information regarding issues relating to the investigation. The investigation has accordingly not been as intensive as the SIU would have wanted, and accordingly, any *lacunae* that exist in the investigation, will be addressed upon the resolution of the litigation between the SIU and Bosasa.

¹² See affidavit of Ms B George, Annexure 8

5 CYBER FORENSIC EXPERTISE ENGAGED BY THE SIU

The SIU employed the services of a cyber forensic expert, Mr J Malan¹³ (Malan), to assist it with the retrieval and analysis of electronic data obtained from Bosasa and Gillingham.

The SIU served notices in terms of section 5(2)(b) and (c) of the Act, on Bosasa requesting *inter alia* that Bosasa provide the SIU with access to its servers so that the SIU could obtain electronic copies of relevant data relating to this investigation. Bosasa offered to assist the SIU with its investigation. The SIU and Bosasa reached an agreement in terms of which the SIU would be granted access to Bosasa's servers and laptops so that mirror images could be made of them.

The imaging was initially scheduled to take place in the first week of December 2008, but at the request of Bosasa, this process was postponed until the second week of December 2008. From 8 to 16 December 2008, the SIU made mirror images of the data on the Bosasa file server environment, domain controller system, email server, financial system server as well as of the personal laptops of Agrizzi, Mr A van Tonder (van Tonder) and Mr F Vorster (Vorster). During the imaging process, the SIU was denied access to one server. After the intervention of Adv J Wells, the SIU's Legal Advisor, access was eventually granted and the server was imaged.

Malan analysed the data obtained from Bosasa, using keyword searches. During his initial analysis of the data, he identified that a data deletion utility known as *Erase*¹⁴ had been used to delete a significant amount of data on the servers. Table 1 below, reflects the dates on which the data was erased.

Table 1: Dates of deleted data on Bosasa server			
Server name	Document and folder count	Timeline of modification and deletion	Comment
Domain server ADS01	32 769	24 July 2008	Documents appear to have been overwritten and then deleted
Domain server ADS01	60	2 December 2008	Mostly archived documents were overwritten and deleted
File server	116	3 December 2008	Folder names appear to have been overwritten with random data and then deleted

¹³ See affidavit of Mr J Malan, Annexure 9

¹⁴ The Eraser product is marketed as software that can frustrate cyber forensic investigations.

File server	468	4 December 2008	Folder names appear to have been overwritten with random data and then deleted
Domain server ADS01	7 130	6 December 2008	Documents appear to have been overwritten and then deleted

Because of the use of the *Eraser* utility, Malan had to employ advanced data recovery techniques, which assisted him in his endeavour to recover the maximum amount of data.

Malan also analysed the mirror images of Gillingham's computers and other electronic data storage facilities, obtained during a search conducted at Gillingham's residence in terms of section 6 of the Act. The *Eraser* utility was also found on Gillingham's system, but Malan found that the utility was not used extensively on his computer to destroy data.

Documents of particular relevance to the investigation of the kitchens and access control tenders, were retrieved and analysed by Malan and are dealt with under the discussion of these tenders.

6 THE BOSASA GROUP OF COMPANIES STRUCTURE

The SIU conducted an investigation into the establishment and structure of the Bosasa Group of Companies. The SIU's findings are based on information obtained from the Registrar of Companies, the previous auditors of the Bosasa Group, tender documentation submitted by Bosasa, Sondolo and Phezulu and from the official Bosasa website. The SIU's findings are set out below.

6.1 Bosasa Operations (Pty) Ltd

During December 1981, a company known as Emafini (Pty) Ltd was formed by Mr SJH Van Zijl (Van Zijl). In December 1984, Smith was appointed to Emafini as a Director. Emafini then changed its name to Meritum Hostels (Pty) Ltd in February 1985.

On 20 June 1985, Van Zijl and Smith entered into a pre-incorporation agreement with a trust, stipulating that a new holding company would be formed and a new operations company would be established to render the services for this holding company, administered by the trust. Mansell signed as a witness to the pre-incorporation agreement.

As a result of this agreement, Meritum Hostels became known as Dyambu Operations (Pty) Ltd (Dyambu Operations), and the trust, as the Dyambu Trust and the holding company, as Dyambu Holdings. In November 2000, Dyambu Operations changed its name to Bosasa Operations (Pty) Ltd.

Mansell was an active Director of Dyambu Operations from 1 June 1997. He resigned as a Director of Dyambu Operations in November 2000, when Dyambu Operations became Bosasa. Despite his resignation from Dyambu Operations, he remained on as a consultant with Bosasa and operated as such during the period that Bosasa was awarded contracts from DCS.

6.2 Sondolo IT (Pty) Ltd and Phezulu Fencing (Pty) Ltd

Sondolo, previously known as Mavava Trading (Pty) Ltd, was formed in 2005, while Phezulu, previously known as Nino Construction, changed its name to Phezulu Fencing in 1997.

Upon changing its name in 2005, Sondolo appointed Bester Viljoen Incorporated as its auditors. At this time, Johannes Gumede, Tony Perry, Papa Leshabane, Brian Gwebu, Jacqueline Leyds, Nomazulu Makoko (among others), were appointed as directors of Sondolo. These individuals were all affiliated to Bosasa.

In December 2005, a number of directors resigned from Phezulu, whilst directors such as Jacqueline Leyds and Victor Mhangwana, with previous Bosasa affiliations, were appointed in their stead as the new directors of Phezulu. At this stage, the auditors for Phezulu, were changed from PricewaterhouseCoopers to Bester Viljoen Incorporated, the auditors for Bosasa and Sondolo.

According to the documentation obtained from the Registrar of Companies, Bosasa, Sondolo and Phezulu have the following in common:

- Bester Viljoen Incorporated are their auditors
- Jacqueline Leyds is a director of all three companies
- Bosasa and Sondolo have Johannes Gumede, Munira Oliveria and Ishmael Mncwaba as directors
- Bosasa and Sondolo share the same physical business address, namely, 1 Windsor Road, Mogale City, Krugersdorp, 1739.

In addition to the above, the documents obtained from the Registrar of Companies indicate that company changes within Sondolo and Phezulu were addressed to

Bosasa. According to the Bosasa website, both Sondolo and Phezulu, fall within the Bosasa Group of Companies.

During the course of the investigation, a document compiled by Agrizzi, was handed to the SIU. This document, entitled *Summary Company Structure*¹⁵, indicated that Sondolo was owned by four companies, namely, Bancar Investment Holdings (Pty) Ltd (25%), Kgwerano Financial Services (Pty) Ltd (25%), Bosasa Youth Development Foundation (10%) and Bosasa (40%). On its website, Bosasa maintains that these companies are all affiliated to the Bosasa Group. The *Summary Company Structure* document in addition, indicated that Phezulu appointed Sondolo as its project manager and integrator of the fencing contract.

Lastly, the tender documentation submitted by Sondolo and Phezulu, confirm that they are part of the Bosasa Group of Companies and that they are dependent on each other for the delivery of services.

7 COMMISSIONER MTI'S FORMAL RELATIONSHIP WITH BOSASA

From the information obtained from the Registrar of Companies, Commissioner Mti is the director of a company called Lianorah Investment Consultancy (Pty) Ltd (Lianorah). Further information from the Registrar of Companies indicated that Lianorah is in one way or another, linked to Bosasa. These links include the following:

- Both Sondolo and Lianorah's registration documentation reflects Mr Stephan Kruger as the initial director, with BGB Smit as the auditors
- Both Sondolo and Lianorah appointed Bester Viljoen Incorporated as their new auditor in place of BGB Smit
- Bester Viljoen Incorporated are the auditors for Bosasa.

At the time Lianorah's incorporation, Commissioner Mti was the DCS National Commissioner. The timing of the registration of the above entity appears to coincide with the awarding to Sondolo of the access control tender, on or about 19 April 2005.

The analysis conducted by the SIU, has revealed that Lianorah was deregistered on 20 April 2007.

¹⁵ See Annexure 10

8 ANALYSIS OF CONTRACTS

Against the background of this information, the SIU analysed the procurement process related to the four contracts referred to above. The evaluation of each one, is dealt with below.

8.1 The kitchens tender: HK2/2004

The kitchens tender was awarded to Bosasa on 20 July 2004. The scope of the kitchens tender entailed the providing of full catering services, including full maintenance of kitchen equipment, cleaning and training of DCS staff and inmates, at correctional centres in seven management areas. These areas were Pretoria, Johannesburg, Durban Westville, Krugersdorp, Pollsmoor, Modderbee and St Albans.

The bid was advertised on 21 May 2004, and it required the rendering of services over a 3-year period (1 August 2004 to 31 July 2007), at a cost of approximately R239 427 694 per annum.

8.1.1 Evidence gathered

Engagement with the service provider prior to publication of the tender

The SIU ascertained that a DCS Executive Management Committee (EMC) meeting was held at Supersport Park in Centurion, Pretoria between November 2003 and early 2004. At this meeting, Agrizzi and Leshabane from Bosasa made a presentation to the attending DCS officials, including Commissioner Mti, Gillingham and Mr F Engelbrecht, the Regional Commissioner of DCS, Gauteng (Engelbrecht)¹⁶.

The Bosasa presentation was to advise the DCS of the services Bosasa was able to provide, including catering and measures to prevent the theft of food from prison kitchens.

This meeting took place not only prior to the advertising of the kitchens tender, but also before it was made known within the DCS that it would be outsourcing catering services, the full maintenance of kitchen equipment and the training of DCS staff and inmates at correctional centres.

Engelbrecht raised questions regarding the viability of outsourcing catering facilities after the Supersport Park presentation. His concern related to job security of DCS

¹⁶ See affidavit of Mr Engelbrecht, Annexure 11

staff, the sustainability of such a venture, its budget and the effect of such outsourcing on offender labour. He stated that in response to his questions, Commissioner Mti had rudely instructed him to stop asking questions.

During a later EMC meeting held prior to May 2004, in Magaliesburg, Gillingham did a presentation regarding the outsourcing of catering services due to the amendments to the Correctional Services Act (111 of 1995) (Correctional Services Act). The relevant amendment to the Correctional Services Act provides:

"Food must be well prepared and served at intervals of not less than four and a half hours and not more than 14 hours between the evening meal and breakfast during each 24 hour period".

During the presentation, Gillingham highlighted the fact that the amendment set requirements which the DCS might not have the capacity to deal with effectively. In addition, he touched on aspects relating to the theft of food in prisons and general hygiene in prison kitchens. At the time of this presentation, Gillingham was the Regional Commissioner: North West, Mpumalanga and Limpopo.

Shortly after the presentation in Magaliesburg, the DCS CFO, Mr Tshivhase (Tshivhase), announced that the DCS would be outsourcing catering services. Gillingham was appointed as the project leader for this tender, which was then prioritised. Two DCS procurement officials, namely, Messrs W Pretorius¹⁷ (Pretorius) and Truter were requested to assist Gillingham with the project.

According to Engelbrecht, the Directorate: Health Care Services was responsible for nutritional services, and to his knowledge, none of the officials from that Directorate, were consulted by Gillingham regarding the drafting of the specifications for this tender.

The timeline of the tender

According to Mr H Truter (Truter)¹⁸, requests to invite bids had to be in writing, and a written instruction to proceed with invitations, needed prior approval. The kitchens tender was approved by Commissioner Mti on 24 May 2004. The bid was advertised on 21 May 2004, and the closing date was 25 June 2004. Compulsory briefing sessions were held from 4–15 June 2004 in all seven management areas where kitchen services were to be outsourced. The awarding of the bid by the NBAC was

¹⁷ See affidavit of Mr Pretorius, Annexure 12

¹⁸ See affidavit of Mr Truter, Annexure 13

scheduled for finalisation on 21 July 2004, but due to delays, the bid was only awarded on 27 July 2004, to Bosasa. Due to the abovementioned delays, Bosasa only commenced with performance on 16 August 2004, as opposed to the original performance date, namely, 1 August 2004.

For ease of reference, the chronological sequence of key events in the tender process for the kitchens tender is encapsulated in Table 2 below.

Table 2: Chronology of events regarding the tender process for the kitchens tender	
Date	Activity
21 May 2004 – 25 Jun 2004	Advertising of bid
11 Jun 2004	Scheduled bid collection
4 Jun 2004	Compulsory information meeting
4 Jun 2004 – 15 Jun 2004	Compulsory site meetings
25 Jun 2004	Closing date for bids
28 Jun 2004 – 30 Jun 2004	Screening of the bids
1 Jul 2004 – 8 Jul 2004	Evaluation process
12 Jul 2004 – 13 Jul 2004	Compiling by the BEC of their recommendations
14 Jul 2004 – 16 Jul 2007	Verification, preparation, recommendation and submission to the NBAC
20 Jul 2004	Awarding of the bid to Bosasa
21 Jul 2004	Scheduled date on which successful bidder was to be notified of award of bid
27 Jul 2004	Actual date on which Bosasa was informed that it was the successful bidder
29 Jul 2004	Signing of contract between DCS and Bosasa
1 Aug 2004	Scheduled date for commencement of services by Bosasa
16 Aug 2004	Actual date on which Bosasa started to render services

Drafting of the bid specifications

The SIU interviewed Mr T Mapasa (Mapasa), the DCS Director: Procurement¹⁹. According to him, the user department in terms of DCS procurement directives must assume responsibility for identifying the need, motivating the urgency and importance of the proposed tender, indicating the value or benefits to be derived from the tender and the providing of an estimate of the cost of the tender. Accordingly, a preliminary step in the procurement process is the identification by the relevant department of a need that is catered for in terms of its strategic plan.

¹⁹ See affidavit of Mr Mapasa, Annexure 14

The SIU could find no evidence that a needs analysis or feasibility study was conducted prior to the initiation of this tender process.

Although the kitchens contract should have originated in the DCS Directorate: Development & Care, the SIU established that the need for the kitchens contract did not originate in this directorate nor did this directorate initiate the process.

The SIU interviewed Ms J Sishuba (Sishuba), DCS Chief Deputy Commissioner: Development and Care and Ms M Mabena (Mabena)²⁰, DCS Director: Health Services. They advised that their directorates were excluded from the entire tender process, despite the fact that nutrition fell under their directorates as end users. According to them, Gillingham had assumed responsibility for the initiation and implementation of the procurement process.

The SIU interviewed the former Director: Security Management Services, Mr AJC Venter²¹ (Venter). Venter confirmed that he had neither taken part in the tender process for the kitchens tender nor was he or any other official from his directorate approached by either Gillingham or any other official for input in respect of the kitchens tender, specifically with regard to the security elements of the tender.

As regards the drafting of the specifications for the tender under discussion, Pretorius informed the SIU that during a meeting he had with Gillingham, the latter advised that he was developing specifications for the tender and handed Pretorius a two-page document that he was requested to peruse. The document handed to him, however, addressed only the aspects of training and equipment, but not the aspects relating to the preparation of food and ration scales, the heart of the kitchens tender. Pretorius advised that he suggested to Gillingham that the specifications used for the outsourcing of catering services at the Ekuseni Youth Centre be used as the basis for the development of the specifications for the kitchens tender. His subordinate, Truter, emailed these specifications to Gillingham.

Truter confirmed that Gillingham's specifications forwarded to him, were very basic and did not address the important aspects of the tender, such as provisioning of food, preparation, rationing scales, etc. In Truter's view, the tender was rushed, because on 10 May 2004, Gillingham had decided that the tender should be published on 21 May 2004.

²⁰ See affidavits of Ms Sishuba and Mabena, Annexure 15 and 16 respectively

²¹ See affidavit of Mr Venter, Annexure 17

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According to Pretorius and Truter, they advised Gillingham on how to comply with the procurement process. However, they did not assist him with the technical aspects of the specifications, as they did not possess the required technical knowledge.

It is unclear to the SIU what qualified Gillingham to draft the specifications for this bid as he only possessed a matric qualification and was not a nutrition expert.

A review of the tender specifications revealed that a number of unusual specifications were included in the bid, namely:

- The installation of security cameras
- The requirement that bidders must have accredited security personnel with proven track records of installing and monitoring offsite (CCTV) and internet protocol surveillance and be International Standards Organisation 9001:2000 (ISO) compliant
- Bidders were required to have a fully functional integrated maintenance department experienced in facilities management with a minimum of 5 years experience
- Bidders were required to have a temporary mobile facility which complied with minimum health requirements to be utilised whilst the kitchens were being upgraded
- Bidders were required to procure the services of two qualified dieticians on their full time payroll, despite DCS having full-time dieticians on their payroll.

The SIU has further established from the witness²² that Agrizzi requested him to develop a solution for the installation of various types of security equipment in correctional centre kitchens. According to him, he was informed by Agrizzi that the solution would be added to the tender specifications to ensure that Bosasa enjoyed an advantage over the other bidders. The witness advises that this solution formed part of the eventual tender specifications.

In the bid, the following security equipment was specified:

- Surveillance cameras in the kitchens
- Digital video recorders in each kitchen office
- Control and review personal computers in each kitchen office
- Access control systems in store rooms and fridges

²² The affidavit of this witness will be withheld and provided to DCS upon request

- Wide area network connectivity to provide off-site surveillance.

During the security roll-out for the kitchens tender in August/September 2004, the witness was introduced to Mansell who had previously visited the Bosasa premises. The witness was informed that Mansell was a consultant and former partner of a Mr G Watson (Watson), the CEO of Bosasa. According to the witness, Mansell occupied an office in one of the Bosasa buildings and was often in the company of Agrizzi.

The bid evaluation and adjudication process

On 1 July 2004, the Code of Conduct and Declaration of Interest forms were signed by the members of the BEC in terms of which they were required to declare their interest, if any, in any of the bidders. Gillingham, as chairperson of the BEC, signed this form and indicated that he had no interest in any of the bidders for the kitchens contract.

Despite the fact that the kitchens contract was not a tender for consultant services, the DCS used the price and functionality tender evaluation method. Truter confirms that only Bosasa and Sechaba Catering Services (Sechaba) met the threshold for functionality and hence qualified for the second phase.

Members of the BEC²³ were informed by Gillingham, the Chairperson of the BEC, that the purpose of the kitchens tender, was to ensure that DCS complied with the amendments to the Correctional Services Act, with specific reference to section 8(5), referred to earlier.

The SIU interviewed Dr J Coetsee²⁴ (Coetsee), a member of the BEC that evaluated the kitchens tender. He informed the SIU that during the evaluation of the kitchens tender by the BEC, he observed that although the budget for the kitchens tender had been sourced from the Directorate: Health Care Services, this directorate had not requested the tender. Other BEC members further observed that the entire tender process had been managed by Gillingham.

From documentation made available to the SIU, it appears that after the awarding of the contract to Bosasa, a complaint was received from Sechaba, questioning the basis on which the tender was awarded to Bosasa. Sechaba complained that its pricing was reasonable in the light of its knowledge of prisons and high volume

²³ See affidavit of Mr Coetsee, attached as Annexure 1B

²⁴ Ibid

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feeding. In its response to the complaint, the DCS stated that the BEC was satisfied that Bosasa had best met the requirements for the tender.

The SIU in the course of its investigation obtained a file relating to allegations of maladministration and misconduct. It was alleged that Gillingham had an affair with his secretary, submitted fraudulent subsistence and travel claims (S&T claims) and had intimidated certain staff members.²⁵ Disciplinary action was recommended by DCS Deputy Commissioner: Legal and Special Operations, Adv T Mqobi (Mqobi), and DCS Chief Deputy Commissioner (CDC) Central Services, Ms J Schreiner. Contrary to the recommendations, Commissioner Mti sent a letter to Gillingham in which on the one hand he chides him for his misconduct, but on the other thanks him for repaying the irregularly obtained S&T monies. In the same letter, Commissioner Mti proceeded to appoint Gillingham as the DCS Acting CFO, which effectively gave him oversight of the procurement division. This appointment was shortly before the kitchens tender was awarded to Bosasa.

For ease of reference, the names of the members of the BEC and NBAC are set out in Table 3 below. It will be noticed that Gillingham served on both committees, in the BEC as its chairman and in the NBAC, in an advisory capacity.

Table 3: BEC and NBAC members of the Bid Evaluation Committee	
Bid Evaluation Committee	
Gillingham (Chairperson)	CDC Finance
Coetzee	Dir: Formal Education
Davids	Area Commissioner: Johannesburg Management Area
Mabena	Dir: Health Care Services
Mdletye	Area Co-ordinator: Development and Care: Durban Correctional Centre
Moodley	DC: Personnel Corrections
Maako	Dir: Contract Management
Lenkoe	Regional Head: Development and Care: Gauteng
FJ Venter	Secretary to BEC
National Bid Adjudication Committee	
Schreiner (Chairperson)	CDC: Central Services
Sishuba	CDC: Development & Care
Gillingham	CDC: Finance (Advisory Capacity)

²⁵ These details were obtained from the disciplinary file compiled by the DCS DIU

Ngubo	DC: Supply Chain Management
Mapasa	Dir. Procurement
Pretorius	Procurement: Secretariat
Ariea	Procurement: Secretariat
Truter	Procurement

The cyber forensic expert's evidence

Malan recovered a document entitled *Checklist.doc*, obtained from the images seized at Gillingham's residence. The document contains bid evaluation criteria and guidelines for evaluating the kitchens tender. These criteria and guidelines obviously, should not have been in the possession of any bidder and especially not before the submission of tenders, since it would enable the bidder to know in advance the weighting of certain factors relevant to the tender.

Malan was able to establish that the document was created on 28 June 2004, and saved on the same date by Agrizzi. According to Malan, the document originated from Agrizzi's computer but the date of first creation could not be established, given the fact that Bosasa had used the *Eraser* utility to selectively erase certain information on its servers. Significantly, however, 28 June 2004, was the date on which DCS started to screen the bids in the kitchens tender.

Email logs between Agrizzi, Mansell and kobus@bfn.co.za

During the SIU's investigation of the access control tender an email address²⁶, kobus@bfn.co.za, was linked to Gillingham.

According to Venter, Gillingham explained to him that kobus@bfn.co.za was his residential e-mail address.

The SIU determined that this email address belonged to an entity called *Network and Computing Consultants (NCC)*, situated in Bloemfontein.

Mr F De Villiers²⁷ of NCC informed the SIU that kobus@bfn.co.za was an email address belonging to Bosasa and paid for monthly by Bosasa between August 2004 and March 2005.

²⁶ Discussed in detail in section 5.2.1 titled "The Bid Specifications"

²⁷ See affidavit of Mr F De Villiers, attached as Annexure 19

The SIU obtained email logs from NCC and found two emails sent from Gillingham to Agrizzi on 26 April 2004 with the subject, "Tender Evaluation Criteria - Danny Mansell" and "Reviewed Documents". These documents were sent approximately one month before the kitchens tender was advertised.

During a search conducted by the SIU at Gillingham's residence in terms of section 6 of the Act, a business card in Gillingham's name was found that reflected that he was a consultant for *Consilium (Pty) Ltd* (established by the SIU as an affiliate company within the Bosasa Group). Furthermore, the contact information on the card included the email address, kobus@bfn.co.za.²⁸

The extension of the kitchens contract

As already observed, the kitchens tender covered seven management areas. The contract signed with Bosasa did not mention seven satellite correctional centres falling within these seven management areas. On 29 September 2004, Bosasa proposed to Gillingham that the seven satellite correctional centres be included by way of an extension of the kitchens tender.

The extension was recommended by Gillingham and authorised by Commissioner Mti on 17 May 2005.

The extension of the kitchens tender period

In October 2006, an extension of the contract was required because the contract would expire on 31 July 2007. The DCS was required to decide whether DCS personnel should render the services in future or a new tender should be advertised. The contract was extended by a year in order for the DCS to determine whether it should outsource the service again or provide the service itself. The contract was further extended for a period of six months.

A new kitchens contract HK14/2006, was awarded to Bosasa on 6 January 2009. The contract period for this contract was three years. In the course of a desktop analysis conducted by the SIU, it could not find any needs analysis or feasibility study for the new contract.

A disqualified bidder, Royal Sechaba (Pty) Ltd, previously Sechaba Catering Services, has since instituted legal proceedings against DCS and Bosasa to have this

²⁸ See copy of business card, Annexure 20

latter tender process reviewed and set aside. These proceedings are at present pending in the North Gauteng High Court.

Benefits received by Gillingham and Mti

The SIU has established that Gillingham received financial benefits from Bosasa over a period of time, for which he gave no valuable consideration. Whilst on the evidence, the payment of the benefits cannot be directly linked to a particular tender dealt with in this report, the timing of the benefits and the tenders lead the SIU to conclude that there is on the evidence a sufficient link between the benefits and the awarding of all of the tenders dealt with herein.

The benefits received by Gillingham and Commissioner Mti are dealt with in more detail later in section 9 of this report.

8.1.2 Findings

The evidence gathered by the SIU, shows that there were clear deviations from the SCM: Guide for Accounting Officers, more particularly, in that the end user department was not included in the bid process. There was also no proper financial planning for this tender in that there was no feasibility study nor needs analysis conducted.

The evidence shows that Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process in relation to the kitchens tender and was irregularly instrumental in the development of the tender specifications for the tender.

According to the witness, Bosasa irregularly participated in drafting the specifications for the tender under discussion and this fact was not disclosed by Gillingham during the bid evaluation process. On the evidence of the witness, the specifications were drafted in such a manner that the security aspects of the tender provided Bosasa with a clear advantage over other bidders. It is therefore not surprising that only two bidders were found to meet the functionality requirements by the BEC.

Furthermore, on the evidence of the cyber forensic expert, a document containing the bid evaluation criteria and guidelines for evaluating the tender was found in electronic data seized at Gillingham's residence, having originated from Agrizzi. The creation date of this document on Gillingham's computer was 28 June 2004 and was saved on Agrizzi's computer on the same day. Significantly, the DCS commenced with the screening of the tenders received in respect of the kitchens tender on 28 June 2004.

Whilst, Malan could not determine the date of first creation on Agrizzi's computer, the evidence raises two concerns: first, whether Agrizzi (and as such Bosasa) was in possession of the document at the time that Bosasa's tender was submitted for the kitchens tender, and second, whether Bosasa was party to the drafting of the evaluation criteria and guidelines for evaluating the tender. Obviously, if this were so, it would not only have subverted the entire procurement process because it would have placed Bosasa in an unduly advantageous position with reference to its competitors, but it would also have exposed the DCS to civil suits from unsuccessful bidders.

Given the fact that there was no BSC constituted to prepare the specifications for the kitchens tender, the fact that Gillingham played an integral role in the preparation of these specifications, the fact that these specifications were prepared in such a way as to favour Bosasa and the fact that a document containing the bid evaluation criteria and guidelines for evaluating the tender, was found on Gillingham's computer – having originated from Agrizzi – leads the SIU to believe that Bosasa along with Gillingham was not only involved in the drafting of these bid specifications for the kitchens tender but also in the drafting of the bid evaluation and guidelines thereof.

Paragraph 1.1 of practice note SCM 3 of 2003 provides that the price/functionality tender evaluation method applies only in tenders where consultant services are procured. It is therefore clear that to the extent that the kitchens tender did not involve consultant services, the price/functionality tender evaluation method applied to the kitchens tender, was in conflict with paragraph 1.1 of practice note SCM 3 of 2003.

The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of the kitchens tender. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham.

The SIU is of the view that the acceptance by Gillingham of financial and other benefits from Bosasa around the time that the kitchens tender was awarded was both irregular and unlawful.

The impact on the kitchens tender and the other tenders, of the receipt of benefits by Gillingham and Commissioner Mti, are more fully dealt with under the discussion of the benefits received by them in section 9.

Turning to the extension of the kitchens contract, the evidence shows that the kitchens tender was extended upon the recommendation by Gillingham and

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authorised by Commissioner Mti on 17 May 2005. In light of the irregular benefits received by Commissioner Mti the extension of this contract was irregular and unlawful.

8.1.3 Recommendations in respect of the kitchens tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by DCS on account of the award of the kitchens tender to Bosasa
- the DCS considers instituting disciplinary proceedings against Gillingham (Commissioner Mti no longer being in the employ of DCS) arising from his irregular conduct relating to the procurement process involving the kitchens tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Bosasa, the latter's office bearers and to the extent that Mansell, Agrizzi and Smith may not be office bearers of Bosasa, that they also be considered for prosecution in their personal capacities
- the DCS cooperates with the NPA for the purposes of prosecuting the persons and entities mentioned above.

8.2 The access control tender: HK2/2005

The access control tender was awarded to Sondolo on 11 April 2005. The scope of the access control tender entailed the supply, delivery, installation, commissioning, support and maintenance of a comprehensive access control and body scanning system with CCTV coverage of DCS staff and inmates at 66 Maximum Security Facilities/Centres of Excellence. The advertisement for the access control tender was published on 4 February 2005. The contract was valued at R236 997 385.31.

This tender was extended to include the staffing of the control rooms at the 66 sites. This extension took place after the awarding of the initial contract.

8.2.1 Evidence gathered

The timeline of the tender process

The tender for access control was published on 4 February 2005, with the closing date on 25 February 2005. The usual time for bidders to respond to the tender advertisement is 30 days, but the time for this tender was reduced to 21 days. The authorisation for such a reduction in time was given by the then Acting National Commissioner, Mr V Petersen (Petersen) on 27 January 2005.

The SIU established from Venter, the circumstances leading up to the advertising and awarding of this tender. Venter informs that towards the end of 2004, he was informed by Mr W Damons (Damons), Deputy Commissioner: Facilities and Security Management, that R90 million that had been budgeted for expenditure on infrastructure within the DCS would not be spent by the DCS Building and Management Division, before the financial year end. Damons instructed him to spend the money to improve security at prisons with existing Repair and Maintenance Programme (RAMP) programmes, by means of variation orders. RAMP projects are an initiative started by the DPW to upgrade various government facilities. The DCS, at the time, had many RAMP projects running with the DPW at various correctional centres.

In pursuance of the instruction from Damons, Venter drafted a plan indicating at which correctional centres the money would be spent, what equipment was required, as well as the cost, amounting to R69 517 000. A memorandum requesting approval of the plan was approved by Messrs F Mocheko (Mocheko) DCS Director of Building

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and Maintenance: Pretoria and Damons on 18 November 2004 after confirmation was received that the money was available.

According to Venter, the plan was approved by Mlombile on 3 December 2004, who commented that Commissioner Mti wanted the option of the DCS acquiring the equipment without the assistance of the DPW due to time constraints. Gillingham then requested him to obtain prices for security equipment as well as the specifications for the following security equipment from the DPW:

- Walk through metal detector
- X-ray scanner
- Security spike boom barrier system, and
- CCTV system (closed circuit television system).

In a memorandum dated 9 December 2004, Venter not only acknowledged the benefits of using the DPW, but also pointed out that his directorate had always been satisfied with the manner in which the DPW had procured equipment in the past. The memorandum was addressed to the following role players within the DCS, namely, Mocheko, Sokupa, Damons, Mlombile, Gillingham and Commissioner Mti.

In Venter's memorandum of 9 December 2004, he requested that the following points be considered:

- Employment of the necessary expertise to ensure that durable equipment was procured
- That the necessary expertise be obtained to ensure that correct equipment was installed, that the components complied with the specifications and were compatible with DCS systems
- The inclusion of a maintenance contract for a minimum period of 5 years
- That long delivery periods may result in some equipment only being installed during the following financial year
- That the DCS should continue to use the expertise of the DPW for the erection of security fences through the RAMP programmes.

According to Venter, he received the following responses to his memorandum:

- Mocheko supported the recommendation that the fences be erected through the DPW
- Sokupa recommended that all the equipment be procured by the DCS's Procurement Directorate

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- Damons supported the recommendation that the fences be erected through the DPW, but in addition, recommended a tender process by the DCS in respect of the security equipment
- Gillingham supported the recommendation regarding the security fences, but suggested that the DCS follows its own procurement process in respect of the security equipment and that all the funds should be allocated before the end of March 2005

Commissioner Mti, whilst approving the recommendations made by Sokupa, Damons and Gillingham, commented that the relevant concerns raised by Venter would be taken into consideration, but that the DCS should follow its own tender process so as not to experience delays from the DPW.

For ease of reference, the sequence of key events involved in the bid process for the access control tender, is encapsulated in Table 4.

Table 4: Chronology of events regarding the bid process of tender J/Kw/2005	
Date	Activity
18 Nov 2004	Damons drafts memorandum indicating R90 million available for expenditure, proposing it be utilised at centres with existing RAMP programmes
9 Dec 2004	Commissioner Mti grants approval to proceed with tender
14 Jan 2005	Gillingham commences drafting of tender specifications
24 Jan 2005	Gillingham emails Mlombile bid specifications originating from kobus@bia.co.za
19 - 26 Jan 2005	Meetings are held to finalise the drafting of tender specifications
27 Jan 2005	Mlombile forwards specifications to Venter
28 Jan 2005	Tender specifications are finalised
4 Feb 2005	Tender is published in the government gazette
14 Feb 2005	Compulsory information briefing is held
25 Feb 2005	Bid closed: 17 bids received as well as 3 late bids
2 Mar 2005	Initial screening of bids is finalised
9 Mar 2005	Motivation for the appointment of BEC members is drafted by Gillingham
16 Mar 2005	Gillingham signs the Declaration of Interest and Code of Conduct
	Instructions are given to the members of the BEC
11 April 2005	NBAC recommends tender be awarded to Sondolo
19 Apr 2005	Contract between DCS and Sondolo is signed

The bid specifications

According to Venter, Mlombile contacted him on 27 January 2006, in connection with an e-mail he had received from Gillingham. Attached to the e-mail, was a document containing specifications for security equipment. Mlombile was concerned by the fact that the individual who had forwarded the document to Gillingham, a certain Kobus with the email address of Kobus@bfn.co.za, was unknown to him. According to Venter, Mlombile suspected that the specifications contained in the document sent to Gillingham, were not drafted by DCS officials.

Venter informed that he investigated the origin of the email and found that the author of the document was an individual called "Danny" and that the e-mail address from which the document had been sent belonged to an entity called *Network and Computing Consultants (NCC)*, situated in Bloemfontein.

Venter then sent a memorandum to Dements, Mlombile and Gillingham in which he raised his concern not only about the origin of the document forwarded to Gillingham, but also the inadequacy of the bid conditions and specifications in the following respects:

- no provision was made for access control at entrances used by DCS officials and SAPS members, which were also being used for the admission and release of offenders
- no provision was made for access control at gates used by work teams at the Centres of Excellence
- no provision was made for equipment to scan items that were being delivered, or the person/s making the delivery
- the Directorate Security Management Services did not possess the expertise required for the purpose of drafting technical specifications, which the DPW had previously drafted
- the CCTV coverage focussed on people entering the secure areas but no mention was made of people exiting these areas.

Venter further informed that he did not receive any feedback regarding the concerns raised in his memorandum regarding the origin and inadequacy of the bid conditions and specifications that were forwarded to Gillingham. According to Venter, Gillingham explained to him that kobus@bfn.co.za was his residential e-mail address, from which he forwarded the document to his official DCS e-mail address.

Through the SIU's investigation, it was established that there was no Kobus employed as a consultant at the DCS and further, kobus@bfn.co.za, was an email address belonging to Bosasa and paid for monthly by Bosasa between August 2004 and March 2005, which includes the day on which the document was emailed to Gillingham.²⁹ The SIU was further able to establish that a number of emails were sent by Agrizzi to Kobus.³⁰

During a search conducted by the SIU at Gillingham's residence in terms of section 6 of the Act, a business card in Gillingham's name was found that reflected that he was a consultant for *Consilium (Pty) Ltd* (previously established by the SIU as an affiliate company within the Bosasa Group). Furthermore, the contact information on the card included the email address, kobus@bfn.co.za.³¹

The SIU was further able to establish that despite it not being within the course and scope of Gillingham's duties, he had assumed responsibility for the drafting of the bid specifications. This fact accords with Venter's evidence that he was not aware of any committee that was formed for the specific purpose of drafting the specifications for this tender.

The witness referred to previously, advised that in December 2004, he was given a document by Agrizzi that contained specifications for security measures at prisons. Agrizzi informed him that the document was for a tender, which the DCS was going to advertise in the near future. Agrizzi instructed him to ensure that the specifications were up to date with modern technology and to align them with the technology Bosasa was employing in the kitchens contract. The witness further advised that his previous involvement in the drafting of the kitchens tender specifications had made the task assigned to him by Agrizzi easier.

The witness further informed that Agrizzi had told him that he (Agrizzi) had informed the Bosasa team that the bid price had to be in the region of R80 million and the bid presentation should include aspects such as system design, costing and maintenance.

The SIU was further advised by the witness that it took him a few weeks to improve upon the specifications contained in the document given to him by Agrizzi. These improved specifications were later presented to Agrizzi.

²⁹ See Annexure 19

³⁰ It is important to note here the email sent between Agrizzi, Mansell and kobus during this tender and the kitchens tender

³¹ See Annexure 20

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According to the witness, he later identified a number of similarities between his improved specifications and those contained in the tender advertisement.

According to documentation obtained from the Registrar of Companies, Sondolo (Pty) Ltd was only registered as such on 18 February 2005, that is, 7 days before the closing of the tender. Since the tender specifications required a proven track record of at least 5 years in the Information Technology (IT) industry, Sondolo clearly did not satisfy that requirement.

Further information sourced from the Sondolo bid documentation indicated the following shareholding in Sondolo:

- Bosasa (40%)
- Kgwerano Financial Services (Pty) Ltd (25%)
- Bancar Investment Holdings (Pty) Ltd (25%)
- Bosasa Youth Development Foundation (Pty) Ltd (10%) – Section 21 Company

As already observed, Kgwerano, Bancar and Bosasa Youth Development are all affiliate companies within the Bosasa Group.

The witness pointed out the following aspects that would have made it very difficult for other bidders to submit a sufficiently compliant bid:

- Given the close association between Bosasa and Sondolo and the former's knowledge of the prisons environment on account of its contractual relations in terms of the kitchens tender, its prior knowledge of the bid specifications and the exclusion of site visits allowed Sondolo to enjoy an undue advantage over other bidders
- Despite the technical nature of the bid, which would have required intensive research, the normal period of 30 days for the submission of bids was reduced to 21 days.

The cyber forensic expert's evidence

Malan obtained electronic copies from the DCS of the earliest versions of the tender specifications in respect of all the tenders forming the subject of the SIU's investigation into Bosasa and its affiliate companies. During the course of this investigation, Malan mirror imaged the servers of Bosasa and the laptops of Agrizzi, van Tonder and Vorster

Malan used the electronic copies of the bid specifications that he had obtained from the DCS in an effort to establish whether there were any similar or identical bid specifications in the Bosasa data. Despite the deletion of information by Bosasa from its servers, Malan was able to identify a document named *cctv bid.doc* both in the electronic data received from the DCS and on one of Bosasa's servers.

The document on Bosasa's server indicated that it was last printed on 13 January 2005. The author of the document was "Danny" and the document was revision 2. The document contained specifications relating to the access control tender. This document was also found on the DCS server and was attached to an email Mlombile received from Gillingham on 24 January 2005. This document indicated that it was revision 4 of the document; the document found on Bosasa's server was revision 2.

The bid evaluation and adjudication process

On 16 March 2005, the Code of Conduct and Declaration of Interest forms were signed by the members of the BEC, in terms of which they were required to declare their interest, if any, in any of the bidders. Gillingham, as chairperson of the BEC, signed this form, indicating that he had no interest in any of the bidders for this contract.

In this bid, the price/functionality tender evaluation method was utilised. Only Sondolo satisfied the threshold for functionality, thus enabling it to be considered in the pricing phase.

Despite Pinnacle Technology Holding (Pty) Ltd (the second highest bidder) obtaining only 68.13% for functionality, it was included for consideration in the pricing phase.

The BEC recommended to the NBAC that Sondolo be awarded the contract. Following this recommendation, the NBAC after its deliberations awarded the contract to Sondolo on 11 April 2005.

For ease of reference, the name of the members of the BEC and NBAC are set out in Table 5 below. It will be noticed that Gillingham served on both committees, in the BEC as its chairman and in the NBAC in an advisory capacity.

Table 5: BEC and NBAC members for the access control tender

Bid Evaluation Committee	
Gillingham (Chairperson)	CDC: Finance
Tshele	Regional Co-ordinator Security: Gauteng
Lethoba	Director Systems Development
Kunene	Regional Commissioner Limpopo, Mpumalanga and North West
Malinga	Area Manager Modderbee
Lenkoe	Regional Head: Development & Care: Gauteng
Damons	DC: Facilities & Security
F Venter	Secretary of the Committee
Steyn	Deputy Director Security Management
National Bid Adjudication Committee	
Sishuba (Chairperson)	CDC: Development & Care
Gillingham	CDC: Finance (Advisory Capacity)
Petersen	CDC: Corporate Services
Ngubo	DC: Supply Chain Management
Sokupa	Dir: Facilities Planning & Development
Mapasa	Dir: Procurement
Pretorius	Acting DD: Tender Management
Ntuli	SPAO: Tenders
Aries	Procurement: Secretariat
Truter	Clerk: Tenders
Du Preez	Clerk: Tenders

The extension of the access control contract

Venter was made a member of the steering committee that managed the access control contract after it was awarded to Sondolo, and as such, attended steering committee meetings.

The witness referred to previously, who also attended various steering committee meetings, informed that when the DCS had to identify DCS officials for training by Sondolo to monitor the control rooms, it became apparent that the DCS was experiencing staff shortages of suitably computer literate personnel, an essential skill required for the access control contract. He further informed that Agriz suggested to

him that he propose to the steering committee that Sondolo would be able to provide the DCS with trained personnel to fulfil the function, which he accordingly did. He did not attend further steering committee meetings and was not sure if DCS acted upon his recommendation.

At one of the steering committee meetings, Gillingham raised the question of outsourcing the staffing function for the control rooms. Gillingham questioned the fact whether or not it would be a cheaper option for DCS to appoint a contractor to provide the staff for the control rooms.

Cost comparisons conducted internally in the DCS indicated that outsourcing the staff component would be cheaper than training DCS members to man control rooms. According to Venter, the initial plan was to outsource the staffing function of only the regional and national control rooms. However, in awarding the contract to Sondolo, the local control rooms were also included in the contract.

Ngubo a procurement official within the DCS, requested the extension of the contract via a memorandum. Commissioner Mti extended the contract on 4 August 2005 and the extension was valued at approximately R200 million.

Contract management

According to Mr Steyn³² (Steyn), the former Deputy Director: Security Management Services, all the work for the access control tender was completed. He confirmed that the maintenance agreement for the tender came into effect on 1 April 2007, and that R2 173 567.92 was paid to Sondolo per month, from the Goods and Services budget of the Directorate Security Management Services, for the maintenance.

Although Steyn indicated that there was no problem in the execution of this tender, the OAG highlighted that it has information that the service provider did not deliver the quality of security equipment specified in the bid specifications.

Benefits received by Gillingham and Mti

The SIU has established that Gillingham received financial benefits from Bosasa over a period of time, for which he gave no valuable consideration. Whilst on the evidence, the payment of the benefits cannot be directly linked to a particular tender dealt with in this report, the timing of the benefits and the tenders led the SIU to conclude that

³² See affidavit of Mr Steyn, Annexure 21

there is, on the evidence, a sufficient link between the benefits and the awarding of all of the tenders dealt with herein.

The benefits received by Gillingham and Commissioner MII are dealt with in more detail later in section 9 of this report.

8.2.2 Findings

This contract was awarded on 11 April 2005 to Sondolo, a company in which Bosasa is a 40% shareholder.

The evidence shows that there were clear deviations from the *SCM: Guide for Accounting Officers*, more particularly, in that the end user departments were not included in the bid processes. According to the evidence, there was no proper financial planning for this tender in that there was no feasibility study or needs analysis conducted and the budget for this tender was significantly exceeded.

As in the kitchens tender, Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process in relation to the access control tender and was greatly instrumental in the development of the tender specifications for the said tender.

On the evidence of the witness and Malan, Bosasa participated in drafting the bid specifications for this tender. Agrizzi, according to the witness, requested him to prepare specifications in line with the technology Bosasa was employing in the kitchens contract. The witness subsequently identified a number of similarities between the specifications prepared by him and those in the advertisement for this tender. Furthermore, on the evidence of the witness, the specifications were drafted in such a manner that the security aspects afforded Bosasa a clear advantage over the other bidders.

On the evidence of Malan, a document titled "cctv bid.doc" was retrieved from the DCS and Bosasa systems. The document contained specifications for the access control tender. Version 2 of the document was found on the Bosasa system, whilst version 4 thereof was emailed by Gillingham from an email address belonging to Bosasa, to Mr S Mlombile (Acting Chief Deputy Commissioner: Corrections) (Mlombile) of DCS.

Given the fact that there was no BSC constituted to prepare the specifications for the access control tender, the fact that Gillingham played an integral role in the preparation of these specifications, the fact that these specifications were prepared in such a way as to favour Sondolo and the fact that a document containing the bid

specifications for the tender was found on Bosasa's servers (indicating that it was last printed on 13 January 2005, a day before Gillingham commenced drafting the tender specifications – some three weeks before the tender was published) led the SIU to believe that Sondolo/Bosasa, along with Gillingham, were involved in the drafting of the bid specifications for the access control tender.

The evidence further shows that the bid submission period was reduced to 21 days, without any apparent cause. Given the technical nature of the tender and Bosasa's participation in the drafting of the specifications for the bid, the shortened period for submission of bids and the fact that no site visits were allowed, provided Sondolo with an unfair advantage over the other bidders. The SIU was unable to find any evidence indicating that there was any urgency for the resource covered by the access control tender.

Paragraph 1.1 of practice note SCM 3 of 2003 provides that the price/functionality tender evaluation method only applies in tenders where consultant services are procured. It is therefore clear that to the extent that the access control tender did not involve consultant services, the price/functionality tender evaluation method applied to the access control tender was in conflict with paragraph 1.1 of practice note SCM 3 of 2003.

Since Sondolo enjoyed access to the correctional centre environment because of Bosasa's kitchens contract, the fact that no site visits were allowed, in effect, afforded Sondolo a significant advantage over its competitors.

Furthermore, despite it being a bid requirement that bidders should have five years' experience, Sondolo had only been registered 7 days before the closing of bids, yet Sondolo was awarded the tender. This was obviously irregular, since Sondolo should have been disqualified at the BEC stage.

The evidence clearly indicates that Gillingham and Commissioner Mti had received financial benefits from Bosasa. The SIU was unable to find any lawful cause for such benefits being made to Gillingham and Commissioner Mti. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham and Commissioner Mti.

The SIU is of the view that the acceptance by Gillingham and Commissioner Mti of financial and other benefits from Bosasa around the time that the access control tender was awarded, was both irregular and unlawful. Furthermore, Gillingham's failure – he served on the BEC and the NBAC – to disclose this during the

procurement process infringed paragraph 16A8.4 of the Treasury Regulations and as such, constituted an abuse of the supply chain management system.

The impact on the access control tender and the other tenders of the receipt of benefits by Gillingham and Commissioner Mti, will be dealt with more fully under the discussion of the benefits received by them in section 9 of this report.

Turning to the extension of the access control contract, the evidence shows that the access control tender was extended upon the recommendation of Ngubo and authorised by Commissioner Mti on 4 August 2005. In light of the irregular benefits received by Commissioner Mti the extension of this contract was irregular and unlawful.

8.2.3 Recommendations in respect of the access control tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by DCS on account of the award of the access control tender to Sondolo
- the DCS considers instituting disciplinary proceedings against Gillingham (Commissioner Mti no longer being in the employ of DCS) arising from his irregular conduct relating to the procurement process involving the access control tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Sondolo, Bosasa, their office bearers and to the extent that Agrizzi, Mansell and Smith may not be office bearers of either Sondolo or Bosasa, that they also be considered for prosecution in their personal capacity
- the DCS cooperates with the NPA for the purposes of prosecuting the persons and entities mentioned above.

8.3 The fencing tender: HK24/2005

The fencing tender was awarded to Phezulu on 29 November 2005. The scope of the fencing tender entailed the supply, delivery, installation and commissioning of security outer perimeter fences with taut wire for outer and inner fences and CCTV surveillance cameras at various correctional centres. The contract value was approximately R486 937 910.

The fencing tender was published on 14 October 2005, with closing date on 14 November 2005. The contract between Phezulu and the DCS was signed on 30 November 2005.

8.3.1 Evidence gathered

The timeline of the tender

For ease of reference, the chronology of the key events involved in the bid process for the fencing tender, is summarised in Table 6 below.

Table 6: Chronology of the key events involved in the bid process for the fencing tender

Date	Activity
19 Sept 2005	Received the standard technical specifications for outer perimeter fences for prisons from DPW
20-30 Sept 2005	Compilation of bid specifications
4 Oct 2005	Compilation of Bid documents
6 Oct 2005	Request to government printers to publish the bid invitation
14 Oct 2005	Bid invitation is published
18 Oct 2005	Memorandum dated 13 October 2005 received from Dir. Facilities Planning and Development confirming availability of funds and providing "Request to Invite Bids"
25 Oct 2005	Compulsory information meeting
14 Nov 2005	Closing date for bids: 6 Bids were received
15 Nov 2005	Initial screening commenced, Tax clearance certificates were requested from 5 of the 6 bidders
15 Nov 2005	Memorandum to Dir. Security Management to convene BEC
17 Nov 2005	Briefing of the BEC
18 Nov 2005	Evaluation of the points for phase 1
18 Nov 2005	Opened financial proposal of short-listed bidder (phase 3)

Table 6: Chronology of the key events involved in the bid process for the fencing tender

Date	Activity
18 Nov 2005	Calculation of points for phase 4
18 Nov 2005	Compilation of draft recommendation
23 Nov 2005	Finalising recommendation to the NBAC
29 Nov 2005	Recommendation approved by the NBAC
30 Nov 2005	Contract between DCS and Phazulu Fencing is signed
1 Dec 2005	Request government printers to publish the results

Planning of the tender

The SIU could find no evidence indicating that a needs analysis, feasibility studies or proper business plans were compiled for the fencing tender.

The fencing tender was initiated by Gillingham, who on 11 August 2005, requested Damons to obtain permission from Commissioner Mhl to erect security fences at 26 Centres of Excellence and 22 High Risk Correctional Centres. Damons in turn instructed Venter to draft the required memorandum. Venter's memorandum was dated 24 August 2005. Venter's memorandum requesting approval for the project and:

- dealt with the utilisation of capital funds earmarked for the construction of 4 New Generation Prisons for the purpose of erecting security fences at 26 Centres of Excellence and 22 High Risk Correctional Centres
- identified the centres where security fences should be erected at an estimated cost of R86 487 000 for the Centres of Excellence and R71 379 500 for the High Risk Centres respectively, bringing the estimated cost of the entire project to R157 866 500
- requested that the procurement process be handled by Gillingham and Ngubo.

Attached to the memorandum were the standard technical specifications for outer perimeter security fences normally used by the DPW. Venter had obtained the specifications, on request of Gillingham, from Mr P du Preez (Du Preez), employed at the Mechanical Engineering, Fire and Security division of the DPW.

The need for fencing at correctional centres was previously identified during initial discussions for the access control tender during which Venter had indicated the

necessity of involving the DPW for assistance on account of its expertise³³ in this area. Venter's suggestion of the DPW's involvement in the fencing tender was supported by Mocheko, Damons and Gillingham. However, Gillingham later did an about turn, by recommending that the DCS should do its own procurement to the exclusion of the DPW.

Gillingham submitted his request for approval of the fencing tender on 31 August 2005. In his request, he recommended that the DCS should do its own procurement and not make use of the DPW. Commissioner Mti approved the request, including the recommendation that the DPW not be included in the procurement process. It is not possible to state on which date the approval was given, as the Commissioner did not indicate a date under his signature.

Venter informed that he completed the Request to Invite Bids (Tenders) form, on 11 October 2005, but deliberately refrained from completing the estimated expenditure section, as his directorate did not have the budget for such a project. The R180 million allocated for the project came from the savings on the compensation of employees' budget.

A letter from Sokupa, dated 13 October 2005, confirmed the availability of funds from the capital works budget for an amount of R160 million. This letter was, however, dated a month after the publication of the tender advertisement.

Venter further informed that on 9 November 2005, he was requested by Gillingham to conduct an updated costing exercise, with an instruction to include earth works, outer fences, taut wire detection, security lighting, CCTV coverage and integration costs. Because costing fell out of his normal scope of work, he approached the DPW for assistance. The DPW provided him with average prices but not a detailed costing. Based on this information from the DPW, he made a calculation and concluded that the cost of the project would amount to R347 383 650.

Venter was requested by the SIU to explain how the distances of the fences as reflected in a extract from the bid document, entitled "Appendix A – List of Centres", was determined. He explained that due to time constraints, he had requested the Heads of the centres that he had identified as requiring fencing, to appoint officials to measure the distances by foot.

³³ See Venter's statement, Annexure 17



The fencing tender was later amended by subsequent variation orders, amounting to approximately R100 million. The additional work that was required to be done, included, *inter alia*, the removal of trees and sub-stations, construction of guard houses, blasting and installation of generators due to inadequate electricity supply as well as erecting additional fences.

According to Steyn by 22 May 2009, R94 700 270.77 had been paid to Phezulu in respect of variation orders, with R4 335 087 12 still due to them.

The bid specifications

The evidence revealed that Gillingham was the project leader for the fencing tender. Although he held meetings with Damons and Venter from the Security Directorate (the end user), he did not discuss the technical fencing specifications with them. His discussions with them concerned issues relating to the bid document, such as what type of fences should be installed and at which centres.

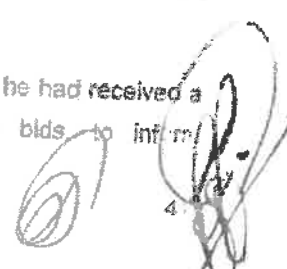
According to Venter, the end user was excluded to a large extent in the tender process. Neither he, nor any other official from his directorate, was involved in the drafting, amending or approval of either the tender specifications or the evaluation criteria. His involvement was limited to obtaining standard specifications from the DPW and identifying the centres where fencing was required.

According to Venter, no tender specification committee was constituted for the fencing tender. According to Truter, Gillingham had, in accordance with paragraph 3.3.1.2 of chapter 3 of the SCM User Manual, certified that the specifications for the bid were obtained from the DPW as a standard set of needs that were adapted to DCS's specific circumstances. According to him, Gillingham, however, failed to indicate who assisted in or was responsible for making the adaptations to the specifications.

The bid evaluation and adjudication

There was great interest shown in the bid by virtue of the fact that the compulsory information meeting held on 25 October 2005 attracted 85 attendees from various enterprises, including Phezulu, Bosasa and Sondolo. However, despite the fact that there was wide interest shown in the bid, also manifested by the fact that documents were issued to 73 entities, only six bids were received.

Truter, a procurement official with the DCS, informed the SIU that he had received a request from his supervisor, Pretorius, after closure of the bids to inform



Commissioner Mti who the bidders were. Despite being uncomfortable with the request, because information relating to the tender was confidential and people outside the procurement process should not have access to such information, Truter drafted such a memorandum to the Commissioner.

The Code of Conduct and Declaration of Interest forms were signed by the members of the BEC on 17 November 2005. Only Mr SG Oosthuizen declared an interest by virtue of the fact that his son was employed by one of the bidders' subcontractors, namely, Teqcon (Pty) Ltd. However, Gillingham signed the Declaration of Interest forms indicating that he did not have a personal interest in any of the bids forming the subject matter of the procurement process in the fencing tender.

The BEC used the functionality and price evaluation method for evaluating the fencing tender. However, according to Braytenbach, this approach was incorrect. The functionality and price evaluation method is only applicable when procuring the services of consultants, and not for general services such as construction work, catering, cleaning or security. The correct evaluation method that should have been used in this tender was the preference point system, as previously described.

It was a bid requirement – confirmed by Gillingham at the compulsory briefing session held on 25 October 2005 – that the erection of fences had to be completed by 17 March 2006.

However, Phazulu submitted two sets of project plans. The first dealt with the delivery of materials up to the completion date of 17 March 2006, while the second dealt with erection of the fences by the middle of 2007. The erection, addressed in the second project plan, ran far beyond the completion date.

However, other bidders, such as Provicom and Intervid, submitted a single plan for the tender with a completion date of 17 March 2006.

Despite the fact that both Provicom and Intervid's project plans were consistent with the completion date, Gillingham scored both these companies 0 out of 6 for time frames, while scoring Phazulu full marks for its time frames.

The DCS, according to George, did not comply with the CIDB prescripts, for the following reasons:

- The fencing tender was subject to the provisions of the CIDB Act and its regulations.
- In terms of regulation 24, the DCS should have stated in its invitation for tender that only contractors that were duly registered with the CIDB would be

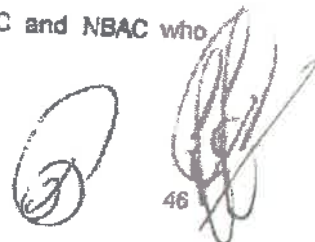
considered for the tender and, in addition, the DCS should have placed the invitation on the CIDB website.

- In terms of regulation 18, the DCS (as the employer) should have registered the fencing project with the CIDB within 21 days of it having been awarded.
- George, requested the CIDB Registry Department to confirm whether the DCS was registered as an employer at the time the tender was advertised and awarded; it was not.
- Table 8 of regulation 17, prescribes the upper limits of the value range for the different grades and a contractor can only do construction work for the public sector up to the maximum values consistent with its grade.
- In terms of regulation 25(9), the DCS should have established whether Phezulu was registered with the CIDB prior to awarding the contract to it. George, requested the CIDB Registry Department to confirm whether Phezulu had been registered at the time. The Registry Department indicated that Phezulu had registered for the first time on 10 May 2007, with a "7" grading which meant that Phezulu could only do construction work up to a maximum value of R30 million. The DCS should consequently have awarded the tender to a bidder with a grading of "8" due to the fact that the tender exceeded R30 million. There is no limit for a "9" grading.

The evidence shows that the non-compliance by Phezulu with the CIDB Act and its regulations were not brought to the attention of the NBAC by the BEC.

The minutes of the NBAC meeting reflect that Gillingham attended the meeting not only in his capacity as CDC Finance, but also as a BEC representative. The minutes further reflect that Petersen, in his capacity as chairperson of the NBAC, confirmed with all officials present that none had any financial interest in any of the bids before the NBAC, since such person(s) would be required to excuse themselves when the relevant bid is presented. Two bids were evaluated during this particular NBAC meeting, namely, the fencing tender and tender DCS9/2005. The Declaration of Interest forms were distributed to all officials present at the meeting for their signatures and were returned to the chairperson. As in the case with the BEC, Gillingham signed the Declaration of Interest form on which he declared that he had no interest in either Phezulu or its sub-contractor, Sondolo.

For ease of reference, the names of the members of the BEC and NBAC who participated in the fencing tender, are set out in Table 7 below.



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Table 7: BEC and NBAC members for the tender center

Bid Evaluation Committee	
Gillingham (Chairperson)	CDC: Finance
Damons	DC: Facilities and Security
Venter	Dir: Security Management Services
Oosthuizen	DD: Project Management
Madisa	Regional Co-ordinator: Corrections: Gauteng
Morai	Area Co-ordinator: Corrections: Gauteng
Phaal	Secretary of the Committee
National Bid Adjudication Committee	
Petersen (Chairperson)	CDC: Corporate Services
Gillingham	CDC: Finance (CFO) (Advisory Capacity and BEC representative)
Mombile	CDC: Corrections
Schreiner	CDC: Central Services
Ngubo	DC: Supply Chain Management
Mapasa	Acting Dir: Procurement
Kgwale	SCO: Secretariat
Aries	COll: Secretariat
Truter	Clerk: Tenders
Davids	Cleric: Tenders

Contract management

On 30 November 2005, Truter forwarded a memorandum to Pretorius, instructing that payments were to be made in strict accordance with the contractual conditions, which provided that:

"The contract manager must certify invoices to the effect that services were delivered correctly and in accordance with the contract before payment can take place".

After the commencement of the contract, the DCS received correspondence from Phezulu indicating that all materials to be used in fulfilling the tender would be purchased from local manufacturers and leading suppliers, including Gondolo and a company by the name of Teqcon (Pty) Ltd.

On 14 December 2005, Phezulu forwarded to the Commissioner, a list of deposits required from DCS, as well as an invoice for a pre-payment of R56 410 172.69. The invoice was attached to a spending plan that reflected how payments should be made in terms of the contract. Venter, who had been appointed as project manager, advised that payment of the first invoice was made on 19 December 2005, by Mr F Venter (F Venter) from Gillingham's office, without any materials having been delivered or work done. Venter only became aware of the payment after it had been made.

On 18 January 2006, F Venter, forwarded Phezulu's second invoice, dated 13 January 2006, to Damons, requesting him to certify it as correct. The second invoice was for R79 138 225.30. Damons, in turn, forwarded this invoice to Venter.

On 20 January 2006, Venter advised Phezulu that it was not clear from the invoice whether materials amounting to the invoice total had been delivered to the sites, as there were no certified delivery notes attached. Venter's concern was that in terms of the contract with Phezulu, 90% of the contract price was only payable on delivery of the full bill of materials. Gillingham, however, instructed Venter that he should verify the spending plan and make payments in terms thereof. The sole purpose, however, of a spending plan, according to Venter, is to determine when materials would be delivered and their value and thus not to make payments that are contrary to the contract.

On the evidence, it would appear that because of the poor planning of this project, the budget was significantly exceeded and in addition gave rise to variation orders valued at R 100 million²⁴.

The evidence shows that Phezulu received 90% of the contract value, amounting to approximately R392 million, prior to the end of the financial year in March 2006 and before any fences had been erected.

The evidence further shows that the integration of the fence to the ON-IMIS access control system at the Johannesburg Correctional Centre is still outstanding, despite the completion date for the project being 17 March 2006.

²⁴ The budget for the project was R 340 million, the contract awarded to Phezulu was R 485 million.

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“K”

Adriaan Basson and Carlen du Plessis, Beeld

Johannesburg – A company with links to Commissioner Linda Mti, the outgoing prisons chief, wrote a large part of a multi-million rand security tender that was subsequently awarded to them by the Department of Correctional Services (DCS).

Sondolo IT, an "unknown player" in the IT sector which is part of the Bosasa group of companies, was last year awarded one of the biggest contracts in the history of this sector (R237 million) for the installation and maintenance of modern access control systems at 66 prisons countrywide.

An investigation by Beeld revealed:

- Employees of the Bosasa group knew of the tender long before it was advertised on February 4 2005;
- Large parts of the tender's technical specifications were written on Bosasa computers in December 2004;
- Mti and Gavin Watson, CEO of Bosasa, have a long-standing relationship since the 1980s when Mti was the commander of Mkhonto weSizwe (MK), the ANC's armed wing, and later became chairperson of the ANC in the Eastern Cape, and
- Patrick Gillingham, financial chief of the DCS, is regularly seen at Bosasa's office in Krugersdorp.

Denial

The DCS last night denied that any "external organisation" participated in the compilation of the tender document.

DCS spokesperson Manelisi Wolela said a technical committee drew up the tender specifications by "improving old specifications" with the "latest technology".

Bosasa group spokesperson Papa Leshabane, denied that his group "consults" with clients on official tender documents or that Bosasa received special treatment by the DCS.

About Gillingham's visits to Bosasa, Leshabane said a number of senior DCS and government officials have visited Bosasa "from time to time". The DCS officials did allegedly visit Bosasa to inspect the premises and receive "training and development sessions".

According to Wolela, Gillingham last visited Bosasa in October 2004 as part of a "delegation" who received training for the implementation of a catering system.

According to Beeld's sources Bosasa already knew at the end of 2004 that a tender for access control systems was going to be advertised by the DCS in the new year.

But the most damning proof of wangling on a high level between the DCS and Bosasa, prior to the tender being advertised, is a 28-page document in Beeld's possession containing technical specifications for the tender.

A forensic investigation was done into this document, which showed that the document was created on December 17 2004 on a Bosasa computer – almost two months before the tender was officially advertised.

Mti resigned last week

Professor Basie von Solms, head of the University of Johannesburg's academy for information technology, compared the Bosasa document with the official tender specifications and found that almost 33% of the technical specifications for the tender were "either taken directly (word for word) or agreed very closely" with the Bosasa document. The awarding of this and other multi-million rand tenders by the DCS to Bosasa companies has been in the news since Beeld revealed Mti's link to Bosasa six months ago.

Apart from his relationship of many years' standing with Watson, the prisons chief is also a director of a private company – Liaurah

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Investment Consultancy – which was registered for him by Tony Perry, Bosasa's group secretary.

According to the registrar of companies' records Lianorah is in the process of being deregistered. The special investigative unit (the Cobras) recently launched an investigation into the awarding of the Bosasa-tenders and others contracts by the DCS.

Mti's resignation was last week accepted by cabinet.

Mti has always denied any impropriety.

End

'Running a R9bn budget – with just matric'

01/12/2006 07:43 – (SA)

Adriaan Basson and Carien du Plessis, Beeld

Johannesburg – The man who has managed the R9bn budget of South Africa's prisons for the last two years, has nothing more than a matric qualification.

Beeld and Die Burger reported on Friday that Patrick Gillingham, who as the financial head of the department of correctional services (DCS) runs the finances of Africa's biggest prison department, has no tertiary qualifications.

Gillingham's post was advertised nationwide last Sunday, and the DCS has confirmed that Minister Ngconde Balfour has now appointed him chief deputy commissioner: corrections.

The move has resulted in other staff changes. Tebogo Motseki, who is in the post at present, becomes the head of central services and Jenny Schreiner moves from the latter position to become chief deputy commissioner: management services.

Informed sources said Balfour had "started to feel the heat", and that was why he moved Gillingham.

Links to Bosasa

A Beeld investigative team earlier named Gillingham as the DCS person who was regularly seen on the premises of the Bosasa group of companies in Krugersdorp.

Various companies in the Bosasa group, including Sondolo IT and Phezulu Fencing, tendered for and won multi-million rand contracts from DCS in the past two years.

Beeld and Die Burger revealed on Thursday that various high profile South Africans, such as President Thabo Mbeki's political adviser, Titus Mafolo, were shareholders of Sondolo IT.

James Selfe, the DA's spokesperson on correctional services, said on Thursday he would have expected someone better qualified to run a multi-million rand budget.

The DCS budget is comparable to the market value of major companies, such as the insurers Mutual and Federal, or Sanlam.

"I don't know what courses he completed in the public service that could qualify him for this job.

Qualified audits

"The department (DCS) has received five qualified audits in a row. That says how unsuitable Gillingham is for the post," Selfe said.

The DCS refused to respond to Beeld's queries about Gillingham's qualifications.

The advertisement, which appeared in various Sunday newspapers, said it was essential that Gillingham's successor should have a B. Comm in accounting.

Gillingham is known to have been a confidant of Linda Mti, the former national chief jailer, who left the service on Thursday.

Beeld and Die Burger disclosed the ties between Mti and Bosasa this year, such as the security tender of R237m for an access system at the

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country's jails, which was awarded to Sonolo IT, after the Bosasa group wrote much of the tender specifications for DCS.

Mti is being investigated by the Public Service Commission, while the Cobra's special unit is investigating the DCS's Bosasa tender process.

Mti's acting successor will be announced by Balfour on Friday.

The DA asked again how much had to be uncovered before Balfour would appoint a commission of inquiry into the way tenders from the Bosasa group were treated.

"The minister must show the nation that he is serious about fighting corruption in his department, by appointing a commission of inquiry to investigate these underhand transactions," Selfe said.

DCS spokesperson Manelisi Wolela said Gillingham's move was part of Balfour's efforts to take "service delivery to a higher level".



A handwritten signature and initials are visible in the bottom right corner of the page. The signature is written in dark ink and appears to be a stylized name. Below it, there are some initials or a date.

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"R"



[Handwritten signature]
01

AA-561

TRANSCRIPTION**CERTIFICATE OF VERACITY**

I hereby certify that, *as far as it is audible*, the transcription is true and correct.

DATE TYPED

18-12-2018


TRANSCRIPTION NOTES

The following problems were experienced while transcribing the recording:

1. The inaudible sections of the audio recordings are indicated as "...[indistinct]" followed by the time at the particular point in the audio recording.
2. The parties interrupted each other rendering the parties inaudible at times.

Handwritten signature and initials in dark ink, located in the bottom right corner of the page.

PERSON 1: Jiba would try and close down twice but Dramat didn't wanna give the docket over to close it down. Then Jiba took off De Kok off this case. Ok. But then De Kok came back on, smuggled back on onto this case. Ok and the person who has control in the whole process is Breytenbach. Now they implicate Willie because Breytenbach and Willie still talk as well Mr President. It's a fact. Ok. I wanna say that. Ok the Willie sitting on the fence Mr President. I know he's done things for you but he's sitting on the fence. Whatever's, wherever he goes I can talk to you about this. Ok. I want a whole ...[indistinct 00:08:52]. I don't wanna sit down and you want make ...[indistinct 00:08:50] facts. They've got to be right. I got people at Tramanza working on their side so I can get that right and I wanna say, this is Breytenbach's thing. All she wants to do is discredit us in the paper so that when this thing comes up, ok, our agreements with the banks they come up. Ok. Overdraft facilities when they come up, they throw this thing in the press. Who is calling it up in the press. Or they want something to stick so that they discredit us in the press. Now Mr President we need to get this thing closed down. We need the right people in the right place. Tramanza the right guy at that place doing what he can. Now we need to get the right person at NPA. Either we get Shahukeng or Jiba or the woman down in Natal. Ok. One of them got a goose. Or look what's happened to Jiba. Jiba, he's bugged up in the press. Oh. He told me that. He said Jiba ...[indistinct 00:07:53] His person. Ok. Tell me that. Must I ask the question. ...[indistinct 00:07:49] how we get on with Jiba. I didn't say that you work ...[indistinct 00:07:46] will get on. Ok. Now Jiba's been bugged up and Kwebo also been bugged up. Ok. In the press. So how do you protect them Mr President. By putting the right person in there. I



don't know who is advising Mr President but you need to make the right decisions now. You haven't got much time. I think that's how I talk to you. Now we need to get our facts right. Ok.

PERSON 2: ...[indistinct 00:07:20].

PERSON 1: Hey.

PERSON 2: ...[indistinct 00:07:17].

PERSON 1: No. I don't know whether De Kok ...[intervenes 00:07:15]

PERSON 2: Hang on. Hang on. You don't know whether its De Kok and who else on that side. Because there's an Indian woman, ...[indistinct 00:07:07]. So who is there? Who is in that unit? We got the opportunity now. You understand what I mean? And has Jiba got a letter of appointment that she'll be acting or not?

PERSON 2: ...[indistinct 00:06:44]

PERSON 1: Because you see I'm gonna say, when this thing happens Mr President. ... [indistinct 00:06:33]. Hey.

PERSON 2: ...She accepted. She worried. I don't know.

PERSON 3: Have you explained to him what you caucused and arranged to move out to move those investigators and that Gavin.

PERSON 1: I was just setting out that they moved.

PERSON 3: Ok.

PERSON 1: That they moved Smit. Smit's actually been ... What they did Rich. They called in the whole case. ...[indistinct 00:05:53] for everything. Understand what I mean. Ok. They called the case, they called them in. He's investigating them. ...[indistinct 00:05:43] and then he's suspending Smit. Ok. Because Smit is on contract. He's not even part of his unit. Also ...[indistinct 00:05:28] The same thing. Is the same thing also what

happened to Jiba with that police ...[indistinct 00:05:22] The same thing with us. I said to them, how can a guy ...[intervenes]

PERSON 2: ...[indistinct 00:05:17]

PERSON 1: By SARS. By some unit. What's that ... ICC or ... [intervenes]

PERSON 2: ...[indistinct 00:05:09] disbanded in ...[indistinct 00:05:07]

PERSON 1: Ja. Pillay and them. And they ...[indistinct 00:05:03]

PERSON 3: ...[indistinct 00:05:02] If that is the truth then it would be out in the cold anyway. If that was the truth because remember that unit's been disbanded. So he can't feature if he's part of that unit. You see if the was part of that unit, this is why it doesn't make sense to me. They disbanded. So he's got no portfolio.

PERSON 1: He's been ...[indistinct 00:04:35] I'm just telling you. This is what they ...[intervenes]

PERSON 2: ...[indistinct 00:04:33] He could be.

PERSON 1: Hang on. Hang on.

PERSON 2: He could be. ...[indistinct 00:04:30] is in the process of being disbanded.

PERSON 3: Yes.

PERSON 2: So it doesn't mean that if he could not have been part of it if that is so.

PERSON 1: It just so. We need ...[intervenes]

PERSON 2: So it's possible.

PERSON 1: Ja. We need to get the right facts.

PERSON 2: That's why I'm saying. We don't know that.

PERSON 1: Hang on. We know that this is what they saying. Hang on. Now guys talk but they don't get down to the facts. Ok. This was so we

need to have a document written or we need to make, it needs to be factual. This is why I'm saying to him. Now explain to him so we, on both sides.

PERSON 3: But we make an accusation or I mean it doesn't matter if we make that accusation that there's a leakage between this guy and that rogue unit but what happens if there's no leakage. We going on what people tell us but there's no factual, they gotta give us the substance of it so that we know that we, because if we put the document forward and it's wrong and these guys aren't part of the rouge unit, he's got the names who would be of the rouge unit. Then they can say oohh, if this is wrong, how much more is wrong.

PERSON 3: I had a meeting with the guys yesterday again. ... [indistinct 00:03:24] to verify things. I got ... [intervenes]

PERSON 1: We have to.

PERSON 3: That's why I'm speaking to him. He can verify on his side.

PERSON 3: ... [indistinct 00:03:18]

PERSON 1: You can't, you gotta be careful. You can't make. It's like me saying. It's like me saying ... [intervenes]

PERSON 3: No. No. Hang on let me just ... [intervenes]

PERSON 1: ... [indistinct 00:03:07] but I can't prove them.

PERSON 3: ... Hang on. We can prove it.

PERSON 1: Ok.

PERSON 3: They said to me, Susina's guy said the same thing as the guy I met yesterday again. Said the same thing. Ok. But we need to. As I said we need facts so that we know, when I say to ... [intervenes]

PERSON 1: [Indistinct 00:02:49]

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- 6 -

PERSON 3: .. [indistinct 00:02:49] When I said to the President, when I go to the ...[indistinct 00:02:46] it's gotta be factual. Ok. So I'm just saying with ...[indistinct 00:02:42] on his side ...[indistinct 00:02:40] They will know whether he tracked them with on the other side. They can ask that question. Then now we getting, I'm meeting the guy again on the, the senior counsel again on Monday to go through that again. We want to know facts. Once it's on paper we buggered.

PERSON 1: The President I think ...[indistinct 00:02:21].

PERSON 3: I don't want that.

PERSON 1: I mean you remember when I did that linkage between Willie Hofmeyr and you know that leakage there but I mean the fact ...[intervenes]

PERSON 3: You see here on this one ...[indistinct 00:02:09]. I want to mention Willie's name without being on paper. I wanna say, you know Willie. ...[indistinct 00:02:02] Mr President. Whatever suits you. ...[indistinct 00:02:00] done things for your Mr President but he does work with the ...[indistinct 00:01:56]. I know for a fact. Off the record.

PERSON 3: Off the record we can say that. But what ...[intervenes]

PERSON 1: But then on the Smith case. That unit. We need to make sure that unit is a Swaz unit.

PERSON 3: Exactly. That's my question.

PERSON 1: Ok. Because Fermanza says it not part of his unit.

PERSON 3: You see.

PERSON 1: It's not. Now Jackie and Jiba will know exactly what it is because they are lawyers. They got a legal process. You understand. They can find out for us because the President wants me to do a presentation to

Date: 20-11-2018

him when he gets back from Russia.

PERSON 2: Don't look at me. I was saying to you ... [indistinct 00:01:14]
There's nothing that stop us.

PERSON 3: Are you sure?

PERSON 2: ... [indistinct 00:01:06] we do not know it means we
... [indistinct 00:01:03] or we can put, we can put the name but whether
they are ... [indistinct 00:00:59] for us we know them ... [indistinct 00:00:56]
but we can ... [indistinct 00:00:55]

PERSON 3: But ... [intervenes]

PERSON 1: No. no. But he can.

PERSON 2: No I'm saying I'm ... [intervenes]

PERSON 3: Ja. I agree with you ... [Intervenes]

PERSON 2: Which the starting of ... [indistinct 00:00:46] but we don't
conclude about the ... [indistinct 00:00:39] until we find it. Because we know
that they have been in the case and they have known the case on behalf of
SAPS.

PERSON 1: So on the document we just put there ... [intervenes]

PERSON 2: Yeahhh. Once we have verification about them engaging
then you ... [intervenes]

PERSON 3: But you can over the weekend.

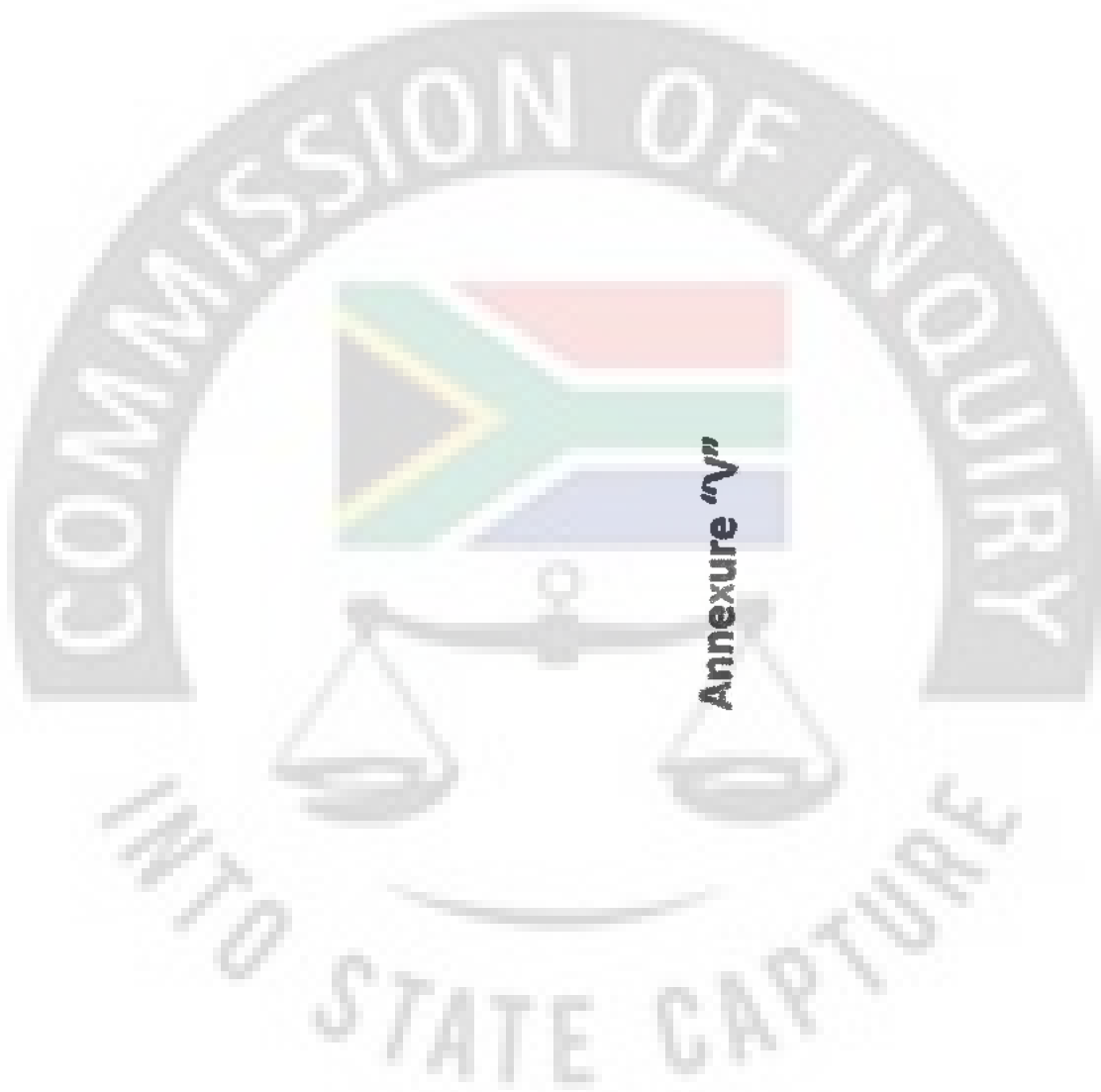
PERSON 2: Yes Kaluka but I'm saying is whether they are part of SAPS
or not does not ... [intervenes]


PERSON 3: Just get ... [indistinct 00:00:16] Just find out from what is that
unit so we can verify with him. ICC or something which is part of SARS.

PERSON 2: No ok. Remember there's an

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“V”






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SOUTH AFRICA | ITALY | USA | UK | BOTSWANA | NAMIBIA

AA-704

X



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Signature

AA-705

TRANSCRIPTION**CERTIFICATE OF VERACITY**

I hereby certify that, as far as it is audible, the transcription is true and correct

DATE TRANSCRIBED : 14 JANUARY 2019

TRANSCRIPTION NOTES


1. Participants in the conversation:
 - 1.1 Person 1: sounds like an adult male who dominates the initial conversation
 - 1.2 Person 2: sounds like an adult male who dominates the second part of the conversation
 - 1.3 Person 3: sounds like an adult female who makes comments towards the end of the conversation
 - 1.4 Person 4: sounds like an adult male who only makes one or two comments towards the end of the conversation
2. The following problems were experienced while transcribing the recording:
 - 2.1 The inaudible sections of the audio recordings are indicted as "....*inaudible*" followed by the time at the particular point in the audio recording
 - 2.2 On some occasions people talk over each other making the recording indistinct and as such it is indicated as "interrupted.....*inaudible*"


.....
H. HEAR



Transcription of file:**WatsonHawksWhatsApp Audio 2017-11-17 at 22.21.33*****Audio starts*****Person 1:** *And the thing is.....interrupted...***Unknown:** *.....*inaudible*...*

Person 1: *And the thing is, I mean to be honest, I haven't even told anybody, to be honest hey, I mean, I was. I was approached by the Hawks, on the same thing...*inaudible*... me and Gavin. That's why I say sometimes...*inaudible*..... Because, Gavin and myself.....*inaudible*... said, go and see the old man, the president, on this matter, when this matter was starting to brew again. We went to see him and he told me to say, he was going to Russia, I remember when we had a chat with him he said, no, before I go, I will phone the two people, and we didn't phone them, because we got feedback and that's the reason why. Then the next thing, the guy from the Hawks, he even showed us, the meeting we were having, every month you were having a meeting, where he decides all those things. It's confidential information, he showed us. In that meeting, the guy said the person they wanted to charge was Angelo and Ryker, none of you guys. Even if I showed this one and showed that guy was never gonna allow, I said please can I take the minutes? I took them on my phone. But the guys they want to charge, if at least they can throw this thing on the charging, it was four hundred, but they're charging two, he said, no, but the other people we are not worried. It was him and Patrick. I said but you're charging two, are you comfortable? We'll replicate the case. They said no, the other people we are not even worried about. Even Angelo knows that copy, I took a copy of those minutes in my phone, and I showed him alone with Trevor. We had two meetings. Every month we were getting those minutes through that *inaudible*. And again, it was twice, those people came back to say hey, these guys, the only people they can charge, is those two. We said no, over our dead body, it cannot happen. And Angelo knows that, that's why, for him to even try and involve other*



people, he knows, he knows that even on that number, because he had minutes twice, I showed him the minutes of that number. Even he had a meeting at the Sheraton at four o'clock, and he was very clear to say that for them to close this project, the only people they think they will charge, is those two. He was aggrieved, because Gavin did not appear on the list of the suspects.

Person 2: But Gavin would not appear, because Gavin was never involved. The thing is, if if they go further with the investigation, then we would have all, because then Angelo would've said, but that oke did that, that oke did that, yes, that oke money went through his bank account, that bank account, this happened, this happened so then we will all be implicated, not only him.

Person 1: Exactly...

Person 2: So, you know understand how a criminal case works?

Person 1: No of course, that's what I said, if you call in one suspect, by default you have to rope in other people, that's how cops work. Cops...interrupted...

Person 2: But that's how the law works.

Person 1: Yes....interrupted

Person 2: The thing is, the thing is Section 205 of the Criminal Procedure Act, I only have to say, 'Joe knows about this'...

Person 1: Yes

Person 2: ...then they get you in front of a Magistrate, the Magistrate asks you the question. If you don't answer the question, he can keep you in prison, until he decides, you've answered the question.

Person 1: ...inaudible....

Person 3: The thing is that uh... *stutters*

Person 2: So yes, what they are saying, Adriaan Basson is a concern Uhh, the the NPA uhh and the Falkons don't can kill this thing, but with...interrupted...

Person 4:Gerrie Nel,



AA-708

Person 2: *With Gerrie Nel, they can start up this...interrupted...*

Person 4: *...of course...interrupted....*

Person 2: *This investigation.*

Unknown: *...inaudible...*

Person 3: *Is it in our, all of our best interest...*

Unknown: *He said that?*

Person 4: *Absolutely.*

Person 3: *To just...that's why I'm saying, Angelo can continue, and it's in all of our best interest, not to get excited, and if there is something that is important, let's put gas on it, let's resolve it, let's move on. And let's know, it is going to happen again.*

Audio ends



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SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

ANGELO AGRIZZI

(IDENTITY NUMBER: 671203 5468 085)

declare under oath as follows:

1. BACKGROUND TO THE SUPPLEMENTARY AFFIDAVIT

- 1.1 The facts contained herein fall within my own personal knowledge, unless the contrary appears from the contents hereof, and are to the best of my belief both true and correct.
- 1.2 My original statement was done in a limited timeframe. I had been in contact with Frank Dutton, an investigator with the Commission of Inquiry into State Capture (*"The Commission"*) and have kept him updated throughout the process in relation to further information and facts relating to the matter.
- 1.3 I have previously deposed to an affidavit on the 15th of January 2019 and have previously given evidence before the Honourable Deputy Chief Justice Raymond Zondo (*"Honourable Chairperson"*) at the Commission held in Johannesburg.
- 1.4 I confirmed and stated under oath that I would supplement my original affidavit with further facts, details and information relating to the matters in question.
- 1.5 During the course of my evidence arising out of questions from the evidence leaders, Advocate Pretorius SC and his team, as well as the Honourable Chairperson requested certain clarification and confirmation with regards to

certain paragraphs of my original affidavit which I am setting out hereunder together with further important information.

QUESTIONS POSED BY THE DEPUTY CHIEF JUSTICE JUDGE ZONDO DURING THE COMMISSION HEARINGS.

2. Sesinyi Seopela / Fana Hlongwane - was there any influence at the Post Office or any direct link?

2.1. At the time of the Post Office contract with Bosasa, there was no influence exercised by Seopela or Hlongwane over the Post Office. Gavin Watson had a direct connection and access to the decision makers and relevant parties.

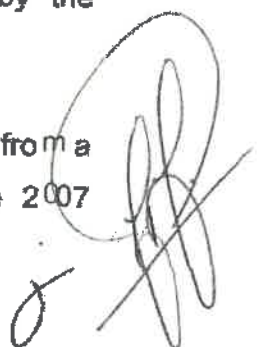
2.2. The involvement of Sesinyi Seopela was to act on potential leads with government for Gavin Watson, and to ensure the Bosasa/African Global group kept their association, for both political and economic wellbeing, with the ruling Party (ANC).

2.3. Seopela interacted with Government Departments and on ministerial levels in relation to tenders.

3. Screenshot sent by Bosasa Employees of a system crash

3.1. I do not have the information at present. My work computer as well as information contained thereon was kept by Bosasa. I am awaiting a copy of a screenshot of the 2007 crash. My computers as well as information were retained by African Global on my departure in December 2016. This information should be retrievable by the IT investigators once they have gained the relevant access.

3.2. I have provided a copy of a report compiled by Mr Wilkinson from a company named Imperative Technology, in respect of the 2007 'crash', a copy of which is attached as Annexure "EE".



4. What was the total amount of cash being kept in safes in Gavin Watson's vault?

4.1. Minimum – At any one time, a minimum amount of R2,000,000 would have to be kept in the safe. Gavin Watson would notify either Andries van Tonder or myself should he require a "top up" in the safe.

4.2. Maximum – The maximum amount would be over the November and December periods where amounts in excess of R6,500,000 would be stockpiled in Gavin Watson's vault, hence the need for the additional floor-standing safes. These large amounts were required over the festive period as Gavin Watson would have to make up larger amounts to be given to the various beneficiaries mentioned before.

4.3. I state further from personal knowledge that the maximum amount in December 2014/2015/2016 periods exceeded R6,500,000 as special extra payments had to be made to various beneficiaries in the form of cash, gifts and gratification. Further, the directors' bonuses were also catered for.

5. What was the average amount of the "Monopoly money" at a particular time?
What was the frequency of the refilling of the safes in the vault?

5.1. During 2016 – On a weekly basis there would be a delivery to Bosasa of between R900,000 to R1,600,000.

5.2. Previously, amounts would be ordered as cash flow permitted. These would be bulk amounts ordered every second week and would amount to an average of R2,800,000. This however became risky and hence the decision to move the deliveries to a weekly basis with a lesser amount involved.

5.3. The process would be as follows: one day to place the order. This would be delivered within the next two or three days. The amount would be invoiced as chicken and payment made thereafter on the

4th or 5th day. The delivery would take place and be stored in the Company Secretary's vault which contained two safes. A day after delivery it would be reconciled, and then transferred to Gavin Watson's safe.

5.4. Andries van Tonder would show Gavin Watson the reconciliation to concur with, and the cash money for the respective beneficiaries would be made up accordingly and packed.

5.5. Note that no specific day would be allocated for filling of the safes. It was normally when Gavin Watson was going to leave for Port Elizabeth or was returning from Port Elizabeth.

6. List of Directors and Shareholders at Dyambu, Bosasa at the time I was first employed:

6.1. At the time of my first employment at Dyambu, which later became Bosasa, the directors were as follows:

(Note that this is 19 years ago, and my recollection might be incorrect. The information can however be obtained in the Companies Register).

6.1.1. Gavin Watson - Chief Executive Officer - 50% Shareholder;

6.1.2. Danny Mansell – Managing Director - 50% Shareholder;

6.1.3. Thabani Mngomezulu (Ex NUM Union member);

6.1.4. Lindie Gouws;

6.1.5. Johannes Gumede;

6.1.6. Wellington Ntshanka (Deceased);

6.1.7. Ishmael Mncwaba (Now Dikani);

6.1.8. Themba Snyman (Deceased).



7. What was the average number of employees and officials who received monthly bribes?

7.1. I state that to the best of my knowledge and as per my recollection there were about 38 people who were directly or indirectly receiving cash payments that worked in various government departments, entities and provincial structures.

7.2. I am aware of approximately 38 people who received monthly payments in cash that worked for Government.

7.3. I have previously attested to the names of the persons involved in various government departments that received cash payment from Bosasa and Gavin Watson, either personally or delivered and handed to the persons by the various directors of Bosasa / African Global Operations.

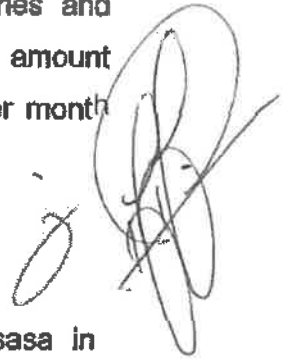
7.4. Gavin Watson was the main person who made the decision as to which people would receive cash, as well as the amounts. Gavin Watson was the person that co-ordinated arrangements to ensure these payments were effected.

7.5. I state further that in view of the amounts involved on a monthly basis as well as the fact that only Gavin Watson had access to the cash in the safes in the vault. I am not aware of what other amounts were given out and to whom.

7.6. I state further that when one compares the lists of names and amounts kept in records by myself of payments and the amount replenished, it is evident that approximately R2,000,000 per month was used or paid out by Gavin Watson himself.

8. Provide the list of companies used to generate cash:

8.1. Some of the companies and firms providing cash to Bosasa in different amounts were as follow:

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8.1.1. AA Wholesalers CC: 1991/026097/23

8.1.2. Riekele Konstruksie CC: 1995/039566/23

8.1.3. Liquor Outlets and Sales - Jumbo/Captain in Randfontein

8.1.4. Equal Trade 4 (Pty) Ltd: 1995/006407/07

8.1.5. Equal Food Traders (Pty) Ltd: 2014/042683/07

8.1.6. Lamozeest (Pty) Ltd: 2012/126413/07.

8.2. Various other false invoices were created that were used to generate cash cheques under the guise of BEE and SMME company payments. These were done internally and the said companies were not privy to what was happening. Accounts (Carlos Bonifacio) and others in the company accounts department would create fraudulent invoices and pay the "companies" cash, which would then be encashed by Bosasa at the First National Bank at Key West in Krugersdorp.

9. What was the position relating to the casual workers and the periods of payment?

9.1. In order to generate cash for corrupt purposes, fictitious employment lists were drafted in "excel" and a total amount then drawn as if to make payment for wages. A bulk cheque would be made out and then drawn from First National Bank in the Key West Shopping Centre Krugersdorp. I attended with the people at one of the withdrawals to establish how it was done. It was then that I also raised my concerns regarding the risk thereof, because of the crime statistics and the risk involved for staff.

9.2. As Bosasa was using contractors to do development and building, it could utilise the system of casual wages if ever questioned, by allocating it to ongoing work and developments.

9.3. This method was abandoned as payment of UIF and Workman's Compensation for casual labourers could not be made. Legislation had been implemented by the Department of Labour that even casual workers would need to be registered for UIF. Bosasa would not be able to do this as it used fictitious names and would require identity documents to do so.

9.4. The Human Resources records and payrolls during that period will confirm the above methodology used in terms of supposed casual labourers and their purported wages.

9.5. To the best of my knowledge, this practice relating to so-called casual workers continued for approximately one year.

10. During the period A gizzi was employed, how many contracts were awarded to Bosasa?

10.1. 1999 to 2002 – Goldmines;

10.1.1. Kloof;

10.1.2. Libanon;

10.1.3. Sasol;

10.1.4. Randfontein Estates Gold Mines;

10.1.5. Harlebeesfontein Gold Mines;

10.1.6. Harmony Free State Gold Mines;

10.1.7. Goedehoop Colliery; and

10.1.8. Horizon Youth Centre Western Cape.

10.2. 2001 – 2004:

10.2.1. Airports Company South Africa;



10.2.2. Post Office; involving

10.2.3. predominantly Security Guarding Contracts.

10.3. 2004 – 2007 – Correctional Services:

10.3.1. Training Contract;

10.3.2. Catering Contract at 7 Management areas;

10.3.3. Sondolo IT Access Control and CCTV Contract;

10.3.4. Sondolo IT television in each cell contract;

10.3.5. Phezulu Fencing Contracts; and

10.3.6. Various North West Youth Centers.

10.4. 2007 – 2010 - Department of Justice and Constitutional Development:

10.4.1. Guarding Security Contract; and

10.4.2. Various Limpopo Youth Centres.

10.5. 2011 – 2016

10.5.1. Clanwilliam Youth Centre;

10.5.2. Namaqualand Youth Centre;

10.5.3. Department of Justice and Constitutional Development provision of Access Control and CCTV / Fencing to 101 courts nationally.

10.5.4. Extension of Airports Company South Africa contracts to all airports in South Africa.

11. Provision of a table of approximate values of contracts awarded to Bosasa.

11.1. Due to the fact that I have not had access to my records at the office or my previous emails, as well as the fact that my erstwhile attorney retained other information, the amounts reflected are at this stage

estimates. I confirm further that I will make myself available to the Commission's Investigation team and authorities in order to assist them with the necessary investigation and information.

11.2. The actual values regarding the turnover per annum can be obtained from the financials of the Company. Since my departure in 2016, I have had no access to accurate turnover figures. The figures reflected refer to those as at November 2016 and are my best recollection.

11.3. I state further that the relevant experts and forensic teams will be able to obtain this information from the records and from Microsoft Great Plains accounting package used, in conjunction with Debtors and Creditors listings and submissions made to the South African Revenue Services.

11.4. These lists, as set out below, do not include the value of houses built, fixtures and fittings as well as furnishings, motor vehicles purchased and travel expenses incurred.

12. Historical Contracts (2000 to 2016):

Contract Name Company	Description	Annual Value or Contract Value	Estimated Annual Bribes paid In Cash*
Sibanye Mines Bosasa Operations	Catering	R71,000,000	R3,000,000
Correctional Services Bosasa Operations	Catering	R580,000,000	R15,000,000
Department of Transport Kgwerano	Fleet	R122,000,000	R3,600,000
Department of Justice Sondolo IT	Security Systems	R700,000,000	R16,500,000
Correctional Services Sondolo IT	Access Control	R241,000,000	R4,200,000
Correctional Services Sondolo IT	Television Systems	R300,000,000	R5,000,000
Correctional Services Phezulu Fencing	Fencing of Various Facilities	R800,000,000	R10,000,000
North West Youth Bosasa	Youth Services	R32,000,000	R4,500,000
Mogale Youth Centre Bosasa	Youth Services	R14,000,000	R2,300,000

Contract Name Company	Description	Annual Value or Contract Value	Estimated Annual Bribes paid in Cash*
Airports Company South Africa Bosasa Security	Physical Guarding Security	R32,000,000	R2,200,000
TOTAL		R2,262,000,000	R66,300,000

13. Continuing contracts, values and bribes:

Contract Name Company	Description	Annual Value or Contract Value	Estimated Annual Bribes paid in Cash **
North West Youth Development Centres	Pre-Opening Expense Fencing and Software	R4,500,000	R2,200,000
Eskom Sondolo IT	Access Control	Unknown Left when it started	Unknown Left when it started
Department of Home Affairs Lindela	Accommodation of undocumented migrants	R85,000,000	R7,200,000
PRASA Sondolo IT	Access Control	Unknown left when it started	Unknown left when it started
TOTAL		At least R89,500,000	At least R9,400,000

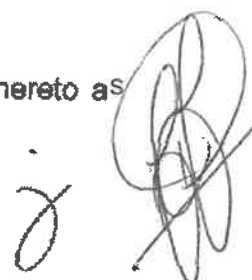
14. How many deliveries took place, what was the costs of the works conducted in respect of Nomvula Mokonyane, and the values? In which activities was Angelo Agizzi personally involved?

14.1. Gavin Watson would deliver R50,000 in cash on a monthly basis. This was recurring.

14.2. I was present when cash was delivered on two occasions. The one was in Bryanston whilst she was Premier. We had to meet her with the MEC of Social Development. The meeting was regarding incidents at the Youth Development Centre in Mogale where we had to assist in accommodating youth from another state-run facility. We sat in the lounge for about 2 hours waiting. Thereafter we had a meeting with her. Gavin Watson had earlier that day packed R50,000 in a grey security bag and placed it in his briefcase. Once the meeting was concluded he left the grey bag with the R50,000 with her on the chair.

- 14.3. The second occasion when money was delivered to her and when I was present, was at the house in Krugersdorp.
- 14.4. Often Gavin Watson would request me to pack an amount of R50,000 in a security bag. I recall at one stage that Watson was in a rush and told me that he was *en-route* to the Premier at her house. At that stage the Premier was Nomvula Mokonyane. I did this and gave him the package. He wanted to discuss the SIU matter as a matter of urgency.
- 14.5. Works conducted at the house of Nomvula Mokonyane at Krugersdorp are hard to quantify with the exact amounts. Richard Le Roux was seconded to handle the matter pursuant to a meeting we held after Gavin Watson had summoned him to the property. Records of the works that existed were left in my files in the Company Secretary's vault. My recollection is that we would attend to all the maintenance, placement of CCTV Cameras, repair of pool, electric fencing, lighting, minor building repairs etc. I would estimate the initial cost at about R300,000 with a continual cost monthly. Gardening maintenance would be done by the Bosasa Internal team, and thus it is difficult to ascertain the costs.
- 14.6. Over years, numerous functions were coordinated: personal ones, - funerals for her family and state functions that took place. I would receive a call from Gavin Watson to arrange and cater for functions. I recall one celebratory function held at the offices of Bosasa that was fully paid for by Bosasa. The costs exceeded R2,400,000. I was always expressly told that costs were not an issue, we simply had to do it as she was vitally important to him personally and for Bosasa
- 14.7. Personal funerals were conducted and paid for by Bosasa on a regular basis. The most recent was that of her late son.

- 14.8. At one stage we accommodated and employed one of the Mokonyane children at Clanwilliam Youth Centre, to assist with a program he was undergoing.
- 14.9. On a few occasions we would have to intervene as a company to assist with the children, via programs and employment as well as hiring of vehicles.
- 14.10. In respect of car hire, this would be frequently arranged on the request of Gavin Watson. Normally this would amount to approximately R80,000 per trip that her daughter would undertake when she returned from studies in China, I would merely receive a call to arrange whatever she required, and delegate it accordingly.
- 14.11. I recall one specific instance where the daughter of Nomvula Mokonyane was in a meeting with Gavin Watson in the boardroom at the Bosasa Offices. I was called in and introduced to her and told to arrange an Audi A3 for her.
- 14.12. On a further occasion I picked up that Frans Vorster had booked a vehicle for the daughter again. I was annoyed as the costs of repairs when she had a vehicle were ridiculous, I confronted Gavin Watson on this and took Frans Vorster on about this.
- 14.13. I am able to inform the Commission's investigators where further relevant evidence may be found.
- 14.14. The purchases of food products, meat hampers, liquor and other items as set out in my original affidavit would be done annually without fail.
- 14.15. One example of a demand from Mokonyane is attached hereto as **Annexure "FF"**.



15. On what basis did Bosasa continue looking after Nomvula Mokonyane and her needs, requirements and wishes?

15.1. Nomvula Mokonyane was known as a very powerful person in Government. She had influence over the former President of South Africa, the Prosecution Authorities and individuals in various Government Departments who would take decisions in matters that would affect Bosasa. Gavin Watson had inter alia requested Mokonyane to arrange for the closure of the Bosasa / SIU case and the potential prosecution of Bosasa and its directors. Nomvula Mokonyane's longstanding association and involvement with the Watson family can more recently be seen in the adjudication of the appeal hearing for the windfarm in the Eastern Cape region, where in her present position as the Minister of Environmental Affairs she is to adjudicate on the failed Environmental Impact Assessment in the application from the company owned by Ronnie Watson, Valance Watson, Jared Watson and Tandy Snead (Ronnie Watson's daughter). An application has been made to appeal the decision made in terms of the Environmental Impact Assessment. This is more particularly so where Gavin Watson has been involved over many years in corrupt activities with the honorable Minister as I have previously testified to and set out above.

15.2. A copy of a news article dated 13 March 2019, providing details on the above, is attached hereto as Annexure "GG". The Watson entities involved in the windfarm project are as follows:

15.2.1. Inyanda Energy Projects (Pty) Ltd

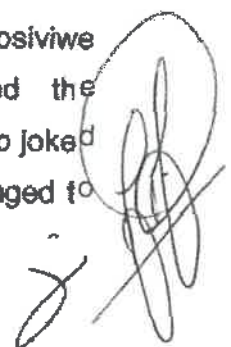
15.2.2. Laldback Investments (Pty) Ltd

15.2.3. O'Feh Investments (Pty) Ltd.

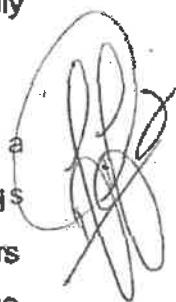
15.3. On diverse occasions the discussions with Mokonyane and Watson pertained to finalizing the closure of the SIU matter, even to the

extent where a meeting was arranged with Anwar Dramat, the then National Head of the Hawks. This was in order to get them to return the Bosasa docket to Advocate Nomcobo Jiba, so that she could arrange for the matter not to be proceeded with.

- 15.4. In an open meeting where Joe Gumede, Gavin Watson and myself were discussing the involvement of Nomvula Mokonyane, I was categorically told by both Watson and Gumede that she (Mokonyane) was extremely important and vital to Bosasa's various processes, and that Bosasa would have to ensure she was well looked after and catered for. Gavin Watson made it clear that Mokonyane was his connection and close confidant and no matter what was needed, it had to be attended to.
- 15.5. Gavin Watson stressed how close Valance Watson's children were to some of Jacob Zuma's children.
- 15.6. Numerous other politicians' names were mentioned by Gavin Watson as being very closely connected to the Watson family. I recall them mentioning Ayanda Dlodlo's and the Sisulu's (I think it was the daughters) that were part of the Vulisango Group of Companies managed by Valance Watson. I attended a few meetings held at the offices of Vulisango in Rivonia and would be introduced to such people. Company records will provide further details and confirmation.
- 15.7. It was at a supper meeting at the Turn and Tender in Illovo that I was also told that Siviwe Mapisa (twin brother to Minister Nosiviwe Mapisa-Nqakula) was holding the shares for Nosiviwe Mapisa-Nqakula, and that he had apparently depleted the shareholding by being paid out. The Watsons at that stage also joked about a house that Siviwe Mapisa had sold that in fact belonged to the Mapisa family.



- 15.8. The aforementioned is but one example of how the Watsons ensured that I realized that they had the most powerful people in the country as their connections and friends. I was also told categorically that they believed that they were the most politically connected people in South Africa.
- 15.9. I would on numerous occasions have to drive Gavin Watson to these meetings in his car, and hence I would be included in the meetings, and privy to discussions and information relating to the top leaders in the country.
- 15.10. Gavin Watson ensured that Nomvula Mokonyane was kept very close to him. I questioned him on the matter whilst in Italy on a tour. His answer was that she was in fact very influential. He needed her to assist in the opening up of avenues for potential new business opportunities and tenders. Mokonyane was politically connected with the then serving president Zuma as well as senior serving government officials and members.
- 15.11. I recall one occasion when the election campaign was being run from the Bosasa Call Centre. If I recall, it was from 2014 that it started being done. Nomvula Mokonyane was attending at the Bosasa Offices. We held an impromptu meeting where Gavin Watson raised the matter of the SIU case and the process that was being conducted. Nomvula Mokonyane confirmed that it was all under control, and that we should not concern ourselves with it.
- 15.12. On numerous occasions Bosasa and I would have to intervene and pull out all the possible stops to assist Mokonyane and her family whenever a request or call was made.
- 15.13. On numerous occasions any opportunity to be able to provide a service (at no charge) would be taken and used. Long term this would yield results in the form of follow-up meetings with ministers who could then be influenced in assisting in a variety of ways. The



continual interaction with Nomvula Mokonyane also ensured that Gavin Watson was most definitely protected from any negativity from politicians. Despite the negativity relayed in the press, contracts would not be cancelled, and investigations were closed down.

15.14. All the conferences, functions and lekgotla's that were done by Bosasa in the past 19 years were fully sponsored by Bosasa on instruction by Gavin Watson. I specifically recall that when the Mogale Business Park (Bosasa) Call Centre was used I would have to procure new computers, systems would be developed and refreshments, luncheons, suppers and accommodation would always be provided at five-star treatment at the cost of Bosasa. This was done on the express instruction of Gavin Watson who was the main person who decided what needed to be done.

15.15. Gavin Watson became completely infatuated with his relationship with various ANC officials. He openly supported the ANC. At times we had to warn him he was flouting human resources rules, as he would publicly instruct staff to vote only ANC or else they needed to find alternative employment.

16. What was the date of the interdict of the SIU Unit by Bosasa?

16.1. The application papers are filed in the North Gauteng High Court under case number 11068/2009. It appears that this was filed on the 30th April 2009.

17. Provide the full names of MEC Department of Social Services in Northwest Province - Kgasi and Tshidi

17.1. I have established the following details of the persons concerned:

17.1.1. Kgasi appears to be Matshidiso Kgasi; a former Chief Director at the Department of Social Development in the North West;

- 17.1.2. Tshidi, who appears to be Matshidiso Cordella Mogale; a former Head of Department ("HOD") at the Department of Social Development in the North West.
- 17.2. The above individuals were both Government officials in the North West Province, Mahikeng.
- 17.3. It was Syvion Dhlamini that introduced me to these two individuals. On 6 October 2015, I received an email from Syvion Dhlamini that he had received from Tshidi Mogale, attaching a Curriculum Vitae (CV) for possible employment. The CV is that of Advocate Matshidiso Cordella Mogale, who was reflected as being employed as the Deputy Director General at the Department of Social Development (North West) between July 2012 and April 2015. I have this documentation if required.
- 17.4. Syvion Dhlamini and I had various meetings with the aforementioned. They related to charging for and approval of various services such as fencing, IT software programs and security systems. The charges were inflated. Cash was drawn in order to pay them. I was told the cash money was in fact to be used for electioneering.
- 17.5. The persons concerned would arrange payments of invoices that had been inflated by Bosasa.
- 17.6. It must also be noted that Miotto Trading (a company in which Peet Venter was involved) was used to make the above payments. The true reason for the above payments was concealed in the records. The records falsely reflect that payments were made to Moroka Consultants for training. This training never took place. Mr Venter indicated in his 2018 statement that the instruction had been received by Gavin Watson and Syvion Dhlamini.
18. How it came about that there was a meeting with Mti and his son at Clearwater?

- 18.1. The meeting was pursuant to a discussion at Mti's house with Gavin Watson, Mti and myself. Mti indicated that his son (Vukane) was depressed and needed to be involved with other youngsters. At that stage my son was very dynamic and was in the process of doing his Honors in Politics Economics and had excelled.
- 18.2. Gavin Watson said it was important to keep Mti and his family happy and that in return Mti would use his influence with Advocate Jiba.
- 18.3. The lunch meeting was held at Ciao Baby, an Italian restaurant in Clearwater, Roodepoort. In attendance was Richmond Mti and his son, my son and myself.
- 18.4. I spoke to Gavin Watson and informed him that Mti's son wanted my son to get involved with mining deals in Zimbabwe which I was not happy with.
- 18.5. My son and Mti's son never concluded any business relationships.
- 18.6. I state further that another son of Richmond Mti was employed by Joe Gumede at the Security Division of the Company. This only came to light in 2015 when I enquired why the person posted at the gate looked similar to Richmond Mti and had similar features. Gavin Watson explained that he was helping Richmond Mti by assisting his son with employment.
- 18.7. I recall mentioning to Joe Gumede that it was extremely obvious, especially posting the son of the National Commissioner of Correctional Services at the main entrance to Bosasa's offices. The following day Mti's son was no longer at the gate.
19. Mti involvement with Patrick Gillinham
- 19.1. My interaction with Gillingham was strictly on instruction from both Gavin Watson and Danny Mansell, and was limited to perhaps the

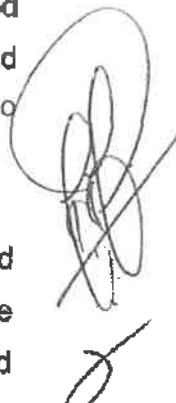
occasional email, or when Danny Mansell had asked me to provide feedback to Patrick Gillingham. I recall that I would also, as I was interested in the development of the industry, receive articles on Correctional Services in various countries on an *ad hoc* basis from Patrick Gillingham. I would return comments on the articles as a courtesy. I, at that stage, had no discussions regarding payment to Gillingham, potential new business, or promises made.

19.2. I had always been with Danny Mansell and Gavin Watson when meeting with Patrick Gillingham initially. This was only on invitation by Gavin Watson.

19.3. When the initial connection was made with Patrick Gillingham in his various positions he held with the Department of Correctional Services, I was at that stage not personally involved. I only met him on diverse occasions. It was only at a later stage when I personally had dealings with Patrick Gillingham that I then realized the full extent of the corrupt practices that had been going on with Gavin Watson, Bosasa, Richmond Mti, Danny Mansell and Patrick Gillingham. This was also confirmed when I read the SIU report in 2009. I also had various discussions with Mansell and Gillingham, which revealed the following:

19.3.1 In late 2004, Gavin Watson arranged for the Gillingham Family and the Mansell Family to go to a game reserve. Danny Mansell informed me before he left for the United States of America that Patrick Gillingham had requested that for all the tenders he had arranged for Bosasa and the extensions of same, he required them in exchange to build him a new house, as well as other gratifications.

19.3.2 Mansell used a specific company he owned, called Grande Four, and L&J Civils to make the respective payments for the building of the property. We discovered



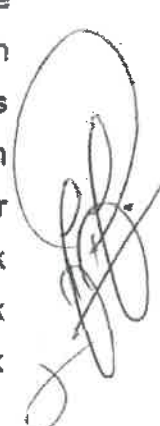
this later when we were tasked by Gavin Watson to clean up the invoice trail of Grande Four and L&J Civils.

19.3.3 I asked Gavin Watson at that stage, whilst in the presence of Andries van Tonder why Gavin Watson had embarked on the process of the corruption with Gillingham and Mti. His response was quite simply that if he didn't do it and arrange it, someone else would have taken the opportunity.

19.3.4 Whilst building the houses, Rlaan Hoeksma made use of a certain architect who designed both Mti's and Gillingham's homes. I noticed that Bosasa was billed for this work. I queried this. I also queried the fact that the interior designer used was a Bosasa employee. I have provided his details to the investigators.

19.4. I was only instructed by Gavin Watson to deal with Patrick Gillingham once Danny Mansell had moved to the United States of America. An introductory meeting was held with Gavin Watson and Patrick Gillingham. I was told that I was to meet and attend to whatever Patrick Gillingham's requests were. Gavin Watson told me after the meeting to get cash from him for Patrick Gillingham's requests. During the meeting Patrick Gillingham mentioned certain problems with his house that needed attention.

19.5. Instructions of this sort were issued by Gavin Watson. They had to be attended to immediately. An example of this is the instruction recorded on the video. The incident took place in Gavin Watson's vault. On the video Gavin Watson is heard instructing Andries van Tonder that a handover will take place and that Andries van Tonder must still deliver cash in the amount of R110,000 to Patrick Gillingham; that Brian Biebuyck would take over dealing with Patrick Gillingham post a handover meeting with Brian Biebuyck, Patrick



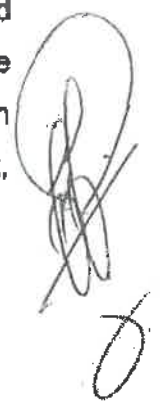
Gillingham and Angelo Agrizzi. This meeting took place at a restaurant/butchery in Midrand.

- 19.6. After the meeting I was driving Gavin Watson's car. Gavin Watson called Riaan Hoeksma at Riekele and asked him to urgently attend to problems at the house he had built. Gavin Watson then started to complain about the workmanship and problems that were encountered by Riaan Hoeksma and told me to get experts in if needed.
- 19.7. I was also specifically told what the package of cash was to contain namely R47,500 and that same had to be delivered to Gillingham by no later than the 25th of each month. I was also informed that an annual allowance was to be made for his family holiday, and to go to Gavin Watson with any specific needs that Patrick Gillingham had. I recall an immediate need was that the house that had been built for him by Riekele Construction including the pool were problematic, I was to ensure that Riaan Hoeksma followed up and attended to it.
- 19.8. I recall that Patrick Gillingham wanted the pool replaced with a Jacuzzi type pool and the decking redone. On my return to the office I contacted Riekele to arrange the work to be done.
- 19.9. Within a week Patrick Gillingham then sent me a quote on the wooden deck and the replacement of the pool with a Jacuzzi. I was instructed by Gavin Watson to rather process a direct payment, to get the cash from Gavin Watson and make the payment accordingly. This was done. I cannot recall the exact amount at the time, but it was well over R100,000.
- 19.10. After Danny Mansell had left for Texas in the United States of America, I would from time to time get impromptu calls from Patrick Gillingham. I would have to leave the office to attend to the requests for meetings by himself. Normally these meetings would be held at a lunch time often at the "Fishmonger" in Centurion on John Vorster



road adjacent to a restaurant called Rhapsody. It would alternate with a meeting held at a coffee shop at Midstream Estates where Patrick Gillingham resided at the time.

- 19.11. The meetings initially would be to discuss occurrences at the Department of Correctional Services and any potential problems relating to the Department and the impact on Bosasa and how we would need to proceed.
- 19.12. I think it was early 2009 when I received a frantic call from Patrick Gillingham to tell me he had been raided by the SIU and that they had taken, amongst others, his computer and also seen his safe with the cash in it. The SIU had also come across a business card of Consilium Business Consultants (Pty) Ltd ("Consilium") that his name appeared on.
- 19.13. I informed Gavin Watson who told me to visit him immediately and calm the storm. I then met with Patrick Gillingham at a restaurant where he told me what had taken place. He then confirmed he had been suspended from his position by the Commissioner of Correctional Services, Vernie Peterson.
- 19.14. The following morning, at about 06:30, I was told by Gavin Watson that I needed to accompany him to the house of Richmond "Linda" Mti. After meeting with Richmond Mti, we arranged to see Patrick Gillingham at the Protea Hotel Midrand. We chatted in the parking lot. Specifically, Gavin Watson said to Patrick Gillingham in my presence that he (Gillingham) must not be concerned, that Gavin Watson had never "dropped" anyone and would stand with him to the end, he would still get his pension as Gillingham raised a concern. Gavin Watson said even if Bosasa had to arrange to make the payment, Gillingham would be taken care of.



19.15. Gavin Watson also said that Patrick Gillingham's legal fees would be paid by the company. It was there that Gavin Watson instructed me to use a company at arms-length to attend to it.

19.16. I recall the meeting vividly. We arrived and because the hotel was busy with a conference, Gavin Watson told Patrick Gillingham to sit in the back of my car. We had the discussion in my vehicle. The discussion concerned the fact that Gavin Watson had the NPA and the investigation on Bosasa under control.

19.17. Whilst driving from the meeting, Gavin Watson asked me to establish what pension was due to Gillingham, and the chances of recovering it for him. I mentioned that I did not know but would call Gillingham and establish what the amount was. Gavin emphasized that all the previous tenders and contracts from the Department of Correctional Services has been secured through Gillingham and Mti.

19.18. Gavin Watson then spoke to Sesinya Seopela. Sesinya Seopela said that we were to use a specific attorney and that he would arrange a meeting for Patrick Gillingham and myself to attend.

19.19. The attorney was Ian Small-Smith of BDK Attorneys.

19.20. A day or two later I was called by Sesinya Seopela and asked to meet him in a building in Johannesburg. The offices I recall were close to the courts in Johannesburg central. I was to ensure that Gillingham was present at the meeting.

19.21. We discussed the Gillingham situation, as well as the fact that Bosasa would cover the costs. Gavin Watson re-iterated that we needed to use one of the companies he had registered in the names of Andries van Tonder and myself. An arms-length company called Sinkoprop No 8 (Pty) Ltd was used.

20. What payments were made to Gillingham?

- 20.1 I am not aware of what the payments to Gillingham were until the stage I was instructed to handle him. Nor can I attest to what all the benefits were other than what is reflected in the SIU report.
- 20.2 The initial payment to Gillingham occurred whilst he was employed by Correctional Services and it amounted to R47,500 per month.
- 20.3 When Gillingham was suspended and ultimately resigned he was paid in cash monthly an amount of R110,000. This was to cover an amount he was not being paid by the Department of R47,500 and an allowance for his cellular telephone.
- 20.4 During 2015, Gillingham complained that he had been short-changed on the amount, and insisted that he be paid a salary via a company. I communicated the concern to Gavin Watson, as I had no authority to make any decisions of that nature.
- 20.5 The following morning Gavin Watson came to my office, and said we could not place Gillingham into Consilium as Watson had spoken to Jurgen Smith. It was then that Gavin Watson proposed that he could be "employed" by BEE Foods, (which was owned by Mark Taverner) and be paid an amount of between R50,000 and R60,000 per month, as well as be given a company car of his choice. This was merely a front, to facilitate the payment. BEE Foods would recover the amount by means of payments from Bosasa on the confidential rebate structure. I cannot recall the exact amount at this stage, but it would have been reflected on a statement of account from BEE Foods, or in the accounts file.
- 20.6 Gillingham underwent a divorce. Gavin Watson at that stage instructed that his case must be dealt with an associate of Brian Blebuyck at Hogan Lovells, and be paid for via the Bosasa funds in the trust account at Hogan Lovells. The payments reflected on the Bosasa statement from Hogan Lovells.

- 20.7 When a divorce settlement was reached with Gillingham I was instructed to pay the settlement figure of approximately R2,200,000 from the Bosasa Trust Account to Gillingham's wife as a settlement.
- 20.8 I am aware that a vehicle was also purchased for Megan Gillingham, Patrick Gillingham's daughter. I was instructed to accompany Andries van Tonder to the Volkswagen dealership at the Glen in Alberton where a Polo was purchased. I recall it was just before Christmas. Gavin Watson continually called me to make sure that Andries van Tonder was *en-route* to purchase the vehicle, as it was important for Bosasa and the continued relationship with Patrick Gillingham.
- 20.9 In 2016 Patrick Gillingham's son, also named Patrick, was implicated in using funds from his employer Bakwena. I was told to intervene and arrange a payment to Bakwena in the amount of about R700,000. I was also told by Gavin Watson to draft a one-page loan agreement between Gillingham and my erstwhile in-laws, so to keep it at arms-length. This did not make sense to me as the payment was effected out of the Bosasa trust funds held by Brian Biebuyck. I never kept a copy. This was supposedly an arrangement that Gavin Watson wanted.
- 20.10 When I enquired from Gavin Watson on how the repayments of the funds would occur, he merely shrugged it off and said the tax consultant to the group, Peet Venter, would make a book entry. After my departure I received a query from the auditors, I reminded Peet Venter of the transactions, and of the fact that Gavin Watson was aware of the same. I followed up with a full explanatory email that can be obtained from the server and the email address "angelo.agrizzi@bosasa.com".
- 20.11 I wish to emphasise that all the major decisions in respect of Gillingham and Richmond Mti were made by Gavin Watson who at all material times was the decision-maker. He thereafter delegated others

like myself to carry out the instructions. The major beneficiary of all the contracts and tenders was in fact Gavin Watson and his family.

21. The decoded list of illicit payments to recipients as reflected in the Black Books

21.1 I have previously set this out in my previous affidavit and have testified as to the list of payments and recipients from the pages of a black book I had possession of.

22. Clarity on the decoded list of payments

22.1 I testified on the list of the payments where I basically created my own version of shorthand to explain the amounts and who it was given to in my previous affidavit.

22.2 I attach as Annexure "HH" documentation which sets out a list of certain payments and relevant communications concerning these payments.

FURTHER SUPPLEMENTARY INFORMATION AND FACTS

23 I set out hereunder the facts relating to the position I held at Bosasa as well as my duties and authority as such:

23.1 It is imperative to note that I was the Chief Operations Officer and not the Chief Executive Officer (as stated in the SIU report). Gavin Watson's name and position was never mentioned in the SIU report. My influence was limited. I was never registered as a director, nor was I at any stage a shareholder within the Bosasa Group of Companies (as again mentioned in the SIU report). Ultimately I reported to a board of directors and the Chief Executive Officer, Gavin Watson.

23.2 My normal course of business and duties would include making operational decisions, within constraints, but I would still have to



consult with each division that was headed up by a director on the main board, and Gavin Watson.

- 23.3 I did not have any access to the bank accounts or the financial packages used. In fact I was not permitted to access or establish what the balances at any stage were, and would have to request information from the accounts people, after I had spoken to Gavin Watson.
- 23.4 The payment regimes and protocols required numerous signatures for sign-off and requests forwarded by myself would require no less than two other signatures as well as those of the Chief Accountant and a director.
- 23.5 I was not permitted to attend meetings, even with normal clients, or negotiations, alone. I would have to be accompanied by the divisional director. There was one exception to this rule. I was permitted to meet with Patrick Gillingham alone on condition that I immediately reported back to Gavin Watson.
- 23.6 I was mandated by a resolution to sign auditor's statements, cheques, EFT's and payment requests. I was not allowed to do this on my own, and it would require at least a second signature, of a director.
- 23.7 At no stage did I have permission to draw cash or make payments. These decisions were made by Gavin Watson, or an appropriate director, if it had been approved by Gavin Watson, who always made the final decision.
- 23.8 To the extent that I could make operational decisions, I was not allowed or permitted to hire staff, make commitments or dismiss staff without the directors' express permission and the approval of the Human Resources Department.
- 23.9 I could not appoint suppliers, or change suppliers on my own.

23.10 Any legal matters relating to the Company and its subsidiaries in so far as they were dealt with were strictly on instruction only by Gavin Watson and his chosen legal team.

23.11 Ultimately all dealings in the company in respect of corrupt activities including tax matters and money laundering that I previously testified to, including payments for tenders, were to be approved by Gavin Watson. These were always done verbally in a meeting, with the consent of one or more directors.

23.12 I was at all times instructed to provide a support service to the directors, who would come to me with requests that were to be made. I would then approach Gavin Watson with the responsible director and discuss the matter and proposal.

24 During the time that I was employed, I was aware of the political connections of Gavin Watson and his directors and that they were being awarded tenders. I was also aware that gratifications were being given to the relevant persons, but up until I personally became involved when cash payments were made and handed over as well as other gratifications, the precise detail of the payments and amounts were unknown to me. My role was limited to the drafting of specifications for various Correctional Services tenders. I became aware of the corrupt activities when the matters were ventilated in the media in 2006 and when I saw the contents of the SIU report in 2009. Copies of the initial media reports in 2006 are attached as Annexure "JJ". When I personally became involved after the departure of Danny Mansell, I then became aware of the full extent of the corrupt activities.

25 Gavin Watson orchestrated and dealt with provision of agreements, new contracts and corrupt activities where he arranged for or instructed payments, services or gratifications to be made to the relevant people that I have mentioned.

26 At this stage I would like to add that I have done my utmost to assist the Commission and where possible the Hawks. This has included not only

confirmation of and addition to the facts relating to the SIU report of the Department of Correctional Services, but also persuading various whistle-blowers to come forward and testify. Those that have already testified as a result of my personal commitment to intervene are as follows:

26.1 Andries van Tonder;

26.2 Leon van Tonder;

26.3 Richard le Roux;

26.4 Greg Lawrence;

26.5 Frans Vorster, and

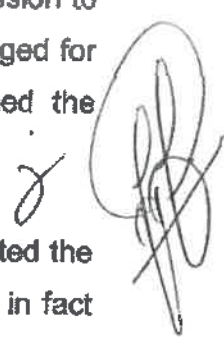
26.6 Gerhard van der Bank.

27 A further group of whistle-blowers is awaiting the opportunity to further corroborate information and provide further tangible proof of widespread corruption and state capture. Numerous of these people are still in the employ of the implicated companies and hence must be attended to with caution. I have provided the investigators of the Commission with the details of some of the potential witnesses.

28 During 2017/2018, I worked directly with the Hawks (Commercial Crimes Unit) located in Visagie street, Pretoria. I dealt with a certain detective Joey Tijane. I submitted a complete case file I had prepared for him, this was specifically related to threats I had been receiving. Nothing ever transpired. A copy of this submission was attached to my initial affidavit.

29 I took these threats against me and my family very seriously.

30 I had a meeting with Advocate Glynnis Breytenbach. Acting on her advice, I dealt with an attorney Gerhard Wagenaar who was thereafter in contact with various members of the Hawks and investigators at the Commission.

- 31 I had a meeting with Advocate Willie Hofmeyr at his offices in order to get urgent assistance in regards to the investigation and the corrupt activities at Bosasa.
- 32 I further contacted a Reverend Stimela at the Commission in or about August 2018, in order to seek guidance and assistance.
- 33 Concerned that I had attempted everything possible to seek advice on how to deal with the whistle-blowing, I then had no option but to reach out and issue a blanket email expressing my intention to whistle-blow and request people to advise me accordingly. This email was sent to various anti-corruption organisations as well as to various State Departments that deal with issues of this nature. An article emanating from the brief I had put out was then posted on News 24. A copy of this article was attached to my initial affidavit.
- 34 Pursuant to receiving a call from Colonel Lazarus during September/October 2018 and pursuant to my press release (on the 21st August 2018), I indicated I would avail myself for a meeting, which then took place in the chambers of Advocate Barry Roux. At the meeting we discussed the assistance of the "whistle-blowers" I had identified to the state.
- 35 I was in contact with my erstwhile attorney Gerhard Wagenaar, who informed me that he was working on the matter, and would meet the relevant authorities in regards to assisting the authorities.
- 36 On 22 November 2018, I informed Mr Wagenaar that I intended terminating his services. Despite this he undertook to complete my affidavit for submission to the State Capture Commission. I agreed. I had in the meanwhile arranged for my present attorney and counsel to come on board and I informed the authorities accordingly (Brigadier Makanyane and Colonel Lazarus).
- 37 On 9 January 2019, when Mr. Wagenaar returned from leave, I requested the updated statement, as I felt that he had been delaying and this could in fact prejudice the case. A meeting was held at Hillside House where the State Capture Commission is located. In attendance was Gerhard Wagenaar, his
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associate, Andries van Tonder and myself. At the meeting I re-iterated that the statement had been outstanding for at least two months.

38 I also raised my discontent with Wagenaar with regard to the manner in which he had handled my matter.

39 At all stages I wanted both the Commission as well as the Hawks to know that I was willing to assist, and it concerned me that Wagenaar seemed to be prolonging the matter unnecessarily.

40 I continued to meet with Mr Frank Dutton and various other investigators at my home over this period, and gave them information pertaining to the matter in order to assist them.

41 Eventually Wagenaar conceded that he was at fault at the meeting referred to above. He agreed to send the updated affidavit to the Commission as well as all documents and files handed to him. To date and notwithstanding various requests he has still not handed over the documentation.

42 I ensured that all the accounts due to Wagenaar and Advocate Roux were paid upfront to ensure a seamless transition to my new legal representatives.

43 I explained in depth that the documents needed to be given to the Commission State Capture's investigators, and made sure that both Colonel Heap and Frank Dutton were aware of this matter.

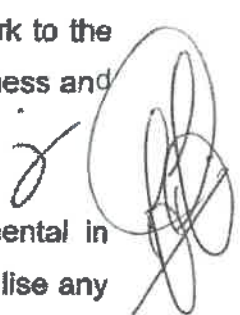
44 The balance of the documents in my possession, as well as iPad's, laptop and hard drives I handed to the Commission investigators, who still have these in their possession and which I requested be forwarded to the Hawks as they would require them as well.

45 I have also rendered assistance to the African Global Operations liquidators and SARS.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, located at the bottom right of the page.

- 46 I have also requested the return of personal information from African Global Operations. This request has been refused.
- 47 In order to assist the investigation teams, I have indicated where the source Data will be found, provide "360 Degree imagery" that shows the relevant offices and storage places. I have also provided the investigation teams with access codes to the main server and repository of the information to assist them.
- 48 I have related the above events in some detail in order to refute any allegation that I may have been delaying the provision of information to the relevant authorities, including this Commission.
- 49 I wish to state further that even when I became aware and had personal knowledge of the corrupt activities being conducted, I was so involved in the complete culture of what was going on that I failed to report same to the authorities. I did in fact benefit from corrupt activities by way of bonuses and overseas travel.

CEDRIC FROLICK

- 50 I was initially introduced to Cedric Frolick by Daniel "Cheeky" Watson telephonically during a period when Bosasa was under severe attack from the media. The call was to inform me that Cedric Frolick would be visiting the Bosasa Business Park, at that stage known as Mogale Business Park, with a certain Buti Komphela whom I did not know at the stage.
- 51 I was then called in by Gavin Watson. The purpose of the meeting that was being scheduled was to arrange a visit to showcase the business park to the two gentlemen, so that they had an idea of the magnitude of the business and what it had to offer especially in terms of BEE development.
- 52 Gavin Watson stressed to us that Cedric Frolick would be instrumental in resolving the impasse with Vincent Smith and would be able to neutralise any
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negativity that would occur in the Parliamentary Portfolio Committee, at that stage chaired by Vincent Smith.

- 53 The reason I was told was that Cedric Frolick was in fact the "Chairman of Chairs" in parliament and could instruct Vincent Smith, and had the political ability to make other changes.
- 54 The visit took place. I recall specifically that I had to arrange transport from the airport. I cannot recall exactly but I think I had to book flights for both Frolick and Komphela via Blakes Travel in Randfontein.
- 55 Special arrangements were also made for a "Golf Cart" to transport Komphela who was disabled and wouldn't be able to do the four-hour tour of the facilities by walking.
- 56 I recall that before seeing the visitors off, we were in the boardroom with Gavin Watson discussing the way forward regarding Vincent Smith. It was decided that Cedric Frolick would coordinate a visit with a certain "Ms Bailee" to meet with Vincent Smith at the parliamentary offices.
- 57 Cedrick Frolick requested that I also draft an official letter of introduction and a portfolio of the Bosasa group to be used as a cover.
- 58 What was specifically mentioned was that Gibson Njenje who was the "chairman" of Bosasa at the time would accompany me. It was agreed that Gavin Watson would not attend because in the event of a conflict, the matter could then be attributed to an error on my side. Gavin Watson did not want to compromise his standing with the ANC people he was close to.
- 59 It was in this specific meeting that Gavin Watson told Cedric Frolick to do whatever possible to ensure we would win over Vincent Smith, or alternatively to try and move him out where he couldn't be detrimental to the Bosasa contracts. During this discussion Komphela was on his phone.

- 60 Whilst we were discussing a potential approach to Vincent Smith, Gavin Watson excused himself and went to his vault. I remained in the boardroom with Cedric Frolick and Komphela. Gavin Watson returned and called Cedric Frolick out of the boardroom and I could see him hand him a security bag. Cedric Frolick placed it in his pocket. I knew without a doubt that it contained an amount in cash.
- 61 Gavin Watson always re-iterated that everything possible had to be done to deal with Vincent Smith who had become a problem to Bosasa and their contracts with the Department of Correctional Services.
- 62 Pursuant to them leaving I debriefed Gavin Watson on the discussions post him leaving the boardroom. He also explicitly then told me he had sorted out Cedric Frolick who was on board "100 percent".
- 63 Gavin Watson mentioned to me that I must remember we have to arrange R40,000 per month specifically for Cedric Frolick. This would be a standard arrangement and Watson would arrange to take it with whenever he was going to Port Elizabeth. I recall questioning Gavin Watson and asking him but how would he take it on a plane through security. He told me he had taken much larger sums through, and always received an escort from the Bosasa Security team and no one checked.
- 64 In addition to the aforementioned payments to Cedrick Frolick, travel costs for Cedrick Frolick would be paid for by Bosasa, via Blakes Travel. An example of one such payment is attached hereto as Annexure "KK". This is an email from Jurgen Smith to me dated 14 December 2010, with subject "*Invoice from Sure Blakes Travel Agency (Pty) Ltd*". The email stated that "*Angelo, Cheeky told me that this invoice must also be paid by Bosasa. Please advise. Doc*". Attached was an invoice number 27255 dated 14 September 2010, in the amount of R2,744.28 for 'accommodation' at the 'City Lodge OR Tambo with reference "VHR-25856' GUEST FROLICH MR C 21/8/2010 – 22/8/2010".
- 65 Shortly thereafter, Gavin Watson informed me that I needed to go to his brother in Port Elizabeth. I was to meet with Valance Watson at his house and

take a parcel of cash which he gave me, and which had been packed for Cedric Frolick.

66 I did what I was told to, including taking the package with me, which included the cash, to Valance Watson's home.

67 I met with Cedric Frolick at Valance Watson's house in, I think the area is called, Waverley in Port Elizabeth. I recall that while I was waiting, Valance Watson showed me a gym that he had built at his house, which he said they had hardly used.

68 Cedric Frolick arrived at Valance Watson's house and we sat in the lounge. Valance Watson made coffee and discussed the strategy regarding certain political issues that took place in the previous days in Port Elizabeth.

69 Valance Watson then discussed the strategy for meeting with Gibson Njenje, Vincent Smith and myself.

70 I gave the package of cash to Valance Watson who later gave it to Cedric Frolick as we left the house.

71 Within a week of the meeting Gavin Watson received a call from Cedric Frolick. Gavin Watson told me that I was to accompany Gibson Njenje on an introductory meeting with Vincent Smith. It would be coordinated by Cedric Frolick. I was requested to prepare a portfolio of the Bosasa Group as well as a document that reflected the benefits of having Bosasa as a partner to the Department of Correctional Services.

72 I travelled to Cape Town and stayed in the same hotel used by the Parliamentary officials. I had breakfast with Gibson Njenje and we left for Parliament where we were met by Cedric Frolick. Whilst we were waiting in an office for Vincent Smith to arrive, both Gibson Njenje and I discussed the approach. The exact time and details would be on the records of Blakes Travel and my credit card statements.

- 73 When Vincent Smith arrived, he seemed extremely irritated by us being there. I tried to introduce the Company to him and he was extremely abrupt. I left the company brochures with him. Cedric Frolick collected us at the entrance and took us on a brief tour of the parliamentary offices. Cedric Frolick then took us to the canteen. We had a meal that he then paid for on what seemed a canteen card.
- 74 A specific incident comes to mind. Gavin Watson was extremely excited as no one had been able to meet the Minister of Justice and Constitutional Development, Michael Masutha.
- 75 Cedric Frolick arranged with Valance Watson for an ANC rally or meeting to be held in Port Elizabeth. He would arrange with Valance Watson to accommodate Michael Masutha at one of the Watson's houses at a luxury estate. Gavin Watson flew down to Port Elizabeth the next week and was to arrange to have breakfast with Michael Masutha one morning.
- 76 Gavin Watson explained that it would be an impromptu meeting but that he would be able to then get Michael Masutha "on-board". The accommodation was arranged accordingly.
- 77 The aforementioned arrangement was also discussed in depth at a meeting held between Richmond Mti, Gavin Watson and myself, the following morning when we went to Mti for a meeting.
- 78 I relate below an incident to show how Cedrick Frolick related to African Global Operations.
- 79 During 2016 and 2017, African Global Operations was involved in litigation with the Department of Correctional Services. African Global Operations sought to set aside the award of a contract to its competitors. Gavin Watson and others had a meeting at my house. During this meeting Frolick and Vincent Smith were consulted. They advised that the litigation be withdrawn. Cedrick Frolick confirmed this to me personally over the telephone.

80 I was upset at this. I asked Gavin Watson and others to leave my house.

81 At this time and owing to my illness I had not been able to make certain deliveries of cash as instructed to Mti, Jiba and Mwrebi. I handed to Gavin Watson the following amounts in cash and told him to make arrangements himself for the deliveries:

81.1 R100,000 (One Hundred Thousand Rands – Marked Snake (Jiba);

81.2 R65,000 (Sixty-Five Thousand Rands) – Marked RM – (Mti);

81.3 R10,000 (Ten Thousand Rands) – Marked Snail – (Mwrebi).

DANNY MANSELL – SUPPLEMENTARY EVIDENCE

82 I have alerted the Commission investigators to certain wrongdoing relating to Gavin Watson and Danny Mansell concerning the Small Business Development Corporation (SBDC). The information was provided to me by Jurgen Smith.

83 As stated in my previous affidavit, Danny Mansell, having left Bosasa, returned to Bosasa during 2003/ 2004.

84 At a stage I discovered that Danny Mansell had been involved in Gavin Watson's dealings with Richard Mti and Patrick Gillingham. I will expand upon this in evidence.

85 Amongst other things Danny Mansell was involved in arranging and reconciling payments from Bosasa to the company Grande Four (Pty) Ltd. Again, I will expand upon this in evidence.

86 After having done the technical management of all the tenders for the Department of Correctional Services, Danny Mansell and Jarod Mansell, his son, started doing contract work for Phezulu and Sondolo IT. A company

called L&J Civils was used, this entity was also used periodically to purchase items for Gillingham and Mti.

- 87 Even after leaving to the United States, he remained on the Bosasa payroll - I presume this was to secure his continued loyalty and silence.

TONY ANTHONY PERRY – COMPANY SECRETARY

- 88 Tony Perry joined the Bosasa Group in about 2003. He was closely associated with the family. Tony Perry was an integral part of Bosasa Operations. He was responsible for documenting the various deals concluded by Danny Mansell and Gavin Watson. He did the administration of the transactions relating to the acquisition of Phezulu Fencing and Beta Fence. He was also involved in the assistance with Richmond Mti detailed below. I am also aware that Tony Perry attended to Gavin Watson's personal financial affairs.
- 89 Tony Perry's responsibility was to develop a myriad of companies and restructure agreements and shareholding so that the full BEE credentials could be claimed, albeit fictitious.
- 90 During early 2004, Tony Perry was with Gavin Watson in the boardroom (I would often use the toilets at the boardroom as they were closest to my office). The walls were at that stage just comprised of thin dry walling and one could hear the discussions in adjacent rooms clearly.
- 91 I heard Gavin Watson instructing Tony Perry to draft an agreement between "Linda Mti" and Gavin Watson that encapsulated charges on a per person costs. At the same time he said that Tony Perry must sit with him and structure a new trust that Mti wanted. At first Tony Perry was apprehensive, but Gavin Watson was abrupt and said that Tony Perry was just to do it.
- 92 At that stage I didn't think too much of it. Only later did I realise after the initial news report that came out that the Trust that was being referred was the "Lianorah Investment Trust" which belonged to Richmond Mti. He used his mother's name as the trust name.

- 93 I have previously given evidence of Gavin Watson's instructions to destroy documents, including the agreement referred to above. Pursuant to Gavin Watson requesting that we find the agreement that had gone missing, and having perused the agreement, I then realised why Gavin Watson wanted the agreement so badly when he thought it had gone missing. The agreement was based on the provisions of the "Catering Contract" and reflected the signatures of both Gavin Watson and Richmond Mti. It contains details of a specific model of payments to be made to Richmond Mti based on an amount per offender / prisoner per day.
- 94 I realised then why Gavin Watson was so eager to get rid of the "contract" between himself and Richmond Mti. The agreement could only have been done on the company secretary's computer at the time, as Tony Perry was not very computer literate. Payroll records will reflect who the secretary was that drafted the agreement at the same time that Llanorah Investments was registered by Tony Perry.
- 95 I am aware that Gavin Watson arranged that Tony Perry's house in Port Alfred be built and paid for by Bosasa. This was done through a company called BuildAll previously owned by Arthur Kotzen and Fred Alibone.

BUILDALL - ARTHUR KOTZEN AND FRED ALIBONE

- 96 In 2005/2006 Gavin Watson decided to venture into prawn aquaculture with an American by the name of Kevin K Wills. I raised my concerns as this was essentially not our core business and numerous similar attempts had failed internationally. Gavin Watson however did not budge and commenced the process.
- 97 Gavin Watson contracted a friend Arthur Kotzen (now deceased) and Fred Alibone. They had a small building and construction company to develop land that he had acquired for the project.



- 98 At the time I recall that there were seemingly insurmountable issues regarding the EIA (Environmental Impact Assessments) that needed to be taken care of. Gavin mentioned this to me in detail.
- 99 At a stage Gavin Watson mentioned to me he was going to procure BuildAll from Arthur Kotzen for R15,000,000. This transaction was concluded and payment was made.
- 100 One day whilst driving in Gavin Watson's car he was speaking to Arthur Kotzen. He instructed him to go ahead with the revamps or build at the house of a certain Thwabo Ndube. I did not know who the person was and when the conversation ended I enquired from Gavin Watson who in fact he was. Gavin seemed annoyed at my prying and told me it's an old friend that he was attending to.
- 101 I later was curious to find out about the person and did a search. I noted that he was an MEC, based in the Port Elizabeth area. The matter made sense that Gavin Watson needed assistance to fast-track the project.
- 102 I was often informed whilst Sea Ark was operational that this was the ideal model to get international funding and that it would in effect be a "game changer". I was somewhat curious because large amounts of payments were paid to a company based in the United States. On closer examination there seemed to be no substance to the entity that was being paid. These amounts were done in bulk payments of up to R35 million and thereafter monthly payments in excess of R700,000 would be transferred to the same company. When I enquired, I was merely told that the funds were for payment of shares in a United States based company in which Gavin Watson had a share.
- 103 I recall vividly that Fred Alibone was tasked by Arthur Kotzen to keep a notebook where all the relevant "special" payments were made to politicians.
- 104 During the pinnacle of the potential raid on Bosasa by the SIU, the computers belonging to Danny Mansell's entity Grande Four were with Jarrod Mansell, the son of Danny Mansell.

- 105 Arthur Kotzen was instructed to collect the computers and to bury them at the Sea Ark site at Kouga.
- 106 I am well aware of the fact that Arthur Kotzen was told by Gavin Watson and Andries van Tonder (whom Gavin Watson tasked with now overseeing the "operation"), to recover the various computers and burn them.
- 107 We are reliably informed that this was never done. Subsequent to excavating the computers, these were stored in the garage of the brother-in-law of Fred Alibone, the son-in-law of Arthur Kotzen. I cannot recall the full name of the person who stored it, save to say he was also an employee of Sea Ark/ BuildAll and his first name was Gerhard.

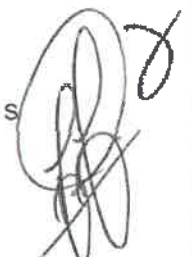
DETAILS REGARDING KGWERANO FLEET / PHAVISWORLD AND DEALINGS WITH BOSASA

- 108 My dealings with the Fleet Management aspect of Bosasa and its associates was limited. At that stage Bosasa employed the services of a certain Vicus Luyt and Alan Chapman to deal with the fleet management and the establishment of the necessary call centers. Gavin Watson utilized the employees of a Transnet related company known as HSA to establish a fleet management subsidiary called Kgwerano.
- 109 Kgwerano, as I was informed, was originally a joint venture between two gentlemen Itu Moraba and Brian Gwebu and Wesbank, a First National Bank subsidiary.
- 110 A tender, which I was not part of, was submitted to manage the NDOT (National Department of Transport) RT62 Contract for the provision of Fleet Managed Vehicles to senior government officials known as SMS members.
- 111 The early stages I am not aware of, I however know that Gavin Watson paid an amount of R20,000,000 for the shares in Kgwerano of Gwebu and Moraba. This was initially reflected as a loan in the Bosasa financials, as Gavin Watson did not want to incur the tax charges.

- 112 I was told that the award of the contract to Bosasa had been pre-arranged and was unlawful. This was told to me by Papa Leshabane (a director of Bosasa at the stage). He also told me that they were paying a certain "Mlungise" at the Department of Transport a substantial amount of money. The amounts were collected by Gwebu from Gavin Watsons vault, in cash.
- 113 At a later stage a new joint venture was created – Phavisworld; which was a Joint Venture between Avis and Bosasa.
- 114 This entity, Phavisworld, was awarded another Fleet Services tender to provide rental vehicles via AVIS dealerships to ministerial and government persons.
- 115 I was not involved with the process and only became involved when I noticed that the Joint Venture was not working out. Gavin Watson instructed me to go and see AVIS (Mr Clive Els) and to request that Bosasa be released from the Joint Venture.
- 116 Alan Chapman had left the employ of the Joint Venture, as had Brian Gwebu and Itu Moraba. I was seconded with Papa Leshabane to enter into the discussions with Clive Els, and a few meetings were held at AVIS offices near Kempton Park.
- 117 At a later stage payment was made by AVIS in an amount of R23,500,000 for Bosasa's share in the joint venture. Included in this amount was an amount to be paid to Seopela and Leshabane. He was to pay in turn officials in the Department of Transport to secure an extension of the contract. The value of Bosasa's share in the joint venture was less than R23,500,000. However, it was a negotiated amount to be paid by AVIS on condition that the contract was extended by the Department of Transport (which did happen).

DUDU MYENI - FURTHER INFORMATION

- 118 Dudu Myeni was first introduced to me at the Sheraton Hotel in Pretoria. It was an informal introduction as I was with Gavin Watson coincidentally at the time.



- 119 I was well aware that Gavin Watson had committed to paying R300,000 a month in cash to Myeni for onward payment to the "Jacob Zuma Foundation". On occasions, I would have to pack the money for him in this regard. At this time Dudu Myeni was the Chair of the Jacob Zuma Foundation.
- 120 Dudu Myeni has made a public statement on eNCA regarding meetings held at Bosasa's offices and stated that she only ever attended an official visit. This is untrue. Meetings were held on a few occasions at the Bosasa offices. One such meeting related to the fracking matter. A further visit took place after a meeting held in the conference venue of the Intercontinental Hotel, when we met with the ex-CEO, Nico Bezuidenhout, of South African Airways on a Saturday afternoon. This meeting was to discuss the possibility for Bosasa to look at taking over the Security contract and the Catering contracts of South African Airways.
- 121 I also recall pursuant to the above comment a comment made by Myeni on eNCA, that during mid-August 2016, both my wife and I were en-route from ORTIA on a SAA Flight to KZN King Shaka Airport, we were seated on row 2 D/E/F on the right-hand side of the plane. This was at the time I had resigned for the first time and refused to take calls from Gavin Watson. Dudu Myeni entered the plane and sat in Row 1, next to the window, she turned around and greeted my wife and I and asked me how Gavin Watson was. I was aloof with her, said I didn't know, she asked me what was wrong, I responded to say that I had resigned from Bosasa.

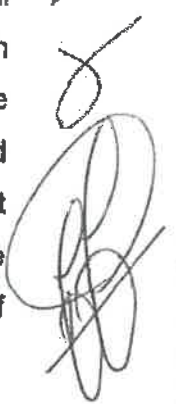
GAVIN WATSON

- 122 What follows are some of the occasions where I was personally present when Gavin Watson was involved in corrupt activities with various members of the ruling party and departments. He made it clear that he had the connections to ensure a constant flow of tenders and contracts to Bosasa. Gavin Watson was Bosasa. He had over the years built up his connections with the ANC and the main decision-makers relating to the awarding of tenders to Bosasa. He decided who, why and what amounts were to be paid and he controlled the

cash. Gavin Watson made the decisions which all ultimately benefited Bosasa, himself and his family.

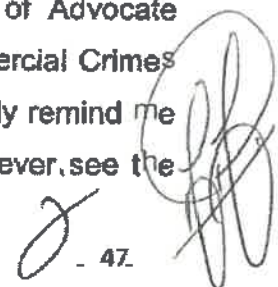
- 123 I wish to state further that these are some of the occasions where I was personally present when Gavin Watson was involved in corrupt activities with various members of the ruling party and departments. He made it clear that he had the connections to ensure a constant flow of tenders and contracts to Bosasa. During the time of my employment and throughout all the years all the major decisions and instructions were given by Gavin Watson. At all material times Gavin Watson acted in concert with his fellow directors in ensuring that in respect of the catering contracts in the Mining Industry and Correctional Services, The Youth Centers, Lindela, The Department of Social Services, The Department of Home Affairs, the Department of Justice and Constitutional Development, Airports Company South Africa, The South African Post Office, The Department of Transport, The Department of Health as well as other Departments that in return for the tenders and contracts to be awarded to the Bosasa Group of Companies that the persons in the government and provincial departments as well as consultants to all received payments and gratifications in respect of ensuring that the Bosasa Group of Companies received the benefit of being awarded the tenders, contracts and extensions thereof. Mr Watson also with his close relationships with the relevant persons on many occasions and by means of his and his directors corrupt activities ensured that extremely large pre-payment up to R100,000,000's was made without any physical work or equipment having been delivered. I myself being aware of these corrupt activities with persons in authority who were benefitting the Bosasa Group of Companies attended various meetings in the company of Gavin Watson and other Directorate and was personally present when payment was made in cash. I personally on diverse occasions and on instruction from Gavin Watson prepared, made up and delivered these cash payments to these said persons. The persons in the various Departments as well as the office bearers in the ruling party and who were to be paid and looked after for the benefit of the Bosasa Group of Companies were all decided upon and arranged by Gavin Watson.

- 124 The first time I was privy to cash being paid to Mti directly was when I attended to the first visit to Mti's house at a complex in Midrand near the Protea hotel, where Gavin Watson paid him openly in front of me. It was R65,000 which was previously packed.
- 125 I recall when we met Mti at a restaurant in Rivonia called the "Cof Father" just off Rivonia road. I had never been in the restaurant before but was told by Gavin Watson it was where he frequently met Mti. At that stage the restaurant was undergoing some renovations. I cannot remember the date, only that Mti was still the National Commissioner, and that on that specific Friday afternoon he did not have a uniform on, and he did not have the traditional security personnel with him.
- 126 We had lunch together. Thereafter Mti walked outside to his car. at that stage it was a dark metallic Volkswagen Touareg. He opened his boot. Gavin Watson took his briefcase from his car and placed cash from his car into a brown satchel with ostrich print of Mti's and placed it in his boot. It was a considerable amount of cash, and it was packed loosely. At the time I estimated it to be at least R150,000.
- 127 I also recall that on a few occasions Gavin Watson would call me to the vault whilst he was packing the cash - he would specifically count out the amount for Mti and others then say to me to keep it with me until the morning. I would lock it in the boot of my car. He would then tell me to meet him at the gate of Savannah Hills and I would follow him in.
- 128 On arrival at the house, I would take the bag from the boot of my car, walk in unannounced and place it in Mti's study. Mti had a wall-safe mounted behind the curtain of his study. Mti would place the cash in the safe.
- 129 When Mti came downstairs to the study where we were sitting, Gavin Watson would greet him and say to him "I brought your stuff". Mti would then take the cash out of the security bag and pack the money in his safe.

- 130 Mti was an avid golfer. I recall Gavin Watson taking Mti to a specialist shop (Pro Shop) and purchasing a range of specialist golf clubs for Mti. At one visit Gavin Watson showed me the set of clubs he had purchased for Mti. An easy analysis would be to draw the credit card payments off the various credit card accounts from Watson which will indicate the purchases.
- 131 Gavin Watson would request that I arrange that Bosasa make payments to certain clothing shops in Sandton. I recall having to go to Sandton shopping centre and visit Grays as well as their related clothing stores. The accounts would have to be paid for Mti. They ranged from R100,000 to well over R250,000. They would normally be attended to by a shortish African gentleman who knew Gavin Watson and Richmond Mti exceptionally well. These purchases happened frequently. These purchases were done at Grays in Sandton and the "Pro Shop" in Woodmead.
- 132 At one stage I had to go to Grays in Sandton to make a payment for clothing for Gavin Watson and Mti. I recall the shop attendant, a short African man mentioning that he hadn't seen Mti for a while and that he had a "Boss" sports jacket altered that he still hadn't collected.
- 133 During one December, I was called by Mti who heard I was in Umhlanga on holiday. At that stage, he was at a Moreschi shoe shop near the main shopping centre in Umhlanga. I was told to go meet him there. When I arrived, he had chosen two pairs of shoes. Gavin Watson said I should use my Bosasa credit card to make the payment. I merely complied with Gavin Watson's instructions and paid. I recall the costs were in the region of R19,000.
- 134 When Mti resigned as the Commissioner of the Department of Correctional Services, I recall Gavin Watson coming to me to say he had just gone through Mti's new employment contract with the 2010 FIFA Organising Committee ("the Organising Committee"). A few weeks later Sondolo IT was appointed (without my knowledge) to attend to an access control and security system at the offices of the Organising Committee. I recall this distinctly due to the numerous problems we encountered with the registration of the fingerprints of Danny Jordaan.
- 

- 135 After Mti had left the employ of the Organising Committee he wanted to get paid via a company and wanted it more structured. Gavin Watson arranged a trip to my brothers' company in Elsburg. Gavin Watson accompanied me and Mti. We drove together in the car, whilst discussing the SIU reports. Mti then walked around the factory and said he wanted to buy a share in it to make the dealings look authentic. He proceeded to make out two cheques for R100,000 each and handed them to my brother with the understanding that it would be paid back. I cannot recall if my brother processed the cheques.
- 136 Gavin Watson was extremely conscious of the fact that he needed to keep Mti content. At a certain point I needed to arrange a meeting with Mti and Brian Biebuyck to reassure Mti that the process was under control and that he would be protected. It was at that specific meeting that Mti explained to Brian Biebuyck that he was told by Nomgcobo Jiba to do a letter regarding the representation regarding the accused, and why prosecution should not take place.
- 137 A further meeting took place which Gavin Watson insisted on at my brother's new premises, which was attended by Gavin Watson and Richmond Mti, as well as myself, where Gavin Watson tried to coerce my brother into taking on Richmond Mti again. Understanding my predicament, my brother merely skirted the matter until we left.
- 138 I have already testified regarding documents I received from the NPA. I handed these documents with my handwritten notes to Brian Biebuyck.
- 139 Brian Biebuyck sought advice on the matter. Brian Biebuyck then produced a lengthy document addressed to the then NDDP dated 28th September 2010. This written representation which was sent by Brian Biebuyck contained the vital inside information that had been received via Richmond Mti from Advocate Jiba and Jackie Lephinka (who was the secretary of Advocate Lawrence Mwrebi, who was the Head of the Specialised Commercial Crimes Unit). It was on this premise that Brian Biebuyck would constantly remind me there was no purpose in whistle-blowing as the matter would never see the day in court.

47



- 140 Gavin Watson and Valance Watson conducted several meetings, especially at the pinnacle of the SIU investigation, with Andries van Tonder and myself, and on occasion with others such as Kevin Wakeford and Ronnie Watson.
- 141 These meetings would take place at various places and stretched over the period 2009 to 2016. One such place was the Michelangelo Hotel in the lounge adjacent to the restaurant Piccolo Mondo. I remember two specific occasions because notably at the one Benny Hinn (an international preacher) was at the lounge area whilst we had the meeting, and on another occasion Morgan Freeman who was starring in the role of Mandela was at the lounge area.
- 142 Meetings would also take place at the residence being used by Valance Watson in Morningside. On occasion Kevin Wakeford would also be there.
- 143 Certain meetings also took place on a Saturday or Sunday mornings at the Tasha's restaurant at the Morningside Shopping Centre. On occasion Sesinya Seopela would join at the meeting.
- 144 Sesinya Seopela had an extremely cordial relationship especially with the sons of the Watsons. They would often discuss gym health programs and I often was amazed that Gavin Watson would even purchase the health meal supplements for Seopela.
- 145 Other matters discussed during meetings were the fact that the team had to stay together, no one would be permitted to speak out; in the event that it happened the person that broke the Watson "Pact" would be dealt with severely and would be treated as an "askari".
- 146 On a few occasions Gavin Watson would at these meetings say, "*Chaps – my signature is nowhere to be found...*" or the favorite he would use in the open at prayer meetings "*We will be like Paul and Silas, praising The Lord in prison together*".
- 147 On another occasion, which I cover in my original affidavit is the time when Gavin Watson visited Nkandla just shortly before a trip to Russia. I refer to the

recording provided to the Commission on State Capture, where Joe Gumede mentions that he had been updated by a certain person at the Hawks that the then President Jacob Zuma had put him in touch with. I did not remember to add the fact that Gavin Watson having seen the photo of the docket taken by Joe Gumede, specifically referred to the fact that "we", the accused, had no option but to "toe-the-line" as he (Gavin Watson) was totally exonerated.

148 Once more when I discussed the matter with Brian Biebuyck, I was told to sing off the same hymn sheet as Gavin Watson; the SIU matter was "stillborn" and as long as I was loyal to the Watsons, I would be fine.

149 In these meetings the 'Watson Pact' would be emphasised. The following roles were often repeated:

149.1 Gavin Watson – would attend to all Political Issues and caucusing, whilst working with Sesinya Seopela and Richmond Mti;

149.2 Andries van Tonder – would attend to the banking queries and financials, and work in conjunction with Kevin Wakeford who would attend to difficult questions if these arose from the banks especially after adverse articles being published;

149.3 Angelo Agrizzi – would attend to legal liaison, with the assistance of Brian Biebuyck at Hogan Lovells. Angelo Agrizzi would also have to attend to Patrick Gillingham and Danny Mansell if need be to keep them calm and ensure "they don't jump ship".

PAPA LESHABANE

150 Papa Leshabane had various roles within the Bosasa Group of Companies. These included:

150.1 Main board member, as well as a director of associate and subsidiary companies;



150.2 Spokesperson for media related issues;

150.3 Human Resources Director;

150.4 Responsibility for Lindela; and

150.5 Responsibility for marketing.

151 The directors were mostly secretive with the alliances that they had built up, and after my initial resignation in August 2016, would collect cash directly from Gavin Watson, citing that I was difficult and wouldn't conform to requests: "I asked too many questions" it was said.

152 By establishing relationships, Papa Leshabane could manipulate certain situations. He would convene parties and arrange events such as the Jazz Festival where people and government officials were entertained lavishly. Bosasa funded all of these expenses.

153 I specifically recall an event I was instructed to pay for via an EFT, held after the SONA in about 2015. The event was held at the premises of the erstwhile Director General "Chauke", at a restaurant he owned in Cape Town called Cubana.

154 Papa Leshabane had direct access to Gavin Watson. He received from Gavin Watson large sums of cash, which I saw him take out. He would not give me the reason for taking the cash.

155 Leshabane, Seopela and Gavin Watson further paid an amount of R300,000.00 cash monthly to people in the Department of Transport relating to the contract for SMS fleet of Government vehicles. This was taken over by them from Brian Gwebu after the initial contract was awarded to Kgwerano Financial Services. Leshabane was fully aware and participated in the corrupt activities at the Bosasa group of companies.



SESINYI SEOPELA "COMMANDER" ASSOCIATIONS

- 156 Sesinyi Seopela was initially employed as a consultant by Consilium to attend to marketing aspects of the group, and deal with problematic clients or Government officials. He is a close confidant of Gavin Watson, and whilst he does not wear a uniform, he acts as a director of the group.
- 157 Sesinyi Seopela was extremely secretive on whom he worked with. However, I was well aware that he had access to various ministers. He had previously been the bodyguard and driver for the late Peter Bokaba of the ANC Youth League.
- 158 Openly and in a widely spread video, Gavin Watson is seen questioning the accuracy of the Bid/Tender proposals where he states that because of errors in the bids produced, both he and Seopela would have to go after hours and work with the "Network" of people to correct and resolve these issues. This was a regular occurrence as Watson states.
- 159 Sesinyi Seopela was instrumental in arranging the first meeting with Vincent Smith, where I was asked to accompany Gavin Watson as mentioned in my first affidavit.
- 160 I cannot recall all the officials, save to say that he had an extensive network. Sesinyi Seopela would only work directly with Gavin Watson, attend meetings and caucus at nights and on weekends. He would collect the cash sometimes directly from Gavin Watson, and distribute it accordingly. Gavin also took him on overseas trips as well as to all meetings and appointments. Seopela interacted with many Government Departments and many ministers that were associated with the tenders awarded to Bosasa. He was very close with Gavin Watson and the various Ministers and Officials where tenders were awarded.
- 161 Sesinyi Seopela would advise me where to meet him and then would request that I follow him to another location and transfer the moneys into the boot of his car.

- 162 Interestingly, albeit that Bosasa provided him with a company credit card, a fuel card and access to Blakes Travel. Sesinyi Seopela would hire cars on the company account for certain meetings and deliveries; because often when I met him he was in a different car. This was extremely prevalent when large sums of the R15,000,000 in cash was paid out in large tranches to his various contacts in the Department of Justice and Constitutional Development.
- 163 Sesinyi Seopela would always insist on a percentage of turnover to be used as the directive and the basis for calculating the corrupt fees to be paid. This was 2.5% of the turnover in respect of the 2013 tender awarded to the Bosasa Group of Companies which was always paid in cash. Sesinyi Seopela only arrived at Bosasa a few years after I was employed.
- 164 I state further that at all material times during the time I was employed at Bosasa, Seopela was personally and actively involved in the corrupt activities with the relevant persons in relation to the tenders and contracts awarded to the Bosasa Group of Companies. He, together with Gavin Watson, had very close relationships with the relevant Ministers and officials in relation to tenders awarded to the Bosasa Group of Companies. After 2010 and on many occasions, I was personally present when information was relayed as to progress of the tenders, the SIU matter and other important aspects that would involve the Bosasa Group of Companies.

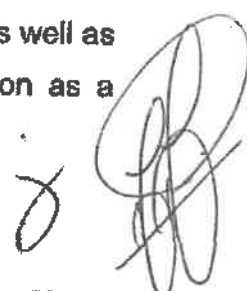
JOE GUMEDE

- 165 Joe Gumede was placed as the Chairman of the Company. He was also instrumental in the following functions:

165.1 Human Resources

- 165.2 Security within the group. He managed the ACSA contract as well as various other portfolios, where he fronted for Gavin Watson as a shareholder. These include:

165.2.1 Beta Fence;



165.2.2 Bosasa Group Holdings;**165.2.3 Employee Trust.**

166 Joe Gumede would be very selective with whom he shared his network of Government officials.

167 Influence would be used to make decisions that benefitted Bosasa, as well as the ability to gain information. An example of this is mentioned in my previous affidavit, where Gumede had direct access to the Bosasa dockets, and the discussions he had with Gavin Watson regarding the closure of the matter. Joe Gumede was fully aware and participated in the corrupt activities at the Bosasa group of companies.

DEPARTMENT OF EDUCATION - NORTHERN CAPE - KIMBERLEY

168 At one stage Trevor Mathenjwa, a director at Sondolo IT, employed a technician called Bheki Gina. His sister works at the Department of Education and has numerous contacts within the Department in the Northern Cape Province.

169 A contract was issued (without tender) for the provision of CCTV and Access Control for the offices of the Department of Education for an estimated R10,500,000. I found this strange at the time because it was processed as a proposal and a quote without following the correct tender procedure. When I queried this, I was told by Trevor Mathenjwa that the contract had gone out on a specific "emergency" requirement at the time.

170 Trevor Mathenjwa approached me at one stage and mentioned that he had established a relationship with Bheki Gina's sister who could procure additional business via the Department of Education and various other Departments in the Kimberley region. He requested that Bosasa provide a bribe. I reminded Trevor Mathenjwa of the protocols required and that he should be dealing with Gavin Watson in terms of the "formal" arrangements.

171 I know that Trevor Mathenjwa also alluded to the fact that SUNWORX, an associated company within the Group, could also benefit from the association in that Bheki Gina's sister had numerous high-level contacts in the area.

172 I am aware of the fact that no tender processes were followed in this respect and that a payment of R1,250,000 was approved in cash to be given to the sister of Bheki Gina. Trevor Mathenjwa managed the project.

173 I am also aware that I was specifically excluded from these discussions and extensions of contracts in the Northern Cape, primarily because Gavin Watson and Trevor Mathenjwa were attending to them. I cannot vouch for the other work provided in the Northern Province.

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT –
SUPPLEMENTARY INFORMATION**

174 The contract award (CCTV and Access Control) was irregular and met with resistance from the procurement division of the Department.

175 As the Operations Officer, I was not able to verify the standards that were relied on. I placed reliance on the feedback given to me by the Operational heads of departments.

176 It came to my attention during 2016, that in fact the various court managers were dissatisfied with the services rendered and in many cases installations were incomplete and sub-standard.

177 I deployed a specialist team to survey and take corrective action on a national basis to rectify the matter.

178 I was dismayed to see the state of disrepairs at the various sites, as we had been charging the Department of Justice and Constitutional Development a monthly maintenance fee. But I was also aware that certain officials were receiving cash payments to overlook the problems and sign off on the monthly maintenance fee that was charged.

179 I initiated and instructed a team to repair and replace faulty equipment.

USASSA - SCHOOL TABLET AND CONNECTIVITY PROJECT

180 I was involved with Fez Mzazi, a Director at Sondolo IT, for the deployment of specialized projects for USASSA in accordance with a contract issued out for Gauteng Schools.

181 An initial agreement was concluded with Fez Mzazi and procurement personnel to ensure that the lucrative portions of the tender be allocated to Sondolo IT. This was done. The initial sum of R500,000 was paid in cash, which was handed to Fez Mzazi from Watson's vault by me for the consultants that worked on the transaction and tender. The initial transaction was concluded by Fez Mzazi with input from Gavin Watson.

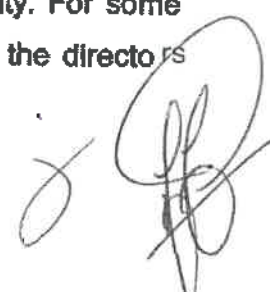
182 Unfortunately, I don't have all the details at this stage as they are contained in my files at the Bosasa offices.

183 Pursuant to being awarded the contract, a meeting was coordinated with the accounting officer at USASSA with Gavin Watson and myself (I cannot at this stage recall the name). I do however recall the meeting taking place at Sandton Square at an upmarket restaurant called "Pigalle", where the potential of the extension of the existing contract and other opportunities were discussed.

184 At that specific meeting Gavin Watson told the CEO of USSASA that he would be looked after financially.

RANDFONTEIN – MOGALE CITY – MUNICIPALITY

185 Numerous irregularities have occurred at Randfontein Municipality. For some time I avoided doing any business with them, contrary to what the directors wanted.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a large, loopy flourish.

- 186 The most recent activity was the installation by Bosasa of security fencing and CCTV access control at the Municipal buildings. No tender process was followed.
- 187 In March 2017, an employee of Sondolo IT, Mr Riaan van der Merwe, approached me to arrange a meeting between the local CEO of DAHUA and Andile Ramaphosa. DAHUA is Dahua Technology, a provider of video surveillance products and services. I did not attend this meeting, albeit that I accepted the meeting invite. An email is available to substantiate this.
- 188 The agreement with the Municipal person who dealt with this was that a proportionate amount of cash be paid to himself in respect of the provision of the systems, as well as a DAHUA system provided for his personal residence at no charge. Evidence of this installation can be seen at the property situated at Randfontein. This occurred post my departure but I was well aware of the plan prior to me leaving the Bosasa Group.
- 189 On being reported that this was in fact the case, I visited the site, as well as the residence of the said person, and can confirm that the DAHUA system has been installed at the residence in Randfontein. The address has been supplied to the Commission investigators.

GWEDDE MANTASHE

- 190 I am aware that the installations done at the homes of Minister Gwede Mantashe were paid for by Bosasa under the instruction of Gavin Watson and Papa Leshabane.
- 191 The serial numbers and purchase invoices from the suppliers utilized will reflect the cash payments which were done by special projects in Bosasa.
- 192 Initially Francois Cronje did the installation after being asked by Papa Leshabane. The first installation was done by contractors appointed and paid for by Bosasa/Sondolo IT. I only found this out when I was asked to sign off the payment for a contractor. I queried this as I was averse to using any



contractors for any work and wanted to know why I had to sign off a contractor's payment. Francois Cronje who submitted the invoice was very evasive. Only after I started to further query the matter, did Papa Leshabane approach me and tell me he had arranged this with Gavin Watson. It was the first time I had heard that we had done a "favour" for Gwede Mantashe.

193 I can attest that all the projects conducted on behalf of Papa Leshabane for Gwede Mantashe were paid in cash by Bosasa or Sondolo IT.

194 Initially when I confronted Gavin Watson on the matter, he denied having any knowledge of the agreement made.

195 It was after I raised my discontent at how Papa Leshabane had gone about this that I was told by Gavin Watson that Papa Leshabane had made him aware of the installation.

196 The invoices for the contractors should be on file and the COD accounts with the suppliers are available at REGAL and the other suppliers.

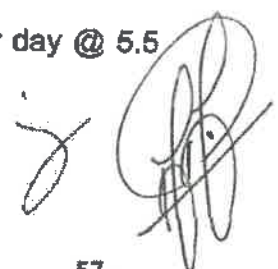
197 It is important to note that when conducting these installations employees would need to be accommodated close to the various sites. These costs are always attributed to Bosasa, as will be reflected by the relevant guesthouses used to complete the installations in the various areas.

198 Employees are remunerated by Bosasa/AGO. Projects of this nature would normally take 2.5 days. The (Labour) costs excluding the equipment on a support team of 5 people would normally be charged out as follows;

198.1 Labour Team per day (5 Technical) R8,750 per day @ Days
(Inclusive of 2 travel days) = R48,125

198.2 Accommodation and Transport (5 Technical) R4,200 per day @ 5.5
including subsistence = R23,100

198.3 Management fee 20% on Labour = R14,245.



- 199 Total Labour costs excluding material internal costs = R85,470 per Installation within 200km of the West Rand.
- 200 Indicatively the equipment costs would be reflected on a basic medium range system as follows:
- 200.1 Cabling and trunking = R7,800 Per site
 - 200.2 Cameras (6 Day Night) Hik Vision in IP 66 containment or similar = R3,850 X 6 = R23,100
 - 200.3 Digital Video Recorder with modules (Cathexis) = R19,500
 - 200.4 Peripheral Hardware Racks etc. = R5,000
 - 200.5 Licensing Software= R4,500
 - 200.6 Total Equipment (Conservatively) = R59,900.
- 201 Total Installation — e.g. Cala amounts to R145,370 excluding VAT. This only reflects a basic CCTV installation. Whilst not perhaps comparable to home DIY systems it is based on a commercial standard and is what would have been the Bosasa / AGO standard in place at all the houses.
- 202 Conservatively the three sites installed for Gwede Mantashe would have amounted to an approximate R650,000 for all the installations provided that they were only based on an alarm system and a 6-zone camera installation.
- 203 As mentioned, I don't have access to the documents I would have kept on file.
- 204 I confirm that the installation as well as all the other installations were conducted and completed at the costs of Bosasa and that Gavin Watson made the arrangements and gave instructions to Papa Leshabane.
- 205 Gavin Watson Impressed upon me the vital role that Mantashe played in assisting Bosasa and that he was a good connection and needed to be looked

after. He was a person of great influence and highly regarded in Government circles. He was also highly placed with the Trade Unions and in Government.

MPUMALANGA DEPARTMENT OF HEALTH

206 In November 2016, I was informed by Joe Gumede, the Chairperson of the then Bosasa Group, that he had been successful in negotiating a contract for the hospitals in Mpumalanga.

207 At the stage he wanted to arrange for a payment to the coordinator of the person who worked on the contract for the Department of Health in Mpumalanga, as he had promised the coordinator a success fee. I immediately referred him to Gavin Watson as I felt strongly that it shouldn't be entertained. At the meeting held in my office, I also voiced my opinion that I was under the impression that the contract was a *bona fide* tender that we would win based on the pricing model we had promulgated.

208 At the stage Joe Gumede raised his discontent with my attitude of not wanting to attend to his needs. I am aware that he approached Gavin Watson independently to discuss the matter.

209 I was led to believe that an amount was in fact paid to the person, and that it was requested that we attend to the servicing of his vehicle, which Gavin Watson approved.

210 A copy of the costs commensurate with the repairs has been made available, and strangely is confirmed by Gavin Watson signature, approval of which I was never made aware of.

LAMOZEST

211 Gavin Watson called us into a meeting one morning – Andries van Tonder and me. The meeting was held in the office of Andries van Tonder. At the time he said because of our close relationship, he wanted to reward us and establish a NEWCO that would be an avenue of providing us with bonus payments and in

order to develop an entity that the other Black Directors were not aware of. Hence he instructed that Lamozeest be formed.


212 Lamozeest was then not used for the intended purpose but became used to filter funds directly for Gavin Watson's personal use and for the family use. Gavin Watson then said that it was not possible to remunerate both Andries van Tonder and myself from Lamozeest, but rather to use new arms-length companies.

213 This entity was *inter alia* used as a means to cover some of the expenses of the Watson family, by creating invoices to the Bosasa Group of Companies, effecting payments, and paying for the personal usage and invoices of the Watsons.



ANGELO AGRIZZI

THUS SIGNED AND SWORN TO before me at PARKTOWN on this the 26th day of MARCH 2019 by the deponent who acknowledges that he knows and understands the contents of this affidavit; that it is the truth to the best of his knowledge and belief and that he has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. RI 258 of 21 July 1972, as amended.



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