



EXHIBIT GG (d)

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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**SUBMISSION BY REVEREND FRANK CHIKANE TO THE JUDICIAL
COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS
OF STATE**

I, the undersigned,

FRANK CHIKANE

an adult male, aged sixty-eight (68) – born on 3 January 1951 – and resident at 21/1 African Wattle Drive, Carlswald Estate, Walton Road, Midrand, Johannesburg, hereby declare:

BACKGROUND AND EXPERIENCE

- 1 I am currently the International President of my Church, The Apostolic Faith Mission (AFM) which has a presence in about thirty-four (34) countries in six (6) continents of the world; a Presiding Pastor of the AFM of South Africa at the Naledi Assembly, Soweto; Vice-President of the South African Council of Churches (SACC); a member of the All Africa Conference of Churches (AACC) Advisory Committee on Peace and Security on the African continent; and, a Moderator of the Churches Commission on International Affairs (CCIA) of the World Council of Churches (WCC).



- 2 I am a former Special Advisor to the Deputy President of the Republic of South Africa, Deputy President Thabo Mbeki (1995-1996); Director General in the Deputy President's Office (1996-1999); Deputy Secretary of the Cabinet of the Republic of South Africa (1998-1999); Director-General in the Presidency, and Secretary of the Cabinet (1999 - June 2009), and the last nine months or so were managed as a transitional period based on a special contract providing for a phase out programme as the Director-General and Secretary of the Cabinet, leaving me on a short term contract to manage the transitional processes leading to the April 2009 national elections and inauguration of the President so-elected in May 2009.
- 3 I am a former pastor of the AFM in Kagiso, Mogale City (then, Krugersdorp) (1976-1981); Technical Assistant at the Nuclear Physics Research Unit (NPRU) at the University of Witwatersrand (1976-1979); a Director of the Kagiso Self Help Project (1980-1981); Coordinator and then Director: Institute for Contextual Theology (ICT) (1981-1987); Deputy President of the Soweto Civic Association (SCA) (1983-1985); Vice-President of the United Democratic Front (UDF) (1983-1985); General Secretary of the South African Council of Churches (SACC) (1987-1994); and a Commissioner of the Independent Electoral Commission (IEC) which was responsible for the first April 1994 democratic elections in South Africa.



QUALIFICATIONS

- 4 About academic qualifications: Besides my Diploma in Theology (Pan-African Bible College, AFM) and an Executive Course for Senior Managers in Government Programme (Kennedy School of Government, Harvard University, 2004), I hold two Masters' Degrees. One on Religious Studies (1992, Natal University, now KZN University), and the other is in Public Administration (1995, Kennedy School of Government, Harvard University). The rest are honorary degrees.

MY SUBMISSION

- 5 My submission is primarily going to be based on my personal knowledge and experience about matters I have been asked to deal with.
- 6 I have also decided to rely on published material which I penned whilst my memory was still relatively fresh about the matters or events related to the interest of the Commission.
- 7 On the Thémba; James Maseko matter, I have gone through the Statement I made to the Hawks when they were investigating the matter. The Statement is herein attached as Annexure 1. I have no idea as to where this case ended.



PUBLISHED MATERIAL ON THE SUBJECT OF THE COMMISSION

- 8 There are three Chapters in the two books I published after leaving Government which deal with some of the aspects that concern this Commission. This was based on my thirteen and a half years of experience in Government, including chairing the National Security Committee (of senior security and intelligence officials) of the National Security Council (executive level).
- 9 One Chapter is in *Eight Days in September: The Removal of Thabo Mbeki* (Picador Africa, 2012) entitled "Conflating State and Party: A National Security Threat", and, two are in *The Things that Could Not be Said: From A(ids) to Z(imbabwe)* (Picador Africa, 2013) entitled "Colonialism in a New Guise" and the "The Scourge of Corruption".
- 10 At the beginning of the latter title, that is, *Things that Could Not be Said*, I deal with the dilemma about things one could not say whilst in Government, and the things I cannot say even now which are still classified in terms of the relevant legislation. My submission to this Commission will also have the same limitation.
- 11 I shall refer to some of the aspects I deal with in these chapters and others in these books.



SIGNS AND SEEDS OF 'STATE CAPTURE' DURING MY TIME IN GOVERNMENT

- 12 The first indicator for me about the risk of capture of the State is contained in my Chapter on "Conflating State and Party: A National Security Threat" in *Eight Days in September*, found in pages 166-190.
- 13 The first challenge I noted was that, notwithstanding the fact that a non-racial democratic South Africa was established in terms of our new Constitution, intelligence officers continued to report to their former commanders during the apartheid days, and this affected both officers from the Apartheid system and those from the liberation movements (pages 166-179). This laid the seeds for a parallel intelligence service that ended up serving the interests of individual leaders or sectarian groups – which is illegal and against the Constitution of the country - rather than serving the State and the people of the country in terms of the law.
- 14 The second indicator for me was the belief (and even the thought) that the President of the country could "use his powers to prevent or stop the prosecution (of) or quash" cases (page 180), notwithstanding or irrespective of or outside the law and the Constitution.
- 15 The third for me relates to the decision by Cabinet to appeal against the Nicholson judgement on the matter which affected the former Deputy

President (Mr Jacob Zuma). Lawyers needed the decision of Cabinet to make this appeal, but Minutes of Cabinet are classified and could not be used in court. The practice to resolve this matter was for the Secretary of the Cabinet to depose an Affidavit to confirm the decision of Cabinet without releasing the classified Minutes. To my shock there were some who suggested I change the Minutes of Cabinet! My advice was that "only Cabinet could rescind the decision" (page 182). Second, there was also an appeal to me not to depose such an Affidavit, and my response was that as long as the decision of Cabinet stood in the Cabinet Minutes I was obliged to execute it" (page 182). I deposed the Affidavit after consulting the President who was President Motlanthe then. His response was 'do what is right Moruti' and what you are expected to do as the Secretary of Cabinet.

16 For me what mattered was the law and the Constitution. "Anything else would border on corruption of the law to serve the interests of some members of the party" (page 183). My compliance with the law cost me dearly within the party, that is, the ANC, and as regards my future thereafter.

17 I say in the book that "If this level of corruption of the system had been achieved, it would mean that the integrity of the state would have been totally compromised and a faction in a party or another entity would effectively have **taken control of the state**. This would be the birth of a



dictatorship or a country controlled by a mafia" (page 183) (my own emphasis). I continue in the book to say that "The Italian Mafia, which ended up corrupting or compromising the police, prosecutors, the judges and the political leadership to have their way or avoid being brought to justice, comes into mind ..." (page 183) (my emphasis).

18 In the worst-case scenario "the whole of the cabinet and its president are compromised, and syndicates operate without any fear. At this point the citizens ... have lost their government, since the government now serves the interests of a particular syndicate or mafia and not those of the people." (page 185) (my own emphasis). I continue to say that "Business too, may compromise key political players to ensure that the government serves their interests at the expense of the people" (page 185). (my own emphasis).

19 In my Chapter on "Warning Lights" in *The Things that Could Not Be Said*, I make a point that "Corruption is devastating. It can compromise leaders to such an extent that they abandon their mission to serve the people and instead serve their own interests or the interests of those who have compromised them or those who know that they have been compromised" (page 144) (my own emphasis).



- 20 A rereading of my Chapter on “The Scourge of Corruption” in *The Things that Could Not Be Said*, makes it clear that **we understood the challenge the country was facing before the worst happened**. In page 224 I indicated that “private sector players were always ready with bags of money to compromise one or other of the bureaucrats or political office bearers if it served their interests”. In fact, whilst I was in government we found that **“there were a set of wealthy, highly placed international and national business people who targeted the leadership or potential future leaders ... to befriend them ... corrupt them in preparation for future deals.”** In this regard “The involvement of **strategically placed senior comrades gave members of these networks a sense of invincibility, and the practice, a certain credibility.**” (page 225) (own emphasis).
- 21 Pages 234-239 sum up the nature of the crisis we are facing. I refer here to a warning I gave to the governing party based on my experience as a deployee of the National Executive Committee (NEC) of the ANC in the North West Province then. It was all about political control and/or business influence for access to tenders, contracts and other deals. They even had paratroopers, apparently with a budget to finance their violent and disruptive activities (page 235).

22 I conclude by advancing a view about what is called **political corruption** which I say is more toxic than the traditional understanding of **bureaucratic corruption**. I then submitted that political corruption "leads to the worst forms of bureaucratic corruption" (page 237). I make the case that 'it is intense' and that it 'can break the system'. Corruption, I say, "causes leaders to define themselves as being above and beyond the law. They easily throw away the regulatory framework when it comes to self-interest. At this high level of corruption, no stone is left unturned until the corrupt elements control all the organs of the state to ensure that they serve their interests. This involves influencing judges, prosecutors and the police." I sight cases that show as to "how close we came to making the institutions of the state part of the corruption project", resulting in what I call a 'mafia state'. (pages 236-237).

23 At the "highest levels of corruption involving syndicated forms of organized crime and mafia-style criminal activity, systems and institutions of law enforcement agencies can be captured by a syndicate and manipulated in a way that serves their interests". (page 237).

THE INTERFASSE BETWEEN PARTY AND GOVERNMENT



- 24 My Chapter on “Conflating State and Party: A National Security Threat”, in *Eight Days in September* deals effectively with this subject and the challenges we face or faced.
- 25 Our Constitution for me is very clear about the separation of powers between the legislature, the judiciary and the executive. There is also a clear separation between party political activity and Government.
- 26 Regarding the appointment of Cabinet, the Constitution is very clear that the President appoints the Deputy President, cabinet ministers and deputy ministers (Sections 91 and 93 of the Constitution).
- 27 Although I was not part of the processes of identification and selection of Cabinet members as a member of the National Executive Committee (NEC) of the ANC then, a Secretary of Cabinet, and Director-General in the Presidency, I was aware that the President appointed Cabinet members after consultation with the Secretary-General of the Governing party. The consultations here did not take away the powers of the President in terms of the Constitution. Appointments were ‘after consultation with’ and not ‘in consultation with’. At no stage, during my tenure as Director-General in the Presidency, did I have a feeling that the President (that is, President Mandela and Mbeki) appointed Cabinet ministers to advance other interests other than those of the Government and the people of South Africa.



- 28 My only concern was the power dynamics within a party which could influence the appointment of Cabinet ministers and other officials of Government. There was also the tension between the deployment policy of the Governing party and the appointment of able and qualified officials of Government in terms of the prescribed rules and regulations governing the appointment of such officials. During my time as Director-General and Secretary of the Cabinet we were able to manage this dynamic and tension within the framework of the law and the Constitution.
- 29 During the thirteen and a half years of my service in Government we 'grappled' with the "subtle difference between the role of the president as head of state and that of head of government" (page 172). There were times when the President acted as the Head of State. Another time as Head of Government. And, at other times as Head of the governing party. I say in this Chapter that "In this regard the presidents I served under – Mandela, Mbeki and Motlanthe – had great respect for the Constitution and also respected the subtle differences between party and government activity and between the state and the (ruling) party" (page 172).
- 30 The challenge in our governance system is managing these different 'centers' of power in a manner that respect their roles and responsibilities. An emphasis of one against the other outside the national constitutional construct of the country can result in disastrously consequences. This includes deployment of staff within Government.
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31 One example for me among many others would be the way the 'War of Poverty' (WOP) programme was developed and handled. In the transition from President Motlanthe and President Zuma the design and restructuring of the new Government was done at Luthuli House (Headquarters of the ANC) without consulting or getting advice from those who were in Government.

32 Ten years or so after the democratic government came into being a group of women concluded that the policies and programmes of the democratic government were not achieving the objective of eradicating poverty (especially abject poverty) in the country as was expected. They undertook a research project in the country and internationally, and, based on this research they reached a conclusion that one could not eradicate poverty with general policies on poverty. The only way they said was to focus on 'one family at a time' until that family came out of poverty. A programme was developed in this regard which was based on collaborative strategies between the families, communities/civil society, and local/provincial/national governments focusing on 'one family at a time'. It was also agreed that this would bring all sectors and departments of government coordinated from the apex of Government, that is, the Presidency. This Programme which got to be known as 'War on Poverty' (WOP) was launched in August 2008.



- 33 After retiring from Government, I facilitated a War on Poverty (WOP) pilot programme in Region D1 of Soweto, within the Johannesburg municipality as I had come to believe that this was the only way to deal with abject poverty in the country. This brought the national government (Deputy President's Office), the Gauteng Provincial Government and the Johannesburg municipality together with the churches and civil society entities in the Region, and affected families to deal with poverty in the Region (D1).
- 34 Unlike the transition from Presidents Mandela and Mbeki in 1999 which was managed well between Government and the governing party, the transition from Presidents Motlanthe to Zuma was managed from the party headquarters without an input from Government or use of the wealth of experience within Government. As a result, and not withstanding available information that poverty had become deeper in some of the major cities in the country, the 'War on Poverty' Programme was moved to the Department of Rural Development. This cut off the Urban Renewal and Development part of the Programme.
- 35 Given the 'War on Poverty' pilot programme my Church (The AFM of South Africa - Naledi Assembly) was pursuing together with other churches and civil society groups in Region D1 of Soweto, we followed the Programme to the Rural Development Department (whilst being Urban). As we did so it became clear to us that the Department really did not know

as to what to do with this programme as it did not fit in within their strategic plans, philosophic perspectives and systems. Within a short space of time the WOP staff was redeployed within the programmes of the Rural Development Programme and the Soweto Programme fell of the radar screen. As a result, poverty has become deeper in some of the communities that would have benefited from the Programme.

ON THE GUPTAS MATTER

- 36 Until the 2013 Waterkloof scandal many of us would not have known the Gupta family in the way we have come to know it. Earlier interactions with them would have been considered as 'innocent' and 'normal' interactions.
- 37 One of these would have been my encounter with them, particularly their mother, per invitation of one of my family members who said that they wanted to introduce me to their mother who had an extra-ordinary project of supporting the Sahara Computers staff in terms of their social responsibility as a company. This happened without any suspicion of what their interests would have been in terms of their long-term interests.
- 38 My recollection is that my first direct encounter with the Guptas within Government is when I saw their names in the list of confirmed guests for a State Banquet where the number of invitees was normally very tight with limited space. I checked with the Protocol Officers as it was strange for



me to have more than two family members in a State Banquet sitting together. I was told that they were invited by one of the Ministers. I expressed a concern about this matter as we could not even have both the Chair and the CEO of the large State-Owned Enterprises (SOEs) in one State Banquet. Again, there was no suspicion about what their intentions would have been except that they were guests of a Minister.

39 I have come to know as well that Ajay Gupta served as a member of the International Marketing Council of South Africa (IMC) since 2006. Again, no alarm was raised about this appointment during my term in Government. One of course would not have known about the happenings within the business of the IMC.

40 Another event was the world premiere of the movie 'Gandhi My Father' (produced by Anil Kapoor) in July 2007 where President Mbeki was a speaker. It also did not raise an alarm about the Guptas and their intentions.

41 I would like to state that during my tenure as Director-General in the Presidency I do not remember any activity that would have suggested that the Guptas had any influence in relation to the Government and appointments of people into influential Government positions.

THE JAMES MASEKO MATTER

- 42 I have known James Maseko, first as a comrade in the struggle for the liberation of our people and the country; second as a member of Parliament; third, as the Superintendent general of the Gauteng Department of Education; fourth as the Director-General of the Department of Public Works; and then as CEO of Government Communication and Information Systems (GCIS).
- 43 I worked with him like all Directors-General during the time when he was Director-General at the national level as I was the leader and Chair of the Forum of Directors-General of South Africa (FOSAD), which includes Directors-General of national departments and Provincial Governments. It is within this Forum that we integrated and coordinated the work of Government together.
- 44 As the Secretary of Cabinet, the Director-General in the Presidency and head of FOSAD I assisted the President in dealing with matters affecting DGs, particularly the relationships between DGs, Ministers and Deputy Ministers. In this regard I was not surprised when Themba Maseko consulted with me and sought advice when he was confronted by a situation that could put him at loggerheads with the President.

45 When Themba Maseko was asked by the President (Zuma) to visit the Guptas at their home and assist them on matters they had an interest in, Maseko consulted me and asked for advice as to how he should handle this situation as he expected that he may be asked to do something irregular and unlawful. My advice to him was that he could not countermand the President until he is asked to do anything that is irregular or unlawful. He went to the Guptas' home. After the meeting, he contacted me again to say that what he suspected would happen had just happened. At that stage I advised that he had the right not to comply with any illegal or unlawful command by the President or any official of Government, using Section 199(6) of the Constitution which is used within the context of the Security Services. We agreed that this was a risky position as he could lose his job, but that he had no option unless if he compromised his integrity.

46 Sometime later he contacted me again and said that the Guptas had told him that if he did not comply or deliver on what they were asking him to do he would not be DG by Wednesday that week. Indeed, after the Wednesday Cabinet meeting he informed me that he was indeed removed as DG or CEO of GCIS. That call from Themba Maseko that day convinced me beyond any doubt that the Guptas dictated as to what happened in Government. From my experience action to remove a DG in the manner it was done would have normally involved the President



and at least the Minister responsible for the Department where the DG is removed from. The third Cabinet member in this regard would be the Minister for Public Service and Administration.

47 With evidence that has come to the attention of this Commission and the public I am now convinced that the Gupta family was not an accident of history. The effort to reach out to me and many others directly or through family members suggest that there was a more intelligent operation to reach out to leaders who were strategically placed or had the potential to occupy strategic positions in the future or their relatives, including children; and create relationships, or corrupt them in preparation for a larger project to capture the state and use it for personal gain or for the benefit of those who collaborated with them.

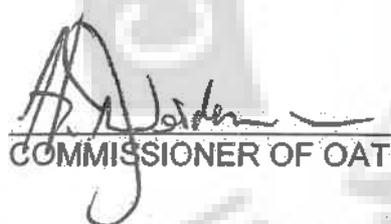
48 If such an intelligent operation was in place I would have been surprised if our national intelligence services would have missed it. If they did I would say that we had no intelligence service and thus very vulnerable as a country. My expectation is that the intelligence agencies must have had this information except that it would be within the realm of classified information. Public information we have now is that two key senior intelligence officers did report this matter to the President, but it did cost



them their jobs. For the purposes of this Commission there should be a legal way in which this could be confirmed.


DEPONENT

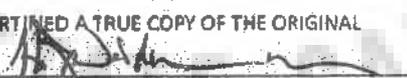
SIGNED AND SWORN TO BEFORE ME AT CENTURION ON THIS 28TH DAY OF MAY 2019, THE DEPONENT HAVING ACKNOWLEDGED IN MY PRESENCE THAT HE/SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THE PROVISIONS OF GOVERNMENT GAZETTE R1478 OF 11 JULY 1980 AS AMENDED BY GOVERNMENT GAZETTE R774 OF 20 APRIL 1982, CONCERNING THE TAKING OF THE OATH, HAVING BEEN COMPLIED WITH.


COMMISSIONER OF OATHS

CAPACITY: GENERAL SECRETARY AFM OF SA

FULL NAMES: HENRI JACOBUS WEIDEMAN

PHYSICAL ADDRESS: _____

CERTIFIED A TRUE COPY OF THE ORIGINAL

COMMISSIONER OF OATHS
D. HENRI WEIDEMAN
BUILDING NO. 14, CENTRAL OFFICE PARK, 257 JEAN AVENUE,
CENTURION, GAUTENG, SOUTH AFRICA.
(012) 644 0490

DATE
28/5/2019



From: Rika Anker <Rika.Anker@dha.gov.za>
Sent: Friday, 27 September 2019 08:58
Subject: RE: Request for Information/Home Affairs

Morning,

The Commission enquiry on flight LMG01 on the 25 January 2011 from Waterkloof refers.

It has been established that the flight was indeed a departure for Switzerland and the official cleared it erroneously as an arrival flight (the complete flight).

The system will be updated.

Trust the above to be of assistance.

Regards,

Rika Anker
Chief Director: Port Control
Tel: (012) 4064126

From: Rika Anker <Rika.Anker@dha.gov.za>
Sent: Wednesday, 18 September 2019 14:18
Subject: Fwd: Request for Information/Home Affairs

Dear Sir

REQUEST FOR INFORMATION REQUIRED FOR PURPOSES OF THE JUDICIAL COMMISSION OF ENQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE

1. The countries of origin and destination are unfortunately not available on the departmental systems.
2. According to the National Population Register all the passports utilised during the mentioned period are diplomatic passports.
3. Although the transport or flight number indicates LMG 1/01, the department cannot confirm if this is an official aircraft.
4. No movements could be traced for Nonhlanhla Ellen Ngcobo nee Majeke and Mogotladi Raesibe Mogano for the requested period.

An MS Excel sheet with the movements for the other travellers during the period 01 Jan 2011 to 28 Feb 2011 is attached.

Trust the above to be in order.

Regards,

Rika Anker
Chief Director: Port Control
Tel: (012) 4064126

movPortCode Cape Town Int Airport	movInOut Arrival	movDate 2011/02/23 06:33	movTransportNumber LMG1	movTravellerType SA Citizen	movDocumentType Passport	movPassportNumber D00001056	movCountryOfIssue ZAF	movSAID 7008090444080	movSurname SITHOLE	movFirstNames DELSEY CONSTANCE
movPortCode Waterkloof	movInOut Arrival	movDate 2011/02/01 02:22	movTransportNumber LMG1	movTravellerType SA citizen	movDocumentType Passport	movPassportNumber D00000930	movCountryOfIssue ZAF	movSAID 7201190315082	movSurname BOSOGA	movFirstNames MILKA NAOME
movPortCode Waterkloof	movInOut Arrival	movDate 2011/01/25 22:44	movTransportNumber LMG01	movTravellerType SA citizen	movDocumentType Passport	movPassportNumber D00000930	movCountryOfIssue ZAF	movSAID 7201190315082	movSurname BOSOGA	movFirstNames MILKA NAOME
movPortCode Waterkloof	movInOut Arrival	movDate 2011/02/01 02:20	movTransportNumber LMG1	movTravellerType SA Citizen	movDocumentType Passport	movPassportNumber D00000422	movCountryOfIssue ZAF	movSAID 6507010253084	movSurname KAUNDA	movFirstNames TERESA LUCKY LAKELA
movPortCode Waterkloof	movInOut Arrival	movDate 2011/01/25 22:46	movTransportNumber LMG01	movTravellerType SA Citizen	movDocumentType Passport	movPassportNumber D00000422	movCountryOfIssue ZAF	movSAID 6507010253084	movSurname KAUNDA	movFirstNames TERESA LUCKY LAKELA
movPortCode Cape Town International	movInOut Arrival	movDate 2011/02/23 06:35	movTransportNumber LMG1	movTravellerType SA Citizen	movDocumentType Passport	movPassportNumber D00000263	movCountryOfIssue ZAF	movSAID 4204125599088	movSurname ZUMA	movFirstNames JACOB GEDLEYHLEKISA
movPortCode Waterkloof	movInOut Arrival	movDate 2011/02/01 02:17	movTransportNumber LMG1	movTravellerType SA Citizen	movDocumentType Passport	movPassportNumber D00000263	movCountryOfIssue ZAF	movSAID 4204125599088	movSurname ZUMA	movFirstNames JACOB GEDLEYHLEKISA
movPortCode Waterkloof	movInOut Arrival	movDate 2011/01/25 22:46	movTransportNumber LMG01	movTravellerType SA Citizen	movDocumentType Passport	movPassportNumber D00000263	movCountryOfIssue ZAF	movSAID 4204125599088	movSurname ZUMA	movFirstNames JACOB GEDLEYHLEKISA







MINISTER
LABOUR
REPUBLIC OF SOUTH AFRICA

Private Bag X499, PRETORIA, 0001 • Laboria House, 215 Schoeman Street, PRETORIA Tel: (012) 362 9620 Fax: (012) 320 1642
Private Bag X9090, Cape Town 8000 • 120 Plain Street, 12th Floor, CAPE TOWN Tel: (021) 466 7160 Fax: (021) 462 2832 www.labour.gov.za

Mr MJ Manyi
PO Box 6021
Rivonia
2128

Dear Mr Manyi

I have pleasure in informing you of your appointment on a term of three years to the post of Director-General: Labour on an all-inclusive remuneration package of R1 203,522 per annum with effect from the 1 September 2009. Your appointment will be based on twelve calendar months probation.

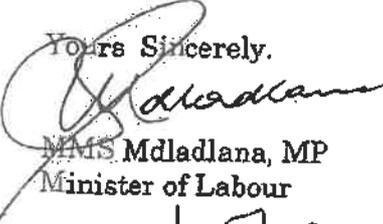
The all-inclusive remuneration package consists of a basic salary, the State's contribution to Government Employees Pension Fund and a flexible portion. The flexible portion must be structured in terms of the guidelines that are contained in the Senior Management Handbook attached as Annexure A. The relevant forms for this purpose are also attached and should be returned to Dr SM Mahlase, Senior Executive Manager: Human Resources Management, at Head Office in Pretoria.

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

Please contact Mr Mdladlana on telephone (021) 466 7162 within 5 days of receiving this letter and indicate your acceptance of this offer of employment.

May I take this opportunity to congratulate you on your achievement. I trust that you will be happy and successful in your new sphere of employment.

Yours Sincerely,


MMS Mdladlana, MP
Minister of Labour

Date: 31/08/09

127



MINISTER
LABOUR
REPUBLIC OF SOUTH AFRICA

Private Bag X499, PRETORIA, 0001 • Laboria House, 215 Schoeman Street, PRETORIA Tel: (012) 352 9620 Fax: (012) 320 1942
Private Bag X9090, Cape Town 8000 • 120 Plain Street, 12th Floor, CAPE TOWN Tel: (021) 466 7160 Fax: (021) 462 2832 www.labour.gov.za

Mr. S. Morotoba
Deputy Director-General: Labour
Private Bag X 117
PRETORIA
0001

Dear Mr. Morotoba

By virtue of the powers vested in me as the Minister of Labour, it is with great pleasure to advise you of my decision to appoint you as acting Director-General: Labour with effect from the 4th June 2010 until further notice.

During this period you are required to perform the functions, duties and delegations pertaining to the post in accordance with prescribed Public Service Regulations.

It is trusted that you will experience achievement and full satisfaction in the course of this assignment.

Yours faithfully

MMS MDLADLANA, MP
MINISTER OF LABOUR

DATE: 4 June 2010

MMS
4/6/2010

Commuted overtime is payable to Medical Doctors and Specialists, at the rates and on the conditions determined by the National Department of Health and the SANDF respectively.

6. CASH PAYMENT FOR ADDITIONAL QUALIFICATIONS

6.1 As of January 1, 1999 if –

- (1) a member had entered into studies for an additional or higher qualification; and
- (2) item 14.0 of the Personnel Administrative Standard that applied to him or her on that date provided a cash award for completion of those studies,

the EA will pay the member the cash award when the member complies with the requirements laid down in the relevant Personnel Administrative Standard.

7. CONTRACT WORKERS

The remuneration of a member on a contract with a fixed term will be equal to the remuneration package of an equivalent permanent worker, which derives from –

- 7.1 evaluation of the job in line with the PSR; or
- 7.2 the remuneration package of a similar existing position.

8. PENSION BENEFITS

Members qualify for pension benefits as contained in the Rules of the GEPF.

9. ADDITIONAL COMPENSATION TO HEADS OF DEPARTMENT (amended w.e.f 1 April 2003)

- 9.1 A non-pensionable Head of Department allowance is payable to a member who is designated as a Head of Department. This monthly allowance is calculated as 10% of the member's annual all-inclusive remuneration package, divided by twelve and is payable for the time that a member is designated as a Head of Department.
- 9.2 For acting in a vacant and funded designated HoD post, as contemplated in Schedules 1, 2 and 3 of the *Public Service Act, 1994*, the HoD allowance is payable in addition to the acting allowance referred to in paragraph 10, calculated at 10% of the member's current inclusive flexible remuneration package. The HoD allowance is

125

9. **ADDITIONAL COMPENSATION TO HEADS OF DEPARTMENT (amended w.e.f 1 April 2003)**

- 9.1 A non-pensionable Head of Department allowance is payable to a member who is designated as a Head of Department. This monthly allowance is calculated as 10% of the member's annual all-inclusive remuneration package, divided by twelve and is payable for the time that a member is designated as a Head of Department.
- 9.2 For acting in a vacant and funded designated HoD post, as contemplated in Schedules 1, 2 and 3 of the *Public Service Act, 1994*, the HoD allowance is payable in addition to the acting allowance referred to in paragraph 10, calculated at 10% of the member's current inclusive flexible remuneration package. The HoD allowance is payable with effect from the date the member is appointed, in writing, to act in the vacant designated HoD position.
- 9.3 
- 9.4 In cases of any other absences of the designated HoD (e.g. due to vacation, sick, special or study leave), excluding maternity leave, the payment of the HoD allowance must be terminated with effect from the date of commencement of absence, provided that the period of absence is going to be longer than 30 continuous days. The HoD allowance is payable to a member who is appointed, in writing, to act in the designated HoD position with effect from the date of termination, provided that the period of acting in the designated HoD position is going to be longer than 30 continuous days.
- 9.5 In cases of maternity leave, the payment of the HoD allowance must not be terminated for the incumbent of the position. However the HoD allowance is similarly payable to a member who is appointed in writing to act in the designated HoD position with effect from the date of commencement of maternity leave, provided that the period of acting in the designated HoD position is going to be longer than 30 continuous days.
- 9.6 In the circumstances referred to in paragraphs 9.3, 9.4 and 9.5 above, the acting allowance referred to in paragraph 10.1 is not payable because the post is not vacant.
- 9.7 If the payment of the HoD allowance to a member who acts in a designated HoD position referred to in paragraph 9.2 commences after the 1st day or terminates before the last day of a month, the daily tariff is calculated by dividing the annual amount by 12 (number of months per year) and then by the number of days for the specific month.

payable with effect from the date the member is appointed, in writing, to act in the vacant designated HoD position.

9.3 In cases of suspension of the designated HoD, the payment to the HoD allowance must be terminated with effect from the date of suspension. The HoD allowance is payable with effect from this date to the member who is appointed, in writing, to act in the designated HoD position.

9.4 In cases of any other absences of the designated HoD (e.g. due to vacation, sick, special or study leave), excluding maternity leave, the payment of the HoD allowance must be terminated with effect from the date of commencement of absence, provided that the period of absence is going to be longer than 30 continuous days. The HoD allowance is payable to a member who is appointed, in writing, to act in the designated HoD position with effect from the date of termination, provided that the period of acting in the designated HoD position is going to be longer than 30 continuous days.

9.5 In cases of maternity leave, the payment of the HoD allowance must not be terminated for the incumbent of the position. However the HoD allowance is similarly payable to a member who is appointed in writing to act in the designated HoD position with effect from the date of commencement of maternity leave, provided that the period of acting in the designated HoD position is going to be longer than 30 continuous days.

9.6 In the circumstances referred to in paragraphs 9.3, 9.4 and 9.5 above, the acting allowance referred to in paragraph 10.1 is not payable because the post is not vacant.

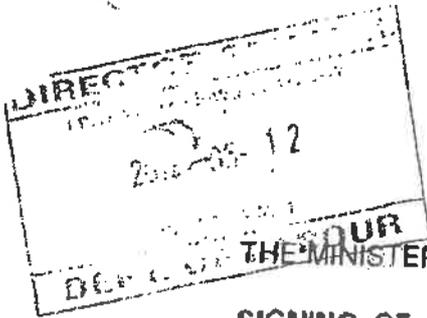
9.7 If the payment of the HoD allowance to a member who acts in a designated HoD position referred to in paragraph 9.2 commences after the 1st day or terminates before the last day of a month, the daily tariff is calculated by dividing the annual amount by 12 (number of months per year) and then by the number of days for the specific month.

9.8 All HoD contracts must be amended to provide for the termination of the HoD allowance for the periods of absence as a result of the circumstances identified in paragraph 9.3 and 9.4. This amendment must be with effect from 1 April 2003.

10. ACTING ALLOWANCE (Implemented as of 1 April 2003)

10.1 A member appointed in writing to act in a higher post, by a person duly authorised, shall be paid an acting allowance, provided that ~

- (1) the higher post in which he/she is acting is vacant and funded, and
- (2) the period of appointment is uninterrupted and longer than 6 (six) weeks.



DEPARTMENT OF LABOUR

S10/P

PRETORIA

SIGNING OF FINANCIAL DISCLOSURE FRAMEWORK FORMS OF SENIOR MANAGERS (SMS) FOR 2009/10 YEAR

1. PURPOSE:

To obtain your signature on the Financial Disclosure Framework forms to be submitted to the Public Service Commission regarding the disclosure of financial interests by Senior Management Service (SMS) within the Department.

2. DISCUSSION

- 2.1 Chapter 3 C.1 of the Public Service Regulations stipulates that every designated employee shall not later than 30 April of each year, disclose to the relevant Executive Authority particulars of all her or his registrable interests in respect of the period 1 April of the previous year to 31 March of the year in question for submission, not later than the 31 May of the reporting year, to the Public Service Commission after being signed by the relevant Executive Authority.
- 2.2 Any person who assumes duty as a designated employee after 1 April in a year shall make such disclosure within 30 days after assumption of duty in respect of the period of 12 months preceding his/her assumption of duty.
- 2.3 In view of the above the Public Service Commission has introduced the Financial Disclosure Framework. This Framework is only applicable to all members of the SMS. For the purpose of this Framework, members of the SMS are referred to as designated employees. The purpose of the Framework is to maintain the highest standards of professional ethics given the fact that designated employees are entrusted with public funds. This Framework is also aimed at preventing conflict of interests by requiring designated employees to disclose their financial interests.
- A... 2.4 In order to comply with the conditions as prescribed in sub-paragraphs 2.1 and 2.2 above, the Human Resources Circular Minute No. Q2 of 2010 attached as Annexure A was distributed to all members of the SMS throughout the Department.

SIGNING OF FINANCIAL DISCLOSURE FRAMEWORK FORMS OF SENIOR MANAGERS (SMS) FOR 2009/10 YEAR

B... 2.5 The name list and Financial Disclosure Framework forms received are hereby submitted for your information and signature as Annexure B.

C... 2.6 A list of members that have not submitted is attached as Annexure C.

3. COMMUNICATION IMPLICATIONS

The Financial Disclosure Framework forms will be submitted to the Public Service Commission once the Minister has signed them.

4. FINANCIAL IMPLICATIONS

None.

5. RECOMMENDATION

It is recommended that the Minister sign the Financial Disclosure Framework forms on page 5 of each form in Annexure B.

JM Marry
JM Marry
Director-General: Labour

Date: *12/05/10*

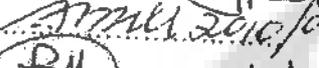
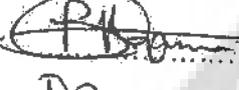
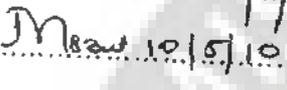
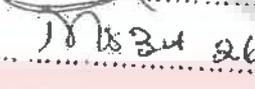
FINANCIAL DISCLOSURE FRAMEWORK FORMS ATTACHED AS ANNEXURE B (SIGNED / NOT SIGNED)

MMS Mdladlana
MMS Mdladlana, MP
MINISTER OF LABOUR

Date: *14/5/10*

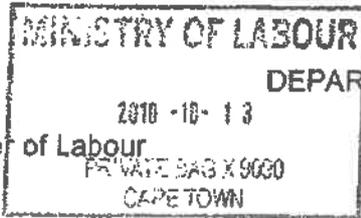
110

OPENING OF FINANCIAL DISCLOSURE FRAMEWORK BY THE SENIOR MANAGEMENT SERVICE (SMS) FOR 2009/10 YEAR

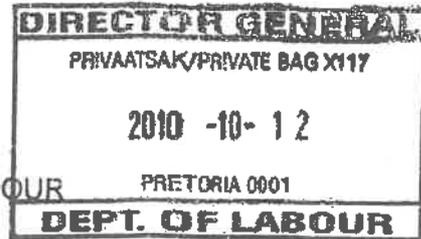
 N. PHASHA 2010/05/12
 R. CHAUKE 2010/05/11
 P. DLAMINI 11/5/10 BH GAMA
 M. MBEBE 10/5/10 ZL MDEBUKA
 P. DLAMINI 26/05/2010
 M. MBEBE 26/05/2010

Financial disclosures 09/10





The Minister of Labour



SP

Termination of the Head of Department allowance to the suspended Director-General of the Department, Mr MJ Manyi and the payment of the allowance to the current acting Director-General: Mr Morotoba.

1 Purpose

To request the Minister to approve termination of the HoD allowance to the suspended Director-General, Mr MJ Manyi and payment of the allowance to Mr Morotoba.

2 Discussion

- A.... 2.1 The Director-General of the Department of Labour, Mr Manyi was suspended with effect from 04 June 2010. Subsequent to his suspension, Mr S Morotoba, was appointed to act as the Acting Director-General from 04 June 2010.
- B.... 2.2 In terms of Paragraph 9.3, Chapter 3 of the SMS Handbook 'In case of suspension of the designated HoD, the payment to the HoD allowance must be terminated with effect from the date of suspension. The HoD allowance is payable with effect from this date to the member who is appointed, in writing, to act in the designated HoD position'.
- 2.3 The HoD allowance to Mr Manyi will be terminated on Persal with effect from 01 October 2010. The continued payment of HOD allowance to Mr Manyi from 04 June 2010 to date has created an overpayment of R40980.70. This overpayment will be recovered from his salary.
- 2.4 After termination of the allowance from Mr Manyi, the Department will pay Mr Morotoba (Acting Director- General) the HOD allowance with effect from 04 June 2010.

3 Recommendation

- 3.1 It is recommended that the Minister signs the letter addressed to Mr Manyi in respect

termination of the Head of Department allowance to the suspended Director-General or the Department, Mr MJ Manyi and the payment of the allowance to the current acting Director-General: Mr Morotoba

of the termination of the HoD allowance and that;

3.2 The Minister gives approval for the payment of the HoD allowance to the Acting Director-General, Mr S Morotoba.

Comments Mr. Chauke
.....
.....
.....
.....

~~Acting Deputy Director-General: Corporate Services~~

Date: 2010/10/11

Letter of termination of the HoD allowance approved / not approved Dr
Payment of the HoD allowance to the Acting Director-General approved/ not approved

Comments I agree and approve that the acting allowance should be paid to the acting D.G. However the letter to Mr Manyi should be written by finance or HR. The rules are clear and have been clear
Mdatadlana

The Minister of Labour

Date: 14/10/10

N Phasha
RF Chauke

Amrri 2010/10/06
Amrri 06/10/2010 BH Gama *

Mand 06/10/2010 Z Mdebuka

Amrri 2010/10/18
Amrri 26/10/2010

* Let's discuss,
Amrri
2010/10/19
Minister's Comment
NR 2010/10/19

Mr. Chauke
Please see

15
adjust the amount to be paid

118



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA

Private Bag X117, PRETORIA, 0001. Laboria House, 215 Schoeman Street, PRETORIA
Tel: (012) 309 4000, Fax: (012) 320 5129, www.labour.gov.za

Mr S Sete
309 4477
SP/

Mr MJ Manyi
P O BOX 6021
RIVONIA

Dear Mr Manyi

RECOVERY OF HEAD OF DEPARTMENT ALLOWANCE: YOURSELF

You are hereby reminded that as Head of Department you are entitled to a Head of Department Allowance of R10 631.10 per month.

However, this allowance is terminated as soon as the Head of Department is suspended. This is in line with Paragraph 9.3 of Chapter 3 of the Senior Management Service Handbook. In order to comply with the provision of paragraph 9.3 mentioned above, your allowance has to be terminated without delay since you did not qualify for the allowance from 04 June 2010 to date due to your suspension. You will therefore not continue to receive the allowance.

Note that the continuous payment of the Head of Department Allowance to your salary from 4 June 2010 to 30 September 2010 has resulted in an overpayment amounting to R40 980.70 and this amount will be recovered from your salary.

Kindly note that the R40 980.70 overpayment will be recovered from your salary in three months installments of R13 660.23 with effect from 01 October 2010. Your October salary will also be adjusted accordingly.

Yours Sincerely,

[Handwritten Signature]
The Acting Director-General: Labour

Date... 2010/10/25

13



**MINISTER
LABOUR
REPUBLIC OF SOUTH AFRICA**

Private Bag X499, PRETORIA, 0001 • Laboria House, 214 Schoeman Street, PRETORIA Tel: (012) 392 8020 Fax: (012) 390 1942
Private Bag X9090, CAPE TOWN, 8003 • 120 Plain Street, 12th Floor, CAPE TOWN Tel: (021) 486 7160 Fax: (021) 482 2932 www.labour.gov.za

Mr Manyi

Dear Sir

PROBATIONARY PERIOD: YOURSELF

Receipt of a letter dated 26 October 2010 from your attorneys is hereby acknowledged and contents thereof noted.

It is not my intention to deal with legal contentions contained therein as these will be dealt with by my legal representatives at an appropriate stage. Suffice it to state that your contentions appear to me to be based on an erroneous understanding of the Public Service Act.

If I understand your representations properly you maintain that I do not have the power to decide whether or not your probationary period should be confirmed or not. In my view this contention is based on a misreading of the Public Service Act and the necessary legislation governing your employment and is faulty.

Notwithstanding your contentions I have decided to consider, as I am of the view that I am duty bound to do so, whether or not your appointment should be confirmed.

Regard being had to the reasons set out hereunder I have decided not to confirm your probationary period. This decision was taken after careful consideration of the fact that:

137

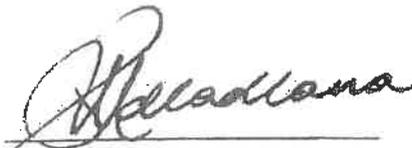
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1. In terms of the SMS Handbook and Regulations you were supposed to have entered into a performance agreement not later than three months after assumption of duty. Despite my reminders to you to do so you failed to arrange for this agreement timeously as you only signed it on the 4th March 2010.
2. Your Performance Review Form on which you seem to rely which was signed by you on 1 April 2010 is a far cry from this requirement.
3. On 4 June 2010 you were placed on precautionary suspension due to your conduct which became unbearable. By that date a performance assessment should have been done. This was not done. It should be noted that the onus is on you to prove that you are a fit and proper person to be appointed in the Public Service and not vice versa.
4. The charges preferred against you, to which you have fully responded by a letter from your attorneys dated 4 August 2010, are serious enough not to be ignored in taking a decision whether or not to confirm your probationary period. Although no decision has been taken in regard to these charges it is clear from your response thereto that they are not unfounded charges. They remain allegations of a serious nature.
5. You have throughout your probationary period and up to this date undermined my authority over you. You even went to the extent of appealing to various entities including the Public Service Commission making unfounded allegations which go into the arena of insubordination claiming, amongst others, that I am "prejudiced against" you and that my conduct "falls short of the requirements of legality" and that I "took the law into" my "own hands by developing

charges that would , hopefully give effect" to my "premeditated intention to "dismiss" you.

6. The conduct set out in the preceding paragraph speaks for itself and regardless of whether or not it has substance demonstrates that the trust relationship between me and you is completely destroyed especially when you don't even recognize that I am your Executive Authority. You maintain that you only have to sign a contract with the Minister of Public Service and Administration. That attitude is not only contemptuous but is a consequence of ignorance of the laws under which you are employed.
7. In the circumstances I have decided not to confirm your probationary appointment.
8. The effect of this decision is that you will not be regarded as an employee of the Department of Labour beyond 30 November 2010. Accordingly you must return all Government property in your possession by the said date.
9. You are hereby advised that you have a right to refer my decision to the Public Service Bargaining Council if you are not satisfied therewith.

Yours faithfully



MMS MDLADLANA, MP

MINISTER OF LABOUR

29 October 2010

23/11 2010 15:59 FAX

001/001

Mr Chayke
Please attend to this matter.

NP 2010/11/24



**Office of the State Attorney
Pretoria**

Private Bag X 91
PRETORIA
0001

Manaka Heights
8th Floor
167 Andries Street

Tel: (Switchboard): (012) 309 1500
(Direct Line): (012) 309 1562
(Secretary): (012) 309 1572

Fax/Faks: (012) 328 2662/3

Docex: 296

23 NOVEMBER 2010

My Ref. 3093/2010/Z74/PM

Your Ref. DG3/08/10 NP

Ms Mdebuka,

Please implement.

Amel
2010/11/24

Enquires: K I CHOWE

Email: kichowe@justice.gov.za

PS: Recover all the o/s payments.

CHIEF LEGAL ADMIN. OFFICER
DEPARTMENT OF LABOUR
PRIVATE BAG X117
PRETORIA
0001

FAX 012 320 5129
ATT: N. PHASHA

**RE: THE MINISTER OF LABOUR / THE DIRECTOR GENERAL:
DEPARTMENT OF LABOUR**

We refer to the above matter and wish to confirm that in terms of the proceedings of the 28th October 2010 in which Mr. Manyi's legal representatives were informed that Mr. Manyi's probation will not be confirmed, Mr. Manyi's employment will effectively be terminated at the end of November 2010.

The above developments have also been confirmed in a letter written to Mr. Manyi by the Minister on the 29th October 2010.

We trust you find the above in order.

[Signature]
K I CHOWE

FOR: STATE ATTORNEY (PRETORIA)

G.P.-S. 81/92092

81/92092 (Z238)



ADVICE OF TERMINATION/ STOP OF SALARY

DEPARTMENT OF LABOUR	Tel No. (012) 309 4504
Reference Number: SP/22069097	Date: 26/11/10

**THE CHIEF FINANCIAL OFFICER:
FINANCIAL MANAGEMENT**

2010/726

Surname	MANYI
First names	MJ
Nature of change	RESIGNATION
Date of effect	01/12/10
Rank	DG
Chief Directorate	
Directorate	

I hereby had to inform you that Mr Manyi is going to resign.. His last day of service is 30 November 2010. Please authorize on the system.

Act Chief Director: Human Resources Management

Date 26/11/2010

FOR USE BY ACCOUNTANT

Noted	Remarks
	6401 2055 36 083

CANCELLED

Signature

Date



ADVICE OF TERMINATION/ STOP OF SALARY

DEPARTMENT OF LABOUR	Tel No. (012) 309 4504
Reference Number: SP/22069097	Date: 26/11/10

**THE CHIEF FINANCIAL OFFICER:
FINANCIAL MANAGEMENT**

2010/745

Surname	MANYI
First names	MJ
Nature of change	TERMINATION OF PROBATION
Date of effect	01/12/10
Rank	DG
Chief Directorate	
Directorate	

Advice no 2010/726 dated 26 November 2010 must please be seen as cancelled.
I hereby had to inform you that Mr Manyi's probation has been terminated. His last day of service was 30 November 2010. Please authorize on the system.



Chief Director: Human Resources Management
Date 3/12/2010

FOR USE BY ACCOUNTANT

Noted	Remarks
..... Signature Date

COPY

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G.P.-S. 81/92092

81/92092 (Z238)



**ADVICE OF APPOINTMENT/STAFF CHANGE
KENNISGEWING VAN AANSTELLING/PERSONNEEL VERANDERING**

Dept./Adm. Labour	Tel No.3094477
Reference Number: Verwysingsnommer:SP/	Date: Datum 26 OCT 2010

THE/DIE CHIEF FINANCIAL OFFICER: FINANCIAL MANAGEMENT (DOL)
THE/DIE

2010/564

Kindly note the following appointment/staff change/ Geliewe van die volgende aanstelling/personeelverandering kennis te neem

Surname Van MANYI	Date of birth Geboortedatum	Conjugal state Huwelikestaat
-----------------------------	--------------------------------	---------------------------------

First names

Voomame **MJ**

Highest educational qualification

Hoo gste opvoedkundige kwalifikasie

Nature of change

Aard van verandering **TERMINATION OF PNP ALLOWANCE**

Date of effect

Datum van inwerkingtreding

PSC Ref No

SDK Verw No

	Before change/Voor verandering	Subsequent to change/Na verandering
Rank Rang		
Salary Scale Salarisskaal		
Salary Salaris		
Allowances Toelae		
Incremental date Verhogingsdatum		
Dept Adm		
Establishment Diensstaat		
Seniority date - Nominal Senioriteitsdatum - Nominaal		
Appropriate experience Toepaslike ondervinding	Year(s) Jaar	Month(s) Maand(e)

PENSION DEDUCTIONS:

PENSIOENAFREKKINGS

Government Service Pension Fund

Regeringsdienspensioenfonds

From: Vanaf	%	Temporary Employees Pension fund	%
		Pensioenfonds vir Tydelike Werkers	

Arrears

%

From/Vanaf

Agterstallig

Remarks/Opmmerkings **KINDLY FIND THE ATTACHED LETTER, TERMINATE THE PNP ALLOWANCE AND RECOVER THE MONEY PAID TO HIM AS INDICATED IN THE LETTER.**

For Head of Department

FOR USE BY ACCOUNTANT/VIR GEBRUIK DEUR REKENMEESTER

Noted/Aangeteken

Remarks/Opmmerkings

Signature/Handtekening

Date/Datum

SRC
1. B. Patel
2. M. ... SP file.

[Handwritten signature]

O.P.S. 81/92092

81/92092 (Z238)

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**ADVICE OF APPOINTMENT/STAFF CHANGE
KENNISGEWING VAN AANSTELLING/PERSONNEEL VERANDERING**

Dept./Adm. Labour	Tel No.3094477	0102 NOV 92
Reference Number:	Date:	
Verwysingsnommer: SP/ 22069097	Datum	2010/784

**THE/DIE CHIEF FINANCIAL OFFICER: FINANCIAL MANAGEMENT (DOL)
THE/DIE**

Kindly note the following appointment/staff change/ Gelteewe van die volgende aanstelling/personeelverandering kennis te neem

Surname Van MANYI	Date of birth Geboortedatum	Conjugal state Huweliksstaat
First names Voorname MJ		
Highest educational qualification Hoogste opvoedkundige kwalifikasie		
Nature of change Aard van verandering TERMINATION OF EMPLOYMENT		
Date of effect Datum van inwerkingtreding 30 NOVEMBER 2010		PSC Ref No SDK Verw No
	Before change/Voor verandering	Subsequent to change/Na verandering
Rank Rang		
Salary Scale Salarisskaal		
Salary Salaris		
Allowances Toelae		
Incremental date Verhogingsdatum		
Dept Adm		
Establishment Dienstaat		
Seniority date - Nominal Senioriteitsdatum - Nominaal		
Appropriate experience Toepaslike ondervinding	Year(s) Jaar	Month(s) Maand(e)
PENSION DEDUCTIONS: PENSIOENAFTRUKKINGS	From: Vanaf	From: Vanaf
Government Service Pension Fund Regeringsdienspensioenfonds	%	Temporary Employees Pension fund Pensioenfonds vir Tydelike Werkers %
Arrears Agterstallig	%	From/Vanaf

Remarks/Opmmerkings Kindly be notified that the service of Mr Manyi will be terminated with effect from 30 November 2010. His salary must be stopped accordingly. Please also recover the last payment of the HoD allowance from his salary for November 2010.

[Handwritten signature]

For Head of Department

FOR USE BY ACCOUNTANT/VIR GEBRUIK DEUR REKENMEESTER

Noted/Aangeteken	Remarks/Opmmerkings
Signature/Handtekening	Date/Datum



ADVICE OF TERMINATION/ STOP OF SALARY

DEPARTMENT OF LABOUR	Tel No. (012) 309 4504
Reference Number: SP/22069097	Date: 03/02/11 / 853

**THE CHIEF FINANCIAL OFFICER:
FINANCIAL MANAGEMENT**

Surname	MANYI
First names	MJ
Nature of change	WITHDRAWAL OF TERMINATION
Date of effect	01/12/10
Rank	DG
Chief Directorate	
Directorate	

I hereby had to inform you that the termination of Mr Manyi is withdraw. Please authorized on the system..


 Chief Director: Human Resources Management

 Date: 3/2/2011

FOR USE BY ACCOUNTANT

Noted	Remarks
..... Signature Date

File copy
86551.15

DEPARTMENT OF LABOUR

PRETORIA

SP/22069097

The Minister of Labour

**EXTENSION OF PROBATION PERIOD: MR MJ MANYI, DIRECTOR-GENERAL:
LABOUR, HEAD OFFICE**

1. PURPOSE

To obtain your signature on the letter addressed to the Director-General: Mr MJ Manyi regarding the extension of his confirmation of probation period.

2. DISCUSSION

A ... 2.1 Mr Manyi was appointed within the Department of Labour on 1 September 2010 on twelve calendar months probation period.

B ... 2.2 On 4 June 2010 Mr Manyi was suspended from duty and this has lead to him not being able to complete his period of probation, namely a 12 month period from date of appointment. In terms of the Public Service Act,1994 Chapter IV, Section 13 (2) (C) which states "The period of probation of an officer shall be extended by the number of days leave taken by him or her during the period of probation or any extension thereof", the Department has deemed it fair to extend your confirmation of probation period.

C... 2.2 Attached as Annexure C is a letter addressed to Mr Manyi in which he is informed of the Department of Labour's intention to extend his probation by the number of days that he is on suspension for. The letter furthermore asks for Mr Manyi to indicate reasons, if any, as to why the Department of Labour should not proceed with the extension of his probation period.

3. RECOMMENDATION

B ... It is recommended that the letter, attached as Annexure C, addressed to the official be signed if you are in agreement with the contents thereof.

S Morotoba
Acting Director-General: Labour

Date:.....

**EXTENSION OF PROBATION PERIOD: MR MJ MANYI, DIRECTOR-GENERAL:
LABOUR, HEAD OFFICE**

COMMENDATION IN PARAGRAPH 3 APPROVED

LETTER ATTACHED AS ANNEXURE C SIGNED

COMMENTS:

.....
.....
.....
.....

**MMS Mdladlana MP
Minster of Labour**

Date:

S MOROTOBA

N PHASHA

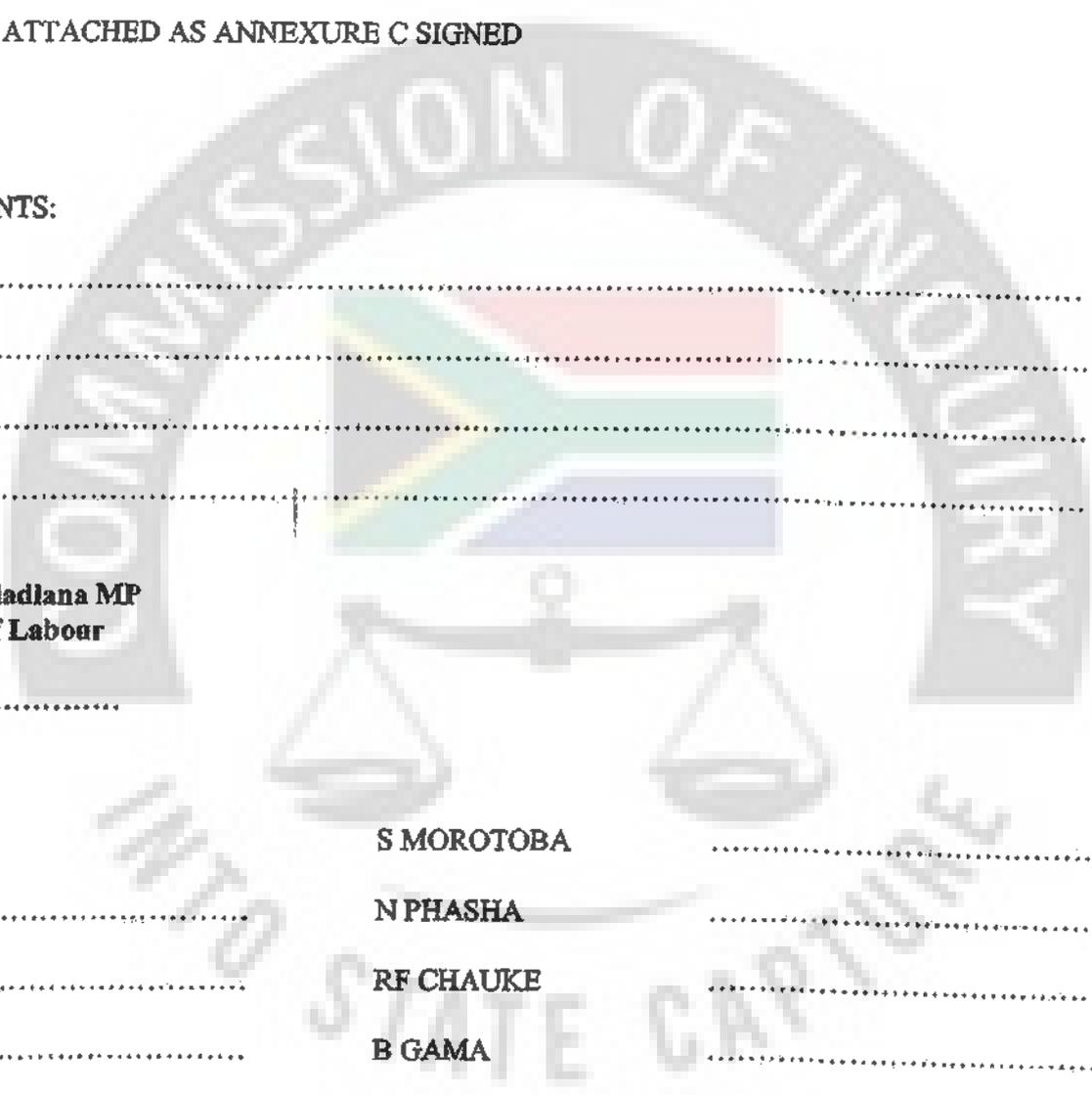
RF CHAUKE

B GAMA

Z MDEBUKA

CD TAIT

[Handwritten signature]
10/7/10



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MINISTER
LABOUR
REPUBLIC OF SOUTH AFRICA

Private Bag X499, PRETORIA, 0001 • Lejora House, 215 Schoeman Street, PRETORIA Tel: (012) 362 9620 Fax: (012) 362 1842
Private Bag X9090, CAPE TOWN, 8000 • 120 Flah Street, 12th Floor, CAPE TOWN Tel: (021) 466 7168 Fax: (021) 492 2035 www.labour.gov.za

Mr. M.J Manyi
Director-General: Labour
Private Bag X117
PRETORIA
0001

Dear Mr. Manyi

DISMISSAL FROM THE PUBLIC SERVICE: YOURSELF

Please take notice that I have decided to withdraw your dismissal from the Public Service in terms of Section 5 (7) of the Public Service Act, 1994 as amended with immediate effect.

You are further placed on special leave until further notice.

Regards

Ms M.N Olliphant, MP
Minister of Labour

Date: 31/01/2011

cc: Mr. M.R Baloyi, MP
Minister of Public Service and Administration

07/02/2011 14:04 0123239512

PAGE 02/02

01/172488
(218)



PRESIDENT'S MINUTE NO. 22

I hereby, in terms of section 12(3)(a), read with section 12(3)(d), of the Public Service Act, 1994 (promulgated under Proclamation No. 103 of 1994), transfer Mr J Manyi from the post of Director-General of the Department of Labour to the post of Director-General of the Government Communication and Information System, with effect from the date following the date on which this President's Minute is signed by the President until 25 August 2012.

Given under my Hand and the Seal of the Republic of South Africa at PRETORIA on the 02 day of February 2011.

PRESIDENT

MINISTER OF THE CABINET



DEPARTMENT OF LABOUR
 Private Bag X117 • Pretoria 0001
 Laboria House • 215 Schoeman Street

Enquiries:	MR PJ Sengwane
Tel:	(012) 309 4304

SUBMISSION OF TRANSFER DOCUMENTS AND FILES

To: Department:	ATT. PRISONA MOKHONG GOVERNMENT COMMUNICATIONS SYSTEM Cnr PRINCE & VERMEER MIDTOWN BUILDING
Name	MANYI MJ
Rank	
Transferred with effect from	03/02/11

The following transfer documents/files marked with a X are attached

<input type="checkbox"/> Personal file	<input type="checkbox"/> Leave file	<input type="checkbox"/> Housing file
<input type="checkbox"/> Other files/documents	<input checked="" type="checkbox"/> LAST PAY CERTIFICATE	<input type="checkbox"/>

Remarks:




 Date:

For Director-General: Labour

ROUTE FORM FOR A NEW APPOINTMENT

FROM: DIRECTORATE: HUMAN RESOURCES MANAGEMENT

TO:

Ms M Frade	:	Finance
Mr G Storey	:	Logistical Services
Mr E Phahlane	:	Logistical Services
Mr T Chauchau	:	Security
Mr J Masango	:	Security
Ms V van der Walt	:	Library
Mr M Maine	:	Switchboard
Ms HE Lebeso	:	Switchboard
Ms I Maritz	:	Finance
Ms R van den Berg	:	Training
Ms T Magidela	:	IT
Ms L Stroebel	:	Travel and Subsistence
Mr P Kgomo	:	Internal Communication
Ms E Greeff	:	EIR
Mr M Nedzamba	:	Internal Audit

KINDLY NOTE THE FOLLOWING PERSONNEL CHANGES:

NAME	:	Mr Jimmy Manyi
APPOINTMENT DATE	:	03 February 2011
CURRENT RANK	:	CEO
MANAGER	:	Mr Collins Chabane
PREVIOUS STAFF	:	Mr James Themba Maseko
DIRECTORATE	:	CEO's Office

Regards

MS P MOKHINE
CHIEF PERSONNEL OFFICER:
HUMAN RESOURCES MANAGEMENT



MINISTER IN THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA

Private Bag X1000, Pretoria, 0001

Mr MJ Manyi
PO BOX 6021
RIVONIA
2128

Dear Mr Manyi

I have pleasure in informing you of your transfer with effect from the 3rd of February 2011 until 25 August 2012 from the Department of Labour, to the post of the Director – General: GCIS on all-inclusive remuneration package of R1 275 732 per annum. You will also receive a non-pensionable head of department allowance calculated as 10% of your all-inclusive remuneration package. Your transfer will be based on twelve calendar months period.

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

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

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

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

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

Yours Sincerely;

A handwritten signature in black ink, appearing to read 'O.C. Chabane'.

O.C. Chabane, MP

Minister in The Presidency: Performance Monitoring, Evaluation and Administration

Date 22/02/2011

EMPLOYMENT CONTRACT PROMULGATED UNDER SECTION 12 OF THE PUBLIC SERVICE ACT, 1994 (PROCLAMATION NO 103 OF 1994) FOR HEAD OF DEPARTMENT

ENTERED INTO BY AND BETWEEN

The Government of the Republic of South Africa herein represented by Mr Collins Chabane in the capacity of Executing Authority of Minister in the Presidency (hereinafter referred to as the Employer)

and

Mr Mzwanele Jimmy Manyi as Head of Department (herein after called the Employee).

WHEREBY IT IS AGREED AS FOLLOWS:

1. Appointment

1.1 The Employer hereby appoints the Employee, who agrees and accepts appointment as Head of Government Communication and Information System (GCIS) and as Government/Cabinet Spokesperson in terms of section 12 of the Public Service Act, 1994 (hereinafter referred to as the Act) commencing on the 3 February 2011 and terminating on the 25 August 2012.

1.2 In terms of this Contract-

1.2.1 the Employee shall serve the Employer as Head of the GCIS and Cabinet/Government Spokesperson.

1.2.2 the Employee will be responsible for the efficient management and administration of GCIS as contemplated in section 7(3)(b) read with section 7(4) of the Act and as set out in the Performance Agreement referred to in clause 7 and shall adequately fulfill his role as Government/Cabinet Spokesperson.

1.2.3 the Employee is also responsible for the exercise of the powers and the performance of the functions entrusted to a head of department in general or to the incumbent of Head of Department of Government Communication and Information System in particular, by or in terms of the

Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), the Act or any other law.

- 1.2.4 the employment of the Employee is subject to a security clearance of top secret
- 1.2.5 any matters arising out of this contract, which are not specifically provided for herein, shall be dealt with in accordance with the provisions of the Act, the Public Service Regulations, 2001, (hereafter referred to as the Regulations) and any other legal provisions applicable to the Employee.

2. Remuneration

- 2.1 The remuneration that the Employee shall receive as from the date of assuming duty as stated in clause 1 above, is that specified in Appendix A.
- 2.2 The salary and benefits will be payable in twelve (12) equal monthly installments on the last working day of each month.
- 2.3 The general conditions of service and benefits specified in Appendix A will be as stipulated and provided for in terms of the Act, and the Regulations. The parties to this Contract accept that the general conditions of service and benefits in Appendix A may be changed from time to time by means of determinations by the Minister for the Public Service and Administration.
- 2.4 Subject to section 7(4)(b) of the Act, the Employee will also qualify for participation in the other benefits and special privileges normally bestowed on a Head of Department as far as this is arranged accordingly in this Contract or other applicable prescripts.
- 2.5 When required to perform official duties away from his headquarters, the Employee shall travel at the Employer's expense and shall be paid a subsistence allowance in accordance with the prescribed provisions.

3. Deployment during the contract period and re-appointment on expiry of the Contract.

The Employee acknowledges that he familiarised himself with the provisions of section 3B and 12 of the Act.

4. Termination of employment

- 4.1 The term of office of the Employee may be terminated in the following ways:
- 4.1.1 On reaching the prescribed (or earlier optional) retirement age [section 16(1), (2), 2(A) and (4)] of the Act.
 - 4.1.2 On completing a term or extended term of office [section 16(3) of the Act].
 - 4.1.3 Premature retirement at own request of Employee [section 16(5) of the Act].
 - 4.1.4 Discharge in terms of any of the subsections of section 17 of the Act.
 - 4.1.5 Re-determination of original term or extended term of office by the Employer [section 12(1) or (2) of the Act].
 - 4.1.6 Voluntary resignation.
 - 4.1.7 Death.
- 4.2 Pension and other payable benefits are directly linked to the specific section of the Act which is utilised, as regulated by the Government Employees Pension Fund Law, 1996, the regulations promulgated thereunder as applicable to a Head of Department and the Regulations.
- 4.3 Subject to the provisions of sections 16(5) and 12(1) or (2) of the Act, and the Labour Relations Act, 1995, either party may, after consultation and agreement, terminate the Contract before the expiry of an original term of office or an extended term of office, by giving to the other party three months' notice of termination, which notice shall-
- 4.3.1 be given in writing; and
 - 4.3.2 be given on or before the last day of a month and take effect on the first day of the succeeding month.
- 4.4 Should notice of termination be given as contemplated in clause 4.3, the Employer has the right to require the Employee to vacate the office occupied by him and to leave the premises of the Department before the expiry of the three months notice period on a day stipulated by the Employer and not to present himself for duty any time thereafter.

- 4.5 Should the Employer invoke the provisions of clause 4.4, the Employee will still be entitled to all such benefits as contained in the relevant prescripts
- 4.6 In the case of inefficiency and misconduct, the Employer may deal with him, in accordance with the relevant labour legislation and any directive issued by the Minister.
- 5. Renewal and extension of term of office**
- 5.1 The Employer shall in writing confer with the Employee at least two calendar months prior to the expiry of the term contemplated in clause 1 (supra) whether he proposes to retain the Employee in service for any extended period not exceeding five years (60 calendar months), or not. If the Employee is so informed of such intention to retain him in service for an extended term, he shall in writing inform the Employer, within one calendar month from the date of that communication, of his acceptance or not of such extended employment.
- 5.2 In the event that agreement is reached that the Employee shall enter into a further Contract on termination or completion of his Contract, the continued service of the Employee will be recognised under the new Contract so as to avoid any break of service and any accrued or pro rata entitlement will be carried forward into the new Contract.
- 5.3 Should the Employer not renew the Contract period beyond the initial period as stated in Clause 1 above, the Employee shall be entitled to the pension and other benefits directly linked to the specific section of the Act which is utilised.

6. Conduct

6.1 The Employee undertakes to the Employer that he-

6.1.1 shall without the applicable consent and during his employment or at any time thereafter, disclose any record, as defined in section 1 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), that must or may be refused upon a request for access to a record of a public body in terms of that Act, whether or not that Act is in force;

6.1.2 shall not, during his employment or at any time thereafter, use any record so defined and obtained as a result of his employment, to be detriment of the State, except if it is used in the exercise or protection of any right, or legitimate expectation, conferred by law;

6.1.3 shall-

(a) if so requested by the Employer during his employment or on the termination of his employment, submit to the Employer any record so defined and in the Employee's possession as a result of his employment; and

(b) not retain any copies of or extracts from such record, except with the consent of the Employer; and

6.1.4 shall comply with the prescribed Code of Conduct.

6.2 The Employee-

6.2.1 acknowledges that he has carefully considered the provisions of the clause;

6.2.2 agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the Employer and the Government of the Republic of South Africa and that if he should at any time dispute the reasonableness of this clause, then the onus of proving such unreasonableness will be upon him; and

6.2.3 acknowledges that he entered into this Contract freely and voluntarily and that no circumstances exist and/or existed for him alleging either now or at any future time that he was at a disadvantage in agreeing to the restraints set out in this

clause or was other than in an equal bargaining position with the Employer in agreeing to such restraints.

7. Additional terms and conditions

The Employer and the Employee hereby agree to the following additional terms and conditions as contemplated in section 12(4) of the Act-

7.1 The Employee shall enter into an annual performance agreement with the Employer, linked to a specific financial year, which shall include at least the following:

7.1.1 Salary increases will be based on the performance of the Employee. Performance will be assessed in accordance with his responsibilities and key performance areas contained in his performance agreement and the extent to which the Employee complied therewith, as well as any directives which the Minister for the Public Service and Administration may issue. Salary increases for the Employee will be based on individual consultation. The Employee along with the Employer has the responsibility to consult regarding his salary increase and cash bonus within the restrictions of the budget based on the performance of the Employee. The salary increase and cash bonus of the Employee shall be based on determinations, directives and guidelines issued by the Minister for the Public Service and Administration.

7.1.2 An annual performance agreement provided for in terms of paragraph 7.1 above linked to a specific financial year, stating clear performance areas/criteria/deliverables of the Department and the Employee must be entered into for the duration of this Contract. As performance agreements are linked to financial years, it should be entered into at the latest on 30 April every year for the duration of this Contract. The Employee should enter into his first performance agreement not later than three months after assumption of duty. In terms of the Public Service Regulations VII B.2 the Employer shall record delegations and/or authorisation in the performance agreement.

7.1.3 The performance agreement shall be revised if, at any time during its term, the work or environment of the Department is so altered (whether as a result of Government or management decision or otherwise) that the contents of it are no longer appropriate.

7.1.4 This Contract is directly linked to the performance agreement referred to in 7.1 *supra*. In the event that the Employee does not perform satisfactorily in relation to the requirements of his performance agreement, the Employee acknowledges that the Employer may deal with him, in accordance with the procedure contained in the relevant labour legislation and any other directives by the Minister.

8. General

8.1 Good faith

In the implementation of this Contract, the parties undertake to observe the utmost good faith and they warrant in their dealing with each other that they will neither do anything nor refrain from doing anything that might prejudice or detract from the rights, assets or interests of each other.

8.2 Applicability of the Act

Any matters arising from this Contract, which are not specifically provided for herein, shall be dealt with in accordance with the provisions of the Act, as amended, the aforesaid Regulations, and other relevant legislation.

8.3 Interpretation of Agreement

The interpretation of this Contract shall be governed by the laws and legal principles applicable in the Republic of South Africa

8.4 Jurisdiction of courts

8.4.1 The Employee submits to the jurisdiction of the Courts of the Republic of South Africa in the event of any legal proceedings arising from the provisions of this Contract.

8.4.2 It shall not be a breach of the Contract if a party to this Contract is prevented from or hindered in the performance or observance of its obligations hereunder by any Act of Parliament or other action of the State or by any cause or event outside the control of that party.

8.5 Variation

8.5.1 The Contract constitutes the whole of the agreement between the parties to this Contract relating to the subject

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matter of this Contract, and save as otherwise provided, no amendment, alteration, addition or variation of any right, term or condition of this Contract will be of any force or effect unless reduced to writing and signed by the parties to this Contract.

8.5.2 The parties agree that there are no conditions, warranties or representations, whether oral or written and whether expressed or implied or otherwise, save those contained in this Contract, the Public Service Act, 1994, the Public Service Regulations, collective agreements and other relevant legislation (e.g. Government Employees Pension Fund Law).

8.6 Waiver

No waiver of any of the terms and conditions of this Contract will be binding for any purpose unless expressed in writing and signed by the party giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party in exercising any right, power or privilege precludes any other or further exercise thereof or the exercise of any other right, power or privilege.

9. Notice and Domicilium

9.1 The parties choose as their respective *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Contract the following addresses:

Employer

Midtown Building

356 Vermeullen St

Pretoria

Employee

4 Riet Avenue

Woodmead

Ext 4

SANDTON

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provided that a party reports any changes of his *domicilium* to any other physical address, postal address or telefax number by written notice to the other party. Such change of address will be effective seven days after receipt of notice of the change of *domicilium*.

9.2 All notices to be given in terms of this Contract will-

- 9.2.1 be given in writing; and
- 9.2.2 be delivered or sent by prepaid registered post or by telefax; and
- 9.2.3 if delivered, be presumed to have been received on the date of delivery; or
- 9.2.4 if sent by prepaid registered post, be presumed to have been received within three business days of posting unless contrary is proved; or
- 9.2.5 if sent by telefax, be presumed to have been received on the first business day following the date of sending of the telefax unless the contrary is proved.

SIGNED by the Employer at Pretoria on the 30th day of March

AS WITNESSES:

1. [Signature]

2. [Signature]

[Signature]
EMPLOYER (EXECUTING
AUTHORITY ON BEHALF
OF THE GOVERNMENT)

SIGNED by the Employee at PRETORIA on the 08 day of MARCH 2011

AS WITNESSES:

1. [Signature]

2. [Signature]

[Signature]
EMPLOYEE (HEAD OF
DEPARTMENT)

Annexure A

SALARY PACKAGE AND STRUCTURING**1. Mr MJ Manyi: Chief Executive Officer****2. Remuneration Package: R1 275 732 per annum**

2.1 You shall be paid an inclusive taxable flexible remuneration package of R1 275 732 per annum which shall consist of the following:

- (a) a core salary consisting of R765 439.20 which equals 60% of the inclusive flexible remuneration package (R1 275 732);
- (b) the Employer's contribution to the Government Employee Pension Fund (GEPF) (R99 507.09), which equals 13% on the core salary; and
- (c) a flexible portion of R410 785.71, calculated as the inclusive flexible remuneration package. This must be structured by yourself in terms of the rules contained in the SMS Handbook for the structuring of the flexible portion. (See chapter 3, section 4.2).
- (d) The above must be structured into the following items: Motor car allowance, 13th cheque, Medical assistance, housing allowance and non-pensionable cash allowance.

2.2 Membership of the Government Employees Pension Fund is compulsory for all permanent employees. The rate of contribution for the Employee and Employer shall be as prescribed.

3. Hours of Work

The employee shall faithfully and diligently work a minimum of 8 hours per day and follow the office hours of the department

4. Other

Other conditions of service are as specified in the SMS handbook.

**SERTIFIKAAT VAN LAASTE BETALING
LAST-PAY CERTIFICATE**

Z 01
(01/123400)

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DEEL/PART I

- Deel Een - KENNISGEWING AAN ONTVANGENDE DEPARTMENT
- Part One - NOTIFICATION TO THE RECEIVING DEPARTMENT
- Deel Twee - KENNISGEWING AAN DIE DEPARTMENT VAN WELSYN
- Part Two - NOTIFICATION TO THE DEPARTMENT OF WELFARE
- Deel Drie - OPSKRIF VIR DIE VERSENDINGSDEPARTMENT
- Part Three - COPY FOR THE SENDING DEPARTMENT

AAN DIE
TO THE GOVERNMENT COMMUNICATION AND INFORMATION SYSTEM

DEPARTMENT VAN
DEPARTMENT OF HARBOUR

PRIVATE BAG X 745

PRIVATE BAG X 117

PRETORIA

0001

PRETORIA

0001

Identiteitsnommer
Identity number 6401205536083

Belastingnommer
Income tax number 74X 1K5A

Departementale verwysing No.
Departmental reference No. 22069097

Pensioen No.
Pension No. 98571556

Aanstellingsdatum
Date of appointment 010909
Day Month Year

Hierby word gesertifiseer dat
This is to certify that MZWANGEL Jimmy Manyi

(Volle naam/Full name)

gebore op
born on 200164
Day Month Year

Huweliksstaat
Marital state

Afhanklikes
Dependants

wat die betrekking beides van
who holds the appointment of MANAGE SUPPORT SR 16

in hierdie departement
in this department

se volle/halwe salaris en toelae betaal is tot en met
has been paid his/her full/half salary and allowances to

310111
Day Month Year

en tot geen latere datum nie teen die tarief hieronder aangedui
inclusive and to no later date at the rate indicated hereunder:

Datum
Date 14/02/2011

namens Rekenpligtige Amptenaar
for Accounting Officer

[Signature]

TARIEF VAN BETALING - RATE OF PAY

Salaries R 63786.60

359515-359609-350002-400712-421724-443061-464696
per 486668-508967 op skaal on scale

Verhogingsmaand
Incremental month 07

Toelae R 12916.59

teen 12916.59

per

(pensioendraend/nie-pensioendraend)
(pensionable/non-pensionable)

Toelae R 16000.00

at R 16000.00

per

(pensioendraend/nie-pensioendraend)
(pensionable/non-pensionable)

Toelae R 14362.41

teen 14362.41

per

Toelae R 16000.00

at R 16000.00

per

**PENSIOENAF TREKKINGS
PENSION DEDUCTIONS**

Bydraes is ook tot op dieselfde datum teen die volgende tariewe gevorderd:
Contributions have also been deducted to the same date at the following rates:

Lopende Agterstalling Vrywillige addisionele
Current R 7907.15 pm Arrears R pm Voluntary additional R pm

Ander (spesifiseer) Ander (specify) R pm

Die bedrag van is nog ten opsigte van agterstallige bydraes verskuldig.
The amount of R is still due in respect of arrears.

**BANKREKENING BESONDERHEDS
BANKING ACCOUNT DETAILS**

Bank/Bouvereniging
Bank/Building society 1st Bank Limited

Tak (straat) Branch (street) 1970768841

Rekening/Account No.

1970768841

Spaarrekening Savings acc Lopende-rekening Current acc Transmissie-rekening Transmission acc

ANDER AF TREKKINGS - OTHER DEDUCTIONS

Medies (meld tipe en lidmaatskapnommer); assurance (meld maatskappy, polisnommer en tipe versekering); behuising (meld takkantoor).
Medical (specify type and membership number); Insurance (specify company, policy number and type insurance); housing (specify branch office).
Motorfinansiering (meld die uitstaande bedrag); belasting (meld addisionele of verminderde aftrekkings).
Motor finance (specify the outstanding amount); tax (specify additional or reduced deduction).

Besonderhede Details F.S.B.C 22069097 R 0.50 pm

B.S.S.B.C 22069097 R 4.00 pm

R pm

R pm

R pm

Eis No. Claim No. vir die tydperk for the period tot to

Besonderhede Details R pm

R pm

R pm

R pm

R pm

ten opsigte van salaris betaal, word aangeheg.
in respect of salary paid, is attached.

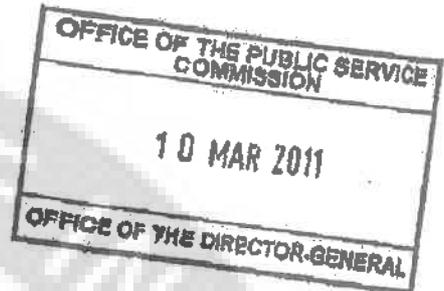


PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

10 March 2011

NATIONAL ASSEMBLY
MEMBER OF PARLIAMENT
PO Box 15 Cape Town 8002 Republic of South Africa
Tel: 27 (21) 403 2931
www.parliament.gov.za

Mr. Mashwahle Diphofa
Director-General
The Public Service Commission
Commission House
cnr. Hamilton & Zivvogel Streets
Pretoria
0083



Delivered by:

Fax: (012) 325 8382
E-Mail: info@opsc.gov.za

Dear Mr. Diphofa

Re: Request to Investigate Mr. Jimmy Manyi

The above matter refers. -

We hereby request that Mr. Jimmy Manyi, as the current head of government information services and the spokesperson for government, be investigated by the Public Service Commission (PSC) as the constitutional custodian of the public service.

Our concern regarding Mr. Manyi position stems from what seems to be transgressions of Sections 30(a) and (b) of the Public Service Act 104 of 1994. It is well known that Mr. Manyi serves in various organizations outside of his position with government. His most well-known outside position is as president of the Black Management Forum. However, we have also received information that he holds the following positions:

1. President of the BMFI (the Black Management Forum's Investment vehicle);
2. President of the Confederation of Black Business Organisations (CBBO);
3. Non-executive directorships with various companies, like IBM South Africa and Meegbank Holdings.

The above list may not be exhaustive and we request that the PSC investigate any further outside interests that might exist as it relates to possible breaches of Sections 30(a) and (b) as set out below.

Section 30(a) states that "every officer and employee shall place the whole of his or her time at the disposal of the State". We are concerned that Mr. Manyi's outside interests are of such a kind that he cannot possibly comply with this provision.

Section 30(b) states that "no officer or employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the public service, without permission granted by the relevant executing authority or an officer authorised by the said authority". We are concerned that Mr. Manyi is engaged in remunerative work outside his public service employment and it is uncertain if permission has been granted for him to earn such income as contemplated herein.

Should the PSC find that Section 30(a) has been transgressed, we request that disciplinary action be taken against Mr. Manyi.

Should the PSC find that Section 30(b) has been transgressed, we request that Section 31(1)(a)(i) be invoked and the outside remuneration be claimed back from Mr. Manyi.

Our complaint relates to the constitutional obligation of the State to provide services in the best interest of the public, as enunciated by the Public Service Code of Conduct. It is also our view that Mr. Manyi's pronouncements regarding minorities from the position as president of the BMF is contrary to Section 2 of the Code which states that "public employees will serve the public in an unbiased and impartial manner in order to create confidence in the Public Service".

Accordingly we are awaiting your further advises herein.

Yours sincerely,



Adv. Anton Alberts
Member of Parliament: Vryheidsfront Plus // Freedom Front Plus
083 950 9272

STATE CAPTURE



Custodian of Good Governance

**PUBLIC SERVICE COMMISSION
REPUBLIC OF SOUTH AFRICA**

KwaZulu-Natal Regional Office: Private Bag X9180, Pietermaritzburg, 3200, Tel: (033) 348 1821, Fax: (033) 348 8606
IDUBE Building, 248 Burger Street, Pietermaritzburg, 3201

CONFIDENTIAL

☐ Ms LC Viviers	Ref.: FV/4/2/8	☐ (012) 352 1145	☐ (012) 328 8382
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Ms M Oliphant, MP
Minister of Labour
Private Bag X499
PRETORIA
0001

Dear Ms Oliphant

INVESTIGATION INTO ALLEGATIONS OF UNETHICAL CONDUCT BY MR JIMMY MANYI

The Public Service Commission (PSC) received a request from Adv A Alberts, Member of Parliament, Freedom Front Plus, to investigate allegations of unethical behavior by Mr Jimmy Manyi, the Chief Executive Officer of the Government Communication and Information System (copy attached for ease of reference). Some of these allegations pertain to Mr Manyi's conduct whilst being employed as the Director-General of the Department of Labour.

The PSC's mandate to conduct investigations in terms of its constitutional mandate is summarized as follows:

- a) Section 196(2) of the *Constitution of the Republic of South Africa, 1996*, *inter alia*, determines that the PSC must exercise its powers and functions in the interest of the maintenance of effective and efficient administration and a high standard of professional ethics in the Public Service.
- b) In terms of section 196(4)(f) of the *Constitution of the Republic of South Africa, 1996*, the powers and functions of the PSC are, among others, "either of its own accord or on receipt of any complaint –
 - (i) to investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executive authority and legislature;
 - (ii)
 - (iii) to monitor and investigate adherence to applicable procedures in the public service;"



c) Section 10(1) of the *Public Service Commission Act, 1997*, determines that –

“The Commission may conduct an inquiry into any matter in respect of which it is authorized by the Constitution or the Public Service Act to perform any function.”

The terms of reference of the investigation are to investigate the following:

- a) To determine whether Mr Manyi has declared all registrable interests by 30 April 2010, in terms of the Financial Disclosure Framework for the Public Service, as contained in Chapter 3 of the Public Service Regulations.
- b) To determine whether there is any potential conflict of interest relating to Mr Manyi's registrable interests.
- c) To determine whether Mr Manyi obtained approval from the Executive Authority to perform remunerative work outside his employment.

Adv Alberts has also requested the PSC to investigate whether Mr Manyi's conduct, when he made pronouncements regarding minorities, was in contradiction with the provisions of paragraph C2.2 of the Code of Conduct for the Public Service. In this regard, the PSC has found that there is some level of overlap with a complaint already lodged with the Human Rights Commission (HRC). As this could result in a duplication of efforts, the PSC has decided to refer this allegation to the HRC for investigation.

It would be appreciated if you could respond in writing to the following in relation to the above-mentioned terms of reference:

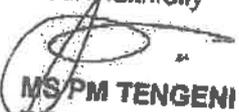
- a) Whilst Mr Manyi was the Director-General of the Department of Labour, did he request approval to perform remunerative work outside his employment. If yes, please provide a copy of the relevant documents, as well as the outcome of the Executive Authority's decision.

You are welcome to provide any further input that may be of relevance to the terms of reference of the investigation. The response should be submitted to the PSC by no later than 7 May 2011.

Please be advised that Mr C Chabano, the Minister in The Presidency, has also been informed of the investigation and he has been requested inform Mr Manyi of the PSC's investigation.

At the conclusion of the investigation you and the Minister in The Presidency will be provided with a draft report, and will be given the opportunity to provide comments in respect of the findings made.

Yours faithfully


M/S PM TENGENI
 DEPUTY CHAIRPERSON
 DATE: 18 APRIL 2011



government communications

Department:
Government Communication & Information System
REPUBLIC OF SOUTH AFRICA

Enq: Jimmy Manyi Tel: (012) 314 2127 Email: jimmy@gcis.gov.za

28 April 2011

Ms M Oliphant, MP
Minister of Labour
Private Bag X 499
Pretoria
0001

Dear Minister

INVESTIGATION INTO ALLEGATION OF UNETHICAL CONDUCT BY MR JIMMY MANYI

Reference is made to a letter dated 18 April 2011 from the Public Service Commission addressed to yourself on the above subject following an enquiry from Honourable Member of Parliament, Advocate Anton Alberts of the Vryheidsfront Plus//Freedom Front Plus.

The terms of reference of the investigations as contained in the letter from the Public Service Commission are listed as follows:

- a) To determine whether Mr Manyi has declared all registerable interests by 30 April 2010, in terms of the Financial Disclosure Framework for the Public Service, as contained in Chapter 3 of the Public Service Regulations
- b) To determine whether there is any potential conflict of interest relating to Mr Manyi's registerable interests
- c) To determine whether Mr Manyi obtained approval from the Executive Authority to perform remunerative work outside his employment.

I humbly reply as follows:

- a) Record will show that I made all my registerable disclosures under oath as of 08/12/2009 for the financial year 2009/10, in fact I think I went beyond the call of duty in that I also submitted share certificates and a print out from CIPRO just to make sure that I leave no stone unturned in disclosing my directorships. Record will also show that former Minister Mdladlana noted the contents of my disclosure as per his signature dated 08/01/2010. His signature of 08/01/2010 is to me and any reasonable person an acknowledgement and endorsement of my other activities as disclosed.

- b) The press release by the former Minister of Labour, attached as Annexure A, provides absolute clarity that the former Minister had provided blessings for my BMF Presidency. This is over and above the fact that my BMF Presidency was disclosed in my CV and was never raised as an issue either in my interview or in my letter of employment. The former Minister, in the press release, made it very clear that if there was any conflict of interest it would be an issue to be managed. Record will show that for the duration of my service at the Department of Labour such a conflict never arose beyond the imagination and speculative assertions of people like Honourable Advocate Alberts of the Freedom Front Plus. *Contrary to popular belief as peddled by the media, even the much publicised Futhi Mtoba (BUSA President) BMF pronouncements were in fact, not made by Jimmy Manyi.*
- c) I never performed any remunerative work outside the employment of the Public Service as contemplated in the Financial Disclosure Framework. May I draw your attention to the fact that the Financial Disclosure Framework distinguishes remunerated work outside the Public Service (*Note 3 on the Financial Disclosure Framework*) from Directorships (*Note 2 of the Financial Disclosure Framework*) as provided in the information sheet of the Public Service Commission

It is my contention that the Honourable Member, Advocate Alberts from the Freedom Front Plus may be erroneously conflating the two (note 2 & note 3) given his listing of only my alleged Directorships and no details whatsoever of the alleged work outside the Public Service. It is important that the two are not conflated. The Financial Disclosure Framework and the information sheet as supplied by the Public Service Commission, clearly separates Directorships where the general signature of the Executive Authority applies, from remunerative work which is specifically regulated and where the Executive Authority has to specifically approve and sign in the appropriate space uniquely provided for this purpose.

Conclusion

From the above it is evident that a) all the disclosures were made; b) there was no conflict of interest for the duration of my stay at the Department of Labour; c) I did not perform any remunerative work as contemplated in the Financial Disclosure Framework. Therefore the allegation of unethical conduct has no substance and must be dismissed.

Kind regards



JIMMY MANYI

CHIEF EXECUTIVE OFFICER

CC: Minister Chabane



**MINISTRY
PUBLIC SERVICE AND ADMINISTRATION
REPUBLIC OF SOUTH AFRICA**

Private Bag X916, PRETORIA, 0001 • Tel: (012) 336 1000, Fax: (012) 336 1809
Private Bag X9148, Cape Town, 8000 • Tel: (021) 467 5120, Fax: (021) 485 5484

Mr O C Chabane, MP
Minister in The Presidency
Private Bag X 1000
PRETORIA
0001

Fax: 086 683 5221

Dear Colleague

**EXPIRY OF TERM OF OFFICE: MR J MANYI, DIRECTOR-GENERAL:
GOVERNMENT COMMUNICATION AND INFORMATION SYSTEM (GCIS)**

According to information at my disposal, the term of office of Mr J Manyi is due to expire on 25 August 2012.

In terms of the powers delegated to individual Executive Authorities by the President, you are required to inform me, three months prior to the expiry of the Director-General's contract of employment, whether you intend to extend the relevant contract or not. If, after consultation with the Director-General, you wish to extend his contract, it would be appreciated if you could provide me with a Cabinet Memorandum in this regard.

In the event of you deciding not to extend the Director-General's contract, you need to inform him accordingly, at least two months prior to expiry thereof. In this regard, your attention is drawn to the condition attached to item 4 of the President's delegation regarding national Heads of Department, which requires Executive Authorities to only take a decision not to extend the term of office of a Head of Department after consultation with the Minister for the Public Service and Administration.

Kind regards

**MS MN OLIPHANT, MP
ACTING MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION
2012/05/28**

RE: EXPIRY OF TERM OF OFFICE OF HEAD OF DEPARTMENT

PURPOSE

1. To obtain the Minister's approval and signature of the attached self-explanatory draft letter to the Minister in The Presidency regarding the expiry of the contract of employment of the Director-General: Government Communication and Information System (GCIS), Mr J Manyi.

BACKGROUND/DISCUSSION

2. The contract of employment of Mr J Manyi, Director-General: Government Communication and Information System (GCIS) is due to expire on 25 August 2012.
3. In view of the above, it is thus prudent to inform the relevant Minister about his responsibilities in this regard. The attached self-explanatory draft letter has subsequently been compiled for purposes of informing the relevant Minister in this regard.

PROPOSAL

4. That the Minister approves and signs the attached draft letter, if in agreement with the contents thereof.

RECOMMENDATION

<p>Draft letter recommended/ recommended as amended</p> <p><i>[Signature]</i> DIRECTOR-GENERAL DATE: 04/05/2012</p>	<p>Draft letter not recommended</p> <p>DIRECTOR-GENERAL DATE:</p>
---	---

DECISION

<p>Draft letter approved/ approved as amended and signed</p> <p><i>[Signature]</i> MINISTER DATE: 2012/05/28</p>	<p>Draft letter not approved</p> <p>MINISTER DATE:</p>
--	--



**MINISTER IN THE PRESIDENCY: PERFORMANCE MONITORING AND EVALUATION
REPUBLIC OF SOUTH AFRICA**

Tel: 012 300 5331/021 464 2122 Fax: 012 300 5779/021 464 2123
Private Bag x1000, Pretoria, 0001

Mr Jimmy Manyi
Chief Executive Officer
Government Communication and Information System (GCIS)
PRETORIA
0001

Dear Mr Manyi

EMPLOYMENT CONTRACT IN THE PUBLIC SERVICE

I have been informed by the Minister for Public Service and Administration that your contract as the Chief Executive Officer of Government Communication and Information System (GCIS) will be coming to an end. As the Executive Authority I have an obligation to formally inform you of the pending expiry of your contract. As you might be aware, you were transferred under my authority, to head the GCIS from the Department of Labour to complete what was the remainder of your current contract. According to the Department for Public Service and Administration your contract will be expiring on the 25th of August 2012. I will as required by law have to fill the vacancy after all the necessary procedures have been followed. I will however not be renewing your contract in this position, I intend to advertise the position in due course.

I have had the pleasure of working with you since you came into the position. You served both Cabinet as a Spokesperson and the CEO of GCIS during which we managed to build a good relationship.

I wish you all the best in your future endeavours.

I wish to, on behalf of the President and Cabinet, thank you very much for the work you have done and the energy you have put in the position.

A handwritten signature in black ink, appearing to read 'OCS'.

Collins Ohm Chabane, MP

Minister in The Presidency: Performance Monitoring, Evaluation and Administration

Date: 22/06/2012



MINISTER IN THE PRESIDENCY: PERFORMANCE MONITORING AND EVALUATION
REPUBLIC OF SOUTH AFRICA
Tel: 012 300 8334/021 484 2122 Fax: 012 300 5778/021 484 2123
Private Bag x1000, Pretoria, 0001

Ms Lindiwe Sisulu
Minister for Public Service and Administration
Private Bag X884
PRETORIA
0001

Dear Colleague

EXPIRY OF THE CONTRACT OF THE GCIS CEO

I have received a letter from your office informing me of the pending expiry of the contract of the Chief Executive Office of the GCIS, Mr Jimmy Manyi. Mr Manyi was transferred to head Government Communication and Information System (GCIS), from the Department of Labour to complete what was the remainder of his contract. As it stands his contract will be expiring on the 25th of August 2012.

I have as per the advise of your office, written to Mr Manyi to inform him of my intention to fill the position two months before the expiry of his contract. I therefore wish to inform your office, as I have informed him as well, that I will not be renewing the contract.

The position will be advertised in due course and all the necessary procedures will be followed to fill the position.

I will also formally inform Cabinet of my intention at the next meeting next month.

A handwritten signature in black ink, appearing to read 'Collins Dhm Chabane'.

Collins Dhm Chabane, MP

Minister in The Presidency: Performance Monitoring, Evaluation and Administration

Date: 26/06/2012

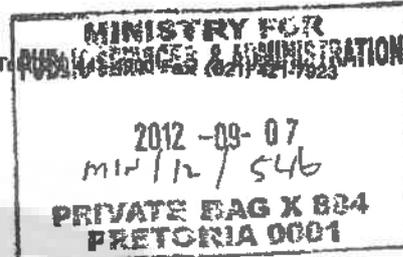


the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE CHIEF STATE LAW ADVISER
P/bag X9089, Cape Town, 8000
12th Floor, Atterbury House, 9 Riebeeck Street, Cape Town, 8001 - Telephone: (021) 421 7923

Ref: 480/2012
Enq: Enver Daniels
Tel: (021) 441-4905
e-mail: EDaniels@justice.gov.za
website: <http://www.justice.gov.za>
Date: 24 August 2012



CONFIDENTIAL

Dr LN Sisulu, MP
Minister of Public Service and Administration (DPSA)
Private Bag X884
PRETORIA
0001

Dear Minister Sisulu

LEGAL OPINION CONCERNING DIRECTOR-GENERAL CONTRACT OF EMPLOYMENT

Introduction

1.1 We have been requested, on an extremely urgent basis, to provide an opinion with regard to the termination of a contract of employment. We have not been provided with the contract in question. However it would seem that the legal question relates to the notice period for termination (non-renewal) of the contract.

1.2 According to information given, the notice period for termination of the contract is two months. According to the employee, the employer has informed the employee of his intention to terminate the employment contract 11 days short of the two months notice period. The employee is of the view that this non-compliance with the notice period renders the notice invalid and hence the employee is entitled to continue to work.

Deliberation

2.1 As we have not been provided with the employment contract in question, we assume that the contract prescribed for heads of departments in schedule 1 of the Public Service Regulations, are applicable. Section 12 of the Public Service Act provides for the

appointment of heads of department and career incidents and the relevant provisions thereof read as follows:

"12.(1) Notwithstanding anything to the contrary contained in this Act, but subject to this section and sections 2 (2B) and 32 (2) (b) (i), the appointment and other career incidents of the heads of department and government component shall be dealt with, in the case of—

(a) a head of a national department or national government component, by the President; and

(b) a head of the Office of a Premier, provincial department or provincial government component, by the relevant Premier.

(2) (a) A person shall be appointed to the post of head of department in terms of section 9 for such term, not exceeding five years, as the relevant executive authority may approve.

(b) The head of department shall conclude the prescribed contract within the prescribed period." (Our emphasis.)

We wish to emphasise that the contract has been prescribed in the Public Service Regulations, and the relevant provisions thereof read as follows:

"ENTERED INTO BY AND BETWEEN

The Government of the Republic of South Africa, herein represented by (full name of political office-bearer) in the capacity of Executing Authority of

(indicate portfolio) (hereinafter referred to as the Employer) and

(full name) as head of department (hereinafter called the Employee.)

WHEREBY IT IS AGREED AS FOLLOWS:

1. Appointment

1.1 The Employer hereby appoints the Employee, who agrees and accepts appointment as Head of Department of.....(name of Office, Department, Organisational Component or Provincial Department) in terms of section 12 of the Public Service Act, 1994 (hereinafter referred to as the Act) for a period ofyears (.....calendar months) commencing on.....and terminating on.....

...

4. Termination of employment

4.1 The term of office of the Employee may be terminated in the following ways—

4.1.1 On reaching the prescribed (or earlier optional) retirement age .

4.1.2 On completing a term or extended term of office.

4.1.3 Premature retirement at own request of Employee.

✓

- 4.1.4 Discharge in terms of any of the subsections of section 17 of the Act.
- 4.1.5 Re-determination of original term or extended term of office by the Employer.
- 4.1.6 Voluntary resignation.
- 4.1.7 Death.
- 4.2 ...

5. Renewal and extension of term of office

5.1 The Employer shall in writing confer with the Employee at least two calendar months prior to the expiry of the term contemplated in clause 1 (*supra*) whether she/he proposes to retain the Employee in service for any extended period not exceeding five years (60 calendar months), or not. If the Employee is so informed of such intention to retain her/him in service for an extended term, she/he shall in writing inform the Employer, within one calendar month from the date of that communication, of her/his acceptance or not of such extended employment.

5.2 In the event that agreement is reached that the Employee shall enter into a further Contract on termination or completion of her/his Contract, the continued service of the Employee will be recognised under the new Contract so as to avoid any break of service and any accrued or *pro rata* entitlement will be carried forward into the new Contract.

5.3 Should the Employer not renew the Contract period beyond the initial period as stated in Clause 1 above, the Employee shall be entitled to the pension and other benefits directly linked to the specific section of the Act which is utilised."

(Our emphasis.)

It would therefore appear that the contract is a fixed term contract. Two calendar months prior to expiry of the fixed term of the contract, the employer shall in writing confer with the employee whether the employer intends to retain the employee in service or not. *In casu*, we are informed that the employer has not complied with the two calendar months requirement stipulated in the contract. Since this is clearly a fixed term contract which terminates on a specified date, and upon careful scrutiny of the clause providing for the renewal and extension of term of office of the contract, we are of the view that clause 5 of the contract is rather applicable when the employer considers renewing and extending the contract. We are therefore of the opinion that the two months period stipulated in clause 5.1 of the contract does not appear to be a specific notice period for the termination of the contract, however, the possibility exists that it may be interpreted as such.

2.3 According to Van Jaarsveld *et al*, Principles of Labour Law, second edition, 2002 at page 130, the contract of employment is a contract to which the ordinary principles of the law of contract are applicable in respect of termination. If a contract of employment is

concluded for a specific period, the contract is terminated at the end of that specific period, without further notice. Many contracts of employment provide that both parties are entitled to terminate the contract after a specific period of notice has been given.

2.4 The crucial question is whether the failure to comply with the two months notice period invalidates the conferring contemplated in clause 5.1 of the contract. If the intention of the employer is to retain the services of the employee, then there would not be any reason for disputing the less than two-month period.

2.5 It would seem that the contract concerned appears to be a fixed term contract with what may be interpreted as a notice period for termination. In the event that it is so interpreted, then the employee will be entitled to his or her full two calendar months notice period with payment. Since the employer has not complied with the stipulations in clause 5.1 of the contract (as we have been informed), it follows that, in our view, the period of employment would be extended by, *in casu*, 11 days with pay.

Conclusion

3. We therefore conclude, in the light of what is stated above, that—
- (a) the contract under discussion is a fixed term contract; and
 - (b) in the event that clause 5.1 of the contract is interpreted as providing for a notice period for termination, and where the employer has not complied therewith, we are of the view that the term of contract of employment would be expended for a further 11 days with pay.

Yours sincerely



ENVER DANIELS
CHIEF STATE LAW ADVISER



**MINISTRY
PUBLIC SERVICE AND ADMINISTRATION
REPUBLIC OF SOUTH AFRICA**

Private Bag X916, PRETORIA, 0001 • Tel: (012) 338 1000, Fax: (012) 338 1800
Private Bag X9148, Cape Town, 8000 • Tel: (021) 487 5120, Fax: (021) 485 5484

The Administrative Secretary to

The Minister: Ministry of Justice and Constitutional Development

Private Bag X9069

Cape Town

8000

Dear Colleague,

LEGAL OPINION CONCERNING DIRECTOR-GENERAL CONTRACT OF EMPLOYMENT

On behalf of the Minister for Public Service and Administration, Dr LN Sisulu, I write to acknowledge receipt of your Minister's letter dated 24 August 2012 and received on 7 September 2012.

The matter is receiving attention and will be brought to the attention of the Minister.

Kind regards,

Debbie
T Sethole (Ms)

Assistant Director: Administration

Date: 07/09/2012

MIN/12/546

CORRESPONDENCE TO MINISTER/REFERRED TO DEPARTMENT(S)

Date Rec	From	Topic
7 SEPT 2012	MINISTRY OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	LEGAL OPINION CONCERNING DIRECTOR-GENERAL CONTRACT OF EMPLOYMENT

MINISTER'S COMMENTS:

HEAD OF MINISTRY'S COMMENTS:

TO: DG: DPSA
 DG: PALAMA
 CHAIR/DG: OPSC
 CPSI
 SITA
 HEAD OF MINISTRY

FOR: COMMENT
 INFORMATION
 ATTENTION

Due Date:

Copy forwarded to:

MINISTERIAL SUPPORT UNIT: THOKO

DATE: 07/09/2010

FILE NUMBER
 MIN/12/546

Copy forwarded to the: THE DIRECTOR-GENERAL AND THE HEAD OF MINISTRY



**MINISTER
MINERAL RESOURCES
REPUBLIC OF SOUTH AFRICA**

Private Bag X56, Arcadia, 0007, 71 Treverna Campus, Building 2C 4th floor, Cnr Meinjies and Francie Baard Street, Sunnyside Tel: (+27 12) 444 3698, Fax: (+27 12) 444 3146
Private Bag X9111, Cape Town, 8000, 7th Floor, 120 Plain Street, Cape Town, 8000 Tel: (+27 21) 462 2310, Fax: (+27 21) 461 0850

From: Director: Human Resources Administration and Practices
Tel: (012) 444 3360 Fax: 086 734 3223 E-mail: Ngwanabanna.Maleka@dmr.gov.za
Enquiries: Mr N Maleka Ref: SP S4/ 1/ 5

Adv. N Ramatlhodi
The Minister of the Public Service and Administration
Private Bag X 884
PRETORIA
0001

Dear Colleague

**FILLING OF THE VACANT POST OF DIRECTOR-GENERAL: MINERAL
RESOURCES, DEPARTMENT OF MINERAL RESOURCES**

1. The post mentioned above was advertised nationally during 10 January 2016 to 24 January 2016. After assessment of the applications against the key performance areas and the requirements attached to the post as advertised, candidates were shortlisted.
2. The selection committee conducted interviews with all the shortlisted candidates. Mr Tumelo Mahuma, the Acting Director: Human Resource Administration and Practices acted as scribe to assist the committee.
3. After thorough consideration of the candidature of the individuals against the background of the particular requirements and circumstances of the post, Mr MJ Manyi was found to be the most suitable candidate for the post.
4. The following documents regarding the filling of the post are attached:

- (a) Copy of advertisement.
- (b) List of the candidates who applied for the post.
- (c) Cabinet Memorandum for submission to Cabinet.
- (d) Copy of letter from NIA regarding security vetting.
- (e) Documentary proof of the outcome of personnel suitability checks.
- (f) Exposition of representivity profile at SMS level.
- (g) Copy of curriculum vitae/resume.
- (h) Copy of ID.
- (i) Copy of competency assessment report

5. In view of the aforementioned, it will be appreciated if you can obtain Cabinet's concurrence with the appointment of Mr MJ Manyi to the post of Director-General: Mineral Resources on salary level 16, (R 1,866,183 all-inclusive packages).

Thank you for your co-operation and assistance.

Kind regards



MR M ZWANE, MP

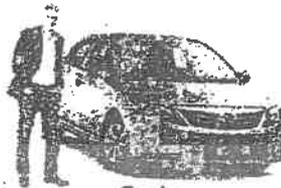
MINISTER: MINERAL RESOURCES

JANUARY 10 2016 | Sunday Times

Paying too much for car insurance? Switch and save!



MPV
2016 Mercedes Benz B200 AT
Premium: R 735 p.m.
OUTbonus: R 2 804
43 year-old female
Hail damage cover included



Sedan
2016 Toyota Corolla Quest 1.6
Premium: R 469 p.m.
OUTbonus: R 1 789
70 year-old male
Hail damage cover included



Bakkie
2016 VW Amarok 132KW Highline 4x4
Premium: R 859 p.m.
OUTbonus: R 3 281
45 year-old male
Hail damage cover included

sms "OUT" to 37221
for a quote.

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Car & Home

OUTsurace is an authorised financial services provider. The OUTbonus displayed is paid after 3 claim-free years and is premium dependent. Premiums are vehicle and risk profile dependent. Ts, Cs and standard sms rates apply.

DIRECTOR-GENERAL

•Salary: 1 866 183 per annum (all inclusive package) (Level 16) •Centre: Head Office (Pretoria)
•Ref: DMR/16/0601 •Five-year renewable contract

REQUIREMENTS: •An appropriate qualification (NQF Level 7) or a post-graduate qualification (NQF Level 8) as recognised by SACQA coupled with 8-10 years experience at a Senior Managerial level of which 5 years must have been at SMS Level within the Public Service PLUS the following competencies: Knowledge: •In depth understanding and knowledge of the Mining Industry •Knowledge of the regulatory regime affecting the Minerals and Mining Industry •Government policy and legislation •Human Resource practice and procedures •Administrative procedures •Financial management •Project management •Personnel management. Skills: •Strategic leadership •Sound organising and planning skills •Good communication skills •Facilitation skills. Creativity: •Innovative and strategic thinker •Meticulous and good analytical skills •Careful, correct and appropriate decision making. Other: •Ability to work under extreme pressure •Ability to work long hours voluntarily •Ability to gather and analyse information •Ability to work individually and in a team •Honesty.

DUTIES: •Provide direction in the development and promotion of mineral and mining related policies •Ensure the regulation of the Mining and Minerals Industry •Ensure the safe mining of minerals under healthy working conditions •Ensure that a corporate service function is rendered (communication, management, etc.) •Ensure provisioning of Supply Chain and Information Management support services •Ensure the establishment of reporting procedures to facilitate performance monitoring and evaluation •Advise the Ministers and Management in the performance of their duties and promote co-operative Governance.

RECOMMENDATION/NOTE: All short-listed candidates for SMS posts will be subjected to a technical exercise that intends to test relevant technical elements of the job, the logistics of which will be communicated by the Department. Following the interview and technical exercise, the selection panel will recommend candidates to attend a generic managerial competency assessment.

ENQUIRIES: Ms P.B. Gamede, tel. (012) 444 3008.

Note: Applications should be on Form 293 (which should be completed in full, accurately, legibly, signed and dated) and must be accompanied by a comprehensive CV, and originally certified copies of qualifications as well as ID not longer than 3 months (where a driver's licence is a requirement, a certified copy must be attached). NB: Applicants who do not comply with the above-mentioned requirements, as well as applications received after the closing date will not be considered. Requirements stated on the advertised posts are minimum inherent requirements; therefore criterion for short-listing will depend on the proficiency of the applications received. The Department reserves the right to determine suitable candidate(s) during the selection process. Confirmation of final appointment will be subject to a positive security clearance. Due to the large number of responses anticipated, correspondence will be limited to short-listed candidates only. Short-listed candidates will be contacted within three weeks after the closing date. Applicants who have not been contacted during this period may regard their applications as unsuccessful.

APPLICATIONS: The Director-General, Department of Mineral Resources, Private Bag X59, Arcadia, 0007 or hand-delivered to Tlovenna Campus, corner Mentjies and Francis Baard (Schoeman) Streets, Sunnyside. FOR ATTENTION: Ms N. Maseko or Ms T. Sibutha.



CLOSING DATE: 24 JANUARY 2016

MatCH Health Systems is a division of the Wits Health Consortium under the School of Public Health of the University of the Witwatersrand. MatCH is committed to supporting the sustainable development goals aimed at gender equity, maternal and child health and combatting HIV. These guide our work which focuses on HIV treatment and care, maternal, child and women's health and sexual and reproductive health. MatCH supports health systems strengthening including service delivery, capacity building and technical support. MatCH conducts clinical, behavioural and operations research.

MatCH

Wits Health Consortium
School of Public Health
Faculty of Health Sciences
University of the Witwatersrand

www.humanjobs.co.za



The SACAA, a key player in the Insur
overseeing the functioning of the Ins
Executive: Hun
(3-year performance-based

The incumbent will oversee and manage an e
an effective Business Partner to the Insur
workforce, security an

WITS VACANCIES



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

DMR 10

CANDIDATE'S LIST FOR THE POST OF DIRECTOR-GENERAL: MINERAL RESOURCES

NAME	EMPLOYER/DEPARTMENT	RANK/POSITION
Mr J Manyi	Rand Waters	General Manager
Mr T Gazi	Transnet	Director: Safety, Health, Environment and Sustainability
Mr N Govinden	Eurasian Resources Group	Head of Tax
Mr TD Mahumapelo	Actuarial Society of South Africa	Actuarial Technician, Specialist and Associate

SECRET

Annexure D



MINISTRY FOR THE PUBLIC SERVICE AND ADMINISTRATION

CABINET MEMORANDUM NO : OF 2016

DATE : 2016

FILE NUMBER :

1. SUBJECT

Filling of the post of Director-General: Mineral Resources in the Department of Mineral Resources.

2. PURPOSE

To obtain Cabinet's concurrence for the intended appointment of Mr J Manyi to the advertised post of Director-General at the Department of Mineral Resources.

3. SUMMARY

It is the intention of the Minister of Mineral Resources to appoint Mr J Manyi to the advertised post of Director-General on the establishment of the Department of Mineral Resources.

SECRET

4. STRATEGIC FOCUS OF THE MEMORANDUM

The filling of this post will contribute to the achievement of the strategic aims of the Department.

5. DISCUSSION

5.1 The post of Director-General was advertised in the media (Sunday Times) of 10 January 2016 with a closing date of 24 January 2016.

5.2 A total number of 4 applications were received for the advertised post. ?

5.3 The following key performance areas for this post have been identified:

5.3.1 Provide direction in the development and promotion of minerals related policies.

5.3.2 Ensure that the mining and minerals industry is regulated and transformed.

5.3.3 Ensure safety in the mining of minerals under healthy working conditions.

5.3.4 Ensure the provision of corporate service function.

5.3.5 Ensure the provision of financial, supply chain and information management support services.

5.3.6 Ensure the establishment of reporting procedures to facilitate effective performance monitoring and evaluation.

5.3.7 Ensure a globally competitive, sustainable and meaningfully through economic growth and sustainable development.

5.3.8 Advise the Minister and management on performance of their duties and promote co-operative governance.

5.4 A pre-selection was done by scrutinising each of the applications received, with due consideration to the core functions and requirements for the post as indicated in the advertisement. The following candidates were shortlisted and invited to the final interviews:

SECRET

NAME	EMPLOYER/DEPARTMENT	RANK/POSITION
Mr J Manyi	Rand Waters	General Manager
Mr T Gazi	Transnet	Director: Safety, Health, Environment and Sustainability
Mr N Govinden	Eurasian Resources Group	Head of Tax
Mr TD Mahumapelo	Actuarial Society of South Africa	Actuarial Technician, Specialist and Associate

5.5 A Selection Committee was constituted consisting of:

- 5.5.1 Mr MJ Zwane, MP : Minister: Mineral Resources ✓
- 5.5.2 Ms AF Muthambi, MP : Minister: Communications ✓
- 5.5.3 Mr D Mahlobo : Minister: Security State Agency ✓
- 5.5.4 Mr MR Sekele : Director-General: Department of Public Enterprise ✓

5.6 The Committee conducted interviews with the short-listed candidates. Following the interviews, selected candidates were subjected to the prescribed competency assessments. After thorough consideration of the candidature of these individuals, the Committee unanimously agreed to recommend the appointment of Mr MJ Manyi on the basis of the strengths he displayed against the required competency profile and in comparison with the other candidates who were interviewed.

5.7 Mr MJ Manyi is in possession of the following qualifications:

- 5.7.1 National Higher Diploma: Economic Geology NAF?
- 5.7.2 National Diploma: Geology
- 5.7.3 Matric Certificate

SECRET

- 5.8 Mr MJ Manyi is in possession of a National Higher Diploma: Economic Geology. He is currently employed General Manager at Rand Waters. The candidate demonstrated excellent knowledge of mining legislation as well as latest developments in the mining industry. The panel was impressed with his strategy capability and leadership skills. The candidate displayed good problem solving and innovative approach particularly to labour related dispute matters within the mining industry. His technical assessment report depicted an individual who has sound knowledge of the Constitution of the Republic of South Africa. The results of competency assessments were also taken into consideration; hence the panel unanimously nominated him as the only suitable candidate for the post of Director-General, Station: Office of the Director-General, salary level 16.
- 5.9 Personnel suitability checks, covering the following, were conducted (documentary proof attached):
- 5.9.1 Criminal record checks;
 - 5.9.2 Citizenship verification;
 - 5.9.3 Qualification/Study verification;
 - 5.9.4 Previous employment verification (reference checks); and
Financial checks.
- 5.10 In light of the above, Mr MJ Manyi was regarded as the most suitable candidate for the advertised post of Director-General.
- 5.11 A copy of Mr Manyi *Curriculum Vitae* is attached for information.
- 5.12 The other candidates for the position were found to be less suitable than the nominee.

6. IMPLEMENTATION PLAN

Not applicable

SECRET

7. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

7.1 The relevant post exists on the establishment of the Department of Mineral Resources. The appointee will fill the vacant post on the establishment.

7.2 Should Mr MJ Manyi's appointment be approved, representivity of the senior management service in the Department will be affected as follows: Gender representivity is at 66% males and 34% females, while race representivity is at 93% African, 7% Whites and 0% Coloureds.

*Per Council
before +
etc.*

8. FINANCIAL IMPLICATIONS

An all-inclusive remuneration package of R 1, 866, 183 per annum has been budgeted for. Funds are therefore available to cover the expenses of the appointment.

9. COMMUNICATION IMPLICATIONS

The Department will inform the candidate of her appointment, if Cabinet Concurs. The other candidates will be informed in writing that they have been unsuccessful.

10. CONSTITUTIONAL IMPLICATIONS

None

11. IMPLICATIONS FOR VULNERABLE GROUPS

None

12. SECURITY IMPLICATIONS

Mr MJ Manyi's pre-employment screening was found positive and will, once appointed, be vetted for a relevant security clearance.

SECRET

13. **DEPARTMENTS AND PARTIES CONSULTED, RESPONSES AND COMMENTS**

This memorandum was drafted by the employing department in association with the Department of Public Service and Administration.

14. **RECOMMENDATIONS**

It is recommended that Cabinet concurs with the appointment of Mr MJ Manyi to the advertised post of Director-General at the Department of Mineral Resources with an all-inclusive remuneration package of R 1, 866, 183 per annum (and the 10% non pensionable allowance payable to HoDs) with effect from a date as agreed to by the relevant Executive Authority and the successful candidate.

15. **OFFICIAL RESPONSIBLE FOR THE MEMORANDUM**

I declare that the memorandum adheres to the guidelines provided by the Cabinet for the drafting of memoranda.

Name: Ms NB Rapoo

Designation: Chief Director: Human Resource Management

Contact Details

Telephone: (012) 444 3657

Cellular: 079 158 3343

16. **HEAD OF DEPARTMENT**

Mr D Msiza

Acting Director-General

Department of Mineral Resources

(012) 444 3880

17. **AUTHORISATION FOR PROCESSING THE MEMORANDUM**

MR N RAMATLHODI, MP

MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION

Is there a need for an electronic presentation to be done in addition to the memorandum? No

CONFIDENTIAL



state security

State Security Agency
REPUBLIC OF SOUTH AFRICA

Private Bag X87, PRETORIA, 0001 State Security Agency Headquarters, Musanda, Delmas Road, PRETORIA
Tel: (012) 427 4000, Fax: (012) 427 4651, www.ssa.gov.za

SSDB/VA10(VA32)/6/1/14/1/2
DMS10000906819

Office of the General Manager
External Vetting

04 May 2016

The Director-General
Dr T Ramontja
Department of Mineral Resources
Private Bag X59
PRETORIA
0001

For attention: Mr MS Khwela

Dear Director-General

Pre-employment Screening: Candidates for the Post of Director-General at the Department of Mineral Resources

1. Your request in the above-mentioned matter refers.
2. Pre-employment screening was conducted on the following candidates:

Name	ID Number
GOVINDEN Nirendheran	7204265065087
GAZI Thabo Enock	7107245477084
MANYI Mzwanele Jimmy	6401205536083

3. No negative information of national security relevance was obtained with regard to the above candidates.
4. The candidates have positive credit records.
5. The candidates are confirmed South African citizens.

Sikhongo Selekuphepha Kwambuso
Setheo ea Tshireletso sa Mnušo
Ikoro yozokuPhepha kwaLizwe

Staatveiligheidsagentskap
Setheo ea Tshireletso sa Puso
UPhiko Lwezokuphepha Kwaswe

I-Arhants yoKhusele kaRihulumetse
Xiyenge xa Vuhlayetso bye Mlomo

Zhandedzi la Vhuta/leledi la Muvhuso
Boemedi be Tshireletso Pusing

CONFIDENTIAL

CONFIDENTIAL

Pre-employment Screening: Candidates for the Post of Director-General at the Department of Mineral Resources

6. The pre-employment screening is valid until a candidate is appointed. The appointed candidate should complete a Z204 form that must be forwarded to the SSA in order to conduct the necessary vetting investigations, at the end of which a relevant security clearance will be considered.
7. Lastly, please note that in terms of a cabinet approved memorandum, all pre-employment screening/personnel suitability checks are expected to be conducted by the Organs of State themselves. To this end you are referred to the instruction from the Department of Public Service and Administration (DPSA), reference 14/1/1/P dated 23 November 2007. Please feel free to contact us, should you have any queries in this regard, on 012 673 8064.



**Dr BWJ Langa
For Director-General**



CONFIDENTIAL



23 May 2016

Mr Ngwanabanna Maleka
Director: Human Resource Administration and Practices
Department of Mineral Resources
Private Bag X 59
Pretoria
0001

Dear Mr Maleka

**Verification for Mineral Resources of the Learner Achievements of
Mzwanele Jimmy Manyi, National ID 6401205536083**

The South African Qualifications Authority has been pleased to assist Department of Mineral Resources, via its National Learners' Records Database, by performing this verification.

The verification results are as follows:

Qualifications:

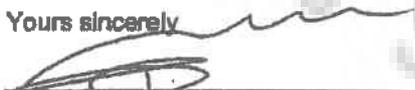
Qualification	NQF Level	Institution	Year	Result
Senior Certificate	4	Jabulani Technical High	1981	Yes
National Diploma in Geology	6	Technikon Northern Transvaal	1985	Yes
National Higher Diploma in Economic Geology	Level TBA: Pre- 2009 was L7	Technikon Witwatersrand	1987	Yes

Recommended wording for press statements:

Mr Manyi was appointed to the position of ... in the Department of Mineral Resources. His qualifications include National Diploma in Geology and National Higher Diploma in Economic Geology.

We look forward to being of further service to you in the future.

Yours sincerely


Dirk Strydom
Manager: Verifications

cc Geeva Pillay, Chief Director: Public Service HR Planning, Employment Practices and Performance, DPSA

PostNet Suite 248
Private Bag X08
Waterkloof 0145
SAQA House
1087 Arcadia Street
Hatfield 0083
Helpdesk: 086 010 3188
Fax (+27 12) 431 6147
Website: www.saqa.org.za
E-mail: saqa@saqa.org.za

SAQA'S MISSION

To ensure the development and implementation of a National Qualifications Framework that contributes to the full development of each learner and to the social and economic development of the nation at large.

Jody Ready:
Jody Shad...

012 431 5015

4315006



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

DMR 10

EMPLOYMENT EQUITY AT SENIOR MANAGEMENT LEVEL: POST-APPOINTMENT										
Male				Total	Female				Total	Grand Total
African	Coloured	Indian	White		African	Coloured	Indian	White		
47	0	0	6	53	27	0	0	0	27	80
59%	0%	0%	7%	65%	34%	0%	0%	0%	34%	100%





REPUBLIC OF SOUTH AFRICA

G.P.S. 8187143



WHAT IS THE PURPOSE OF THIS FORM

To assist a government department in selecting a person for an advertised post.

This form may be used to identify candidates to be interviewed. Since all applicants cannot be interviewed, you need to fill in this form completely, accurately and legibly. This will help to process your application fairly.

WHO SHOULD COMPLETE THIS FORM

Only persons wishing to apply for an advertised position in a government department.

ADDITIONAL INFORMATION

This form requires basic information. Candidates who are selected for interviews will be requested to furnish additional certified information that may be required to make a final selection.

SPECIAL NOTES

1 - All information will be treated with the strictest confidentiality and will not be disclosed or used for any other purpose than to assess the suitability of a person, except in so far as it may be required and permitted by law. Your personal details must correspond with the details in your ID or passport.

2 - Passport number in the case of non-South Africans.

3 - This information is required to enable the department to comply with the Employment Equity Act, 1998.

4 - This information will only be taken into account if it directly relates to the requirements of the position.

5 - Applicants with substantial qualifications or work experience must attach a CV.

A. THE ADVERTISED POST	
Position for which you are applying (as advertised) DIRECTOR-GENERAL	Department where the position was advertised DEPARTMENT OF MINERAL RESOURCES
Reference number (as stated in the advert) Ref: DMR/16/0001	If you are offered the position, when can you start OR how much notice must you serve with your current employer? 30 DAYS BUT HIGHLY NEGOTIABLE

B. PERSONAL INFORMATION			
Surname	MANYI		
First names	MZWANELE JIMMY		
Date of birth	20 JAN 1964		
Identity number ²	640120 5536 083		
Race ³	<input checked="" type="radio"/> African	<input type="radio"/> White	<input type="radio"/> Coloured
Gender ³	<input type="radio"/> Female	<input checked="" type="radio"/> Male	
Do you have a disability? ³	<input type="radio"/> Yes	<input checked="" type="radio"/> No	
Are you a South African citizen?	<input checked="" type="radio"/> Yes	<input type="radio"/> No	
If no, what is your nationality?			
And do you have a valid work permit?	<input type="radio"/> Yes	<input type="radio"/> No	
Have you been convicted of a criminal offence or been dismissed from employment? ⁴	<input type="radio"/> Yes	<input checked="" type="radio"/> No	
If your profession or occupation requires State or official registration, provide date and particulars of registration			

C. HOW DO WE CONTACT YOU			
Preferred language for correspondence?	ENGLISH		
Telephone number during office hours	(082) 379 3454		
Preferred method for correspondence	<input type="radio"/> Post	<input checked="" type="radio"/> E-mail	<input type="radio"/> Fax
Correspondence contact details (in terms of above)	JIMMYMEMWEB.CO.ZA		

D. LANGUAGE PROFICIENCY (rate good, fair, or poor)

	Languages (specify)					
	ENGLISH	AFRIKAANS	XHOSA	ZULU	S-SOTHO	TSWANA
Speak	V. Good	FAIR	V. GOOD	V. GOOD	GOOD	FAIR
Read	V. Good	FAIR	V. GOOD	V. GOOD	FAIR	FAIR
Write	V. Good	FAIR	V. GOOD	V. GOOD	FAIR	FAIR

E. QUALIFICATIONS (please ignore if you have attached a CV with these details)

Name of School/Technical College	Highest qualification obtained	Year obtained
JABULANI TECH HIGH	MATRIC WITH EXEMPTION	1981

Tertiary education (complete for each qualification you obtained)

Name of Institution	Name of qualification	Year obtained
HAVARD BUS SCHOOL	SENIOR EXEC PROGRAMME	1999
NATIONAL HIGHER WITS TECHNIKON	NHD ECON GEOLOGY	1987
TECHNIKON NORTHERN TUL	NATIONAL DIPLOMA IN GEOLOGY	1985

Current study (institution and qualification):

F. WORK EXPERIENCE

Employer (including current employer)	Post held	From		To		Reason for leaving
		MM	YY	MM	YY	
RAUDWATER (DWS)	GENERAL MANAGER	09	12			CURRENT
NATIONAL GOVT	DE & CEO	09	09	08	12	CONTRACT EXPIRED
TIGER-BRANDS	GROUP EXEC CORP AFFAIRS					
IBM						
BARCLAYS PLC	DIRECTOR Public Policy					
NEBCOR; TOYOTA AND ANGLO AMERICAN						

If you were previously employed in the Public Service, indicate whether any condition exists that prevents your re-appointment.

Yes	No
-----	----

If yes, provide the name of the previous employing department

CV ATTACHED WITH FULL DETAILS

G. REFERENCES (please ignore if you have attached a CV with these details)

Name	Relationship to you	Tel. No. (office hours)
TEMBAZI MNYAKA	PROFESSIONAL ASSOCIATE	079 695 3232
ZINHLE CELE	" "	060 501 7783
THEMBA LANGA	" "	082 789 8545

DECLARATION

I declare that all the information provided (including any attachments) is complete and correct to the best of my knowledge. I understand that any false information supplied could lead to my application being disqualified or my discharge if I am appointed.

Signature: *J. May* Date: 19/01/16

Profile – Mzwanele Jimmy Manyi

Name : Mzwanele Jimmy Manyi **Residential address:** 4 Riet Avenue
Woodmead ext 4

Postal address : PO Box 6021 Rivonia 2128 **Email address** : jimmyvm@mweb.co.za

ID Number : 640120 5536 083 **Cell Number** : 082 379 3454

Nationality : South African **Race** : African

Spoken Languages: Xhosa, Zulu, S Sotho, Tswana, English, and fair Afrikaans

General Profile for the Director General (DMR) position

Mzwanele Manyi is a professional with 10 years hands on mining Industry experience gained at Anglo American. His experience combines 5 years Mining geology and another 5 years exploration geology. He also a former Accounting Officer (DG/CEO) who served in the public service at sms level for more than 6 years split between his role in National Government and as General Manager at Randwater.

Sms track record in the Public Service

- Managing budgets of up to R2bn as accounting officer and staff compliments > 7000 people.
- Working with confidential & classified information including top secret.
- Formulate and Implement Public Policy/ Regulations including Labour Laws.
- Hands on experience and sound knowledge of Government Policies and legislation
- Providing leadership to a diverse team of professionals, including Human Resources, Supply Chain, Communication, Audit and information technology
- Implementation of Administrative procedures.
- Demonstrable track record in Financial Management
- Experience in Development of strategic plans, Annual performance plans and Annual Reports.
- Provided Oversight State Owned entities including funding supervision

He is also, a Harvard Alumnus and a Chartered Marketer CM (SA) with M+ 4 Economic Geology qualifications. He is more than suitably qualified in all respects. He has formal qualifications, exceeds requisite industry experience and also exceeds requisite sms level experience in the public service

Apart from mining experience he also has over 15 years senior/executive management corporate experience mainly from blue chip and multinational companies. His experience, spans across key sectors of the Economy including Exploration and Mining geology with Anglo, ICT with IBM, Peoples Bank (Nedcor Group) and Barclays bank plc. Auto sector with Toyota SA and FMCG with Tiger brands. He also participated in various Transformation charter development processes. He is an honest, hardworking and is experienced in working long hours, under pressure, individually and in teams. His analytical skills are well developed and he has very good decision making capabilities.



MINISTRY
PUBLIC SERVICE AND ADMINISTRATION
REPUBLIC OF SOUTH AFRICA

Private Bag X916, PRETORIA, 0001 • Tel: (012) 336 1000, Fax: (012) 336 1508
Private Bag X9148, Cape Town, 8000 • Tel: (021) 467 5120, Fax: (021) 485 5464

Mr MJ Zwane, MP
Minister of Mineral Resources
Private Bag X 59
ARCADIA
0007

Fax: 012 444 3145

Dear Colleague

**FILLING OF THE VACANT POST OF DIRECTOR-GENERAL: DEPARTMENT
OF MINERAL RESOURCES**

Your letter and the accompanying Cabinet Memorandum in the above regard, have reference.

I have noted the contents of the Cabinet Memorandum whereby you are recommending the appointment of Mr. MJ Manyi as Director-General of the Department of Mineral Resources.

According to the advertisement availed, the post of Director-General in your Department was advertised with the educational requirements of "an appropriate qualification (NQF Level 7) and a post-graduate qualification (NQF Level 8) as recognised by SAQA." In this regard, SAQA verified Mr. Manyi's highest qualification to be at NQF Level 7. Although Mr. Manyi's excellent knowledge of mining legislation as well as latest developments in the mining industry and his strategic capability and leadership skills as reflected in the Cabinet Memorandum have been duly noted; he however does not meet the educational requirements as clearly articulated in the advertisement for the post.

Furthermore, it is acknowledged that Mr. Manyi previously served as a Director General in 2 departments, i.e. the Department of Labour and Government Communication Information Systems; this was prior to the introduction of new entry requirements as outlined in the Directive endorsed by Cabinet.

Your Department's recommendation that Mr. Manyi be appointed as Director-General: Mineral Resources does not comply with the requirements of the post as advertised and with the provisions of the Directive on compulsory capacity development, mandatory training days and minimum entry requirements for the

Senior Management Service, issued on 1 April 2015 (as amended). Amongst the requirements of the said Directive are specific entry requirements regarding the minimum educational qualifications for the appointment of a Head of Department, which are **"an undergraduate qualification and a postgraduate qualification (NQF level 8) as recognized by SAQA."**

Against the above background, I am not in a position to table this appointment before Cabinet for concurrence due to the fact that the process as noted above does not comply with relevant prescripts, which will be regarded as irregular when subjected to audit processes.

As a way forward your Department may revisit the candidature of the other shortlisted candidates in order to determine their suitability or not for appointment to the post concerned. In the event that none of those candidates are being found suitable for appointment, the post will have to be re-advertised nationally in order to attract a new pool of candidates for consideration. In order to broaden the potential pool of candidates to be generated through such an advertisement, your Department may request identified potential candidates to submit their candidature for the post prior to the closing date of the advertisement. Applications received from such identified potential candidates must then be considered together with all other applications and all the normal selection processes will apply.

Kind regards



ADV. NGOAKO. A. RAMATLHODI, (DR.) (MP)
MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION

DATE: 08/06/2016

Top level skills and experience

- Governance at board level both in Private and Public Sector.
- Provided Advisory services to the Minister of Communications
- Proven Strategic thinking and Leadership skills.
- Executive management in both Private and Public Sector.
- Excellent negotiation skills and extensive network.
- Stakeholder Engagement and management.
- Proven track record of working under pressure.
- Over the years he has served on various boards and in leadership roles and he has a proven track record in the administration of large entities.
- His past leadership roles include being a member of Forum for Directors General (Fosad), Board member Peoples bank; Board member Computershare; Chairman BMF Investments; Board member & President of Black Management Forum, Council member Black Business Council; Council member of business Unity SA; Board member Brand SA; Board member at Media Development and Diversity Agency (MDDA) also served as Chairman of the Commission for Employment Equity.

Educational Qualifications

- Harvard & Wits Bus School : Senior Exec Programme- (1999)
- IMM & MASA : Chartered Marketer (SA) since 1999
- Wits Technikon : National Higher Diploma Economic Geology (1987)
- Technikon Northern TVL : National Diploma in Geology (1985)
- Jabulani High School : Matric with Exemption (1981)

Detailed Career History

Dates : September 2012 to date – Randwater.

Position : General Manager Randwater Academy

Duties

- Professionalising Engineers
- Professionalising Scientists
- Professionalising Process Controllers
- Professionalising Artisans
- Deploying graduates to the various municipalities

Dates : Feb 2011 – Aug 2012 GCIS/Cabinet Left due to Expiry of Contract

Position : CEO GCIS and Cabinet Spokesperson

Duties

- Accounting Officer for Departmental Budget of about R500m.
- Managing a staff complement of about 500 people.
- Develop and Implement communications strategy including community media development strategy
- Stakeholder and Reputation management.
- Develop Communication products and platforms
- Ensure coherent messaging across the whole Government
- Media management
- Spoke on behalf of Cabinet and communicated all Cabinet decisions.

Achievements : Launching a Government newspaper (Vuk'uzenzele)

Dates : Sep 2009 – Feb 2011 Department of Labour until Redeployed to GCIS

Position & Duties : Director General,

- Accounting Officer for Departmental Budgets of ~R 2bn
- Managing a staff complement of about 7 500 people
- Advise the Minister on formulation of Labour policies and regulations
- Oversee the Unemployment Insurance Fund (UIF) (~R30bn)
- Oversee the Compensation Fund (~R20bn)
- Oversee the Financial stability and good governance of the CCMA
- Leading and managing Skills development Act, Seta's and National skills Fund until they were transferred to the Department of Higher Education and Training. **Achievements** : Submitting 4 Labour Bills to Cabinet.

Date : June 2006 – Aug 2009 Tiger Brands - Resigned to joined Gvt

Position : Group Executive Corporate Affairs

Duties

- Lead Corporate Social responsibility programme
- Lead both Internal and External Communication
- Manage the reputation of the Company
- Management of External Stakeholders
- Represented Tiger in various bodies
- Represented the CEO in Business Leadership SA
- Member of Exco and attended board meetings.

Achievements: Leading the negotiation team that fully co-operated with the Competition Commission on the bread price fixing case, resulting in minimal penalties incurred.

Date : Jan 2005 – May 2006 IBM Head-hunted to join Tiger-brands

Position : Director Public Policy and corporate Affairs

Duties

- Lead BBBEE Implementation
- Lead Corporate Social Responsibility
- External stakeholder management
- Advised on Public Policy pertaining to ICT Policy

Dates : Jan 2004 – Dec 2004 Barclays Bank Plc. Head-hunted to join IBM

Position : Director Public Policy and Corporate Affairs

Duties

- Facilitate Funding of BEE transactions
- Lead Corporate Social responsibility across 12 countries in Africa
- Manage the reputation of the company
- Lead External Communication
- Lead Internal Communication
- Manage Stakeholder engagement
- Develop Public Policy strategy

Dates : Jan 2001 –Dec 2003 NEDCOR Group (Peoples Bank) Resigned to join Barclays

Position : Executive Director Business Banking and Marketing,

Duties

- Manage a loan book of about R900 000 000.
- Lead the sales team.
- Lead presentations to the credit committee.
- Engage with the Risk supervision department of the SA Reserve Bank.
- Over-all responsibility the growth of the Business banking
- Lead marketing and brand management of the bank
- Spear-headed the re-branding of Peoples Bank

Dates : Sep 1998 –Dec 2000 Meegbank Holdings Resigned to join Nedcor

Position : Group Exec Director Business development and Marketing

Duties

- Lead the growth and development of the bank.
- Lead the acquisition of large scale deposits.
- Liaised very closely with the treasury unit for wholesale deposits.
- Lead the marketing function
- Lead the re-branding and positioning of Bank of Transkei into an acceptable commercial bank, Meegbank
- Served on the Board of both the Group holding company and the bank

Dates : Jan1995 – Aug 1998 Toyota South Africa Resigned to Join Meegbank

Position & Duties : Sales Regional Manager and later General Manager (Transformation)

- Manage Corporate, Diplomatic and Government sales
- Meet sales targets on sedans and light commercial vehicles
- Manage and maintain relationships with clients during and after sale
- Keep clients abreast of vehicle built progress until delivery
- Collaborate very closely with the dealer network
- Use National Association of Automobile Manufacturing of SA figures for target setting in the growth of market share

Dates : Jan 1985 – Dec 1994 Anglo American. (Prospecting Services and President Brand)

Resigned to Join Toyota

Duties 5 years Exploration Geology and 5 years Mining Geology

- Hands on experience drawing up Geological maps and sections.
- Experience in structural mapping and interpretations
- Underground mapping experience of stopes, haulages, cross-cuts and raises
- Provide technical advice on physical characteristics of certain rock formations to enhance mine safety
- Experienced in Sedimentological and stratigraphic mapping.
- Ore body and resource modelling for life of mine estimations
- Project management of exploration ventures
- Topographical mapping, geological core logging and trench sampling
- Ability to prepare geological and mineral reports
- Environmental management of surface drilling sites.



**ASSESSMENT REPORT
STRICTLY CONFIDENTIAL**

NAME & SURNAME	Mzwanele Manyi
IDENTITY OR PASSPORT NR	640120 5536 083
RACE	African
GENDER	Male
DISABILITY	None
QUALIFICATIONS	National Higher Diploma
DATE OF ASSESSMENT	19 April 2016
CURRENT JOB TITLE	Advisor to the Minister
POSITION ASSESSED FOR	Director General

In order to comply with the Ethical Code for Psychologists, kindly note that this is a confidential report, the content of which is only for the information of the assessed and relevant senior management within the Department of Mineral Resources.

This assessment only relates to the generic managerial competencies required for effective performance as a member of the Executive Management Service. It does not reflect on the functional competencies required for specific roles within the Department. The implementation of the assessment results as contained in this report must be implemented in accordance with the requirements of the Directive on the use of competency based assessments for EMS in the Public Service.

Please note that these results may not be used for any other purpose unless the assessee consents thereto.

Contact Details:

**47 Landmarks Avenue,
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T +27 12 675 5000
F +27 12 675 5400
P O Box 10629, Centurion,
South Africa.
www.gjilma.com**

1. EXECUTIVE SUMMARY

The Candidate's Personality Profile indicates that he may generally assign tasks to delegates without necessarily obtaining their inputs and viewpoints, and tends to expect subordinates to work with minimum guidance and supervision. He appears to place focus on task demands in his management approach, and seems likely to be goal-orientated and results driven in nature. Although he may function effectively in stressful contexts, he appears inclined to enjoy more relaxed work environments where he can follow his own work pace. He has a proclivity for adopting disciplined and controlled work methods, and tends to be persuasive, influential, tactful and diplomatic in his interactions with colleagues. Mr. Manyi is likely to trust in the motives and intentions of his colleagues, and considers himself able to work independently, as well as within a team in his work environment. He may however lose heart when faced with setbacks and failures in his work context which could potentially affect his emotional resilience, and ability to motivate and inspire colleagues during difficult times at work.

The Candidate's Cognitive Profile reveals that he generally adopts a diagnostic approach to problem solving by identifying potential causes of problems, and devising applicable solutions. He tends to be effective in the application of analytical reasoning skills to make sense of unfamiliar information, but seems quite uncertain when placed in situations where he is not the knowledge expert. This may affect the application of his judgement in new work environments. He should consider developing his logical reasoning- and categorisation skills to help him order and structure information more effectively, and to enable him to work with more boldness and confidence in novel work contexts that are outside of his realm of experience and expertise.

Based on the comparison between Mr. Manyi's performance in the assessment (integrated findings on the performance in the generic managerial competency exercises, personality and capability measures) and the requirements for efficient and effective performance within the Public Service, the following are possible strengths and development areas:

Areas of Strength:

- He considers himself able to work independently as well as within a team-based context.
- He appears likely to be persuasive & influential in nature which may help him convince colleagues of new ideas regardless of his personal convictions.
- He tends to be proficient in the application of tactfulness & diplomatic skills.
- He reported himself to apply self-discipline & control in his approach to work.
- He may be able to assert his viewpoints & opinions when the situation necessitates it.

- He appears to be skilled in the application of analytical reasoning skills in new work environments.
- He considers himself to adhere to rules, regulations & procedures in his work environment.
- He tends to be persevering & conscientious in seeing tasks through to completion.
- He is likely to pay attention to tasks, goals & end-results in his management approach.

Areas of Development:

- He may overlook the practicality & feasibility of his proposed ideas & solutions at times.
- He may benefit from strengthening his categorisation skills to enhance his judgment capabilities.
- He could possibly benefit from strengthening his logical reasoning skills to help him process novel data with more boldness, speed & accuracy.
- His tendency to feel somewhat dejected in cases of setbacks may affect his emotional resilience & leadership capabilities.



2. ASSESSMENT METHODOLOGY

2.1 Cognitive Process Profile (CPP)

The Cognitive Process Profile (CPP) measures the way people think when dealing with new information and solving problems of varying complexity. It also assesses aspects of people's potential for future cognitive development and growth.

2.2 Occupational Personality Profile

The OPP is a general personality profile designed to assess a broad range of personality traits. These traits assess the candidate's characteristic ways of behaving across a wide range of situations. When interpreting this profile due weight should be given to other relevant factors such as: attitudes, previous experience, personal circumstances, education and training etc.

2.3 Competency Based Exercises

Management simulation exercises (Project, Planning, Reporting and Role Play) are specifically designed to measure generic executive managerial competencies which have been specifically identified as relevant to the Public Service.

3. INTEGRATED ASSESSMENT RESULTS

Proficiency Level Key

PROFICIENCY LEVEL	DESCRIPTOR
Not achieved	Poor demonstration of competency
2 Partially achieved	Marginal demonstration of competency
3 Achieved	Acceptable demonstration of competency
Exceeded expectation	Good demonstration of competency

CORE COMPETENCIES	DEMONSTRATED PROFICIENCY	DESCRIPTION
<p>Strategic Capability and Leadership Must be able to provide a vision, give direction and inspire others in order to deliver on the organisational mandate.</p>	<p>3 2 3 4</p>	<p>Mr. Manyi's personality profile indicates that he may prefer a Delegation Leadership style, which suggests that he may choose to delegate tasks to subordinates, and that he could expect them to work with minimum guidance and supervision. He considers himself to be somewhat more assertive than most, and may come across as somewhat dominant and pushy at times as he is inclined to challenge others and speak his mind. He also appears to favour a task-oriented approach to management, and is inclined to focus on goals and end-results in his work environment.</p>
	<p>2</p>	<p>His cognitive profile indicates that he tends to solve complex problems by accumulating practical and theoretical knowledge to diagnose situations before formulating applicable solutions and initiating action. When dealing with tasks of a complex nature, he investigates situations to pinpoint symptoms and causes of problems before proposing possible solutions. He seems to be quite effective in the application of analytical reasoning skills to subdivide and integrate unfamiliar information, and his preferred problem solving style also appears to be analytical in nature, which suggests that he solves problems using a precise, detailed and systematic approach. To further improve his strategic capability in unfamiliar situations, Mr. Manyi may need to improve his logical reasoning- and categorisation skills to help him classify novel information with more ease and speed, and to base arguments on logical evidence when processing novel data. This should help him apply his judgment with greater confidence in situations that are outside of his realm of experience and expertise, and may increase his strategic capability in situations where he is not the knowledge expert.</p>
		<p>In his role play and competency based exercise, Mr. Manyi identified several management shortcomings that may have a detrimental effect on the functioning of the department in response, he suggested the formulation of strategic objectives taking the internal and external departmental context into account. He proposed interventions in alignment to the National Development Plan and ASGISA initiatives of government, and understood the importance of establishing strategic partnerships to facilitate the delivery of the organisational mandate. He encouraged the use of technological systems to facilitate the sharing of knowledge and information across the organisation, but his proposed solutions were mostly reactive in nature, and Mr. Manyi would have benefited from anticipating organisational challenges more proactively across tasks. He did not identify trends between seemingly separate issues in the department, and could have done more to communicate the departmental vision and mission in a more motivational and inspirational manner in his exercises.</p>

<p>Programme and Project Management Must be able to initiate, plan, manage, monitor and evaluate specific outputs in order to achieve the desired objectives.</p>	<p>2</p>	<p>Mr. Manyi's personality profile suggests that he may prefer a balanced approach to work, and that he is unlikely to be overly competitive, or too relaxed in his attitudes. Although he may be able to work hard when necessary, he seems disinclined to enjoy working under pressure on a continuous basis. He may prefer following his own work pace and appears unlikely to deliver his best results in stressful situations that are characterized by continuous deadlines.</p> <p>Mr. Manyi's cognitive profile suggests that he may be relatively effective in the analysis of resource requirements when dealing with particularly complex and challenging tasks, but that he may not always foresee the long-term consequences of his proposed ideas or solutions in response to problems presented to him in novel contexts. Although he may generate ideas that are innovative and creative he may also at times overlook the practicality of his proposed solutions.</p> <p>In his role play and competency based exercises, Mr. Manyi suggested the implementation of an ERP system to optimize project planning, and synchronize implementation processes. He proposed projects that were likely to lead to the achievement of long-term strategic objectives, and understood the importance of conceptualizing interventions in consultation with relevant stakeholders. His project plans however did not clearly demonstrate his ability to plan work and deploy resources to ensure the delivery of results, and he could have presented a more compelling case to officials to facilitate the adoption of his project proposals. Mr. Manyi also overlooked the need for innovation in existing programs and projects in the department.</p>
<p>Change Management Must be able to initiate and support organisational transformation and change in order to successfully implement new initiatives and deliver on service delivery commitments</p>	<p>2</p>	<p>Mr. Manyi's personality profile suggests that he is quite good at thinking on his feet, and that he views himself as being more persuasive than most people. He is likely to be a moderately effective speaker when talking about familiar subjects, and as he tends to be quite aware of social expectations and demands, he may be able to hide his personal feelings and opinions when the situation necessitates it. His tendency to influence others also suggests that he could be relatively effective in situations that require a high degree of tactfulness and calculated diplomatic behaviour.</p> <p>His cognitive profile indicates that he has a proclivity for generating innovative and creative ideas, and that he may function quite proficiently in work contexts that allow him flexibility, and provide him with learning opportunities. His lack of confidence in his intuitive abilities may however affect his performance in more ambiguous, unstructured contexts that require a strategic focus.</p> <p>In his role play and competency based exercise, Mr. Manyi placed focus on organisational restructuring in light of planned</p>

<p>strategic objectives. He placed emphasis on the need to target communication efforts to intended stakeholders and recipients, and suggested the use of newsletters and bulletins to keep internal organisational members abreast of developments in the department. Mr. Manyi recommended communicating the benefits of planned interventions to obtain buy-in from role players, suggested conducting focus groups to sell new systems to staff members, and proposed the formulation of a media- and stakeholder engagement plan to help facilitate organisational transformation. He could have placed more focus on establishing a clear vision for change in his exercises, and would have done well to place more focus on the foreseen impact thereof. He could also have considered the appointment of change sponsors or agents, to help drive and oversee transformational processes in the organisation.</p>	<p>Mr. Manyi's personality profile indicates that he is likely to lack spontaneity, and that he tends to place importance on self-discipline and control in his approach to work. He has a proclivity for adhering to rules and regulations in his work context, and tends to be a little more conscientious and persevering than most of his colleagues. He is inclined to be somewhat conservative by nature, and may be relatively traditional in his attitudes towards work in general.</p> <p>His cognitive profile reveals that he may need to develop his ability to formulate arguments based on logical evidence. He may however be proficient in the identification of underlying patterns, trends, connections and relationships in unfamiliar data, and should be able to link seemingly separate issues together when processing new information.</p> <p>In his role play and competency based exercises, the candidate outlined fruitless and wasteful expenditures as a negative impact of non-adherence to procurement prescripts, and suggested involving National Treasury to conduct workshops for the purpose of ensuring compliance to the PFMA. He mentioned the role of an ERP system in strengthening internal controls, and proposed risk management initiatives to strengthen the department's internal audit function. His short-, and medium term financial inputs included the identification of budget needs, procedures to be put in place in case of budget deviations, and the preparation of cash flow plans in advance. He also recommended the formulation of long-term budgets that reflect the strategic direction of the organisation, and put forward several ideas to enhance financial accountability in the organisation. Mr. Manyi could however have placed more focus on determining the financial impact of strategic decisions in the unit, and did not put forward ideas to ascertain whether or not planned initiatives will deliver value for money.</p>	<p>Mr. Manyi's personality profile indicates that although he may maintain a positive mind-set at the onset of new tasks, initial failures and setbacks may however cause him to lose heart, which could potentially affect his emotional resilience, and ability</p>
<p>Financial Management Must be able to compile and manage budgets, control cash flow, institute risk management and administer tender procurement processes in accordance with generally recognised financial practices in order to ensure the achievement of organisational objectives.</p>		<p>People Management and Empowerment Must be able to</p>

manage and encourage people, optimise their outputs and effectively manage relationships in order to achieve organisational goals.

to motivate and inspire co-workers to persevere during difficult times. He does however see himself as being able to work self-sufficiently, as well as interdependently with colleagues. He is also likely to be as trusting as most, and sees little reason to question the motives and intentions of his colleagues.

In the role play and competency based exercise, Mr. Manyi placed focus on the implementation of performance management mechanisms in the department, inclusive of key performance areas that are directly aligned to strategic objectives. He made suggestions for the creation of job specifications, and the execution of recruitment plans to help fill vacant positions, and placed focus on maximizing cultural understanding in the unit, and improving workforce diversity. He distinguished between short- and long-term retention mechanisms, proposed inputs for the establishment of a competency readiness dashboard in the department and made propositions for finalizing the constitution of the bargaining council to facilitate healthy labour relations in the organization. His prioritized interventions were aimed at improving literacy levels and skills in the region, specifically amongst females and young adults, and he put forward ideas to standardize job grading processes, by executing benchmarking exercises.



4. CONCLUDING REMARKS

This report is based on the assessment results and evidence of competency provided by Mr. Manyi during the assessment. The candidate's strengths and areas of development in respect of the core managerial competencies are reflected in the table below:

CORE COMPETENCIES	STRENGTH (3 & 4)	DEVELOPMENT AREA (1 & 2)
Strategic Capablity and Leadership		2
Programme and Project Management		2
Change Management		2
Financial Management		2
People Management and Empowerment	3	

Mr. Manyi should consider training and development interventions in respect of the learning focusses highlighted in Appendix A.



Jolene Geldenhuis
Industrial Psychologist
PS 0118044
Date: 25 April 2016



Marnelle van Rooyen
Counselling Psychologist
PS 0107182
Date: 25 April 2016

Appendix A: Learning focus per Core Competency

Strategic Capability and Leadership	<p>Strategic Planning and Management</p> <ul style="list-style-type: none"> Analyzing the External and Internal environment Develop a Strategic Intent Develop and Evaluate a Strategic Business Plan <p>Leadership for Good Governance</p> <ul style="list-style-type: none"> Beyond Management: the Art of Leadership Leading for Strategic Alignment From Motivation to Inspiration Considerations for an African Leadership Approach Principles and Practices of Good Governance <p>Leading Innovation in the public service</p> <ul style="list-style-type: none"> Create and manage an environment that promotes innovation Opportunities for Innovation Techniques Promoting Creativity Creating Environments Conducive of Innovation Leading a Team Through Creative Thinking processes
Programme and Project Management	<ul style="list-style-type: none"> Program Life Cycles In Government Program Success and Ministerial Oversight Managing Inherent and Residual Risks in Programs The Project Life Cycle Project Management Knowledge Areas Project Documentation Projects in a Global and Culturally Diverse Setting
Change Management	<p>Leading Change</p> <ul style="list-style-type: none"> Instituting Change and Leading Transition Practical Guidelines for Leading Change Change and Transition: the Strategy Link
Financial Management	<p>Financial Management & Budgeting</p> <ul style="list-style-type: none"> Introduction to the Public Sector Financial Management Planning, Budgeting and Performance Management Risk Management, Internal Control and Supply Chain Management In-Year Monitoring and Reporting
People Management and Empowerment	<p>Strategic Human Resource Management</p> <ul style="list-style-type: none"> Strategic Human Resource Management and Planning Recruitment and Selection of the Right People Challenges to and Opportunities for Strategic Human Resource Management Performance Management Labour and Employment Relations
Knowledge Management	<p>Policy Formulation & Implementation</p> <ul style="list-style-type: none"> Policy Formulation Policy Implementation Policy Monitoring and Evaluation Education and Training for Policy Development <p>Research Methodology for ENS in Public Service</p> <ul style="list-style-type: none"> Research and Management in the Developmental Public Service Needs Assessment Research Research Planning, Design and Strategies Identification and Formulation of Research Problems Presentation and Communication of Research Results Research Proposals and Dissertation Ethics Implications and Consideration in Research
Client-orientation and Customer Focus	<p>Communication & Customer Focus Strategies</p> <ul style="list-style-type: none"> Communication In Government Communication Strategy and Planning Communication and Customer Focus Strategies



**MINISTRY
PUBLIC SERVICE AND ADMINISTRATION
REPUBLIC OF SOUTH AFRICA**

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Honourable M J Zwane, MP
Minister of Mineral Resources
Private Bag X 59
PRETORIA
0001

Fax: (012) 444 3145

Dear Colleague

**FILLING OF VACANT POST OF DIRECTOR-GENERAL: DEPARTMENT OF
MINERAL RESOURCES**

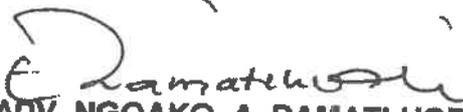
This serves to inform you that Cabinet has, at its meeting of 01 March 2017, concurred with the appointment of Mr T S Mokoena to the above-mentioned post at a remuneration package of R1 689 750 per annum, for a term of five (5) years, with effect from a date as agreed to between yourself and the appointee.

Kindly note that the appointee must sign the prescribed employment contract attached as Annexure 2 of the Public Service Regulations, 2016 and must also enter into a performance agreement within three months after assumption of duty. The incumbent is also expected to obtain a relevant security clearance to be conducted by the State Security Agency.

It would be appreciated if you could forward a copy of the signed employment contract at your earliest convenience to the Department of Public Service and Administration, marked for the attention of Ms Rhulani Makhubela, Chief Director: Public Service Leadership Management (tel. 012 336 1108).

Attached please find a draft letter of appointment for your consideration and possible use.

Kind regards


ADV. NGOAKO. A. RAMATLHODI, (DR.) (MP)
MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION
DATE: 06/03/2017





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

Mr M.R. Baloyi, MP
Minister for the Public Service and Administration
Private Bag X884,
PRETORIA,
0001

Dear Colleague,

TRANSFER OF MR T J MASEKO TO THE DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

I concur, subject to the President's approval, with the transfer of Mr T J Maseko, the Director-General of the Government Communication and Information System (GCIS), in terms of section 12(3)(a) to the post of Director-General of the Department of Public Service and Administration (DPSA). The proposed effective date of the transfer, namely the date following the date that the President signs the President's Minute, is also supported.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M.F.OC Chabane'.

M.F.OC Chabane, MP
Minister for Performance Monitoring, Evaluation and Administration in The Presidency

Date: 2/2/2011

EXPLANATORY MEMORANDUM

1. According to section 12(3)(a) of the Public Service Act, 1994 (promulgated under Proclamation No. 103 of 1994), the President may during the term of office of the head of a national department transfer him or her to perform functions in a similar capacity in any national department for the remainder of his or her term. Such transfer may only occur if the relevant head of department consents to the transfer or, after due consideration of the head's representations, the transfer is in the public interest (section 12(3)(d) of the Public Service Act).
2. The President's Minute proposes the transfer of Mr TJ Maseko, the Director-General of the Government Communication and Information System (GCIS), to the post of Director-General of the Department of Public Service and Administration (DPSA). The post of Director-General of the DPSA is vacant. The transfer of Mr Maseko is proposed to coincide with the transfer of Mr Manyi, the Director-General of the Department of Labour, to the post of Director-General of the GCIS.
3. The responsible executive authority for the GCIS, the Minister for Performance Monitoring, Evaluation and Administration in The Presidency concurs with the proposed transfer of Mr Maseko (see herewith a copy of his letter to the Minister for the Public Service and Administration in this regard).
4. The proposed effective date of the transfer is the date following the date the President signs the Minute until 30 June 2012, being the date that Mr Maseko's term expires. The proposed transfer was discussed with Mr Maseko and he is in agreement.



**MINISTRY: PUBLIC SERVICE AND ADMINISTRATION
REPUBLIC OF SOUTH AFRICA**

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NO.: 2234.

Mrs A M Dreyer (DA) to ask the Minister of Public Service and Administration:

Whether (a) his department and (b) any entities reporting to him has paid out the remainder of any employee's contract before the contractually stipulated date of termination of the contract since the 2008-09 financial year up to the latest specified date for which information is available; if so, (i) what amount has (aa) his department and (bb) entities reporting to him spent on each such payout, (ii) to whom were these payouts made and (iii) what were the reasons for the early termination of the contracts in each specified case?

NW2593E

REPLY

Mr. Themba Mveli James Maseko (Director General-Department of Public Service and Administration) was appointed in the DPSA on 4 February 2011. His employment contract covered the period 4 February 2011 until 30 June 2012. He offered to resign on 22 July 2011 (the Minister offered to re-determine his term of Office), he was paid out for the remainder of his contract period.

REPLY

(i) R1,202,849.94

(ii) Mr. Themba Mveli James Maseko

Reply to the Parliamentary Question 2234 [NW 2593 E] ask by Mrs A M Dreyer (DA) to the Minister of the Public Service and Administration

(iii) Redetermination of term of office of the Director General by the Minister of Public Service and Administration

REPLY ORIGINATOR

Name: Thabang Ntsiko
Designation: Deputy Director: HRP
Contacts: 012 336 1163

Recommended / Not recommended

Ms Linda Shange
Deputy Director-General (Acting) – Corporate Services
Date

Recommended / Not recommended

Mr Mashwahle Diphofa
Director-General: Public Service and Administration
Date:

Recommended / Not Recommended

Hon. Ayanda Dlodlo, MP
Deputy Minister for Public Service and Administration
Date:

Approved/ Not approved

Hon. Nathi Mthethwa, MP
Minister for Public Service and Administration (Acting)
Date:

23. Public Service & Administration (cont)	Mr T J Maseko	04 February 2011	30 June 2012	Transferred from GCIS to DPSA w.e.f. 04/02/2011 until 30/06/2012 (i.e. for remainder of contract). Re-determination with last day 21/07/2011(He offered to resign on 22 July 2011 but the Minister offered to re-determine his term of Office)
		Mr K Govender (Acting)	06 October 2011	Acting
		Mr K Ndaba (Acting)	31 October 2011	Acting
	Mr M Diphofa	15 October 2011	31 December 2012	Transferred from OPSC w.e.f. 15 October 2011 for remainder of contract, i.e. 31/12/2012. Only assumed duty w.e.f. 01 November 2011
		01 January 2013	31 December 2015	Extended. Seconded to establish Office of Standards. Re-assumed duties as DG w.e.f. 1 October 2013
	Mr N Nkontwana	01 January 2016	31 December 2020	Extended On voluntary absence leave from 17 October 2017
		02 April 2013	31 July 2013	Transferred to the Dept of Traditional Affairs w.e.f. 01 February 2018 for the remainder of his contract -- 31 December 2020
		01 August 2013	30 September 2013	Acting
	Mr K Ndaba	23 October 2013	01 November 2013	Acting
		Mr W Vukela	13 October 2017	05 April 2018
Acting				

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The Honourable
Mr Richard Baloyi, MP
Minister for Public Service and Administration
Batho Pele House
Pretoria
0001

Dear Minister,

REDETERMINATION OF CONTRACT: TMJ MASEKO - DG DPSA

Our meeting of the 10 June 2011 and today, 15 June 2011 regarding the above-mentioned matter refers.

I hereby confirm that I am indeed accepting the proposal for my contract to be re-determined with effect from 1 July 2011.

As I indicated at our meetings, I believe I have served the South African public for the past 16 years with distinction and honour. My public service career started as a Member of Parliament in 1994. I left parliament after a year to assume the position of Superintendent General in the Gauteng Department of Education. I joined national government when I was appointed Director General in the departments of Public Works and GCIS.

During these years, I served the South African public and the South African Government with honour, dedication, loyalty and distinction. I take the opportunity to thank the South African government for giving me the opportunity to serve.

The time has come for me to move on and create opportunities for other South Africans to make a contribution to strengthen our democracy. South Africa is not short of talent.

I have now had the opportunity to study the proposal made by Mr Alvin Rapea and hereby confirm that I accept paragraph 4.1 under 'Exit mechanisms'. I believe that this is a fair and reasonable way to exit the public service. I am grateful to you for making my exit to be as amicable as possible.

Although I will be exiting the public service, please be assured of my availability to serve my government in whatever capacity in future. I've accumulated so much knowledge and skills in the public service and I feel obliged to offer my skills in whatever way possible in the future.

Thank you,

Kind Regards,



Themba Maseko

Director General

Date: 15 June 2011.

STATE CAPTURE

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DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION**CABINET MEMORANDUM NO ?? OF 2006****DATE: ?? JUNE 2006****FILE NUMBER: ?????****FILLING OF THE POST OF CHIEF EXECUTIVE OFFICER OF THE GOVERNMENT
COMMUNICATION AND INFORMATION SYSTEM****1 SUBJECT**

Filling of a post of Chief Executive Officer of the Government Communication and Information System.

2. PURPOSE

To obtain Cabinet's approval for the appointment of Mr TJ Maseko to the advertised post of Chief Executive Officer of the Government Communication and Information System.

3. SUMMARY

It is the intention of the Minister in the Presidency to appoint Mr TJ Maseko to the post of Chief Executive Officer on the establishment of the Government Communication and Information System.

DISCUSSION

On 25 January 2006 Cabinet noted that it is the intention of the Minister in the Presidency that the functions of the CEO GCIS and the Head PCAS would be separated during the coming year. Upon the separation of these functions and the appointment of a suitable CEO of the GCIS, Mr JK Netshitenzhe would relinquish his duties at the GCIS and solely focus on his responsibilities and duties as the Head of the PCAS in The Presidency for the 5 year extended term of his office.

The relevant post was advertised in terms of the Cabinet discussion of 25 January 2006 in the Sunday Times from 9 April 2006 to 24 April 2006.

A total of 23 applications for the post were received.

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During the evaluation process of applications received, it became clear that only one of the applicants met the very minimum of requirements for the advertised post of CEO: GCIS.

On 26 April 2006 the Executing Authority agreed to a process of head hunting to augment the available list of candidates for the position.

The following key performance areas for this post have been identified:

- Knowledge and Understanding of Communication Strategies;
- Understanding of Government Policies and Programmes;
- Spokesperson of government and Cabinet;
- Providing Leadership to the Media Development and Diversity Agency (MDDA);
- Providing leadership to the International Marketing Council (IMC);
- Serving as Accounting Officer.

In early May 2006 the Executing Authority noted the outcome of the head hunting process and agreed to interviews to be scheduled for Mr TJ Maseko (head hunted candidate) and Mr S Muofhe (applicant).

A selection committee was constituted consisting of:

Dr EG Pahad, Minister in the Presidency (Chairperson of the Panel)
Dr P Jordan, Minister of Arts and Culture
Dr I Matsepe-Cassaburi, Minister of Communications
Dr F Chikane, Director General, The Presidency
Mr J Netshitenzhe, Head PCAS, The Presidency and Current CEO GCIS.

The Committee conducted interviews with the 2 short listed candidates on 29 May 2006. After thorough consideration of the candidature of these individuals Mr TJ Maseko was found to be the most suitable candidate for the post. The security clearance for Mr TJ Maseko has been obtained from NIA.

During the interview Mr Maseko showed a good grasp of the breadth and depth of the responsibilities of the CEO GCIS. In addition he reflected confidently on some of the challenges related to GCIS in the coming period, specifically as it relates to the consolidation of current activities and initiatives as well as possible new areas of work so as to ensure better functioning of Multi Purpose Community Centres (MPCCs) and targeting various strata of SA society. In addition he demonstrated a good understanding of ways in which to make use of information and communication technology to deepen communication for development.

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Mr Maseko did not extensively reflect on the work and challenges with regard to the IMC and MDDA although he did indicate a keen understanding of the importance to broaden and entrench media diversity and improve international marketing.

Mr Maseko is an energetic person with a good understanding of the importance of communication and has extensive experience in the management and control of large budgets and organisations.

The panel agreed that Mr Maseko reflected a clear and focused understanding of government policy and communication challenges. He has shown that he had thought about the issues, including new initiatives to improve the work of the GCIS. He will need the support of communications professionals and would also need assistance to fill the gaps with respect to the work and leadership in relation to the IMC and MDDA.

Mr Maseko confirmed to the panel that, should he be successful in his candidature for the position of CEO GCIS, he will relinquish all positions and interests in private sector initiatives and companies he currently is involved with.

In terms of the guidelines for the appointment of Directors-General in the Public Service a security clearance must be obtained before submitting to Cabinet.

A copy of the candidate's application form and curriculum vitae is attached for information

The other candidate interviewed for the position, was found to be unsuitable for the post.

5. **ORGANIZATIONAL AND PERSONNEL IMPLICATIONS**

The relevant vacant post exists on the establishment of the Government Communication and Information System. The appointee will fill the post on the establishment.

FINANCIAL IMPLICATIONS

The post has been budgeted for and funds are available to cover the relevant expenses.

7. **COMMUNICATION IMPLICATIONS**

The Department will inform the candidate of his appointment, if Cabinet concurs and also inform the other candidates that have been unsuccessful.

8. **STRATEGIC FOCUS**

None

9. **CONSTITUTIONAL IMPLICATIONS**

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None

10. OTHER DEPARTMENTS / INSTITUTIONS CONSULTED

None

11. RECOMMENDATION

That Cabinet concurs with the appointment of Mr TJ Maseko to the advertised post of Chief Executive Officer for the GCIS with an all inclusive salary package of R885 714 plus 10% allowance per annum, for a term of five years with effect from a date as agreed by the relevant Executing Authority and the appointee. This takes into account that Mr TJ Maseko had been a director-General of Department of Public Works for three years.

12. CONTACT PERSON

Ms I Langa can be contacted at tel: (012) 314 2402 /082 5521314, should there be any enquiries on the particulars provided in this Memorandum.

AUTHORISATION FOR DISTRIBUTION**MS GJ FRASER-MOLEKETI MP****MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION****SECRET**

Ms GJ Fraser-Moleketi
Minister for the Public Service and Administration
Private Bag X884
PRETORIA

Dear Colleague

FILLING OF THE VACANT POST OF CEO GCIS: GOVERNMENT COMMUNICATIONS

The post mentioned above was advertised nationally in the Sunday Times from 9 April 2006 to 24 April 2006.

After assessment of these applications against the key performance areas and requirements attached to the post as advertised, candidates were shortlisted. A Selection Committee conducted interviews with all the shortlisted candidates. Dr EG Pahad, Minister in the Presidency was the Chairperson and Mr Louis du Plooy, acted as scribe to assist the Committee.

After thorough consideration of the candidature of these individuals against the backdrop of the particular requirements and circumstances of the post, Mr TJ Maseko was found to be the most suitable candidate for the post.

The following documents regarding the filling of the post are attached:

- i) Copy of advertisement
- ii) A list of the candidates who applied for the post
- iii) A Cabinet Memorandum for submission to Cabinet
- iv) Comments on suitability of shortlisted candidates.

In view of the aforementioned, it will be appreciated if you can obtain Cabinet's approval for the appointment of Mr TJ Maseko on a 5-year term of office, to the post of CEO: GCIS, with a salary of R885 714 plus a 10% allowance per annum, with effect from a date to be agreed between myself and the nominee. This takes into account that Mr TJ Maseko had been a Director-General of Public Works for three years.

Thank you for your co-operation and assistance.

Kind regards

Dr E PAHAD
MINISTER IN THE PRESIDENCY
DATE:

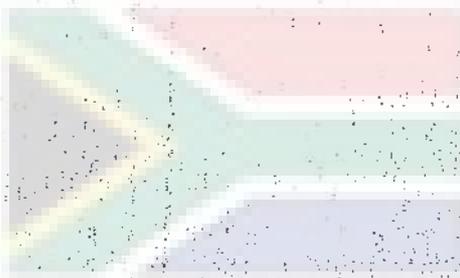
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MINISTER IN THE PRESIDENCY; REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

20 June 2006

Mr TJ Masoko
PO Box 1257
Bromhof
2154



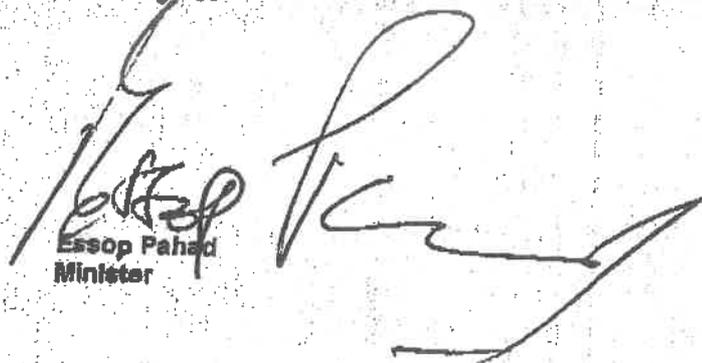
Dear Mr Masoko

APPOINTMENT TO THE POST OF CHIEF EXECUTIVE OFFICER: GOVERNMENT COMMUNICATION AND INFORMATION SYSTEM

It is my pleasure to inform you that I have, in terms of the provisions of section 9 and 12 of the Public Service Act, 1994 and based on a recommendation of the Minister of Department of Public Service and Administration in terms of the provisions of section 3(3)(1), and 11 of the Act, approved your appointment to the relevant post of Chief Executive Officer with an all-inclusive salary package of R685 714 per annum on the salary band R672 628 - R940 056 for a term of three years with effect from 1 July 2006.

Your conditions of service will be those prescribed by the Public Service Act, 1994, the Public Service Regulations as well as the conditions contained in Chapter 8 of the Senior Management Service handbook.

Kind regards


Essop Pahad
Minister

mail 16457590

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**MINISTRY: PUBLIC SERVICE AND ADMINISTRATION
REPUBLIC OF SOUTH AFRICA**
Private Bag X884, Pretoria, 0001, Tel: (012) 314 7911, Fax: (012) 328 6529
Private Bag X9148, Cape Town, 8000, Tel: (021) 465 5491/2/3, Fax: (021) 465 5484

Mr EG Pahad
Minister in the Presidency
Private Bag X745
PRETORIA
0001

Fax: (012) 328 7447

Dear Colleague

**FILLING OF POST OF CHIEF EXECUTIVE OFFICER: GOVERNMENT
COMMUNICATION AND INFORMATION SYSTEM**

This serves to inform you that Cabinet has, at its meeting of 14 June 2006, concurred with the appointment of Mr TJ Maseko to the above-mentioned post with effect from his date of assumption of duty at a remuneration package of R885 714 per annum for a period of three years.

Kindly note that the appointee must sign the prescribed employment contract attached at Annexure 2 (Part 1) of the Public Service Regulations, 2001 and must also conclude a performance agreement within three months after assumption of duty. Please ensure that the provisions of the Department of Public Service and Administration Circular 1/7/1/4/1 dated 25 April 2003 pertaining to the payment of a non-pensionable HoD allowance are captured in the employment contract.

It would be appreciated if you could forward a copy of the signed employment contract at your earliest convenience to the Department of Public Service and Administration, marked for the attention of Ms D Mereeotlhe, Director: Senior Management Services (tel: 012 336 1351).

Attached please find a draft letter of appointment for your consideration and possible use.

Kind regards

M. G. Fraser-Moleketi
MS G. FRASER-MOLEKETI
MINISTER

20/07/06



government communications

Department:
Government Communication and Information System
REPUBLIC OF SOUTH AFRICA

Private Bag X745, PRETORIA, 0001 Midtown Building, cnr Prinsloo and Vermeulen Streets, PRETORIA
Tel: (012) 314 2911, Fax: (012) 323 3831 website: www.gcis.gov.za

EMPLOYMENT CONTRACT PROMULGATED UNDER SECTION 12 OF THE PUBLIC SERVICE ACT, 1994 (PROCLAMATION NO 103 OF 1994) FOR HEAD OF DEPARTMENT

ENTERED INTO BY AND BETWEEN

The Government of the Republic of South Africa herein represented by Dr Essop Pahad in the capacity of Executing Authority of Minister in the Presidency (hereinafter referred to as the Employer)

and

Themba James Maseko as Head of Department (herein after called the Employee).

WHEREBY IT IS AGREED AS FOLLOWS:

1. Appointment

1.1 The Employer hereby appoints the Employee, who agrees and accepts appointment as Head of Government Communication and Information System in terms of section 12 of the Public Service Act, 1994 (hereinafter referred to as the Act) for a period of three years commencing on the 28th day of June 2006 and terminating on the 27th day of June 2009.

1.2 In terms of this Contract-

1.2.1 the Employee shall serve the Employer as Head of the Government Communication and Information System at such place as may from time to time be directed by the Employer;

1.2.2 the Employee will be responsible for the efficient management and administration of Government Communication and Information System as contemplated in section 7(3)(b) read with section 7(4) of the Act and as set out in the Performance Agreement referred to in clause 7.

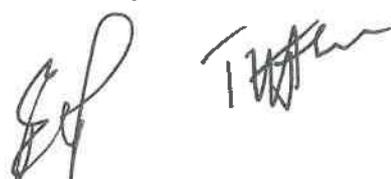
1.2.3 the Employee is also responsible for the exercise of the powers and the performance of the functions entrusted to a head of department in general or to the incumbent of Head of Department of Government Communication and Information System in particular, by or in terms of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), the Act or any other law.

1.2.4 the employment of the Employee is subject to a security clearance of top secret

1.2.5 any matters arising out of this contract, which are not specifically provided for herein, shall be dealt with in accordance with the provisions of the Act, the Public Service Regulations, 2001, (hereafter referred to as the Regulations) and any other legal provisions applicable to the Employee.

2. Remuneration

- 2.1 The remuneration that the Employee shall receive as from the date of assuming duty as stated in clause 1 above, is that specified in Appendix A.
- 2.2 The salary and benefits will be payable in twelve (12) equal monthly instalments on the fifteenth day of each month and should the fifteenth fall on a Saturday, Sunday or public holiday, on the preceding working day.
- 2.3 The general conditions of service and benefits specified in Appendix A will be as stipulated and provided for in terms of the Act, and the Regulations. The parties to this Contract accept that the general conditions of service and benefits in Appendix A may be changed from time to time by means of determinations by the Minister for the Public Service and Administration.
- 2.4 Subject to section 7(4)(b) of the Act, the Employee will also qualify for participation in the other benefits and special privileges normally bestowed on a Head of Department as far as this is arranged accordingly in this Contract or other applicable prescripts.

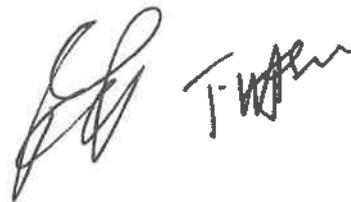


- 2.5 When required to perform official duties away from his headquarters, the Employee shall travel at the Employer's expense and shall be paid a subsistence allowance in accordance with the prescribed provisions.
3. **Deployment during the contract period and re-appointment on expiry of the Contract.**

The Employee acknowledges that he familiarised himself with the provisions of section 3B and 12 of the Act.

4. **Termination of employment**

- 4.1 The term of office of the Employee may be terminated in the following ways:
- 4.1.1 On reaching the prescribed (or earlier optional) retirement age [section 16(1), (2), 2(A) and (4)] of the Act.
 - 4.1.2 On completing a term or extended term of office [section 16(3) of the Act].
 - 4.1.3 Premature retirement at own request of Employee [section 16(5) of the Act].
 - 4.1.4 Discharge in terms of any of the subsections of section 17 of the Act.
 - 4.1.5 Re-determination of original term or extended term of office by the Employer [section 12(1) or (2) of the Act].
 - 4.1.6 Voluntary resignation.
 - 4.1.7 Death.
- 4.2 Pension and other payable benefits are directly linked to the specific section of the Act which is utilised, as regulated by the Government Employees Pension Fund Law, 1996, the regulations promulgated thereunder as applicable to a Head of Department and the Regulations.
- 4.3 Subject to the provisions of sections 16(5) and 12(1) or (2) of the Act, and the Labour Relations Act, 1995, either party may, after consultation and agreement, terminate the Contract before the expiry of an original term of office or an extended term of office, by



giving to the other party three months' notice of termination, which notice shall-

4.3.1 be given in writing; and

4.3.2 be given on or before the last day of a month and take effect on the first day of the succeeding month.

4.4 Should notice of termination be given as contemplated in clause 4.3, the Employer has the right to require the Employee to vacate the office occupied by him and to leave the premises of the Department before the expiry of the three months notice period on a day stipulated by the Employer and not to present himself for duty any time thereafter.

4.5 Should the Employer invoke the provisions of clause 4.4, the Employee will still be entitled to all such benefits as contained in the relevant prescripts

4.6 In the case of inefficiency and misconduct, the Employer may deal with him, in accordance with the relevant labour legislation and any directive issued by the Minister.

5. Renewal and extension of term of office

5.1 The Employer shall in writing confer with the Employee at least two calendar months prior to the expiry of the term contemplated in clause 1 (supra) whether he proposes to retain the Employee in service for any extended period not exceeding five years (60 calendar months), or not. If the Employee is so informed of such intention to retain him in service for an extended term, he shall in writing inform the Employer, within one calendar month from the date of that communication, of his acceptance or not of such extended employment.

5.2 In the event that agreement is reached that the Employee shall enter into a further Contract on termination or completion of his Contract, the continued service of the Employee will be recognised under the new Contract so as to avoid any break of service and any accrued or pro rata entitlement will be carried forward into the new Contract.

5.3 Should the Employer not renew the Contract period beyond the initial period as stated in Clause 1 above, the Employee shall be entitled to the pension and other benefits directly linked to the specific section of the Act which is utilised.



6. Conduct

6.1 The Employee undertakes to the Employer that he-

6.1.1 shall without the applicable consent and during his employment or at any time thereafter, disclose any record, as defined in section 1 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), that must or may be refused upon a request for access to a record of a public body in terms of that Act, whether or not that Act is in force;

6.1.2 shall not, during his employment or at any time thereafter, use any record so defined and obtained as a result of his employment, to be detriment of the State, except if it used in the exercise or protection of any right, or legitimate expectation, conferred by law;

6.1.3 shall-

- (a) if so requested by the Employer during his employment or on the termination of his employment, submit to the Employer any record so defined and in the Employee's possession as a result of his employment; and**
- (b) not retain any copies of or extracts from such record, except with consent of the Employer; and**

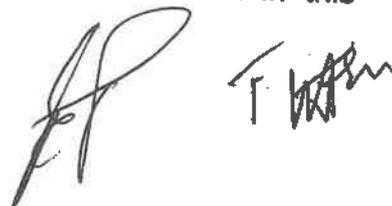
6.1.4 shall comply with the prescribed Code of Conduct.

6.2 The Employee-

6.2.1 acknowledges that he has carefully considered the provisions of the clause;

6.2.2 agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the Employer and the Government of the Republic of South Africa and that if he should at any time dispute the reasonableness of this clause, then the onus of proving such unreasonableness will be upon him; and

6.2.3 acknowledges that he entered into this Contract freely and voluntarily and that no circumstances exist and/or existed for him alleging either now or at any future time that he was at a disadvantage in agreeing to the restraints set out in this



clause or was other than in an equal bargaining position with the Employer in agreeing to such restraints.

7. Additional terms and conditions

The Employer and the Employee hereby agree to the following additional terms and conditions as contemplated in section 12(4) of the Act-

7.1 The Employee shall enter into an annual performance agreement with the Employer, linked to a specific financial year, which shall include at least the following:

7.1.1 Salary increases will be based on the performance of the Employee. Performance will be assessed in accordance with his responsibilities and key performance areas contained in his performance agreement and the extent to which the Employee complied therewith, as well as any directives which the Minister for the Public Service and Administration may issue. Salary increases for the Employee will be based on individual consultation. The Employee along with the Employer have the responsibility to consult regarding his salary increase and cash bonus within the restrictions of the budget based on the performance of the Employee. The salary increase and cash bonus of the Employee shall be based on determinations, directives and guidelines issued by the Minister for the Public Service and Administration.

7.1.2 An annual performance agreement provided for in terms of paragraph 7.1 above linked to a specific financial year, stating clear performance areas/criteria/deliverables of the Department and the Employee must be entered into for the duration of this Contract. As performance agreements are linked to financial years, it should be entered into at the latest on 30 April every year for the duration of this Contract. The Employee should enter into his first performance agreement not later than three months after assumption of duty. In terms of the Public Service Regulations VII B.2 the Employer shall record delegations and/or authorisation in the performance agreement.

7.1.3 The performance agreement shall be revised if, at any time during its term, the work or environment of the Department is so altered (whether as a result of Government or management decision or otherwise) that the contents of it are no longer appropriate.



7.1.4 This Contract is directly linked to the performance agreement referred to in 7.1 *supra*. In the event that the Employee does not perform satisfactorily in relation to the requirements of his performance agreement, the Employee acknowledges that the Employer may deal with him, in accordance with the procedure contained in the relevant labour legislation and any other directives by the Minister.

8. General

8.1 Good faith

In the implementation of this Contract, the parties undertake to observe the utmost good faith and they warrant in their dealing with each other that they will neither do anything nor refrain from doing anything that might prejudice or detract from the rights, assets or interests of each other.

8.2 Applicability of the Act

Any matters arising from this Contract, which are not specifically provided for herein, shall be dealt with in accordance with the provisions of the Act, as amended, the aforesaid Regulations, and other relevant legislation.

8.3 Interpretation of Agreement

The interpretation of this Contract shall be governed by the laws and legal principles applicable in the Republic of South Africa

8.4 Jurisdiction of courts

8.4.1 The Employee submits to the jurisdiction of the Courts of the Republic of South Africa in the event of any legal proceedings arising from the provisions of this Contract.

8.4.2 It shall not be a breach of the Contract if a party to this Contract is prevented from or hindered in the performance or observance of its obligations hereunder by any Act of Parliament or other action of the State or by any cause or event outside the control of that party.

8.5 Variation

8.5.1 The Contract constitutes the whole of the agreement between the parties to this Contract relating to the subject

matter of this Contract, and save as otherwise provided, no amendment, alteration, addition or variation of any right, term or condition of this Contract will be of any force or effect unless reduced to writing and signed by the parties to this Contract.

8.5.2 The parties agree that there are no conditions, warranties or representations, whether oral or written and whether expressed or implied or otherwise, save those contained in this Contract, the Public Service Act, 1994, the Public Service Regulations, collective agreements and other relevant legislation (e.g. Government Employees Pension Fund Law).

8.6 Waiver

No waiver of any of the terms and conditions of this Contract will be binding for any purpose unless expressed in writing and signed by the party giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party in exercising any right, power or privilege precludes any other or further exercise thereof or the exercise of any other right, power or privilege.

9. Notice and Domicillum

9.1 The parties choose as their respective *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary in terms of this Contract the following addresses-

	Employer	Employee
Physical address	<u>Union Buildings</u> <u>Gaut Ave.</u> <u>P.A</u>	<u>11 Hillman Street</u> <u>Woodmead East</u> <u>Senolton</u>
Postal address	<u>P. Bag X1000</u> <u>Pretoria</u> <u>0001</u>	<u>P.O. Box 76134</u> <u>Wendywood</u> <u>2144.</u>
Telefax Number	<u>012 300 5779</u>	

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provided that a party reports any changes of his *domicilium* to any other physical address, postal address or telefax number by written notice to the other party. Such change of address will be effective seven days after receipt of notice of the change of *domicilium*.

9.2 All notices to be given in terms of this Contract will-

9.2.1 be given in writing; and

9.2.2 be delivered or sent by prepaid registered post or by telefax; and

9.2.3 if delivered, be presumed to have been received on the date of delivery; or

9.2.4 if sent by prepaid registered post, be presumed to have been received within three business days of posting unless contrary is proved; or

9.2.5 if sent by telefax, be presumed to have been received on the first business day following the date of sending of the telefax unless the contrary is proved.

SIGNED by the Employer at [Signature] on the 24 day of August.

AS WITNESSES:

1. [Signature]

2. _____

EMPLOYER (EXECUTING AUTHORITY ON BEHALF OF THE GOVERNMENT)

SIGNED by the Employee at Pretoria on the 11 day of July 2006.

AS WITNESSES:

1. [Signature]

2. J. Shokwane

EMPLOYEE (HEAD OF DEPARTMENT)

**SENIOR MANAGEMENT PERFORMANCE AGREEMENT
GOVERNMENT COMMUNICATIONS AND INFORMATION SERVICES (GCIS)**

BETWEEN

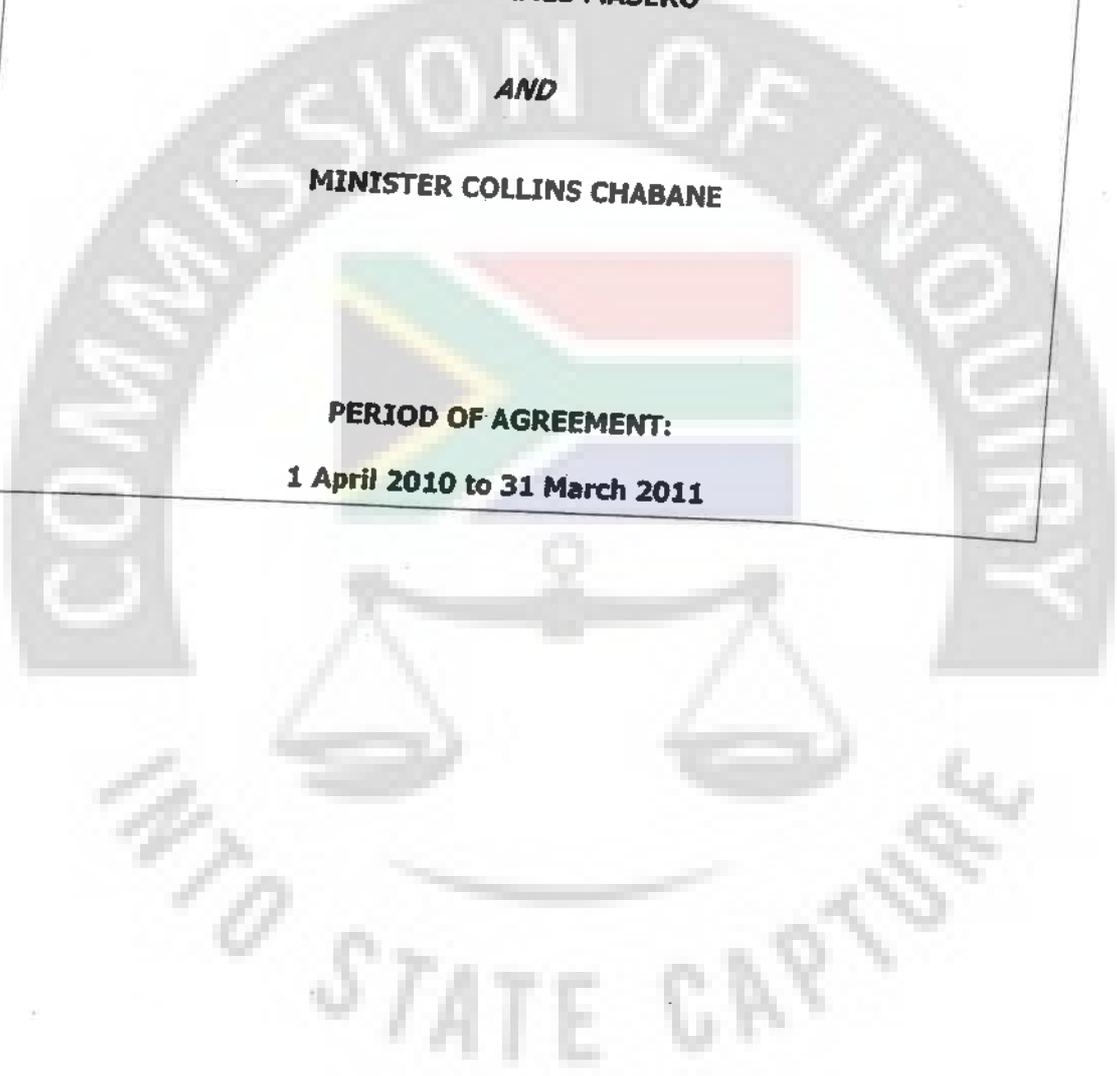
THEMBA JAMES MASEKO

AND

MINISTER COLLINS CHABANE

PERIOD OF AGREEMENT:

1 April 2010 to 31 March 2011



1. JOB DETAILS

Persal number :15857590
 Component :GCIS
 Location :Pretoria
 Salary level : 16
 Notch (package) :
 Occupational classification : Director-General
 Designation : Chief Executive Officer

2. JOB PURPOSE

To provide strategic leadership and coordination of Government Communication System that ensures that the public is informed and have access to government programmes and policies that benefit them

3. JOB FUNCTIONS

1. Government/Cabinet Spokesperson
2. Accounting Officer of GCIS

4. REPORTING REQUIREMENTS/LINES & ASSESSMENT LINES

Themba James Maseko shall report to the Minister in the Presidency: Performance, Monitoring & Evaluation and Administration as his supervisor on all parts of this agreement. The SMS member shall:

- (1) Timeously alert the supervisor of any emerging factors that could preclude the achievement of any performance agreement undertakings, including the contingency measures that she/he proposes to take to ensure the impact of such deviation from the original agreement is minimised.
- (2) Establish and maintain appropriate internal controls and reporting systems in order to meet performance expectations.

- (3) Discuss and thereafter document for the record and future use any revision of targets as necessary as well as progress made towards the achievement of performance agreement measures.

5.2 In turn the supervisor shall:

- (1) Create an enabling environment to facilitate effective performance by the SMS member.
- (2) Provide access to skills development and capacity building opportunities.
- (3) Work collaboratively to solve problems and generate solutions to common problems within the department that may be impacting on the performance of the SMS member.

5. PERFORMANCE APPRAISAL FRAMEWORK

Performance will be assessed according to the information contained in the work plan and the Core Management Criteria (CMC) framework. The specific KRAs and CMCs together with their weightings are, for example, as follows:

- 5.1 The KRAs and CMCs during the period of this agreement shall be as set out in the table below.
- 5.2 The SMS member undertakes to focus and to actively work towards the promotion and implementation of the KRAs within the framework of the laws and regulations governing the Public Service. The specific duties/outputs required under each of the KRAs are outlined in the attached work plan. KRAs should include all special projects the SMS member is involved in. The work plan should outline the SMS member's specific responsibilities in such projects.

KEY RESULT AREAS (KRAs)	Botho Pele Principles	Weight
Provide authority and leadership in government communications by ensuring better performance by the communication system	3,5	35
Ensure effective functioning of GCIS as Accounting Officer	2,6,8	35
To provide strategic leadership to the MDDA and the IMC	1	20
Networking with strategic partners to build and strengthen relations in the pursuit of GCIS vision	3,5,7,8	10

5.3 The SMS member's assessment will be based on her/his performance in relation to the duties/outputs outlined in the attached work plan as well as the CMCs marked here-under. Only five CMCs should be selected (✓) from the list that are deemed to be critical for the SMS member's specific job.

CORE MANAGEMENT CRITERIA	Batho Pele Principles	Weight	CORE MANAGEMENT CRITERIA	Batho Pele principles	Weight
Strategic capability Leadership	1	20	Problem solving and Analysis	7	5
Programme and Project Management	8	10	People Management and Empowerment	1 and 4	10
Financial Management	8	10	Client Orientation and Customer Focus	4 and 8	5
Change Management	6 and 7	5	Communication	5	10
Knowledge Management	5	5	Honesty and Integrity	8	10
Service Delivery Innovation	4	10	TOTAL		100%

1. Consultation
2. Service Standards
3. Access
4. Courtesy
5. Information
6. Openness and Transparency
7. Redress
8. Value for money

6. DEVELOPMENTAL REQUIREMENTS

A suitable developmental programme will be determined in due course.

7. TIMETABLE AND RECORDS OF REVIEW DISCUSSIONS AND ANNUAL APPRAISAL

Annual evaluation at the publication of the Annual Report: **October 2011**

8. MANAGEMENT OF PERFORMANCE OUTCOMES

Identify and specify what actions will be taken in recognition of superior performance or to address poor/non-performance: (These should be based on Chapter 4 of the SMS Handbook).

9. DISPUTE RESOLUTION

- 9.1 Any disputes about the nature of the senior manager's PA, whether it relates to key responsibilities, priorities, methods of assessment and/or salary increment in this agreement, shall be mediated by:
- 9.2 If this mediation fails, the dispute-resolution procedure referred to in the SMS Handbook and/or the prescribed grievance procedures will apply.

10. AMENDMENT OF AGREEMENT

Amendments to the agreement should be in writing and can only be effected after discussion and agreement by both parties.

11. SIGNATURES OF PARTIES TO THE AGREEMENT

The contents of this document have been discussed and agreed with the SMS member concerned.

Name of SMS member: Themba James Maseko

Signature: *[Handwritten Signature]*

Date: 24.05.2010

AND

Name of supervisor of SMS member: Minister Collins Chabane

Signature: *[Handwritten Signature]*

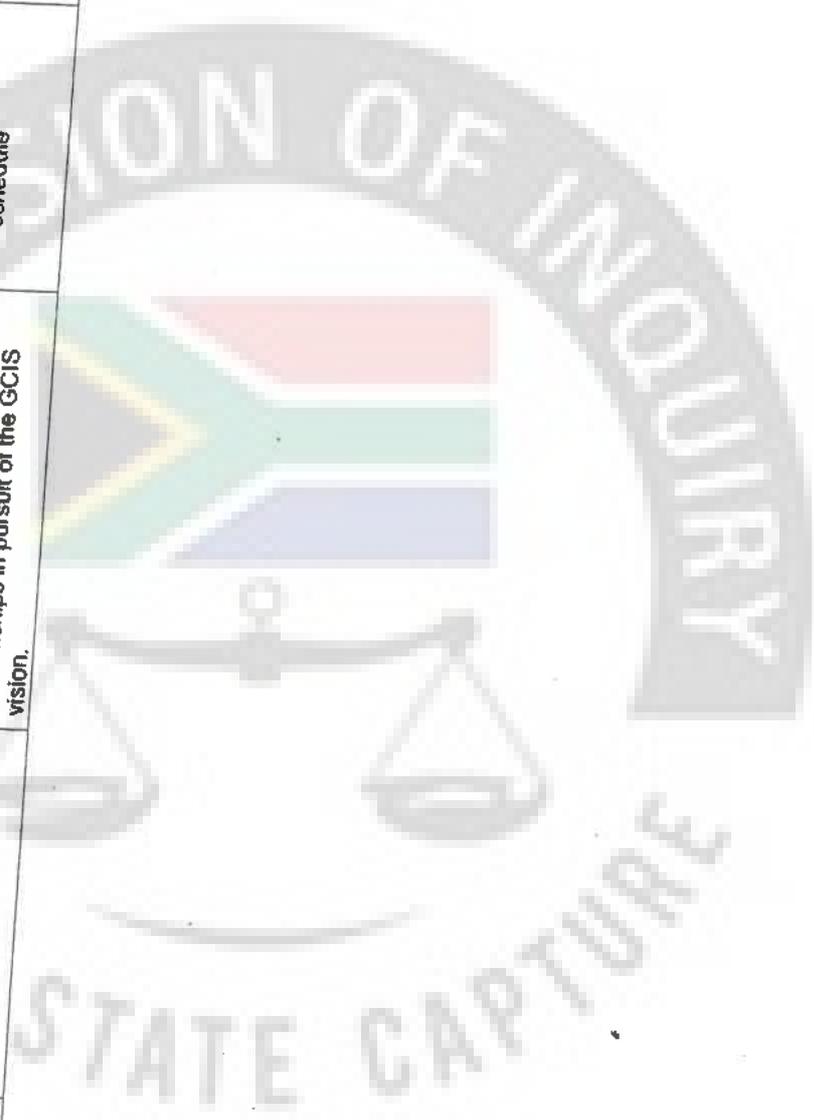
Date: 2010/05/25

Purpose:

To provide strategic leadership and coordination of government communication system that ensures that the public is informed and have access to government programmes and policies that benefit them.

CORE RESPONSIBILITIES	OUTPUT	PERFORMANCE MEASURE/INDICATOR	TARGET (Date, Totals, Period)	BUDGET	RESPONSIBLE OFFICIAL
<p>Key objective 1</p> <p>Provide strategic leadership in government communications aligned to the NCSF and driven by the priorities of government's MTSF.</p> <p>Provide authority and leadership in government communications by ensuring better performance by the communication system</p>	<p>A communication system that enables all citizens to be well informed about governments policies, plans and programmes</p>	<ul style="list-style-type: none"> To provide platforms for govt communicators to plan and identify communication opportunities across all spheres and sectors of government. 	<ul style="list-style-type: none"> Weekly meetings with HOCs Facilitate weekly media briefings by delivery depts Quarterly Com Forum for all Govt. Communicators 		CEO
<p>Key objective 2</p> <ul style="list-style-type: none"> Operate an efficient, effective and compliant government communication organization <p>Strategy: Ensure implementation of effective strategic business planning and performance monitoring in line with relevant legislation</p> <p>Ensure effective functioning of GCIS as Accounting Officer</p>	<p>Cabinet decisions linked to the MTSF of government are communicated to the citizens of SA</p>	<ul style="list-style-type: none"> Post-Cabinet media briefings held and statements issued. 	<ul style="list-style-type: none"> Biweekly or guided by the cabinet schedule 		CEO
<p>Strategy: Provide effective and efficient oversight role to the public entities</p> <p>To provide strategic leadership to the MDDA and the IMC</p>	<p>Effective implementation of the GCIS' corporate strategy.</p> <p>The effective functioning of the MDDA to fulfil the developmental communication goal</p>	<p>Alignment of GCIS strategic objectives and its operations with relevant legislation and the management of all resources.</p> <p>Monitoring and evaluation of organisational performance status against set targets.</p> <p>Public Entity mandate and governance process clearly articulated in the accountability framework</p>	<p>Bi weekly EXCO and MANCO meetings</p> <p>Quarterly performance information evaluated</p> <ul style="list-style-type: none"> Accountability framework updated annually Bimonthly meetings to ensure compliance to the Act. 		CEO

CORE RESPONSIBILITIES	Output	PERFORMANCE MEASURE/INDICATOR	TARGET (Date, Totals, Period)	BUDGET	RESPONSIBLE OFFICIAL
	An effective and efficient functioning IMC	Public entities' mandate and governance process clearly articulated in the accountability arrangement/framework	<ul style="list-style-type: none"> Accountability framework updated annually; and Monitoring and evaluation (M&E) management meetings held at quarterly 		CEO
<p>Key objective 3: Build partnerships with strategic stakeholders in pursuit of the GCIS vision</p> <p>Strategy: Build and sustain networks and strategic partnerships to build and strengthen relations in the pursuit of GCIS vision</p>	<p>High level partnerships maintained</p>	<p>Represent GCIS at meetings/ events that will help strengthen/maintain relationships in pursuit of the GCIS vision.</p>	<ul style="list-style-type: none"> As per the CEO's schedule 		CEO



GENERIC CORE SMS MANAGEMENT CRITERIA AND STANDARDS
STANDARDS – BATHO PELE PRINCIPLES INCORPORATED
GENERIC

CRITERIA	DESCRIPTION	WEIGHTING
<p>1. Strategic Capability and Leadership</p> <ul style="list-style-type: none"> ◊ Gives direction to team in realising the organisation's strategic objectives; ◊ Impacts positively on team morale, sense of belonging and participation; ◊ Develops detailed action plans to execute strategic initiatives; ◊ Assists in defining performance measures to evaluate the success of strategies; ◊ Achieves strategic objectives against specified performance measures; ◊ Translates strategies into action plans; ◊ Secures co-operation from colleagues and team members; ◊ Seeks mutual benefit/win-win outcomes for all concerned; ◊ Supports stakeholders in achieving their goals; ◊ Inspires staff with own behaviour – "walks the talk"; ◊ Manages and calculates risks; ◊ Communicates strategic plan to the organisation; and ◊ Utilises strategic planning methods and tools. 	<ul style="list-style-type: none"> ◊ Provide a vision and direction for GCIS and inspire EXCO/MANCO to implement the corporate strategy 	<p>20</p>
<p>2. Programme and Project Management</p> <ul style="list-style-type: none"> ◊ Establishes broad stakeholder involvement and communicates the project status and key milestones monthly ◊ Defines roles and responsibilities for project team members and clearly communicates expectations monthly ◊ Balances quality of work with deadlines and budget monthly ◊ Identifies and manages risks to the project by assessing potential risks and building contingencies into project plan monthly ◊ Uses computer software programmes to help manage projects as required ◊ Sets and manages service level agreements with contractors monthly 	<ul style="list-style-type: none"> ◊ Manages, monitors and evaluates specific activities in order to deliver the desired outputs and outcomes through biweekly EXCO and MANCO meetings 	<p>10</p>
<p>3. Financial Management</p> <ul style="list-style-type: none"> ◊ Demonstrates knowledge of general concepts of financial planning, budgeting and forecasting and how they interrelate ◊ Develop risk management systems, manage and monitors financial risk monthly ◊ Continuously looks for new opportunities to obtain an save funds ◊ Prepares financial reports and guidelines based on prescribed format within 5 days of request 	<ul style="list-style-type: none"> ◊ Ensure implementation of effective strategic business planning and performance monitoring, in line with Public Finance Management Act (PFMA), 1999 (Act 1 of 1999), requirements. 	<p>10</p>

CRITERIA	STANDARD - BATHO PELE PRINCIPLES INCORPORATED GENERIC	DESCRIPTION	WEIGHTING
4. Change Management	<ul style="list-style-type: none"> ◇ Understands and weighs up financial implications of propositions ◇ Understands, analyse and monitors financial reports monthly ◇ Allocates resources to establish goals and objectives biannually ◇ Aligns expenditure to cash flow projections monthly ◇ Develops corrective measures/actions to ensure alignment of budget in line with the strategic objectives of the organisation annually ◇ Effective utilisation of financial resources and show compliance to PFMA and input on monthly basis ◇ 100% expenditure on budget ◇ Reduce audit queries by 25% ◇ Prioritise responses to audit queries and provide answers and information requested by auditors within 3 days ◇ Monitor expenditure vs. budget and ensure money is well spent on budgeted items on a monthly basis ◇ Produce all required inputs for departmental strategic plan and annual report and any other reports of the department ◇ Performs analysis to determine the impact of changes in the social, political and economic environment on an ongoing basis ◇ Keep self and others calm and focussed during times of change and ambiguity ◇ Initiates, supports and encourages new ideas ◇ Volunteers to lead change efforts outside of own work team ◇ Consults and persuades all the relevant stakeholders of the need for change ◇ Inspires and builds commitment within own area for the change by explaining the benefits of change and process of implementing the change ◇ Coaches colleagues on how to manage change ◇ Identifies and assists in resolving resistance to change with stakeholders ◇ Designs specific projects to enable changes that are aligned to the organisational objectives ◇ Uses the political, legislative and regulatory processes of the Public Service to drive and implement change efforts ◇ Uses appropriate information systems to manage organisational knowledge ◇ Uses modern technology to stay abreast of world trends and information 	<ul style="list-style-type: none"> ○ Initiates, supports and champions organisational transformation and change in order to successfully implement new initiatives and deliver on service delivery commitments 	5
5. Knowledge Management	<ul style="list-style-type: none"> ○ Promotes the generation and sharing of knowledge and learning in order to enhance the collective knowledge of the 		5

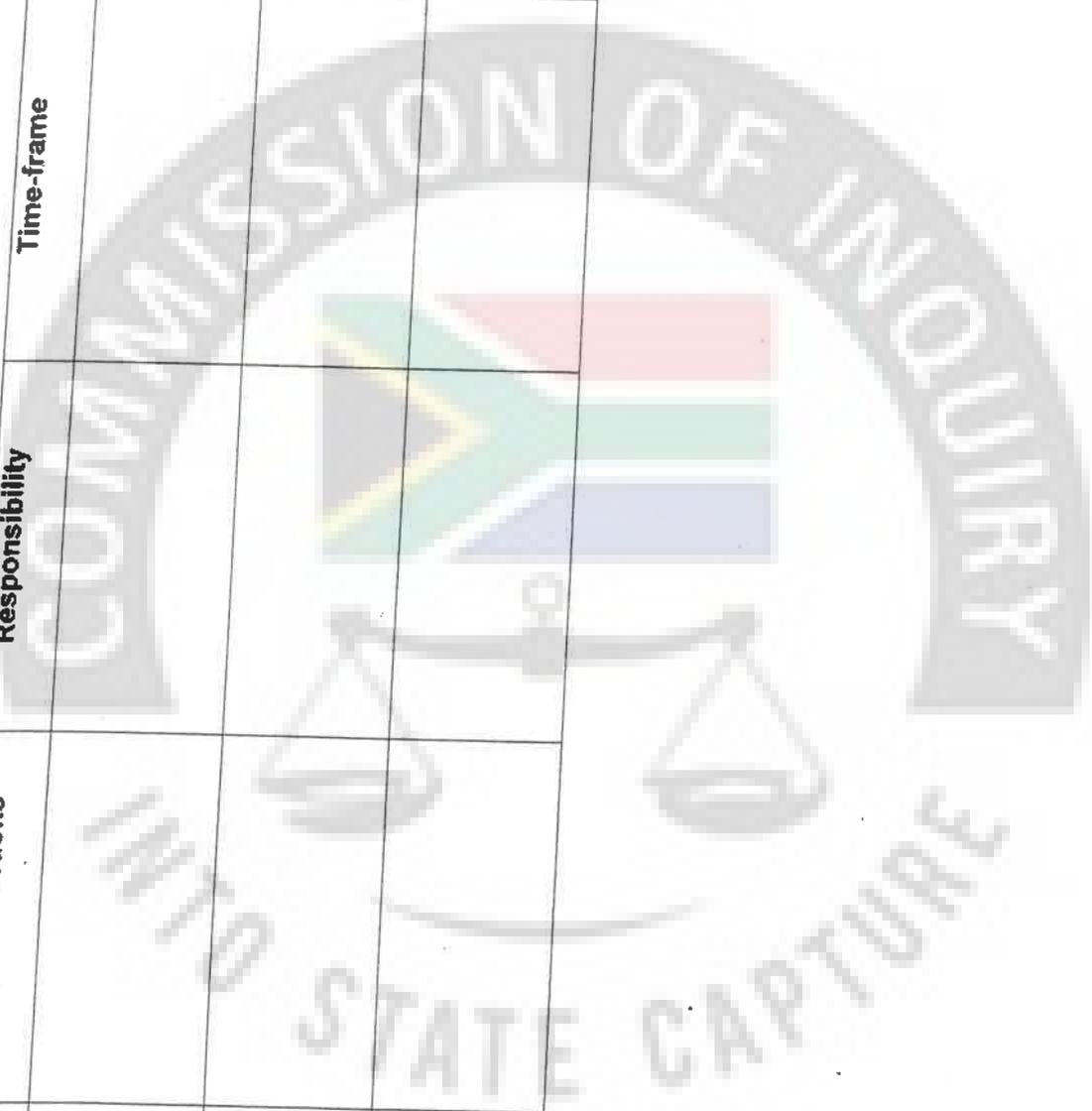
CRITERIA	STANDARD 10 GENERIC	DESCRIPTION	WEIGHTING
	<ul style="list-style-type: none"> ◊ Evaluates information from multiple sources and uses information to influence decisions ◊ Creates mechanisms and structures for sharing of knowledge in the organisation ◊ Uses libraries, researchers, knowledge specialists and other knowledge bases appropriately to improve organisational efficiency ◊ Promotes the importance of knowledge sharing within own area ◊ Adapts and integrates information from multiple sources to create innovative knowledge management solutions ◊ Nurtures a knowledge-enabling environment ◊ Consults clients and stakeholders on ways to improve the delivery of services monthly ◊ Formulate and implement Initiatives aimed at improving service delivery in my section ◊ Communicates the benefits of service delivery improvement opportunities to stakeholders continuously ◊ Identifies internal process improvement opportunities to SDI quarterly ◊ Demonstrates full knowledge of principles on service delivery innovations ◊ Identifies and analyse opportunities where innovation ideas can lead to improved service delivery ◊ Creates mechanisms to encourage innovation and creativity within functional area and across the organisation and department ◊ Implements innovative service delivery options in the department ◊ Respond to all correspondence within 5 working days ◊ Attend all meetings invited to or send written apology ◊ Explains potential impact of problems to own working environment ◊ Demonstrates logical problem solving approach and provides rationale for proposed solutions ◊ Determines root causes of problems and evaluates whether solutions address root causes ◊ Demonstrates objectivity, thoroughness, insightfulness and probing behaviours when approaching problems ◊ Demonstrates the ability to break down complex problems into manageable parts and identify solutions ◊ Seeks opportunities to increase personal contribution and level 	<p>organisation</p> <ul style="list-style-type: none"> ◊ Champion new ways of delivering services that contribute to the improvement of organisational processes in order to achieve organisational goals 	<p>10</p> <p>5</p> <p>10</p>
6. Service Delivery Innovation			
7. Problem solving and analysis			
8. People			

CRITERIA	STANDARDS - BATHO PELE PRINCIPLES INCORPORATED GENERIC	DESCRIPTION	WEIGHTING
Management and Empowerment	<ul style="list-style-type: none"> ◇ of responsibility ◇ Contribute towards the development of the HR Plan regarding targeted recruitment and staff retention, HR forecasting and HR supply projections ◇ Develop and support subordinates to get further training ◇ Supports and respects the individuality of others and recognises the benefits of diversity of ideas and approaches ◇ Delegates and empowers others to increase contribution and level of responsibility ◇ Applies labour and employment legislation and regulations consistently ◇ Facilitate team goal setting and problem solving ◇ Recognise individuals and teams and provide developmental feedback in accordance with performance management principles ◇ Adheres to internal and national standards with regards to HR practices ◇ Deals with labour matters ◇ Identifies competencies required and suitable resources for specific tasks ◇ Displays personal interest in the well-being of colleagues ◇ Able to manage own time as well as the time of colleagues ◇ Manages conflict through a participatory transparent approach ◇ Develop an HR plan focussing on the following strategies for targeted recruitment and retention, forecasting, human resource supply projections, policies and programmes, evaluation of human resource planning effectiveness on a quarterly basis ◇ Align training and development to organisational strategic goals on a quarterly basis ◇ Develop and support sub ordinates to get further training on a quarterly basis 	people, optimises their outputs and effectively manages relationships in order to achieve organisational goals	
9. Client orientation and customer focus	<ul style="list-style-type: none"> ◇ Develops clear and implementable service delivery programmes ◇ Identifies opportunities to exceed the expectations of customers ◇ Designs internal work processes to improve customer service ◇ Adds value to the organisation by providing exemplary customer service ◇ Adds value to the organisation by providing exemplary customer service ◇ Applies customer rights in own work environment 	<ul style="list-style-type: none"> ○ Willing and able to deliver services effectively and efficiently in order to put the spirit of customer service into practice 	5

CRITERIA	STANDARDS - BATHO PELE PRINCIPLES INCORPORATED GENERIC	DESCRIPTION	WEIGHTING
10. Communication	<ul style="list-style-type: none"> ◊ Contribute towards client satisfaction and retention ◊ Client service standards as per SLA and achieve 80% of service standard as indicated in the SLA ◊ Enhanced relationship management by reporting on service standard and achievements internally and to client on a monthly basis ◊ Implement BEE policy and incubator strategy within 3 months and monitor compliance monthly ◊ Expressive ideas to individuals and groups both in formal and informal settings in an interesting and motivating way on a monthly basis ◊ Receptive to alternative viewpoints ◊ Adapts communication content and style according to the audience including managing body language effectively ◊ Delivers messages in a manner that gains support commitment and agreement ◊ Writes well structured complex documents as per deadline ◊ Communicates controversial sensitive messages to stakeholders tactfully ◊ Listens well and is receptive ◊ Encourages participation and mutual understanding ◊ Respond to all correspondence within 5 working days 	<ul style="list-style-type: none"> ◊ Exchanges information and ideas in a clear and concise manner appropriate for the audience in order to explain, persuade, convince and influence others to achieve the desired outcome 	10
11. Honesty and integrity	<ul style="list-style-type: none"> ◊ Conducts self in accordance with organisational code of conduct ◊ Admits own mistakes and weaknesses and seeks to help from others where unable to deliver ◊ Reports fraud, corruption, nepotism and misadministration within 24 hours of discovery ◊ Honours the confidentiality of matters and does not use it for personal gain or the gain of others ◊ Discloses conflict of interest issues within 24 hours of discovery ◊ Establishes trust and shows confidence in others ◊ Treats all employees with equal respect ◊ Undertakes roles and responsibilities in a sincere and honest manner ◊ Incorporates organisational values and beliefs into daily work ◊ Uses work time for organisational matters and not for personal matters ◊ Shares information openly, whilst respecting the principle of confidentiality 	<ul style="list-style-type: none"> ◊ Displays and builds the highest standards of ethical and moral conduct in order to promote confidence and trust 	10

APPENDIX C: PERSONAL DEVELOPMENT PLAN

Competency to be addressed	Proposed actions	Responsibility	Time-frame	Expected outcome
A suitable developmental programme will be determined in due course.				





government communications

Department:
Government Communication and Information System
REPUBLIC OF SOUTH AFRICA

Private Bag X745, PRETORIA, 0001 Midtown Building, cnr Prinsloo and Vermeulen Streets, PRETORIA
Tel: (012) 314 2911, Fax: (012) 323 3631 website: www.gcis.gov.za

Minister Collins Chabane
Performance Monitoring, Evaluation and Administration
The Presidency
Private Bag X 100
PRETORIA
0001

26 October 2010

Dear Minister Chabane,

PERFORMANCE ASSESSMENT 2008/9: THEMBA MASEKO

We are in receipt of the outcome of Mr Themba Maseko's Performance Assessment for 2008/9 financial year and in the process of implementation thereof.

We however have the following challenges:

1. In annexure H where you need to indicate your final decision you recommended a cash bonus without indicating the percentage. You also indicated that you concur with the advice of the evaluation panel which does not recommend a cash bonus.
2. It is a requirement that if you deviate from the decision of the evaluation panel, you indicate such and provide reasons for the deviation (see attached Annexure H).
3. In terms of the Performance Management Development System Chapter 4 for SMS members he needs an overall score between 130% - 149% to qualify for a cash bonus.
4. You scored him 129% that is 1% short. The panel scored him 114%.

I am kindly suggesting that you review the attached and advise accordingly.

PHUMLA WILLIAMS
DCEO: CORPORATE SERVICES

File in SM

1

SENIOR MANAGEMENT PERFORMANCE AGREEMENT

DEPT PUBLIC SERVICE & ADMINISTRATION

BETWEEN

**Dr. Ellen Nelly Kornegay
Deputy Director General
(the employee)**

AND

**Mr. James Themba Maseko
Director-General The Department of Public Service and Administration
(the employer)**

Public Service and Administration

2011 -06- 08

Staatsdiens en Administrasie

Public Service & Administration

Private Bag / Privaatsak 916

2012 -05- 02

Pretoria 0001

Staatsdiens & Administrasie

Ellen Kornegay

T. Maseko

**PERIOD OF AGREEMENT:
(01 April 2011 until 31 March 2012)**



government communications

Department
Government Communication & Information System
REPUBLIC OF SOUTH AFRICA

Private Bag X745, Pretoria, 0001 ● Midtown Building, cnr Prinsloo and Vermeulen Streets, PRETORIA

Tel: (+27 12) 314 2356 ● Fax: (+27 12) 324 4452 ● Website:
www.gcis.gov.za

STATEMENT ON THE CABINET MEETING OF 2ND FEBRUARY 2011

Cabinet held its ordinary meeting in Pretoria yesterday, 2nd February 2011

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

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

assistance and support to our communities in a coordinated manner.

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

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

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

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

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

Cabinet noted that President Jacob Zuma will be delivering his State of the Nation Address on the evening of the 10 February. The address will be followed by a

debate in the National Assembly and a series of media engagements by the Ministers. The Minister of Finance will deliver his budget speech in Parliament on the 23rd February 2011.

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

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

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

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

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

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

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

the Government Communication and Information System (GCIS).

Enquiries: Themba Maseko

Contact : 083 645 0810

www.gcis.gov.za; www.info.gov.za





"Confidential"

FPI/LER1468/1668

15th November 2018**Mr. Zondo**

Deputy Chief Justice

Judicial Commission - Enquiry into State Capture

Johannesburg

South Africa

Ref: SPS01/0002/NS

Dear Mr. Zondo,

1. **Ajay Gupta; Passport # Z1876211**
2. **Rajesh Kumar Gupta; Passport # M00006520**
3. **Atul Gupta; Passport # 477486059**
4. **Duduzane Zuma; Passport # M00006518**
5. **Mabel Mentor; Passport # E00004317**
6. **Fana Hlongwane; Passport # M00013538**

This is with reference to the Subpoena dated 7th November 2018; received by us on 14th November 2018; seeking information under the applicable data protection laws of South Africa pertaining to the above individuals.

Re Subjects 1-5: Our records indicate that the subjects had travelled on our various flights. Travel details from 01-May-2010 to 31-Oct-2010 is provided as enclosure.

Re Subject 6: Please be advised that we do not find any travel on our flights pertaining to the Subject during 01-May-2010 to 31-Oct-2010.

Yours Sincerely

Dr. Abdulla Al Hashimi
Chief of Group Security

Encl: as stated above

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For South African Judicial Commission Use Only

Sub.No	Passenger Name	NAT	DOB	Passport No	PNR	Ticket No	Flight Date	Flight No	From	To	Seat No
1	GUPTA/AJAYMR	IN	05-Feb-1966	Z1876211	JVEUHS	1762128993638	02-May-2010	EK0762	JNB	DXB	002E
							03-May-2010	EK0510	DXB	DEL	001F
	GUPTA/AJAYKUMARMR	IN	05-Feb-1966	Z1876211	JND3AW	1762124375107	07-May-2010	EK0513	DEL	DXB	002F
							07-May-2010	EK0763	DXB	JNB	002F
							11-Aug-2010	EK0762	JNB	DXB	001E
							12-Aug-2010	EK0510	DXB	DEL	001E
	GUPTA/AJAYKUMARMR	IN	05-Feb-1966	Z1876211	K7FXGS	1761601532909	14-Aug-2010	EK0511	DEL	DXB	002E
							14-Aug-2010	EK0765	DXB	JNB	001F
	GUPTA/AJAYKUMAR	ZA	05-Feb-1966	Z1876211	KFXKFS	1763799084402	22-Aug-2010	EK0766	JNB	DXB	001E
							23-Aug-2010	EK0308	DXB	PEK	001B
							25-Aug-2010	EK0307	PEK	DXB	002E
							26-Aug-2010	EK0763	DXB	JNB	001E
	GUPTA/AJAYKUMARMR	IN	05-Feb-1966	Z1876211	K7FXGS	1761601532909	02-Oct-2010	EK0762	JNB	DXB	001E
							03-Oct-2010	EK0510	DXB	DEL	001A
GUPTA/AJAYMR	IN	05-Feb-1966	Z1876211	JV4G8W	1763799445952	04-Oct-2010	EK0515	DEL	DXB	001E	
						05-Oct-2010	EK0761	DXB	JNB	002A	

Sub.No	Passenger Name	NAT	DOB	Passport No	PNR	Ticket No	Flight Date	Flight No	From	To	Seat No
2	GUPTA/RAJESHKUMARMR	ZA	05-Aug-1972	M00006520	J63FEN	1769740895613	31-May-2010	EK0766	JNB	DXB	003F
							01-Jun-2010	EK0506	DXB	BOM	001F
	GUPTA/RAJESHKUMARMR	ZA	05-Aug-1972	M00006520	BPXQWS	1761601119586	24-Jul-2010	EK0515	DEL	DXB	001A
							25-Jul-2010	EK0761	DXB	JNB	001A
	GUPTA/RAJESHKUMAR	ZA	05-Aug-1972	M00006520	F3K8KW	1763799084403	22-Aug-2010	EK0766	JNB	DXB	003A
							23-Aug-2010	EK0308	DXB	PEK	001J
							26-Aug-2010	EK0307	PEK	DXB	001E
							27-Aug-2010	EK0765	DXB	JNB	001K

Sub.No	Passenger Name	NAT	DOB	Passport No	PNR	Ticket No	Flight Date	Flight No	From	To	Seat No
3	GUPTA/ATULMR	ZA	14-Jun-1968	477486059	HRDNNS	1763799360094	03-Oct-2010	EK0764	JNB	DXB	002A
							04-Oct-2010	EK0059	DXB	HAM	001B
							06-Oct-2010	EK0060	HAM	DXB	001A
							07-Oct-2010	EK0761	DXB	JNB	008B

Sub.No	Passenger Name	NAT	DOB	Passport No	PNR	Ticket No	Flight Date	Flight No	From	To	Seat No
4	ZUMA/DUDUZANEMR	ZA	20-May-1982	M00006518	FLSLNW	1769740895616	31-May-2010	EK0766	JNB	DXB	003E
							01-Jun-2010	EK0506	DXB	BOM	001E
	ZUMA/DUDUZANE	ZA	20-May-1982	M00006518	KC6YDJ	1763799084404	22-Aug-2010	EK0766	JNB	DXB	003E
							23-Aug-2010	EK0308	DXB	PEK	002K
							26-Aug-2010	EK0307	PEK	DXB	001F
							27-Aug-2010	EK0765	DXB	JNB	001F

Sub.No	Passenger Name	NAT	DOB	Passport No	PNR	Ticket No	Flight Date	Flight No	From	To	Seat No
5	MENTOR/MABELMS	ZA	19-Oct-1963	E00004317	JDPWCN	1763798918911	22-Aug-2010	EK0766	JNB	DXB	002E
							23-Aug-2010	EK0308	DXB	PEK	002E
						1763798918912	27-Aug-2010	EK0305	PVG	DXB	002B
							27-Aug-2010	EK0765	DXB	JNB	002E



the dti

Department
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Our Reference : 6/3/3/2-66/18
Your Reference :
Enquiries : Ms Kedibone Mashaba
Division : GSSSD
Room No : Room DF14 First Floor Block D - Legal Services
Tel : (012) 394 1265
Fax : (012) 394 2265
Email : kmashaba@thedti.gov.za

The Commission of Inquiry Into State Capture
Hillside House
17 Empire Road
Parktown
Johannesburg
2193

Per email: nkosanas@commissiionsc.org.za

Dear Mr. Nkosana Sifumba

RE: INFORMATION REGARDING THE PRESIDENTIAL VISIT TO CHINA, 24 - 26 AUGUST 2010

The above subject-matter and your email correspondence dated 14 August 2018 bears reference. As per the Commission's request, we enclose herewith the following information pertaining to the Department of Trade and Industry's (the dti) participation on visit by the erstwhile President, Mr Jacob Zuma to the People's Republic of China on 24 – 26 August 2010:

. 1 Purpose of the visit/mission

The purpose of the Presidential visit was to establish a new comprehensive Strategic Partnership between South Africa and China which would guide bilateral relations into the future in order to achieve the following objectives:

- 1.1 deepen and broaden the strategic partnership to a new comprehensive strategic partnership between the two countries;
- 1.2 strengthen and broaden economic and commercial interaction between the two countries;

- 1.3 expand South-South interaction with a view to strengthen the voice of the developing world and its capacity to address the needs of its people, and its people; and
- 1.4 to demonstrate appreciation for the importance South Africa attaches to its political, economic and cultural relationship with China.

It is important to note that the role of the dti was to meet with officials of the Chinese Ministry of Commerce (MOFCOM) in order to discuss, among others, the terms of reference (TOR) on Trade Statistics with the aim of signing the TOR and to discuss the report on non-tariff barriers and its impact on expansion of trade. Furthermore, the dti officials' role was to support Minister Dr Rob Davies regarding the dti's inputs on the PGD incorporated in a Declaration on the Establishment of a Comprehensive Strategic Partnership which was signed by the respective heads of states. In this regard, Please see attach a letter dated 04 August 2010 from former President Jacob Zuma to the Minister (Annexure A) and submission dated 13 August 2010 to the Director-General for approval for the visit (Annexure B).

2. Full Itinerary and programme

The full Itinerary and program of the visit is captured in the briefing document from the Department of International Relations and Cooperation (DIRCO) enclosed herein as Annexure C. We further attach a list of the attendees on the visit (Annexure D). The standard practice on arranging a State visit is that there is a business component and all private sector participants are required to cover the total cost of their attendance. A deviation submission (Annexure E) approved by the Director General of the dti is attached for six emerging exporters to be funded. This is part of the Department's export development programme to assist emerging exporters to gain exposure in foreign markets.

3. Mission report

Officials from the dti are required to submit a travel report on any foreign visit they undertook in order to ensure that the objectives of the visit were achieved and value for money was obtained. The travel report submitted by the dti officials who attended the visit is attached (Annexure F).

4. Any available pictures taken during the mission

Following a diligent search, no pictures of the visit could be obtained.

We hope that you find the above in order. Kindly let the writer know if anything further is needed.

Regards



MS ROBBYN RICHARDS
ACTING CHIEF DIRECTOR: LEGAL SERVICES
DATE: 20/8/2018



ccc

MINISTRY OF TRADE AND INDUSTRY
RECEIVED ON / AMOGETSWE KA
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M _{IN} /76605
LEFAPHA LA KGWEBO LE MADIRELO

PRESIDENT

REPUBLIC OF SOUTH AFRICA

04 August 2010

Dear Minister

**STATE VISIT TO THE PEOPLE'S REPUBLIC OF CHINA (PRC)
FROM 24-26 AUGUST 2010.**

Honourable Minister, you might be aware, that I am undertaking a State Visit to the People's Republic of China (PRC) from 24-26 August 2010.

Since the establishment of diplomatic relations between the two countries, relations have grown to a point that the two countries are now close strategic partners. The two sides have agreed to elevate the strategic partnership to a new "Comprehensive Strategic Partnership" which will guide our bilateral relations into the future. In this regard, China is now South Africa's biggest trading partner.

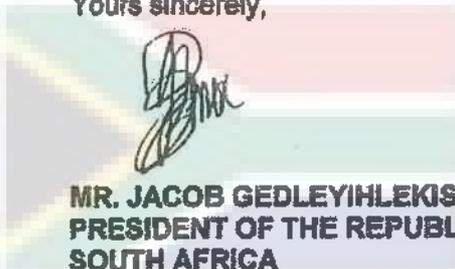
The first leg of my visit starts in Beijing, the capital of the PRC on 24 August 2010, where I will meet my counterpart, President Hu Jintao. On the 25 August 2010, I will meet with Premier Wen, Chairman of National People's Congress, Mr. Wu Bangguo and Vice President Xi Jinping to consolidate and strengthen political relations.

The second leg of my visit will end with Shanghai, the finance and commercial hub of China to interact with captains of industry, with the view to strengthen economic ties between South Africa and China. I will also be visiting the South Africa Pavilion at the Shanghai 2010 World Expo.

I am advised that your Department intend to sign Terms of Reference during the visit. You will take responsibility for the business leg of the visit. Therefore, I wish to extend an invitation to you to join me on this auspicious occasion. Your presence, I believe, will work towards improving our relations with China.

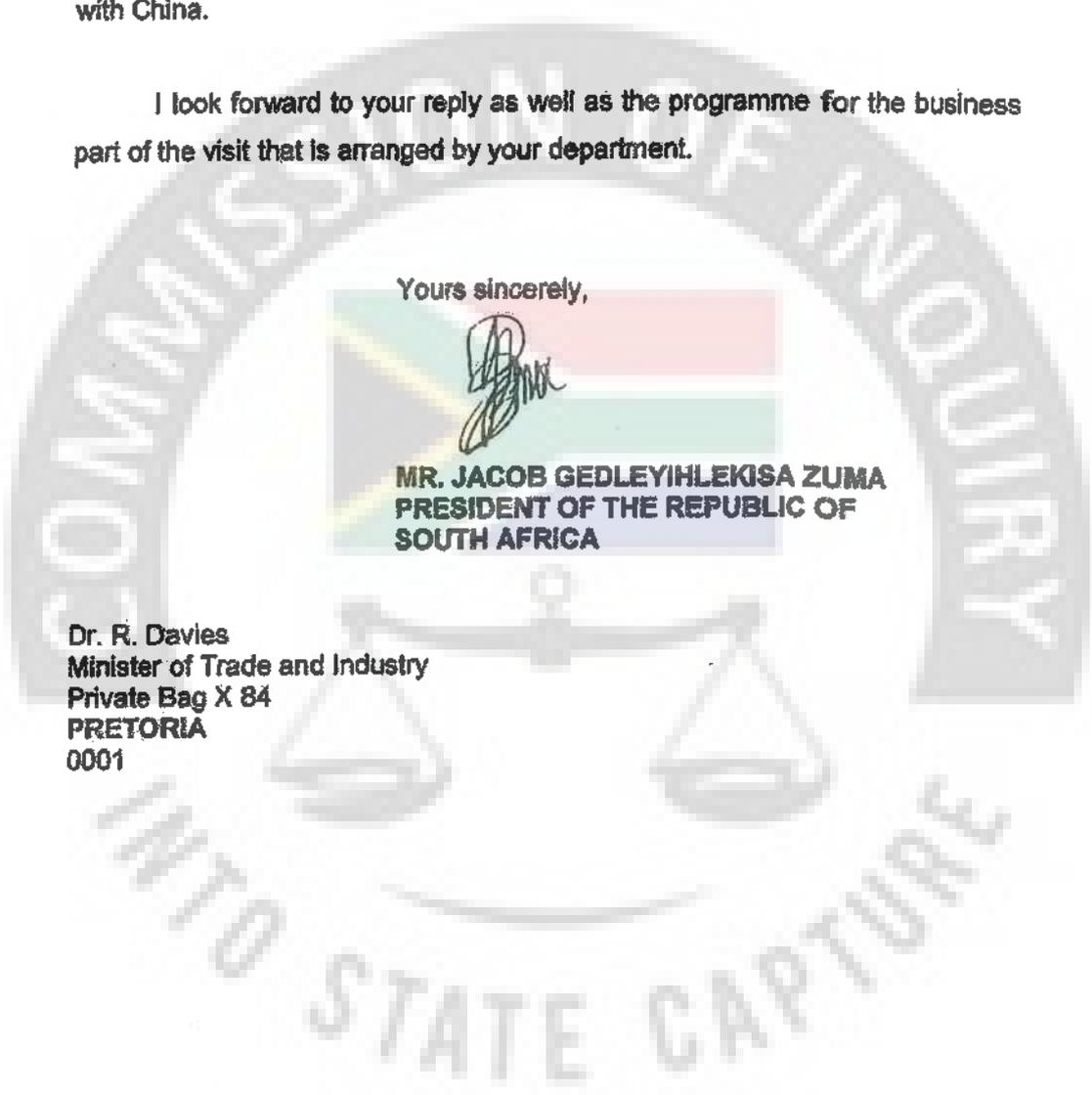
I look forward to your reply as well as the programme for the business part of the visit that is arranged by your department.

Yours sincerely,



**MR. JACOB GEDLEYIHLEKISA ZUMA
PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA**

Dr. R. Davies
Minister of Trade and Industry
Private Bag X 84
PRETORIA
0001





Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Office of the Director-General
Received on:
12 AUG 2010
Dept of Trade and Industry

Confidential

SUBMISSION

Reference No: 14/3/2/7/11/2

Enquiries: Seabelo Molepolle

Division: ITED

Room No: Block B, Third floor, Enterweni Building

Tel: 012 394 3078

Fax: 012 394 1313

Email: smolepolle@thedti.gov.za

TO : THE DIRECTOR GENERAL
(VISIT TO CHINA FROM 16-29 AUGUST 2010 (INCLUDING TRAVEL DAYS))

SUBJECT (S) : (1) MEETING WITH CHINA'S MINISTRY OF COMMERCE (MOFCOM) OFFICIALS TO FINALIZE AND SIGN THE TERMS OF REFERENCE ON THE ESTABLISHMENT OF THE JOINT WORKING GROUP ON TRADE STATISTICS, 23 AUGUST 2010

(2) TO SUPPORT MINISTER DAVIES DURING STATE VISIT TO CHINA BY PRESIDENT JACOB ZUMA, 24-26 AUGUST 2010

1. PURPOSE

1.1 To request the Director General (DG) to grant approval for ITED officials to travel to Beijing, China to hold a meeting with MOFCOM officials to finalize and sign Terms of Reference on the Establishment of the Joint Working Group (JWG) on Trade Statistics, 23 August 2010.

1.2 To request the Director-General (DG) to approve that the dti delegation to accompany and support Minister Rob Davies during the occasion of the State Visit to China (16-29 August 2010 including travel days).

2. BACKGROUND

2.1 Joint Working Group Meeting on Trade Statistics

trading partner globally in 2009 and the 1st in the Asian region. China is also a key partner to South Africa as we seek to advance South-South relations.

Our bilateral meetings with MOFCOM with regard to the finalization and the signing of the ToR will also afford an opportunity to further address the bilateral structure of trade between the two countries. It is to this end, that the dti officials will be visiting China to support both the Minister and the President.

In light of the above, we request that Director General grants approval for the following dti officials; Victor Mashabela, Iqbal Sharma, Phillip Mtsweni, Frank Stevens, Sadiq Jaffer, Yunus Hoosen, Bongani Lukhele, Vusi Mveli, Brian Soldaat and Talitha Setshedi to travel to China with Minister Rob Davies, in support of President Zuma during the State Visit.

4. THE DTI DELEGATION

Mr. Victor Mashabela- Chief Director: Bilateral Trade Relations, ITED

He is responsible for South Africa's bilateral relations with the world; he will therefore support the Minister on his bilateral engagements and also with his Chinese counterpart sign the Terms of Reference on establishing the Joint Working Group in Trade Statistics.

Mr. Phillip Mtsweni- Director: Asia Bilateral Relations, ITED

He is responsible for managing relations with China. He will support the Chief-Director during the meeting and the signing of the ToR. He will also ensure follow-up and implementation of the agreed work programme arising from discussions taken at the State Visit.

Mr. Frank Stevens- Deputy Director: Asia Bilateral Relations, ITED

He is responsible for implementation of the agreed work programme on China and will ensure follow-up on issues agreed during the State Visit. In addition, they will provide both technical and logistical support to the whole delegation.

Mr. Iqbal Meer Sharma – Deputy Director General (DDG): TISA

Mr Iqbal Sharma will lead the dti delegation that will provide support to the President and the dti Minister on the business component during the State Visit. Mr Sharma and TISA officials will also take part in other business events and meetings involving South African business delegation and their Chinese counterparts.

Mr. Sadiq Jaffer - Chief Director: Investment Promotion and Facilitation, TISA

Mr. Yunush Hoosen - Director: Investment Promotion and Facilitation, TISA

Mr. Vusi Mveli - Director: Export Promotion, TISA

The abovementioned officials will follow up with their counterparts on joint economic programmes and interface with potential Chinese companies to promote sourcing South Africa valued added goods and services as well as investment opportunities in South Africa. They will coordinate and facilitate engagements between South African companies and their Chinese counterparts.

They will also support Minister Rob Davies in meetings with his counterpart and also support the President during his visit to the South African pavilion at the 2010 Shanghai expo in China

Mr. Brian Soldaat- Deputy Director: Investment Promotion and Facilitation, TISA

Ms. Talitha Setshedi- Assistant Director: Office of the DDG, TISA

As the official visit will be accompanied by more than 100 members of the business delegation, the above mentioned officials from TISA will formulate a programme for the business delegation; arrange business seminars and business to business meetings for the South African companies. They will also assist the Embassy and provide logistical support to their principals during the official visit. They will also be responsible for the overall management of the business delegation as well as securing good

Mr Bongani Lukhele – Deputy Director: Media, Marketing

The official will coordinate media interviews for the Minister and handle enquiries from local and international media. He will distribute speeches and issue media releases of the event. The official will also communicate and market the visit to the international and local media.

TRAVEL DATES

- Victor Mashabela, Iqbal Sharma, Phillip Mtsweni, Frank Stevens, Bongani Lukhele, Vusi Mveli will depart SA for China on **21 August 2010**, and depart China for Johannesburg on **29 August 2010**.
- Sadiq Jaffer, Yunus Hoosen, Brian Soldaat and Talitha Setshedi will depart SA for China on **16 August 2010**, and depart China for Johannesburg on **29 August 2010**.

5. FINANCIAL IMPLICATIONS

For the dti officials to support Minister Dr Rob Davies and President Jacob Zuma during the State Visit in China.

ITED OFFICIALS

Roundtrip (air ticket) (Business) R 65000 x 1 officials	R 65000.00
Roundtrip (air ticket) (Economy) R50000 x 2 officials	R 100000.00
S&T @ \$US117 x R7.25 (R850) x 9 days x 3 officials	R 22950.00
Accommodation: R 2500 x 8 nights x 3 officials	R 60000.00
Transport (R2000 x 3 officials)	R 6000.00
Communication (fax and internet) R1000 x 3 officials	R 3000.00
Laundry R 1000 x 3 officials	R 3000.00
Sub Total	R 259 950.00

TISA OFFICIALS INCLUDING MARKETING OFFICIAL

Roundtrip (air ticket) (Business) R 65000 x 2 officials	R 130000.00
Roundtrip (air ticket) (Economy) R50000 x 5 officials	R 250000.00
S&T @ \$US 117x R7.25 (850) x 14 days x 4 officials	R 47600.00
S&T @ \$US 117x R7.25 (850) x 9 days x 3 officials	R 22950.00
Accommodation: R 2500 x 13 nights x 4 officials	R 130000.00
Accommodation: R 2500 x 8 nights x 3 official	R 60000.00
Transport (R2000 x 7 officials)	R 14000.00
Communication (fax and internet) R1000 x 7 officials	R 7000.00
Laundry R1000 x 7 officials	R 7000.00
Sub Total	R 668550.00

TOTAL (ITED, TISA, MARKETING) R 928 500.00

Allocation Codes**Mr. Victor Mashabela**

(Business class air ticket and subsistence allowance)
 Responsibility code: 10073441, CD: Bilateral Agreements
 Objectives code : 10038441
 ITEM: T&S (Foreign)

Mr Phillip Mtsweni and Mr Frank Stevens

(Economy class air ticket and subsistence allowance)
 Responsibility code: Asia 10065441
 Objectives code : Bilateral agreements 10038441
 ITEM: T&S (Foreign)

Mr Iqbal Meer Sharma

(Business class air ticket and subsistence allowance)
 Responsibility code: 10197441
 Objectives code : 10260441
 ITEM: T&S (Foreign)

Ms Talitha Setsedi

(Economy class air ticket and subsistence allowance)

Responsibility code: 10197441

Objectives code : 10260441

ITEM: T&S (Foreign)

Mr Sadiq Jaffer

(Business class air ticket and subsistence allowance)

Responsibility code: 10200441

Objectives code : 10262441

ITEM: T&S (Foreign)

Mr Yunus Hoosen

(Economy class air ticket and subsistence allowance)

Responsibility code: 10201441

Objectives code : 10262441

ITEM: T&S (Foreign)

Mr Vusi Mveli

(Economy class air ticket and subsistence allowance)

Responsibility code: 10208441

Objectives code : 10267441

ITEM: T&S (Foreign)

Mr Brian Soldaat

(Economy class air ticket and subsistence allowance)

Responsibility code: 10202441

Objectives code : 10262441

ITEM: T&S (Foreign)

Mr Bongani Lukhele

(Economy class air ticket and subsistence allowance)

Responsibility code: 10286441

Objectives code : 10288441

ITEM: T&S (Foreign)

6. RECOMMENDATION

It is recommended that the Director General grants approval for the following dti officials; Victor Mashabela, Iqbal Sharma, Phillip Mtsweni, Frank Stevens, Sadiq Jaffer, Yunus Hoosen, Bongani Lukhele, Vusi Mveli, Brian Soldaat and Talitha Setshedi to travel to China with Minister Rob Davies, in support of President Zuma's ~~during the State Visit~~ *to that country as part of the delegation*

CONSIDERED BY:

[Signature]
Name: Mr Phillip Mtsweni
Rank: Director
Unit: Asia Bilateral Trade Relations
Date:/...../2010

Supported by:

[Signature]
Name: Ms. Nomonde Mampuru
Rank: Financial Advisor
Unit: ITED
Date:/...../2010
Funds available/Not-available

[Signature]
Name: Mr Sikhathi Ndala
Rank: Financial Advisor
Unit: Marketing
Date:/...../2010
Funds available/Not-available

[Signature]
Name: Mr. Victor Mashabela
Rank: Chief Director
Unit: ITED Bilateral Trade Relations
Date:/...../2010
Recommended/ Not Recommended

[Signature]
Name: Ms. Jodi Scholtz
Rank: Acting Marketing Head
Unit: Marketing
Date: 13/...../...../2010
Recommended/ Not Recommended
Recommended

Subject to confirmation from Minister about role of media unit on this trip. Massa will get back to me after he's checked with Minister. Jodi

[Signature]
Name: Ms Lizell Reinecke
Rank: COO
Unit: ITED
Date: 12/1/8/2010
Recommended/ Not Recommended

[Signature]
Name: Mr. Xavier Carim
Rank: Deputy Director-General
Unit: ITED
Date:/...../2010
Recommended/ Not Recommended

6. RECOMMENDATION

It is recommended that the Director General grants approval for the following dti officials; Victor Mashabela, Iqbal Sharma, Phillip Mtsweni, Frank Stevens, Seabelo Molepolle, Sadiq Jaffer, Yunus Hoosen, Bongani Lukhele, Vusi Mveli, Brian Soldaat and Talitha Setshedi to travel to China with Minister Rob Davies, ~~in support of President Zuma~~ *as part of the delegation of* ~~during~~ *the State Visit to that country.*

Supported by:

Name: Mr. Ernest Moagi
Rank: Financial Advisor
Unit: TISA
Date:/...../2010
Funds available/Not available

Name: Mr Riaan Le Roux
Rank: COO
Unit: TISA
Date:/...../2010
Recommended/ Not Recommended

Name: Mr. Sadiq Jaffer
Rank: Chief Director
Unit: TISA: Investment Prom and
Date:/...../2010
Recommended/ Not Recommended

Name: Mr. Iqbal Sharma
Rank: Deputy Director – General
Unit: TISA
Date:/...../2010
Recommended/ Not Recommended

[Signature]
Name: Mr. Tshediso Matona
Rank: Director-General
Unit: the dti
Date: *13*.....*10*...../2010
Approved / Not Approved

CONFIRMED LIST: CHINA STATE VISIT 20-26 AUGUST 2010

No.	Name	Suriname	Designation	Company	Sector	Passport No.	Tel	Email	Travel Dates
1	Mr Mahsood	Abdulla	Executive Director	Yorkshire Oil and Gas	Oil and Gas				
2	Mr Imtiaz	Abdullah	Executive Chairman	Uktubona Holding	Energy				
3	Mr MANESSAH	ALAGBAOSO	HEAD: BUSINESS SEGMENT	STANDARD BANK	Financial Services	476148950	116312957	labdulla@netactive.co.za	
4	Mr James William	Alderslade	Group Chief Investment Officer	Thebe Investment Corporation	Financial Investments			James@thebe.co.za	
5	Mr Haiko	Afeld	General Manager: Government Relations	Sasol Group	Financial Investments	460461113	27 11 447 7800	mamokhele@thebe.co.za	
6	Dr Isaac	AMUJAH	Chairman	Wictria Holdings	Railway	456301331	011 344 2635	baiko.aifield@asol.com	
7	Ms Salvation	Andrewse	Personal Assistant	Business Unity South Africa (BUSA)	General	470687591	011 8840930	Kwame.amuah@busrifoldings.co.za	
8	Mr John	Armstrong	Country President: Sasol China	Sasol	General	476708196	27 11 784 8000	salvation.andreas@busa.org.za	
9	Mr Ameen	Ashraf	CEO	Ashraf Ameen Group of Companies	Property Investments			Ashraf@vodamail.co.za	
10	Mr Victor	Barbery	CEO	Port Lobster	Agro-Processing	467919386	012 347 4484	port.lobster@gmail.com	
11	Mr Ian	Barnard	International Relations Director	Naspers Group	Media	444498329	27 83 956 8751	ibarnard@mih.com	
12	Ms Devorah	Barnes	Portfolio & Governance Manager	ABSA Group	Financial Services	478993152	27 11 950 6302	devorahb@absa.co.za	
13	Ms Pippa	Beyers	Project Manager	ABSA Group	Financial Services	461929773	27 11 507 7317	pppab@absa.co.za	
14	Mr Samuel	Bhambhe	EXECUTIVE HEAD: STRATEGY/MARKETING	Nedbank Corporate	Financial Services	448099059	(011)295-8478	Alicab@nedbank.co.za	21 - 26 August
15	Mr Fan	Bing	Managing Dir, Business Origination	Standard Bank	Financial Services				21 - 28 August
16	Mr Keily	Binguan Zhuang	Chairman	Z.B.G. International Company	Import & Export of furniture				
17	Mr Matthew	Britch	Senior Manager	Frontier Advisory	Consulting	G37572799	011-62295-49	bjshuang@126.com	
18	Mr William	Blackie	SA Head Investment Banking	Standard Bank Group	Financial Services	A00214833	011 442 2735	jdevilliers@frontieradvisory.com	
19	Mr Mike	Blades	Managing Director	International Business Development Standard Bank	Financial Services			Tshepo.Mazibuko@standardbank.co.za	
20	Ms Jesmanhe	Boggenpoel	Independent Advisor	Sole Proprietor	Financial Services			Tshepo.Mazibuko@standardbank.co.za	
21	Mr Graig	Bond	Chief Executive: Standard Bank China and Manager	Standard Bank Group	Financial Services	470590492	27 83 708 4819	jesmanhe@vodamail.co.za	
22	Mr Alejandro	Borean	Manager	Petro SA	Oil and Gas	445903962	021 929 9110	Tshepo.Mazibuko@standardbank.co.za	
23	Mr Erwin	Boutard	Director	OWIGSA	Financial Services			sandra.borean@petrosa.co.za	
24	Ms Khearsani	Buchman	Director	South African Flight Training Academy	Aviation	454406182	82 777 6660	RKishan@omiles.com	22-Aug
25	Mr Jing Chang	Chabane	Chairman	PVAG Mining	Mining			barry@safta.co.za	
26	Mr KERRY	Chiu	MARKETING DIRECTOR	ULTIMATE MARKETING	Financial and Marketing	632542889	011 615 6227	chobanekm@gmail.com	
27	Mr Mustapha Moosa	Chotte	Director	Chatia Brothers	Textiles	752015003	083 792 3900	KENNY@ULTIMATEMARKETING.CO.ZA	
28	Mr Andre	Cilliers	Chief Financial Officer	Palladio Holdings	Joint ventures	4809803079	021 522 8700	Ashraf@vodamail.co.za	
29	Mr Stuart	Clarkson	CEO	Siemens Ltd	ICT	706276848	011 652 2893	andre@25group.co.za	23-27 August
30	Mr Marthinus	Coetzee	CEO	Stralmeester Agricultural Imports	Agro-Processing	477176262	018 431 0900 / 082 904 8249	paula.defreitas@siemens.com	
31	Mr Colin	Coleman	Managing Director	Goldman Sachs International	Investment Banking	M00003946	27 11 303 2727	stallmas@rnweb.co.za	
32	Mr Zulele	Combi	Chairman	Themba Capital / Pioneer Foods	Agro-Processing	449164851	021 8866578	Susan.Nicolli@gs.com	
33	Mr Pedro	Continho	Executive Director	Network Investments	Consulting			hmentoor@thembakapital.com	
34	Mr Gavin	Cooper	Managing Director	Blue Quartz Consulting	Engineering			mritam@network.pro	
35	Ms Simone	Cooper	Head: Business Lending Products	Standard Bank	Financial Services	430013951	2785297286	Simone.Cooper@standardbank.co.za	
36	Mr Petrus	Crouse	Exec Head: Ecobank	Nedbank	Banking	M00006562	27 11 294 1113	smik@nedbank.co.za	
37	Mr Vullndlela	Cube	Chairman and President	NGN Telecoms	Telecommunications	481337359	011 201 7400	yuli@ngntelecoms.com	
38	Mr Mpumali	Dames	Group Chief Executive Officer	CEF Group	Renewable Energy	462491981	010 204 4717	kimt@cefgroup.co.za	
39	Mr BRIAN ANTHONY	Dames	Chief Executive Officer	ESKOM	Energy			karen.vdyby@eskom.co.za	
40	Ms Christie	Davidson	Personal Assistant	Salvare Computers	IT				
41	Mr Pat	Davies	Chief Executive Officer	Sasol	Energy and Chemical	438876626	27 11 800 4585	pat.davies@sasol.com	22 - 27 August
42	Mr Martyn	Davies	CEO	Frontier Advisory	Consulting	441009725	27 11 441 9477	jdevilliers@frontieradvisory.com	
43	Ms Louise	de Klerk	Owner	ASSO Flowers 1/2 SA flowers Export Council	Agro-Processing	445740941	27 11 442 2735	madvies@frontieradvisory.com	
44	Mr Danie	De Wet	Owner	De Westhof Estate	Agro-Processing	455052160	011 6924 237	info@saflower.co.za	
45	Mr Calvin Kagiso	Dichabe	Chief Operations Officer	On Point Engineers	Engineering	463148093	025 6151853	purchases@dewesthof.com	
46	Mr Quinoy	Ding	General Manager	Landpac	Construction	A01037100	083 459 1127	kagisho@onpoint.co.za	
47	Ms Patricia	Dingaan	Investment Executive	Wiphold	Investments			gdingaan@wipcapital.com	
48	Ms Mbuso	Dlamini	Executive Chairman	Palaca Group	Power & Energy	474641309	011 715 9537	mibuso.dlamini@palacagroup.co.za	
49	Mr William Hendrik	Du Plessis	Director: Agricultural Banking	Standard Bank	Financial Services	46321101	27 11 783 5638	william.duplessis@standardbank.co.za	
50	Mr Owen	Dube	Group Chief Executive Officer	Rondebut	Construction	444744094	011 636 6162	willow.duplessis@standardbank.co.za	
51	Mr Owen	Dube	Group Chief Executive Officer	Rondebut	Construction	8N667513	013 933 3643	ttable@rondebult.co.zw	20-Aug

52	Mr	Ethan	Dube	Chief Executive Officer	Vumani Limited	Financial Services	M00004467	27 11 263 9500	edube@vumani-capital.co.za / inross@vumani-capital.co.za	22-
53	Mr	Sipho	Dube	Executive Chairman	Enbulwini Resources Ltd / Sandza (Director)	Mining	M00019676	011 450 2000	neema@enbulwini.com	22-
54	Mr	Nikesh	Dullaboh	General Manager: Africa	Bateman Beijing Axis	Mining, Mineral & Capital Equipment		27 11 201 2453	nkesh.dulabh@batemanbeijingaxis.com	21 - 28 August
55	Mrs	Tino	Eboka	Group Director Group Corporate Affairs	Standard Bank Group	Financial Services	457039350	011 636 8688	Tshapo.Macabuko@standardbank.co.za	22-26 August
56	Mr	Emszen	Ebosen	Chairman	Umsimbithi Holdings	Investments	7004386659	27 21 930 9370	john@umsimbithi.co.za	21 - 28 August
57	Mr	John	Evans	General Manager	Landpac	Construction	445727832	86 1860 115 2332	john.evans2@gmail.com	21 - 28 August
58	Ms	Nolikhla	Fakude	Executive Director: Sustainability and Trade	Saoli	Energy	464028240	0011 441 3834	nolikhla.fakude@saoli.com	21 - 28 August
59	Mr	Jorn	Falbe	Vice President	Petro SA	Oil and Gas	529335258	021 929 3382	joern.falbe@petrosol.co.za	22-30 August
60	Mr	George	Fang	Managing Director, Mining & Metals Core	Standard Bank	Financial Services				
61	Mr	Carlos	Ferreira	Chief Financial Officer	Gilima Ast	ICT				
62	Mr	Neels	Ferreira	Chief Executive Officer	Grain South Africa	Agro-Processing	A00139265	012 675 5320	Carlos.ferreira@efirma.com	
63	Mr	Nils	Flaatten	Chief Executive Officer	Wesgro	Trade and Investment	477997285	082 566 1375	moedverloren@wvlink.co.za	
64	Dr	Denver	Fredericks	Chief Executive Officer	Lodestar Medical Holdings	Health	464112484	021 487 8610	karriete@wesgro.co.za	21 - 28 August
65	Mr	Jaan	Frick	Chief Executive Officer	Ridder's Creek	Agro-Processing	458889767	076 339 8100	damer@lodestarmedical.com	
66	Mrs	Hajira	Ganie	Account Manager: Asset Finance	Demies Tours	Tourism	472209062	021 973 7746	ridder@lodestarmedical.com	
67	Mr	Jasmina	Gandjar	Managing Director	ABSA Group	Financial Services	477889568	27 21 797 1070	info@demiestours.co.za	22 - 26 August
68	Mr	Induluka	Goeba	Chief Executive Officer	Discovery Holdings	Health and Life Insurance	482061612	27 82 973 8066	jasmina.gandjar@absa.co.za	
69	Mr	Adrian	Gore	Project Manager	Corporate Traveller	Travel	488778028	011 529 2800	adrian.gore@discovery.co.za	22 - 27 August
70	Ms	Janelle	Gouldie	National Manager: Projects	ABSA Group	Financial Services	436707672	27 11 525 2416	janelle.gouldie@corporatetraveller.co.za	
71	Mr	Collin	Gounden	CEO	Artha Gounden Attorneys	Legal	476741544	27 11 350 5065	collin@absa.co.za	
72	Mrs	Anika	Gounden	General Manager	Concrete Lining Products	Recycling & Energy	480872104	031 2628497	anika@artha.co.za	
73	Mr	Sathis	Gounden	Director	Green Technologies	Mining	482860598	011 3585000	gounden@concrete.co.za	20-Aug
74	Mr	Eric	Gowus	Director: Trade Policy	Business Unity South Africa (BUSA)	General				
75	Mr	Shalin	Gowender	Chief Operating Officer: Unsecured Lending	ABSA Group	Financial Services	EA880152	27 11 784 8000	rene.s@abcs.co.za	
76	Mr	WV	Grant	Chief Executive Officer	RMC	Mining	M00009692	27 11 350 3450	catherine.grant@busa.org.za	
77	Ms	Catherine	Green	Executive Chairman	Guma Group	IT, Infrastructure, Energy	M00000012	27 11 548 0000	janpre@absa.co.za	
78	Mr	Jan	Green	Chief Executive Officer	Mabanga	Mining	482061042		robert.gumede@efirma.com	22-27 August
79	Dr	Artem	Grigoriash	Chairman	SAbara Computers	IT	21376211			
80	Mr	Robert	Gumedes	Director	A.L.R Agencies cc	Chemical Manufacturing & Trade	443330841	27 21 692 3932	art7886@mweb.co.za	
81	Mr	Rajesh Kumar	Gupta	Managing Director	Ocean Echo Properties 203 CC	Construction and Real Estate	G30225839	011 4561916	goldraefemporia@yahoo.com	22-26 August
82	Mr	Ajay Kumar	Gupta	Chief Executive Officer	Rulok International Trade	Agro-Processing	4380182435	021 913 4742	william@tukou.co.za	
83	Mr	Abdul Rahim	Hafim	Director	Hanna Property Investment Trust	Mining, telecommunications			greg@hannafin.com	22 - 26 August
84	Ms	Fang	Han	Head of Business Intelligence	Africa Resources Limited	Financial Services	444514585	011 797 2000	mwaare@afriheritage.com	
85	Mr	William	Hanekom	CEO	First Rand	Joint ventures	470171040	27 21 522 5700	Marthinus.Havenga@fnb.co.za	22-26 August
86	Mr	Greg	Hanna	Group Leader SA	KPMG	Engineering Consulting		067 741 2200	phumelele.phungula@arup.com	
87	Mr	Jan	Hanuperi	Partner	Ping An Health	Insurance	M00012801	021 408 7332	glenn.ho@kpmg.co.za	
88	Mr	Marthinus	Havanga	Managing Director	NIRMag Pty Ltd	Metal Beneficiation	448723630	27 41 799 9188	reph@pingan.com.cn	
89	Mr	Olof Walter	Haveng	Chairman	FLT Technology	Import & Export electrical goods, mining, property development	J00455822	083 77 998 66	Mavis@nirmagroup.com	
90	Mr	Damane	Hialele	CEO	OMIESSA	Diamonds & Hospitality	449419630	833061588	samm@ft-global.com	21-Aug
91	Mr	Glenn	Ho	Managing Director	AFRIGEM Diamonds (Pty) Ltd	LOGISTICS, CLEARING AND FORWARDING	21467912	011 455 5926	derrichthuang@gmail.com	25-27 August
92	Mr	Ralph	Holmes	CEO	MIPISI TRADING 74 (PTY) LTD	Construction	47040124	021 941 5000	robert@mipisi.com	
93	Dr	Paul	Holmes	CEO	Indawo Cape Pty (Pty) Ltd	Mining	445899272	011 564 9400	pamela@indawo.biz	
94	Mr	Siu	Howard	CEO	Warwick Wine Estate	Agro-Processing	A00632104	018 786 2220	amike@warwickwine.com	
95	Mr	James	Howard	CEO	Zambezi Mining	Mining			pkasono@zlp-online.co.za	
96	Mr	FERRICK	HUANG	CEO	Udonolo Investment Holding	Investment	479425719	011 784 1601	shivestret@bonanza.co.za	
97	Mr	JEN-CHIH (ROBERT)	Huang	Executive Business Development	Anoosqa Resources Corporation	Mining	M00012765	321 421 4828	Abeyal@bonanza.co.za	
98	Mr	Peter	Jack	CEO	Merit Capital Ltd	Finance, Property, Infrastructure	438794636	083 523 4291	joel@anoosqaresources.co.za	
99	Mr	Parekh	Jagdish	Managing Director	Infocal Investments	Capital Equipment			thabani@infocal.co.za	
100	Mr	Joza	Joubert	CEO						
101	Dr	Pius	Kasolo	CEO						
102	Mr	Silvestro	Kassoma	CEO						
103	Mr	Joel	Keslar	CEO						
104	Ms	Hawa Bibi	Khan	CEO						
105	Mr	Thabani	Khumalo	Managing Director						

106	Mr	Lusito	Khumalo			Westfallia Fruit Estates	Agro-Processing	483515600	015 309 0000 / 073 717 3955	lustrick@westfallia.co.za	
107	Mr	Machoda	Khuzwayo	CEO	CEO	MyNext Mail	ICT	478172146	798025655	madoda@mynextmail.com	
108	Mr	Martin	Kingston	Executive Deputy Chairman	Executive Deputy Chairman	Rothschild	Investment Banking	761089447	27 11 215 6836	martin.kingston@rothschild.com	
109	Mr	Gregory	Khross	President	President	CIC Energy Corp	Mining Exploration	475295961	2711 305 1850	carol.chizaro@rothschild.com	21-27 August
110	Ms	Rofie	Kisten			QMGSSA	Financial Services			nuria.williams@cienergy.com	
111	Dr	Lea	Klein	Special Projects		Discovery Holdings	Health and Life Insurance	464112895	011 529 3095	RKisten@omiga.com	22-Aug
112	Mrs	Venete	Klein	Chief Corporate Affairs & Sustainability Officer		ABSA	Financial Services	452983856	27 11 350 5304	leak@discovery.co.za	24 - 26 August
113	Mr	DAMKO	KOMCAR	CEO MINERALS	CEO	RUIJKI SOUTH AFRICA	Mining	4092779		Belma.Mare@absa.co.za	
114	Ms	Basanzana	Kumalo	Strategic & Operations Director	CEO	RWIM (Pty) Ltd	Media / Property / Mining Construction	434519024	011 464 7230	malinda@topbilling.com	24 - 26 August
115	Ms	Nokuthando	Kunene		CEO	Indilaizuko Construction	Construction	458980899	011 836 3173	ngobila@hiconstruction.co.za	
116	Ms	Nokuthando	Kunene		CEO	South African Women in Mining Investment Hold	Mining	437504617	011 834 9039	vmyengule@bullion.org.za	
117	Mr	Rajendaran	Langerhans	Managing Director	Managing Director	Pfizer BEE Solutions	Accountants & Auditors	437504617	011 384 8054	roger.langerhans@pf.co.za	
118	Mr	Simon	Ledgerwood	Managing Director	Managing Director	Precision Press Pty Ltd	Automotive Component manufacture	453983485	021 951 2866	simon@precisionpress.co.za	
119	Mr	Anderson	Lee	Deputy Senior Editor	Deputy Senior Editor	China News S.A.	Diamond industry	6350850083	011-4666373	chivanawshahic@gmail.com	
120	Ms	Masago	Lehlihi	PR & Communications Officer	PR & Communications Officer	Business Unity South Africa (BUSASA)	General	471914474	27 11 784 8000	masago.lehlihi@busa.org.za	
121	Mr	Xiao Ping	Li	President/Chairperson	President/Chairperson	Lykem Global Investment Consultants	Professional Services	470556724	27 11 513 3555	peter@lykem.co.za	
122	Mr	Xinzhu	Li	Chairman	Chairman	Yuncheong Trading Manufacturing Pty Ltd	Shoe manufacturing, property development	447144259	011-6220038	JIL08@yeah.net	21 - 28 August
123	Mr	Mingfang	Li	Secretary	Secretary	PMG Resources	Mining	620407520	011 615 6227	pmgresources@gmail.com	
124	Mr	Quan	Liang	Editor	Editor	African Times	Media		011-6159988		
125	Mr	IZU - YI (BRUCE)	LI	CHAIRMAN	CHAIRMAN	JHB 101 INVESTMENTS (PTY) LTD	PROPERTY DEVELOPER	466119234	011- 615 1506	bruce@waveheights.co.za	22 August-03 Sept
126	Ms	Qian	Lu	Director	Director	Golden Nest International Group	Shipping and logistics	6099301353	011-4660445	luy@gn.co.za	22-Aug
127	Mr	Jun	Lu	Managing Director	Managing Director	CRI-Eagle Investments (Pty) Ltd				che@eigh.co.za	
128	Mr	George (CHEUKYU)	Lo	Director	Director	Standard Chartered Bank	Financial Services	A01122249	27112376852	George.Lo@sc.com	
129	Mr	Ebrahim Hassim	Longat	Director	Director	Ashraf Ameen Group of Companies	Property Investments			Ashtara@woodmail.co.za	
130	Mr	IMABELINDILE ARCHIBALD LUHLABO	LUHLABO	Director	Director	AFRIGEM DIAMONDS(Pty) Ltd	Diamonds	452918818	011 784 4291	lungu.noupe@teeemene.co.za	
131	Mr	Mthunzi	Luthuli	GROUP MANAGING DIRECTOR	GROUP MANAGING DIRECTOR	MADLANDIUNA CORPORATION	Engineering, Energy, Infrastructure	474636097	011 783 4949	luthuliam@madlandiuna.com	
132	Mr	Siphilele Mátolom	Mabaso	Vice President	Vice President	Lykem Global Investment Consultants	Professional Services	A01207474	27 11 513 3555	matolom@lykem.co.za	
133	Mr	TSHEDISO	IMABELANE	Managing Director	Managing Director	NEWBLAX INVESTMENTS (PTY) LTD	Renewable Energy	492510243	27 83 330 1989	tshediso@nbiinvestments.co.za	
134	Mr	Obbey	Mabetsa	Director	Director	Mafraams Investments	Energy		011 021 3464	bmo@mweb.co.za nbo@mweb.co.za	
135	Mr	Jabu	Mabuza	Chair	Chair	SA Tourism	Tourism	700468210	011 510 7000	jabum@tsogosun.com	
136	Mr	Theobala	Madi	Managing Director	Managing Director	Ikthebe Group	Wiring and Financial Services	452478264	078 5100 101	doreenmb@tsogcom.com	
137	Mr	MandlaMhe	Madubela	Group Chief Executive Officer	Group Chief Executive Officer	Lodestar Medical Holdings	Health	448266475	27 11 024 0257	themba.madi@ikhabe.com	
138	Mr	David Nyemunchengwa	Madzanga	Managing Director	Managing Director	Maramati Nzou	Mining	W00018196	012 783 4520	mandi@bobeatmedical.com	
139	Mr	Joel	Mafanya	Executive Director	Executive Director	Knowledge Innovations	Energy	455330053	27 82 755 2044	david@matemalmzou.co.za	21 - 28 August
140	Mr	Tumi	Magasa	Advisor to the Board	Advisor to the Board	ZTE Corporation SA	Telecommunications & Electronics	483159965	27 82 331 0958	turni@zte.co.za	
141	Mr	Xola	Makapela			Network Investments	Consulting	463254604	27 11 684 2822	miriam@network.pro	
142	Adv	Umbu	Makalini	Acting Chairperson	Acting Chairperson	PetroSA	Oil and Gas	A00300838	021 929 3279	Makalini@mweb.co.za	
143	Mr	Basil	Makhathini	Chairman	Chairman	Mediam Investments	ICT	454818392	051 705 4796	JUDY.Sobantu@petrosa.co.za	
144	Mr	EUGENE SIZWE	MAKHAYE	DIRECTOR	DIRECTOR	PANTECH (PTY) LTD	Health	483633575	031-3243300	kondwam@madaimgroup.co.za	
145	Mr	Bhekisipho	Makuzeni	Legal Advisor	Legal Advisor	Lodestar Medical Holding	Pharmaceutical	439694986	011 024 0257	SIZWE@PANTECH.CO.ZA	23-27 August
146	Ms	Angie	Makwela			Aband'Ubandu Cooperative	Agro-Processing			phk@abandfarmmedical.com	
147	Mr	Jabufani	Mamba			Lethwanya Holdings	Agro-Processing	470430161	011 656 5131	angie@makwela.co.za	
148	Mrs	Mpho	Mampuru	Managing Director	Managing Director	Absolute Telecommunications & Technology Solutions	ICT	A00722967	27 11 695 4800	mphom@absolutetelecoms.co.za	
149	Ms	Zobwa	MAMASE	CEO	CEO	MAMASE & ASSOCIATES	Auditing		27 11 447 2428	Rebecca@mamase.co.za	
150	Mr	Thabiso	MAME	Project Manager	Project Manager	PANZO SA	Energy/Petroleum	A00532969	801-278541	thabiso.mame@petrose.co.za	22-28 August
151	Ms	JELENA	MANJOLVIC	GROUP CHAIRPERSON	GROUP CHAIRPERSON	RUIJKI SOUTH AFRICA	Mining		083 799 4572	glady@ruikki.co.za	21 - 28 August
152	Ms	Linda	Mantshi	Director OIB	Director OIB	Standard Bank Group	Financial Services			Tshapo.Mazshuko@standardbank.co.za	
153	Ms	Maphalle Kadali	Maponya	Managing Director	Managing Director	Morongwa Consulting Inc	Financial, Accounting & Audit services	472935875	011 514 0922	mmaponya@morongwaconsulting.co.za	
154	Ms	Charlotte Mary Mashitzi	Maponya	Managing Director	Managing Director	Maponya Group	Retail, mining, Property Development		011 880 5170	info@maponyagroup.co.za	
155	Mr	Richard	Maponya	CEO	CEO	Maponya Group	Retail, mining, Property Development		2711-636 4424	richardmaponya@maponyagroup.co.za	
156	Mr	Jacko	Maree	Group Chief Executive Officer	Group Chief Executive Officer	Standard Bank Group	Banking			Marty.Schonborn@standardbank.co.za	
157	Mrs	Deelzy	Marencia	Portfolio Manager	Portfolio Manager	Alsa Group	Financial Services	427995635	27 11 507 7903	ddeezy@alsa.co.za	24 - 26 August

158	Ms	Diebre	Head of Public Affairs & Transformation	Wiphold	Investments	475545923	011 715 3600	21 - 28 August
159	Ms	Gloria	Seebio Manula Indigenous Produce	Agro-Processing	Agro-Processing	A01174608	079 405 6104	
160	Mr	Billy	Chief Executive	Mining	Mining	M00013504	27 11 779 1253	
161	Mr	Steve	MANAGER: BUSINESS DEVELOPMENT	Economic Development	Economic Development	483497939	41 403-0437	
162	Mr	Christopher	Managing Director	Renewable Energy	Renewable Energy	482224601	079 226 1769	
163	Mr	Bongani	Director	Mining and Energy	Mining and Energy	453069291	035 796 1309	
164	Ms	Masuku	Executive Director	Financial Services	Financial Services	474850069	082 785 5460	22 - 28 August
165	Mr	Ivab	Chairman	SAVCO HOLDINGS	Engineering	484629859	27 11 316 2480	
166	Mr	Wang	Director	Knowledge Economic Pty Ltd	Property Investments	443739901	715091040	
167	Mr	Mathys	Director	Matemainzu	Energy	400187629	27 11 783 4520	
168	Mr	David	Chairperson	Gluti Energy	Mining, Construction	M00006355	083 445 2700	
169	Ms	Gugulethu	Head of Department - Stakeholder Relation	Standard Bank Group	Financial Services		011-7972000	
170	Mr	Mutsums	Director	Matemainzu	Mining		27 11 653 7546	
171	Mr	Tshapo	Chief Executive Officer	Matemainzu	Mining		011 783 4520	
172	Mr	Sandile	Chief Executive Officer	Matemainzu	Mining		27 11 243 4900	
173	Mr	Wellington Sandile	Vice President	Matemainzu	Manufacturing Engineering		082 959 8152	23 - 27 August
174	Ms	Nenkqubela	General Manager	Matemainzu	Manufacturing Engineering		011 884 0818	
175	Dr	Zola	Chief Executive Officer	Matemainzu	Telecommunications		011 201 7400	24-26 August
176	Mr	Menzi	Research and Communication	Matemainzu	Business Union		021 403 3765	22-27 August
177	Mr	Calum John	Char:Public Enterprises	Matemainzu	Business Union		021 403 2729	22-Aug
178	Mr	Stephen	Director	Matemainzu	Business Union		064 800 0521	22-Aug
179	Mr	Malke Patronella	Specialist: Electronic Delivery Solutions	Matemainzu	Business Union		072 130 0921	22-27 August
180	Ms	David	CEO	Matemainzu	Business Union		27 11 350 4755	
181	Ms	Prasella	Senior Associate	Matemainzu	Business Union		021 929 3160	23 - 28 August
182	Ms	Michelle	Associate	Matemainzu	Business Union		113512900	
183	Mrs	Michelle	Chief Executive Officer	Matemainzu	Business Union		011 351 2980	
184	Mr	Spheo	Chief Executive Officer	Matemainzu	Business Union		011 656 6838	
185	Ms	Lumka	Chief Executive Officer	Matemainzu	Business Union		27 11 783 8048	22 - 28 August
186	Ms	Lumka	Chief Executive Officer	Matemainzu	Business Union		470039243	23-26 August
187	Mr	Teakene	Director	Matemainzu	Business Union		425258899	
188	Mr	Phosane	Director	Matemainzu	Business Union		483302668	
189	Mr	Phosane	Director	Matemainzu	Business Union		442034791	
190	Ms	Ephesha Thlang	Director	Matemainzu	Business Union		446114246	
191	Ms	Sauri	Director	Matemainzu	Business Union		453172352	
192	Mr	SECHABA, ITUMELENG	Director	Matemainzu	Business Union		478848841	
193	Ms	Lebogang	Director	Matemainzu	Business Union		478408401	
194	Mr	Thapelo Kgaswane	Director	Matemainzu	Business Union		AD1190661	
195	Mr	Spoo	Director	Matemainzu	Business Union		P02278759	
196	Ms	Louisa Madiako	Director	Matemainzu	Business Union		A01174675	
197	Dr	Lynette Moretto	Director	Matemainzu	Business Union		A00933912	
198	Mr	Nchakha	Director	Matemainzu	Business Union		435264937	
199	Mr	Thabo	Director	Matemainzu	Business Union		468518770	
200	Mr	Thabo	Director	Matemainzu	Business Union		M00013509	
201	Ms	Zanele	Director	Matemainzu	Business Union		49527361	
202	Mr	Chackalingam	Director	Matemainzu	Business Union		452281405	
203	Dr	Ahmed	Director	Matemainzu	Business Union		434419182	
204	Mr	Mohsen Valt	Director	Matemainzu	Business Union		448105107	
205	Mr	Cornelius	Director	Matemainzu	Business Union		445511693	
206	Mr	Michael	Director	Matemainzu	Business Union		476903645	
207	Mr	Cwesiel	Director	Matemainzu	Business Union			
208	Mr	NRibi	Director	Matemainzu	Business Union			
209	Mr	Blake	Director	Matemainzu	Business Union			
210	Ms	Innocentia Itumeleng Grijmatau	Director	Matemainzu	Business Union			

211	Mr	Harold	Motaung	Executive Corporate Affairs	Anoorag Resources Corporation	Mining	443704925	011 779 6633	harold@anooragresources.co.za	21 - 28 August
212	Mr	Moetsapele	Mothababi	Director	Thabi Carriers	ICT/Transport	453124838	27 83 449 6576	eta_mothababi@wembu.com	8-29 August
213	Mr	Modisa	Motoba	Chief Executive Officer	Quantile Capital	Financial Services & Investment	466293932	27 11 442 5605	Modisa@cvcapital.co.za	21 - 28 August
214	Mr	Pathe	Motsepe	Executive Chairman	African Rainbow Minerals Limited	Mining	467632103	11 779 3468	barbara_russell@arm.co.za	8-29 August
215	Mr	Tumelo	Motsei	Executive Director	Anoorag Resources Corporation	Mining	461176742	27 11 779 6633	Thandiswa@anooragresources.co.za	22-26 August
216	Mr	Mohamed Saleem	Mowzer	Strategic Advisor to the CEO	EDI Holdings (Pty) Ltd	Energy	M00021891	021 441 8580	Liliane.Hattingh@ediholdings.co.za	
217	Dr	Jaobson	Mphahudi	Chairman	Naledi Real Engineering	Railway	471999342	011 783 6992	d.j.mphahudi@telkomsa.net	
218	Mr	Bongizwe	Mpondo	Managing Director	SAFIRI (Pty) Ltd	Transport	445137244	(011) 694 1789	bongiz@safrin.co.za	
219	Mr	Mandis	Msimang	Chief Executive Officer	Benisizwe Communication Consultants	Telecommunications	447304879	27 83 751 2220	mandisa@bensizwe.com	
220	Mr	Stankake	Mtangi	Director	Africa Resources Limited	Mining, telecommunications	00-1-502-5000002			
221	Mr	Andrew	Mthemba	Chairman	Broadband Infoco	Telecommunication	461083978	011523 3000/	leem@bfi.co.za	
222	Mr	Prince	Mthimkhulu	Executive Director	Khumbula Property Services	Construction	477825977	082 677 3399	prince@khumbula.co.za	23 - 27 August
223	Ms	Futhi	Mtoba	President	Business Unity South Africa (BUSISA)	General	M000021155	27 11 806 5961	mthuzinger@deloitte.co.za	
224	Mrs	Johanna	Mukoli	Managing Director	Travel with Flair	Travel & Tourism	453076663	27 11 234 6660	johanna@twf.co.za	21 - 28 August
225	Mr	David	Mukoudi	Global Head: Investment Banking	Divine Inspiration Trading	Agro-Processing	442918892	072 626 5655	philipmukoudi@yahoo.com	23-Aug
226	Mr	Andrew	Munro	Director	Standard Bank Group	Financial Services	M000013860	27 11 636 5066	Tshapo.Machuko@standardbank.co.za	
227	Mr	Vusi	Murray	Director	Ping An Health	Health and Insurance	A00486019		andrewm@discovery.co.za	
228	Mr	SBUSISO LUCAS	Mzobese	Executive Director	Jubane Holdings	Transport	441275988	27 31 503541	ahabasa@vodmail.co.za	22-26 August
229	Mr	Mervyn	Naidoo	Owner	Imfolazi Investments	Capital Equipment	A00025899	076 747 5889	deebom@webmail.co.za	21 - 28 August
230	Dr	Yatesh Narasimani	Naidoo	Owner	SAVIO HOLDINGS	Healthcare	464758196	27 32 551 3000	umadood@telkomsa.net	24-26 August
231	Dr	Kavin Shumugam	Naidoo	Global Programs Director	Self	Healthcare	A01156606	27 32 551 3000	yaimaidoo@yahoo.com	
232	Mr	Joel	Naidoo	Executive Chairman	International Centre for Eyecare Education	Public Health	M00018905	27 31 2023811	k.naidoo@icse.org	
233	Mr	Joel	Naidoo	Director	Age Group	Transport	462301466	27 12 667 6494	reggie@agegroup.co.za	
234	Mr	PA	Naidoo	Head	ATB Coaches	Financial Services	44801375	27 82 788 7709	joel@atb.co.za	24 - 26 August
235	Ms	Hugo	Naidoo	Chief Executive Officer	FNB	Private Equity	448201375	082 788 7709	hugo.naidoo@fnb.co.za	
236	Ms	Karuna	Naidoo	CEO	VANDHAN DISTRIBUTIONSCC	Import & Export, & Governance	A00773614	27 82 3377017	hugonaidoo@yahoo.com	
237	Ms	Basia	Nastorowska	CEO	CGLS	ICT	P07109910	27118951075	karuna@cgls.co.za	
238	Mr	Kadi	Nasieip	CEO	Intercept Networks CC	ICT	469786033	010 201 4731	denisek@SANERLO.ORG.ZA	24 - 26 August
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240	Mr	Nqobizwe	Ndlovu	CEO	Kwela Fleet Management	Tourism	472085895	015 583 0039	info@kvwelofleet.co.za	
241	Ms	Alida Anna	Nel	General Manager and Head of Operations	N Ndlovu And Associates	Management Consulting			tdlamini@wmdforassociates.com	
242	Mr	Paul	Nel	General Manager and Head of Operations	Levubu Dried Fruit	Agro-Processing			info@kvwelofleet.co.za	
243	Ms	Sophie	Nengwekhulu	Managing Director	Tshavelsi-Mudzinga Electrical	Financial Services				
244	Mr	Andre	Nenele	Managing Director	Securelink	ICT				
245	Mr	Benjamin	Ngcwangana	Director	G-Worn Fourteen	Agro-Processing	453478717	062 651 7711	gkelibz@afrika.com	
246	Mr	Babawha	Ngyoma	CEO	Kelly Group	Human Capital	477060910	27 11 483 0840	babawha@sfika.co.za	21-26 August
247	Mr	Mlameli	Ngubane	Managing Director	SS Mining	Mining	47077529	051 702 1601	cardm@bonelena.co.za	
248	Mr	Pinky	Nzudele	Managing Director	Epabe	Investments	458716083	011 706 3811	pinky@bfinvestments.co.za	
249	Mr	Zanoxolo Mmangaliso	Nhansi	Director	Woman Investment Portfolio Holdings	Investments	800081992	27 11 715 3616	tsuim@wiphold.com	
250	Mr	Johan	Nkomo	CEO	Umsimbithi Holdings	Engineering	427409448	012 243 7203	johann@umsimbithi.co.za	21 - 28 August
251	Mr	Andrew	Nkomo	Executive Chairperson	Nizambule and Associates	Technology	456951477	27 11 501 2800	anknambule@nkambule.co.za	
252	Mrs	Constance	Nkosi	CEO	Lidonga	ICT			connie.nkosi@lidongagroup.co.za	22 August-03 Sept
253	Mr	Patrick	Nkuta	Head of Infrastructure Advisory	Tirani Business Solutions (Pty) Ltd	Financial	465472333	27 11 312 3970	mimdia@tirani.co.za	
254	Mr	Mosib	Nkisi	Head of Infrastructure Advisory	Standard Bank	Financial			mabatokeing@tirani.co.za	
255	Ms	Pontso	Ntseose	Managing Director	NESS	International Business Development & Consulting	4319105745	011 467 9004	pointso@nessenergy.co.za	
256	Mr	Thabo	Ntshupa	CEO	Khumbula Investments Holdings	Investments	464050458	082 466 4907	thweste@gmail.com	
257	Ms	Judy	Nwokedi	Senior Vice President	AREVA	Energy	M8579478	27 11 9266637	judith@vodmail.co.za	21 - 28 August

261	Ms	Judy Ernst	Nwokedi Oberholster	Senior Vice President Managing Director: Sasol Synthetics Internal Communications	Areva Sasol	M8579478 M00004715	011 3705637 27 11 3440002	Judith.voddamill.co.za Ernst.oberholster@sasol.com	21 - 28 August
262	Mr	Lynette Paul	Oelshig O'Flaherty	Director Strategic Marketing Chief Financial Officer	International Marketing Council of SA Esikom	4424259869	1148930122	lynette@brandsouthafrica.com	
263	Ms	Marianne Stephen	Olkon Oosthuysen	Head: Retail Strategy & Integration Senior Consultant	ABS Group Frontier Advisory	706591245 710959999	27 11 350 9248 852-9889-5510	marianne@absa.co.za solben@frontieradvisory.com	
264	Ms	Donna	Padachi Pandaram	General Manager Member	Itiron Miles Plant Hire	422024364	27 11 944 0212	elhor.bodinger@itiron.com	
265	Mr	Damian Sydney	Parmasur Paruk	Executive: Corporate Development Director	African Rainbow Minerals Limited Landsee Shipping	47882669 A00587470	071 928 1700 083 555 7077	damian.padachi@itron.com Juanita.Rhodes@itron.com	
266	Mr	Shanlin Imrhan	Patheer Patheer	Group Managing Director Group Managing Director	Bakau Group Ernst & Young	AD1081200 469132896	27 11 895 6439 27 11 779 1300	milesplant@valloc.com shanim@masur@absacapital.com	22 - 27 August
267	Ms	Urvashi Swasingaran	Patheer Patheer	Group Managing Director Associate Director: Head of China Africa D	Bakau Group Ernst & Young	407186271	27 11 679 1651 27 11 7069100	Urvashi.Swasingaran@arm.co.za Siva@landsee-shipping.co.za	
268	Mr	Kevin	Paul	Managing Director	Nambirth Technologies		091 5768000	bataungroup@telkom.net Lauren.Palensky@za.ey.com	
269	Mr	Bao	Pei Zhao	Director	Bao Li Distribution CC	632359717	011-6232108	dieok@hotmail.com	
270	Mr	Sindile	Peter	Shareholder Project Manager	Huawei Technology SA Network Investments	M00001377	078 738 8502	mandy_lee@huawei.com	
271	Mr	Dabwolo Peter	Peter	Business Development Manager: Global	Standard Bank Group	47726037	27 11 684 2322	mritam@network.pro	
272	Mr	Alvin	Peter	Business Development Manager: Global	Standard Bank Group	477083443	27 11 631 1965	alvin.peter@standardbank.co.za	23-27 August
273	Mr	David	Pfeiff	Chief Financial Officer	Eaton Telecom	467025716	0474673945	david.pfeiff@eatontelecom.com	
274	Ms	Alice	Phatudi	Business Development Manager	South African Women in Mining Investment Hold Landsee Shipping	464594297	011 934 9039	alice@mvwecaps.co.za	
275	Mr	Dreushan	Pitay	Business Development Manager	Landsee Shipping	462208683	27 11 679 1651	dirushamp@landsee-shipping.co.za	
276	Mr	Johannes	Pratorius	CEO	Wipro Holdings	470 813 755	082 578 6213	kerrina.sib@wiproholdings.co.za	
277	Mr	Thinus	Prinsloo	Integration Director	Alba Group	480870630	27 11 350 8531	opbeerman@mweb.co.za	
278	Mr	Dabwolo Peter	Pule	Founder & Proprietor	North College Way (NOW)	N598886 (Botswana)	27 78 513 7714	thinus.prinsloo@absa.co.za	
279	Mr	Alvin	Peter	Business Development Manager: Global	Standard Bank Group	477083443	27 11 631 1965	banepulle@gmail.com	
280	Mr	David	Pfeiff	Chief Financial Officer	Eaton Telecom	467025716	0474673945	makwanar@bc.co.za	
281	Ms	Alice	Phatudi	Business Development Manager	South African Women in Mining Investment Hold Landsee Shipping	464594297	011 934 9039	alice@mvwecaps.co.za	
282	Mr	Dreushan	Pitay	Business Development Manager	Landsee Shipping	462208683	27 11 679 1651	dirushamp@landsee-shipping.co.za	
283	Mr	Johannes	Pratorius	CEO	Wipro Holdings	470 813 755	082 578 6213	kerrina.sib@wiproholdings.co.za	
284	Mr	Thinus	Prinsloo	Integration Director	Alba Group	480870630	27 11 350 8531	opbeerman@mweb.co.za	
285	Mr	Barne	Pule	Founder & Proprietor	North College Way (NOW)	N598886 (Botswana)	27 78 513 7714	thinus.prinsloo@absa.co.za	
286	Mr	Geoffrey	Qhena	Chief Executive Officer	IOC SA	464039006	011 269 5279	makwanar@bc.co.za	
287	Mr	Kenneth	Quinn	Managing Director of Oil and Gas	Standard Bank			headali@murwa.com	
288	Mr	Herman	Radij	Director	MURWA TECHNOLOGIES	A00378141	792259780	Cheryl.Singee@sasol.com	
289	Mr	Maurice	Radebe	Chairperson	South African Petroleum Industries Association	D00003975	011 885 6907	personal.assst@mmakau.co.za	
290	MS	Bridgette	Radebe	Executive Chairman	Minskau Mining	474654415	27 11 268 6780	pete@identitypartners.co.za	
291	Ms	Polo	Radebe	CEO	Identity Partners	M00013495	011 351 2900	gavin@gwinrajah.com	
292	Mr	Gavin	Rajsh	CEO	GAVIN RAJAH ATEHER PTY LTD	A00612820	21 424 7862	gwinaj@mweb.co.za	
293	Mr	Micketo	Ralgogo	Chairperson	Linked Thoughts Consulting	449437667	082 952 5315	mrskgogo@infedthroughits.co.za	
294	Mr	Andile	Ramaphosa	Manager International Business Development	Standard Bank			gallig@parliament.gov.za	
295	Adv	Ngaoko	Ramathodi	Special Advisor	Secunjalo Investments: International Economic Affairs			tramaano@wiphold.com	
296	Ms	Tryphosa Mmakaya	Ramosa	Group CFO	Wiphold			resetse@me.com	
297	Mr	Sello	Rasethaba	Executive Director	Mediterranean Shipping Company	300407179	011-788-8538	tsalal@shoofitresources.com	
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299	Ms	Johanna	Rafietse	SAATHI (Pty) Ltd	Rawat Property & Manufacturing	481642779	082 952 2938	phr@absamail.co.za	
300	Mr	Goolam	Rawat	Rawat Property & Manufacturing	Rawat Property & Manufacturing			pa.royan@satling.co.za	
301	Mr	Thitaj (Allan)	Reddy	Chairman	Satlog Group	M00002474	27 11 994 9000	rens@satfinwines.co.za	
302	Mr	Rene	Reiser	CEO	South African Fine Wines	M00006557	021 864 1235	gfaudy@matiki.co.za	
303	Mr	GLAOSTONE	REUBEN	CEO	KERMAAS MINING RESOURCES SA	438605439	021 871 1308	rud@satfca.co.za	
304	Ms	Rudolph	Richards	South African Fruit & Vegetable Canners Export Council	South African Fruit & Vegetable Canners Export Council			elnieke@absa.co.za	
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308	Mr	Mortimer	Rydal	Koopermansloot Wingerde	Koopermansloot Wingerde	4588940724	021 865 2355		
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310	Mr	Nazar	Salman	Galaxy Dried Fruit Processing	Galaxy Dried Fruit Processing	474814083	011-7972000 093 702 4840		

311	Mr	Andile	Sangqu	Executive Director	Xatara South Africa	471436559	27 82 465 8920	Pleirand@ustrata.co.za
312	Ms	Rabbia	Sarang	Head of Academy	ABSA Group	458954490	27 11 350 0971	rabbia.sarang@absa.co.za
313	Ms	Portia	Schippers	Chief Operating Officer: Mining & Infrastructure	Berfin	462017516	021 763 7690	portia@berfin.biz/nikki@berfin.biz
314	Mr	Edward	Scholtz	Principal Partner	CIC Energy Corp	440753556	27 11 305 1850	nuna.williams@cicenergy.com
315	Mr	Andrew	Scott	Principal Partner	Ping An Health	M00022459	011 351 2900	andrew@discovery.co.za
316	Ms	Sonja Enifila Ncumisa	Sebotso	Wealth Manager	Investec Securities	466830191	27 11 286 8745	Sonja@idmthypartners.co.za
317	Ms	Dimakatso	Sekhoto	Vice President	Petro SA	483339671	27 11 286 8745	dsakhoto@investec.co.za
318	Mr	Everton	September	Executive Director	Network Investments	4741930727	27 11 684 2822	ANDISWA.Koyana@petrosa.co.za
319	Ms	Miliza	Sequeira	Executive Director	Wiphold	AEO98934	27 11 684 2822	micram@network.pro
320	Mrs	Gloria	Serobe	Managing Director	CFE Group	477578204	010 201 4717	gserobe@wiphol.com/TQuinn@wipcapita.com
321	Mr	Jabulani	Shabalala	Head of International Investment Banking	Standard Bank	477578204	010 201 4717	klm@cefgroup.co.za
322	Mr	Paul	Shang	Chairman	Southern Africa Shanghai Industrial & Commercial	M00014867	013 755 4649	paul.shang@standardny.com
323	Mr	Paul	Shang	Chairman	Johann Sibbye Promotions	A00216645	828949197	tdshihai@gmail.com
324	Mr	Haf	Shi	Executive Director	LSIG Holdings	013 755 4649	27 83 688 6623	sibiya@vodamail.co.za
325	Mr	Mfana Johanna	Sibiya	Group Executive Director	Mosa Trading Ltd	428259576	011 805 5153	linden@lshg.com
326	Mr	Lindani	Sigaseke	Vice President	Durban Chamber	442834425	27 11 355 1000	chris@rossagroup.co.za
327	Mr	Redzani Christopher	Singo	Chairman	Arup (Pty) Ltd	454476837	27 11 355 1000	tembakazi@acc-solutions.co.za
328	Mrs	Tembakazi	Sififi	Director	National Youth Development Agency	A00754230	27 11 883 9363	DMbange-la@nyda.gov.za
329	Mr	Lungile	Sisulu	Managing Director	Chicks Silver Co-Op	A00012613	27 11 883 9363	fjabber@gmail.com
330	Mr	Francois	Slabber	Executive Chairman	Green Technologies	440020685	27 11 783 8771	luyendas@worldonline.co.za
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333	Mr	Rory	Stear	Co-Head of Investments	Wiphold	M00013855	27 11 441 3445	ntthebosa@wiphold.com
334	Mr	Michael	Stehler	Senior Group Executive: New Business Development	Sasol	467008527	082 411 5907 / 021 864 5050	lean.straus@sasol.com
335	Mr	Richard	Stocken	Chairman	Thokoza Wine & Spirits Investments	451324814	27 21 419 0124	info@thokoza.com
336	Mr	Jannie	Stockenström	Group Chief Executive Officer	Sekunjalo Investments	451458898	011 529 2021	vanesa@sekunjalo.com
337	Mr	Sean	Straus	Managing Director	Discovery Holdings	473982098	011 529 2021	kimba@discovery.co.za
338	Mr	Sean	Straus	Managing Director	PRIMESTARS MARKETING	S75313946	011 764 8618	primestars@primestars.co.za
339	Mr	Benise	Stubbs	Managing Director	GMT Investcorp Pty Ltd	S16995942	011 784 8618	angelina@gmtafrica.com
340	Mr	Barry	Swartzberg	Acting Head: Capital Management	Standard Bank	464770246	27 11 350 7715	christina@gmtafrica.com
341	Mr	Marth	Sweet	Head: TRANSPORTATION, FINANCIAL SERVICES SBU	ABSA Group	468634546	011 269 3740	nicole@absa.co.za
342	Ms	ANGELINA	Tan	EXECUTIVE MANAGER: BUSINESS DEVELOPMENT	IDC SA	453655342	41 405-0418	kugant@idc.co.za
343	Ms	CHRISTINA	Tan	Director	COEGA DEVELOPMENT CORPORATION (PTY) LTD	A00041789	073 104 6219	khwezi.tye@coega.co.za
344	Mr	Seath	Tan	Executive Director: New Business & Stakeholder Relations	Knowledge Economix Pty Ltd	46110993	011 455 2111	Harvey@knowlex.co.za
345	Mrs	Nicole	Tembett	CEO	Bright Electrical Industries	M00013461	23 348 6300	yivanzinvest@gmail.com
346	Mr	Kugan	Thaver	Regional Manager	GRW ENGINEERING PTY LTD	M00015167	2782 468 7739	shams@grw.co.za
347	Mr	KHWEZI	Tiya	Director	Abba Group	A00576884	27 31 565 8400	econ@uma.co.za
348	Mr	Harvey	Trent	Head: Organizational Development	Ping An Health	479470997	021 950 9270	waron.vanrensburg@absa.co.za
349	Mr	Xolani	Teehana	Chairman	ABSA Group	478935967	27 11 350 5210	johann@umsinbithi.co.za
350	Mr	Gerhard	Van der merwe	Chief Executive Officer	IMPECC	466645836	046 622 6567	johannr04@aligan.com.cn
351	Mr	Deon	Van der Walt	Chief Executive Officer	Isidile Investments	44851884	27 83 604 8008	lorenz@absa.co.za
352	Mr	Warren	van Rensburg	Chief Executive Officer	Business Unity South Africa (BUSA)	443641688	27 11 784 8000	powermark@imaginet.co.za
353	Mr	Jaco	van Rensburg	Chief Executive Officer	OMISSA	456620104	053 474 1677	dupree@bellomisa.net
354	Mr	Johan	van Rooyen	Market Analyst	Olives South Africa	G15056316	0027 41 403 0429	tshepo.maseko@busa.org.za
355	Mr	Lorenzo	van Schalkwyk	Deputy CEO	Coega Development Corporation	G33411231	833893667	visser@mweb.co.za
356	Mr	Philip	Vermak	Director General	Muswei Technology SA	G31782861	012-4660445	bel.wang@coega.co.za
357	Mr	Dupree	Vieklazi	Director General	Golden Nest International			mandy.lew@huawei.com
358	Mr	Jerry	Vhakaazi					wangbing@gnl.co.za
359	Mr	Duncan	Vink					
360	Mr	Benjamin	Visser					
361	Ms	Boj	Wang					
362	Mr	Shun U	Wang					
363	Mr	Wei	Wang					

364	Mr	Anton James	Weeswind	Managing Director	Continental Cement	458934942	27 83 277 4321	anton@starex.co.za
365	Mr	Wesish			Agro-Processing	702964459	031 450 5890 / 082 907 9027	ronnie.welsh@za.namapak.com
366	Ms	Barbara Kim	Wetzi	Director	Education	A00382279		kimwetzi@icon.co.za
367	Mr	Willem	Winstel		Agro-Processing	M00004033	022 492 2839	willem@cloof.co.za
368	Mr	Rene	Wolfaardt		Agro-Processing		021 982 5030	rene@roelbosters.co.za
369	Mr	Thabile	Wondi	Managing Director	Investment	470706716	27 73 371 4650	thabile@kogaerainbow.co.za
370	Mr	Zhi-Qiang	Wu	CEO	telecommunication	G32342557		wuzhiqiang@huawei.com
371	Mr	Changbin	Xu	Managing Director	Property development	G36558477	011-9301588	changbinxu718@hotmail.com
372	Mr	Buzwe	Yefele	Director	Construction	477176440	11 779 2813	sharonco@aveng.co.za
373	Mr	Xiaoyan	Yang	General Manager	Import & Export subseas and property development	G20407516	011-3340303	yang-y88@hotmail.com
374	Mr	Yang	Yang	Director:Public Relations	Telecommunication	G34006990	083 389 9667	mandy.lew@huawei.com
375	Dr	Kun	Yu		Health	429207091	012 335 2557	dikunyu@burst.co.za
376	Mr	Juraji	Zhang	Managing Director	Shopping centre development, Construction	G32342928		petersa888@sina.com
377	Mr	Peng	Zhang	Vice President	Construction	G32342492		mandy.lew@huawei.com
378	Mr	Lasarus	Zim	Executive Chairman	Telecommunication	M00012239	11 884 0818	lauren@afnpalmrest.co.za
379	Mr	Makhanga Johannes	Zulu	Senior Audit Partner	Mining			
380	Mr	Michael	Zurita	Executive Manager	Financial Services	482595315	017 692 4955	marhinga@idzwest.co.za
381	Mr	Sizwe	Zuma	Chief Operating Officer	Construction	435474267	072 083 5144	khwests@gmail.com
382	Mr	Duduzani	Zuma	Managing Director	Oil and Gas			
					Mining	456433643		
383	Mr	Sandle	Zungu	Executive Chairman	Investment	438715743	011 217 3300	kebob@ico.co.za sandile@zico.co.za



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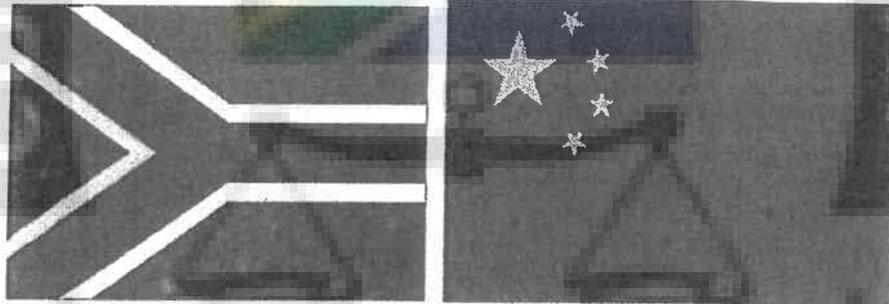


international relations & cooperation

Department:
International Relations and Cooperation
REPUBLIC OF SOUTH AFRICA

VISIT TO THE PEOPLE'S REPUBLIC OF CHINA BY H.E. PRESIDENT JG ZUMA.

24 - 26 August 2010



BRIEFING NOTE FOR MINISTERS ACCOMPANYING PRESIDENT ZUMA

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SECTION A: DRAFT PROGRAMME**Monday, 23 August 2010**

- 00:00 The President and entourage arrive at Beijing Capital Airport (New VIP Terminal)
Received by: Vice Minister of Foreign Affairs for Africa
- 00:00 The President receives flower bouquet from children
- 00:00 President escorted directly to vehicle
- 00:00 President and entourage proceed to Diaoyutai State Guesthouse
Villa No.18
Address: No.2 Fuchenglu, Haidian District
Tel No. +86 (10) 58591188
- 00:00 Briefing to the President
Venue: Diaoyutai State Guesthouse
- 00:00 Private Dinner
Venue: Diaoyutai State Guesthouse

Tuesday, 24 August 2010

- 00:00 Breakfast
- 00:00 Depart for Business Seminar
- 10:00-11:00 President to open Business Seminar and witness signing of business contracts
Venue:
Diaoyutai State Guesthouse
Contact: Recado Andrews
- 12:00-14:00 Luncheon with Chinese Business Executives hosted by the President
Venue: Diaoyutai State Guesthouse
- 14:10-14:25 Greet South African Embassy staff
Venue: Diaoyutai State Guesthouse
- 14:30-15:15 Meet Ambassadors of the African Diplomatic Corps
Venue: Diaoyutai State Guesthouse
- 16:30 Depart for the Great Hall of the People
- 17:00-17:15 Welcome Ceremony hosted by President Hu Jintao
Venue: Great Hall of the People
Contact:
- 17:15-18:15 Official talks between President J Zuma and President Hu Jintao
Venue: Great Hall of the People
Contact:
- 18:15-18:30 Signing Ceremony of Agreements
Venue: Great Hall of the People
Contact:

18:30-19:30 Dinner hosted by President Hu Jintao
 Venue: Great Hall of the People
 Contact:

00:00 -00:00 Spousal Programme
 To be confirmed

Wednesday 25 August 2010

00:00-00:00 Breakfast
 Venue: Diaoyutai State Guesthouse

10:00-11:00 Lecture by President Zuma at Renmin University
 Venue: tbc

11:30-12:00 One-on-one interview with President by Chinese television network
 Venue: Diaoyutai State Guesthouse

00:00 Lunch

00:00-00:00 Media Conference
 Venue: Diaoyutai State Guesthouse

00:00 Depart for Great Hall of the People

15:00-15:40 Meeting with Mr Xi Jinping, Vice President of the P.R.C.
 Venue: Great Hall of the People
 Contact:

16:00-16:40 Meeting with Mr Wu Bangguo, Chairman of the National People's Congress (NPC)
 Venue: Great Hall of the People
 Contact:

17:00-17:40 Meeting with Premier Wen Jiabao
 Venue: tbc

00:00 Depart for Diaoyutai State Guesthouse

18:15 Briefing to South African media
 Venue: Diaoyutai State Guesthouse

19:00-20:00 Dinner

20:10 Check-out of Diaoyutai State Guesthouse

20:30 Depart for Beijing Capital Airport (New VIP Terminal)

00:00 Arrive at Beijing Capital Airport

21:00 Depart Beijing for Shanghai

23:00 Arrive in Shanghai at Airport
 Received by

00:00 Depart for Hotel

Thursday, 26 August 2010

00:00 Breakfast

00:00 Expo site visit
Venue: tbc

00:00 Depart for the South African Pavillion at the Expo site
Contact: Consul-General VM Khumalo

00:00-00:00 Tour of Expo site

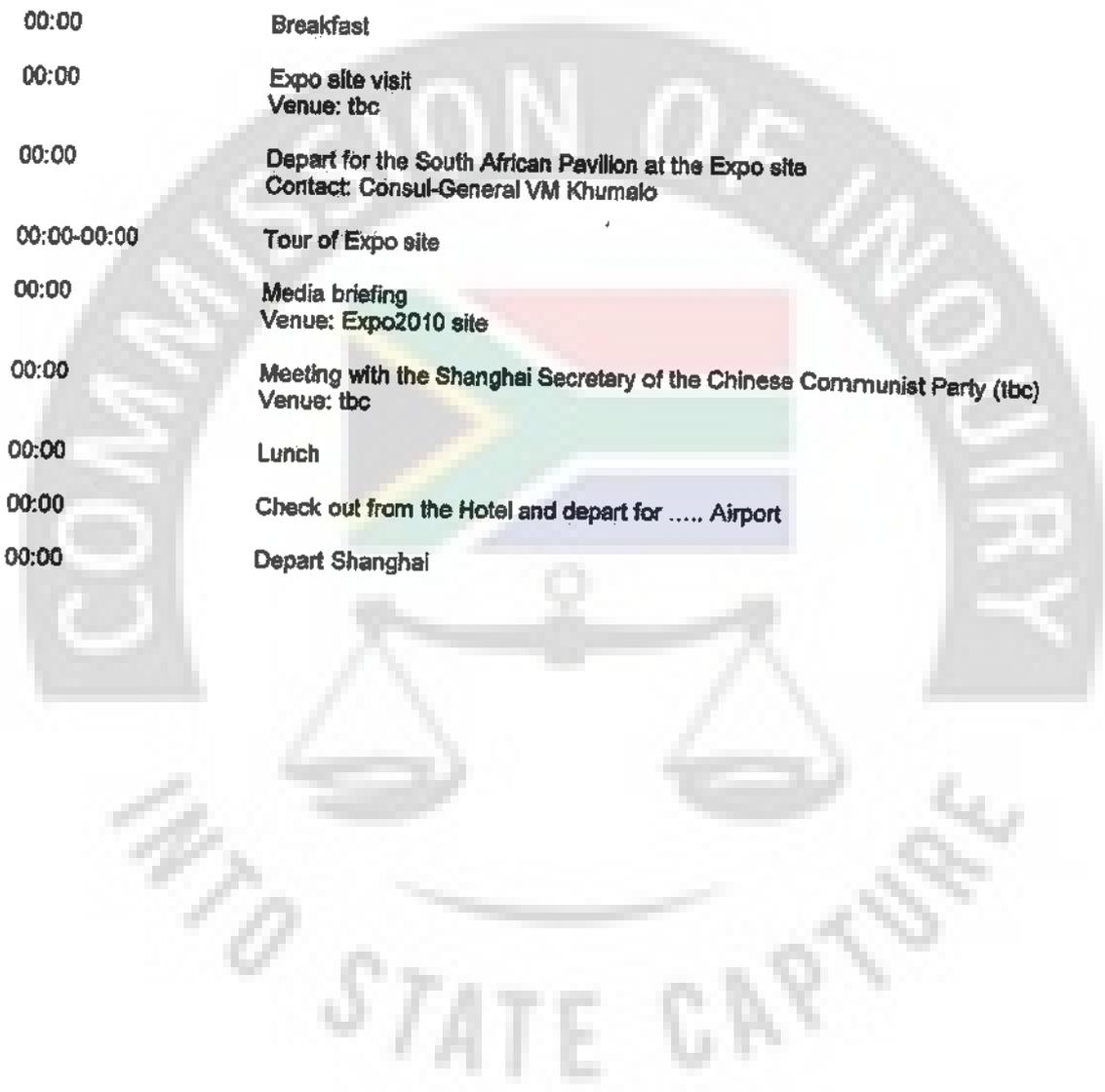
00:00 Media briefing
Venue: Expo2010 site

00:00 Meeting with the Shanghai Secretary of the Chinese Communist Party (tbc)
Venue: tbc

00:00 Lunch

00:00 Check out from the Hotel and depart for Airport

00:00 Depart Shanghai



SECTION B: COUNTRY PROFILE - CHINA AT A GLANCE



Official Name	-	The People's Republic of China
Ruling Party	-	Chinese Communist Party
Head of State	-	Hu Jintao
Foreign Minister	-	Yang Jiechi
Ambassador to SA	-	H.E. Zhong Jianhua
Ambassador to PRC	-	H.E. Ndumiso Ntshinga
*China's GDP	-	US \$ 5.6 bn (April 2010)
*China's real GDP Growth (%)	-	9.7 % (April 2010)
*Source:		www.eiu.com

Land area: 9,561,000 sq km
Population: 1.32bn (end-2007; official estimate)
Population (millions) of main urban areas:
 Shanghai 15.6; Chongqing 5.1; Beijing (capital) 13.1; Wuhan 4.9; Guangzhou 11.0; Harbin 4.8; Shenzhen 8.5; Shenyang 4.4; Dongguan 6.5; Chengdu 3.8; Tianjin 5.2; Zhengzhou 3.5

Climate: 23-33°C (average daily minimum and maximum in August)
Language: *Putonghua*, (known as Mandarin); local dialects and languages are also used
Measures: The metric system is used
Currency: Renminbi (Rmb), or Yuan. Average exchange rate in 2009: Rmb 6.83: US\$1
 As of 17 August 2010: 1.00 USD = 6.79680 Rmb

Fiscal Year: January-December

Time: 6 hours ahead of SA

According to the *National Bureau of Statistics of China*, released on 15 July 2010, the preliminary gross domestic product (GDP) of China in the first half of this year was 17,284.0 billion Yuan, a year-on-year increase of 11.1 percent, which was 3.7 percentage points higher than that in the same period last year. The value added of the primary industry was 1,336.7 billion Yuan, up by 3.6 percent; that of the secondary industry was 8,583.0 billion Yuan, up by 13.2 percent; and that of the tertiary industry was 7,364.3 billion Yuan, up by 9.6 percent.

The agricultural production kept a steady growth and the output of summer grain maintained the same level. The total output of summer grain was 123.10 million tons, a decrease of 390 thousand tons, down by 0.3 percent, and this is the third best harvest since the foundation the People's Republic of China. In the first half of this year, the total output of pork, beef and mutton reached 37.13 million tons, a year-on-year growth of 3.5 percent. The output of pork reached 24.55 million tons, up by 3.6 percent.

Industrial production picked up quickly with a substantial increase in economic efficiency of enterprises. In the first half of this year, the total value added of the industrial enterprises above designated size was up by 17.6 percent year-on-year, or 10.6 percentage points higher than that in the first half of 2009. An analysis on different types of enterprises showed that the value added growth of the state-owned and state holding enterprises went up by 17.7 percent; collective enterprises by 10.2 percent; share-holding enterprises by 18.8 percent; and 17.0 percent growth for enterprises funded by foreign investors or investors from Hong Kong, Macao and Taiwan provinces. The year-on-year growth of heavy industry was 19.4 percent, and 13.6 percent for the light industry. Among 39 industrial divisions, 38 of them registered year-on-year growth. In terms of different areas, the growth in eastern, central and western regions was 16.7 percent, 20.7 percent and 17.6 percent respectively. The production and sales of industrial products went on well. In the first half of this year, the sales ratio of industrial products was 97.6 percent, or 0.4 percentage point higher than that in the previous year.

In the first five months of this year, the profits made by industrial enterprises above designated size stood at 1,539.7 billion Yuan, up by 81.6 percent year-on-year. Among the 39 industrial divisions, 36 divisions registered year-on-year increase in profits, 1 division reversed from loss-making to profits, and the rest 2 divisions witnessed reduction of profits.

The growth rate of investment in fixed assets came down from a high level while the investment in real estate experienced accelerated growth. In the first half of this year, the investment in fixed assets of the country was 11,418.7 billion Yuan, a year-on-year growth of 25.0 percent. Of this total, the investment in urban areas reached 9,804.7 billion Yuan, up by 25.5 percent while that in rural areas was 1,614.0 billion Yuan, up by 22.1 percent. Of the total investment in fixed assets in urban areas, that in the primary industry, the secondary industry and the tertiary industry went up by 17.8 percent, 22.3 percent and 28.4 percent respectively. The investment in eastern, central and western regions grew by 22.4 percent, 28.0 percent and 27.3 percent respectively. In the first half of this year, the investment in real estate development was 1,974.7 billion Yuan, up by 38.1 percent year-on-year.

Sales on domestic markets enjoyed fast growth and the popular commodities maintained high sales. In the first half of this year, the total retail sales of consumer goods reached 7,266.9 billion Yuan, a year-on-year rise of 18.2 percent. The retail sales in cities reached 6,265.9 billion Yuan, up by 18.6 percent, and the retail sales in rural areas stood at 1,001.0 billion Yuan, up by 15.6 percent. Grouped by consumption patterns, the income of catering industry was 818.1 billion Yuan, up by 16.9 percent; that of retail sales of commodities, 6,448.8 billion Yuan, up by 18.4 percent. In particular, the retail sales by businesses above designated size reached 2,646.5 billion Yuan, up by 30.0 percent. Rapid growth was registered in emerging areas for consumption: the sales of motor vehicles rose by 37.1 percent; that of furniture went up by 38.5 percent, and that of household appliances and audio-video equipment grew by 28.8 percent.

The year-on-year growth of consumer prices went up mildly while producer prices for manufactured goods increased sharply. In the first half of this year, the consumer prices went up by 2.6 percent. The price rose by 2.5 percent in cities and that in rural areas by 2.8 percent. Grouped by commodity

categories, five out of the eight witnessed growth and the rest three saw drops in prices. The prices for food rose by 5.5 percent; prices for tobacco, liquor and articles up by 1.7 percent; health care and personal articles up by 2.7 percent; recreation, education, culture articles and services up by 0.3 percent; and housing up by 3.9 percent while prices for clothing down by 1.1 percent; household facilities, articles and maintenance services down by 0.6 percent; and transportation and communication down by 0.1 percent. In terms of month-on-month change, in June this year, the consumer prices dropped by 0.6 percent. In the first half of this year, the producer prices for manufactured goods went up by 6.0 percent year-on-year; the month-on-month change in June was down by 0.3 percent. In the first half of the year, the year-on-year growth of purchasing prices for raw materials, fuels and power was 10.8 percent.

Foreign trade recovered rapidly and trade surplus was reduced markedly. The total value of imports and exports for the first half of this year was US\$ 1,354.9 billion, up by 43.1 percent year-on-year. The value of exports was US\$ 705.1 billion, up by 35.2 percent, and the value of imports was US\$ 649.8 billion, up by 52.7 percent. The trade surplus was US\$ 55.3 billion.

The urban and rural population's income continued to grow with steady increase in living expenditure for consumption. In the first half of this year, the per capita total income of urban households was 10,699 Yuan. Of this total, the per capita disposable income of urban population was 9,757 Yuan, a year-on-year growth of 10.2 percent, or a real growth of 7.5 after deducting price factors. Of the per capita total income of urban households, the year-on-year growth of wage income was 9.7 percent; transferred income 13.2 percent; net income from business operation 8.6 percent; and 20.7 percent from property income. The per capita cash income of rural population was 3,078 Yuan, up by 12.6 percent year-on-year, or 9.5 percent growth in real terms. Of this total, the growth of wage income was 18.0 percent; household business operating income 8.0 percent; property income 21.3 percent; and 18.6 percent from transferred income. In the first half of this year, the per capita consumption expenditure for urban population increased by 7.2 percent in real terms and the per capita consumption expenditure in cash for rural population grew by 8.5 percent after deducting the price factor.

The growth rate of money supply dropped from the high level while the incremental outstanding loans and deposits declined as compared with that a year ago. By the end of June, the balance of broad money (M_2) was 67.4 trillion Yuan, a year-on-year growth of 18.5 percent; the balance of narrow money (M_1) was 24.1 trillion Yuan, a rise of 24.6 percent; and the balance of cash in circulation (M_0) was 3.9 trillion Yuan, up by 15.7 percent. The amount of outstanding loans of all financial institutions was 44.6 trillion Yuan, increased by 4.6 trillion Yuan over that at the beginning of this year, or a drop of 2.7 trillion Yuan as compared with the end of June last year. The amount of outstanding deposits of all financial institutions was 67.4 trillion Yuan, an increase of 7.6 trillion Yuan over the beginning of the year, or 2.3 trillion Yuan less than that a year ago.

The domestic and international environment for national economic development is still fairly complicated, and there are still a lot of difficulties and problems in the course of economic recovery. We should be guided by the scientific outlook on development, implement various policies set by the Central Party Committee and the State Council, continue to carry out the pro-active fiscal policy and moderately easy monetary policy, maintain the continuity and stability of macroeconomic policies, and improve the relevance and flexibility of the policies. In implementing the policies, we should apply the proper strength, pace and focus on the priorities, vigorously promote the adjustment of economic structures and the transformation of economic development mode, and make great efforts to intensify the economic reform and achieve a sound and fast economic and social development.

Other Key Financial indicators:

(Source: Foreign Affairs July/August 2010 "Coping with China's Financial Power – Beijing's Financial Foreign Policy" by Ken Miller)

Foreign Exchange Reserves:	US\$2.4 trillion (2009 –People's Bank of China)
Currency Swap Deals:	with Argentina, Belarus, Hong Kong, Indonesia, Malaysia and South Korea
Trade Surplus	US\$196 billion (2009 – China National Bureau of Stats)
China's outbound FDI	US\$48 billion (2009 – around 1% of GDP) (US\$211 billion total accumulated FDI – around 4.3% of GDP)
China's Investment Corporation	(US\$300 billion under management in 2009 -Sovereign Wealth Fund)
Export-Import Bank of China	US\$10 billion worth of concessional loans (2009)

Overview of SA-China Political Relations:

Since the establishment of diplomatic relations in 1998 and the subsequent adoption of the "One China Policy", South Africa's relations with China has expounded substantially in the political and economic spheres.

Importantly, since the 10th year anniversary celebrations of SA-China relations in 2008, the marketing of the 2010 FIFA World Cup and South Africa's successful participation in the 2010 Shanghai World Expo has resulted in SA's image being greatly enhanced in China.

China and South Africa share a common vision and have sufficient consensus on a range of global issues and domestic challenges. Relations are underpinned by more than 60 joint agreements, memoranda, programmes of action, declarations and exchange of notes, which, *inter alia*, cover diplomatic relations, protection of investments, trade and economic cooperation, double tax avoidance housing, agriculture, human resources development, police cooperation, civil air transportation, scientific and technological exchanges, water, sport, arts and culture.

The defining instruments are the *Pretoria Declaration on the Partnership of 2000*, and the *Programme of Cooperation on Deepening the Strategic Partnership of 2006*. These *Declarations* reflect the broad bilateral engagement and common agenda.

President Zuma first visited China as the Deputy President of SA in 2004, where he held bilateral discussion with Vice President Zeng Qinghong. He paid courtesy calls on President Hu Jintao, Mr Wu Bangguo and Premier Wen Jiabao. His delegation visited the cities of Shenzhen, in Guangdong Province (the first Special Economic Zone), and Xian in Shaanxi Province.

The following may be noted with reference to our bilateral relations during 2010:

Feb 2010:	Minister Nkoana-Mashabane paid an official visit to the PRC.
March 2010:	Mr Jia Qinglin, Chairperson of the Chinese People's Political Consultative Conference paid an official visit to SA.
April 2010:	South Africa participates in the 2010 Shanghai World Expo until end of October.
August 2010:	President Jacob Zuma to pay a State Visit to the PRC.
October 2010:	The Speaker of Parliament, Mr Max Sisulu to pay an official visit to the PRC.
November 2010:	Vice President Xi Jinping to pay an official visit to SA to co-chair the 4 th BNC.
December 2010:	Planning to co-chair FOCAC in 2012 and to host FOCAC Summit in SA in 2015.

China is already assisting SA with the implementation of SA's Five National Priorities as follows:

Education and training:

SA-PRC: 200 artisans training through Umsobomvu Youth Fund, 10 short term courses and long term courses for post-graduates e.g. Agriculture, construction, IT etc; upgrading of FET Colleges and vocational training; and 28 new education projects.

FOCAC: PhD students to PRC; 20:20 University.

Fight against Crime

SA-PRC: Organised crime cooperation signed in 1998 and reviewed in August 2010.

Health

SA-PRC: Traditional medicine.

FOCAC: Hospital infrastructure development.

Creating Decent Jobs

Major trading partner

Major investor:

SA-PRC: IDC loan US\$ 50 million to re-capitalise export finance loan book, loan to DBSA; purchase by ICBC of stake in Standard Bank.

Technology transfer e.g. solar panels

FOCAC: China-Africa Development Fund US\$ 5 billion.

Land and Rural Development:

SA-PRC: Aquaculture Gariap Demonstration Project

FOCAC: Agricultural demonstration centres and infrastructure e.g. grain storage facilities in Zambia

SA-PRC Trade Relations: (SA-China Trade Statistics www.thedti.gov.za (Rand '000))

SA Exports	May. 2010	R4,212,187
Annual Total Exports	2009	R48,686,325
SA Imports	May. 2010	R5,785,999
Annual Total Imports	2009	R70,809,455
SA Trade Balance	May. 2010	R-1,573,813
	Feb.2010	R-1,774,658
Trade Balance	2009	R-22,123,130
Total Trade between SA and the PRC	in 2009	R119,495,780

Recent SA-China Bilateral Developments:

The Minister visited the PRC for bilateral consultations in February 2010 to prepare for a State Visit by President Zuma to the PRC later this year. She met with her counterpart, Mr. Yang Jiechi for consultations, and paid a courtesy call on the Vice- President, Mr. Xi Jinping. The visit successfully reviewed the dynamic strategic partnership between South Africa and the PRC and it was agreed in principle that relations be elevated to a Comprehensive Strategic Partnership.

The importance of hosting the 4th Plenary of the Bi-National Commission (BNC) in South Africa in the latter part of 2010 was emphasised, to implement the outcomes of the forthcoming State Visit and to advance practical cooperation within Sectoral Committees and Working Groups. Currently, three Sectoral Committees exist within the BNC structure, namely Foreign Affairs; Economic and Trade; and Education.

In order to further align SA's Five National Priorities within the BNC structure, new Sectoral Committees will be proposed. A review mechanism has also been proposed between the respective Ministries to streamline the BNC Process.

Shanghai 2010 World Expo:

The construction of the South African pavilion at the Shanghai 2010 World Expo was facilitated in consultation with key national departments, provinces and cities, as well as the private sector. The overall theme "The rise of a Modern Economy- Ke Nako!" and monthly themes were approved in April 2009. The Shanghai 2010 World Expo, scheduled to take place from 01 May 2010 until 31 October 2010, offers South Africa an opportunity to showcase the vibrancy of South African cities and urban culture and market South Africa to Chinese society as a modern and vibrant economy; as well as improve the coordination of South Africa's international relations.

MONTH	THEME	LEAD ORGANISATION
May	South Africa's contribution through FIFA 2010 World Cup: <ul style="list-style-type: none"> • Technology and Innovation and • Urban and infrastructure Development 	2010 FIFA loc, DIRCO Public Diplomacy
June	Remodeling of communities in the city: <ul style="list-style-type: none"> • Fighting urban poverty (best practices in all provinces) • Cosmo cities • Inner city regeneration 	The Department of Cooperative Governance and Traditional Affairs.
July	A Modern Economy	The DTI.
August	A Modern Economy	The DTI.
September	Tourism and Heritage	The Department of Arts & Culture/SA Tourism
October	Environment and Climate Change	The Department of Science & Technology /Department of Water and Environmental Affairs

Forum on China Africa Cooperation (FOCAC):

The Minister of International Relations and Cooperation, Ms. M. Nkoana-Mashabane, attended the 4th Forum on China Africa Cooperation (FOCAC) Ministerial meeting in Sharm El - Sheik, Egypt during November 2009. FOCAC is the key instrument for the PRC's engagement with Africa. A bilateral meeting between Minister Nkoana-Mashabane and her Chinese counterpart, Mr. Yang Jiachi, was also held on the margins of the FOCAC Ministerial on 9 November 2009. South Africa remains committed to finding synergies between the New Partnership for Africa's Development (NEPAD) and FOCAC to ensure the Consolidation of the African Agenda and looks forward to co-hosting the 5th FOCAC Ministerial scheduled for 2012 and hosting the FOCAC Ministerial in South Africa in 2015.

Multilateral Relations:

In the Multilateral sphere, President Zuma met President Hu Jintao at the United Nations General Assembly (UNGA) in September 2009 and at the United Nations Climate Change Conference (COP 15) held in Copenhagen in December 2009. South Africa and the PRC share a common vision on Climate Change, as expressed in their collaboration on The Copenhagen Accord in the Brazil, South Africa, India and China (BASIC) grouping.

Important SA- PRC Agreements:

30 December 1997

Joint Communiqué between the Government of the People's Republic of China and the Government of the Republic of South Africa on the Establishment of Diplomatic Relations

April 2000

The Pretoria Declaration on the Establishment of the Partnership Between the People's Republic of China and the Republic of South Africa

December 2001

Exchange of Notes on the Establishment of Bi-National Commission between the Government of the People's Republic of China and the Government of the Republic of South Africa".

21 June 2006

Programme of Cooperation on Deepening the Strategic Partnership

28 August 2006

Memorandum of Understanding on Promoting Bilateral Trade and Economic Cooperation.

24 September 2007

Agreement on Co-operation in the Minerals and Energy Sector.

February 2010 (ongoing)

In the process of drafting and negotiating a Comprehensive Strategic Partnership

SECTION C: SALIENT OBJECTIVES OF THE VISIT

- Deepen and broaden the current strategic partnership to a new Comprehensive Strategic Partnership between South Africa and China;
- strengthen and broaden economic and commercial interaction between the two countries;
- expand South-South interaction with a view to strengthen the voice of the developing world and its capacity to address the needs of its people, and
- to demonstrate appreciation for the importance South Africa attaches to its political, economic and cultural relationship with China.



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DOCUMENTS



Project Spider Web: The full document

Anonymous |

24 August 2015

Anonymous author(s) say white establishment manipulating fiscal and monetary project via National Treasury

Insurance and Risk Management from the University of the Witwatersrand and CAIA Charter holder

He serves on the Investment Committee of the Pan African Infrastructure Development Fund

Member of the Social Finance and Impact Investing

Committee of the Institute of Actuaries (UK).

Previously with ABSA Investments

Ms Adri van Niekerk Head: Board Secretariat

Spider Web Code Name: The Fixer

University of Pretoria: B Admin

Public Management

University of Pretoria: Honours Degree in Public Management

CJ Member of the Integrated Reporting Committee of South Africa

Previously with the University of Stellenbosch as the head of admissions

Key actions moving forward

The spider web has brought back the queen of leaves to restructure National Treasury moving forward. There are talks with the white establishment to position treasury as a strategic benchmark for most African Treasuries. Cyril Ramaphosa is seen as one of the most important events in the history of the Spider Web.

There is a believe that once he is appointed the state president of South Africa, he will be able to achieve most objectives of the spider web that Thabo Mbeki failed to implement. Cyril has a long relationship with the King of leaves. They have worked together in many projects including the establishment of the NDP.

Cyril's younger brother also worked with the Queen of leaves at ABSA bank for a brief period. Minister Nene is being handled by the Queen of Leaves.

During the recent World Economic Forum in Cape Town, Nene assembled all the DDG's and Chief Directors from National Treasury at a Cape Town hotel for a brief meeting. The Deputy Minister was not part of the meeting since he was travelling to Paris. These are the outcomes of the meeting:

The DG's position

Lungisa Fuzile, the current DG for National Treasury will not be extending his contract at the end of August 2015. He will be joining the faculty of economics at the University of Stellenbosch. His departure will be a catalyst for some big changes inside National Treasury.

It is being heard through the grapevine that Avril Halstead will be promoted to the position of DG at treasury. She will be promoted to position of DDG very soon as a stepping stone for her to become the next DG.

Michael Saks, the current DDG will be transferred to one of the SOE's. Tumi Moleko, will be transferred to another ministry as a DOG that works with treasury.

Spider Web Code Name: The Mistress**Ms Matshepo More, Chief Financial Officer**

Member of the Fund Investment Panels

A CA(SA)

Bachelor of Business Science (Finance)

- Certificate in the Theory in Accounting (CTA)

Member of the Board of CBS Property Management (Pty) Ltd

- Member of the Board of Pareto Limited

Member of the Board of ADR International Airports Company South Africa

Member of the Board of ABASA

Spider Web Code Name: The Countess**Ms Moira Moses, Independent Non-Executive Director**

- Chairman of the Property Committee

- Member of the Directors' Affairs Committee

Member of the Audit and Risk Committee

- Member of the Human Resources and Remuneration Committee

- Member of the Investment Committee

BA

Management Advancement Programme (Wits Business School)

- Member of the GEPF Board of Trustees

- Member of the Thusanang Trust, a non-profit organisation focused on Development Phase Education

The Government Employees Pension Fund (GEPF) was established in terms of the Government Employees Pension Law (YEAR) to manage and administer pension matters/schemes related to government employees. The GEPF is self-funded. With a membership of about 1,2 million and 225 000 pensioners, it is one of South Africa's largest pension funds. This is one unit that the queen of leaves has placed an agent.

Hemal Naran**Head of Investments and Actuarial****Spider Web Code Name: The Professor**

Bachelor of Commerce degree in Actuarial Science

African government, on the grounds of their knowledge and experience, mainly in the financial services environment. No fewer than seven Directors on the current Board are chartered accountants, with the other six Directors holding advanced qualifications in fields such as financial economics, business leadership, applied mathematics and tax law. The members of project spider web have been identified through codenames.

The spider web has huge influence in the PIC. This unit it's very important for the white establishment since the PIC owns 34% of the JSE. White asset management firms rely on the PIC for the mandate. PIC has placed more than R70 Billion with Investec alone. The spider web being controlled by the queen of eaves, she has started making moves to ensure that ABSA benefits from the Asset Management mandates.

Spider Web Code Name: The Fox

Mr Mcebisi Jonas, Chairperson

- Chairperson of the PIC Board of Directors
- Chairperson of the Directors' Affairs Committee

Bachelor of Arts in History & Sociology (Rhodes)

- Higher Diploma in Education

Deputy Minister of Finance at National Executive (Executive)

- Member at National Assembly (Parliament)

Member at African National Congress (ANC) Party

Spider Web Code Name: The Iron Master

Mr Daniel Matjila, Chief Executive Officer

Member of the Investment Committee

Member of the Property Committee

Member of the Fund Investment Panels

BSc (Hons) in Applied Mathematics (Fort Hare)

MSc Applied Mathematics (Rhodes)

PhD in Mathematics (WITS)

Postgraduate Diploma in Mathematical Finance (Oxford)

Senior Management Programme (University of Pretoria)

Advanced Management Programme (Harvard)

- Member of the Board of Comprop
- Member of the Board of Ecobank Transnational Incorporated

Office of the Chief Procurement Officer (O-CPO)

The purpose of the O-CPO is to: Modernise the state procurement system to be fair, equitable, transparent, competitive and cost-effective; enable the efficient, economic, effective and transparent utilisation of financial and other resources; including state assets, for improved service delivery; and promote, support and enforce the transparent and effective management of state procurement and the sound stewardship of government assets and resources.

Kenneth Brown

Spider Web Code Name: The Tiger

Mr Kenneth Brown is deputy director general: Intergovernmental Relations, a position he has held since July 2009. He has a MSc in Public Policy from the University of Illinois in the United States (USA),

BA (Hons) in Economics from the University of the Western Cape, and a primary teacher's diploma. After a career in teaching, Mr Brown joined National Treasury in 1998 as a deputy director: Financial Planning. He then went to the USA to study for his Master's degree and returned to National Treasury in 2001 as director: Provincial Policy, a role that underpins national transfers to provinces. Mr Brown was later appointed the chief director: Intergovernmental Policy and Planning, a responsibility which involves sector policies that impact on provinces and local government. He was a Vula operative.

SOE's Under National Treasury and under the Influence of the spider web

The South African Revenue Service (SARS) is mandated by the South African Revenue Service Act (1997) to collect all tax revenues that are due, to provide a customs service, to protect national borders and to facilitate trade. SARS also works to expand the pool of tax contributors by promoting awareness of the obligation to voluntarily comply with tax and customs laws. SARS aims to conduct its activities in a way that enhances economic growth and social development. SARS reports to Deputy Minister of Finance. At the present moment the Spider Web suffered a huge setback when their top members were suspended by the new commissioner. This unit was regarded as the enforcers of the spider web.

The Public Investment Corporation (PIC)

PIC is a government-owned investment management company - and one of the largest investment managers in the country. Founded in 1911, it became a corporate entity in terms of the Public Investment Corporation Act (2004). The PIC invests funds on behalf of public-sector entities. Its largest client is the Government Employees Pension Fund. Pie is governed by a Board of Directors with 10 members, of whom 7 are non-executive directors, excluding the traditionally non executive Chairman.

The Board's overarching role is to maintain sound corporate governance within PIC. As such, its responsibilities include appointing executive management, developing and approving corporate strategies, ensuring an effective governance framework, overseeing risk management and ensuring that PIC's business is managed prudently and responsibly.

The Board is assisted by six Board committees, namely the Audit and Risk Committee, the Investment Committee, the Human Resources and Remuneration Committee, the Directors' Affairs Committee, the Social and Ethics Committee and the Property Committee. The Board has also established four Fund Investment Panels to assist the Board in discharging its statutory duties and responsibilities in relation to investment in South Africa and the rest of the African continent.

Board members are appointed by the Minister of Finance, who represents PIC's shareholder, the South

and the production of macroeconomic forecasts, in particular on growth, the external account and inflation. The forecasts inform economic policy, the fiscal framework, tax forecasts and debt management strategy. Still searching for the presence of the spider web.

Tax and Financial Sector Policy

The Tax Policy unit is responsible for advising the Minister of Finance on tax policy issues that arise in all three spheres of government. The Financial Sector Policy unit is responsible for the design and legislative framework of the financial sector as a whole, and works closely with regulatory agencies such as the Financial Services Board, Banking Supervision and Exchange Control (now to be called Financial Surveillance) departments of the Reserve Bank, and the Financial Intelligence Centre. The unit is responsible for liaison between the National Treasury and the Reserve Bank on matters related to bank supervision, financial stability and the national payments system.

Mr Ismail Momoniat

Spider Web Code Name: The Bull

International and Regional Economic Policy

The division comprises of two chief directorates: International Finance and Development and Africa Economy, Integration.

South Africa aims to promote reform of the IMF and the World Bank. Policy is focused on exploring ways to reduce global financial market volatility and promote balanced global growth and development, including through government's participation in the G20, which South Africa chaired in 2008.

South Africa also plays an important role in encouraging these institutions to seek innovative solutions for poverty alleviation, and to promote regional and African growth and development with strategic alliances on the continent and with other emerging economies.

Intergovernmental Relations

This division is responsible for coordinating fiscal relations between national, provincial and local government as well as promoting sound provincial and municipal financial planning, reporting and management.

Office of the Accountant General

The division seeks to achieve accountability to the general public by promoting transparency and effectiveness in the delivery of services. It sets new government accounting policies and practices, and improves on existing ones, to ensure compliance with the standards of Generally

Recognised Accounting Practice. It also focuses on the preparation of consolidated financial statements and an improvement in the timeliness, accuracy and efficiency of financial reporting.

Public Finance

Public Finance is primarily responsible for assessing budget proposals and reviewing service delivery trends in national government departments and their entities. The division also manages the National Treasury's relations with other national departments, provides budgetary support to departments, and advises the Minister and the National Treasury on departmental and government cluster matters.

Ms Halstead holds an MSC in Economic Policy from the University of London, an MBA from the University of Cape Town and an MA in Organisational Consulting from the City University, London she also holds a B Com honors and Social Science degrees. Ms Halstead is a Chief Director at the National Treasury in South Africa where she has responsibility for overseeing approximately 40 of the largest state owned enterprises (SOEs). Prior to joining the National Treasury, Ms Halstead worked for McKinsey & Company, Old Mutual and Wipcapital, a subsidiary of Wiphold. She has also worked with a number of NGOs, notably the Nelson Mandela Foundation as well as the Family and Marriage

Association of South Africa (FAMSA) and Ikageng, an organisation responsible for caring for HIV/AIDS orphans. She was nominated as a Young Global Leader and one of the Mail & Guardian's Top 200 Young South Africans in 2011.

Anthony Julies

Spider Web Code Name: The Jackal

The team is still searching for the CV. This is one member of the spider web who is the most secretive and extra careful.

Budget office

Coordinates the national budgeting process. This includes coordinating the allocation of resources to meet the political priorities set by government. While the standard of documentation produced with the budget is already impressive, the Budget Office constantly strives to improve the quality, usability and coverage of the publications produced. The division also provides fiscal policy advice, oversees expenditure planning and the national budget process, leads the budget reform programme, coordinates international technical assistance and donor finance., supports public private partnerships (PPPs) and compiles public finance statistics.

Marissa Moore

Spider Web Code Name: The Hustler

University of Johannesburg

Johannesburg, South Africa | 1990 - 1993 Bachelor of Science (BSc) (Honorary) Cum Laude - Industrial Sociology

University of Witswatersrand Johannesburg, South Africa | 1990 - 1993 Master of Science (M.Sc.) - Social Science

Corporate Services

The Corporate Services division is responsible for the department's governance framework, and aims to create a productive and creative working environment that enhances effectiveness. No presence of the spider web, it's not a strategic unit.

Economic Policy

The Economic Policy division plays a central role in formulating and coordinating appropriate growth enhancing policies that strengthen employment creation. The key responsibility of the Economic Policy division is to provide policy advice on macroeconomic developments, international economic developments and microeconomic issues. The division does this through policy analysis, scenario testing

Project Spider Web has a codename membership system allocated to different members who play a key role in this project.

Trevor Manuel is codenamed as the King of Leaves and Maria Ramos as the Queen of Leaves. Members of the project who work in different position in government are also coded through various names, for instance, Dr Dan Majila is coded as the Iron Master. There are different levels of disclosure for members.

Most members of this project are not aware that they are part of a covert project to influence fiscal and monetary policy since they are handled through various handlers. This paper will identify Individuals who are key members of Project Spider Web. These individuals are being handled through various means to achieve the objectives of Project Spider Web.

Members of the Project Spider Web inside National Treasury

Government Technical Advisory Centre (GTAC)

Andrew Donaldson

Spider Web Code Name: The Emperor

Andrew Donaldson studied at the University of Stellenbosch for a degree in economics, he studied together with Professor Hugo Nel Andrew also studied in UNISA and Cambridge University. He taught Economics at the former University of Transkei, Rhodes University and the University of the Witwatersrand. Before 1991, He was also the strategic planner for the National Intelligence and Secret Services (NISS) for the Apartheid government.

He joined the then Department of Finance in 1992, and in 2001 was appointed Deputy Director-General with responsibility for the Budget Office and Public Finance in the National Treasury. His work covered spending policy, social development and reform of the budget process and budget documentation.

He contributed to the work of the Katz Commission on tax policy, served on the Committee of Inquiry into a National Health Insurance System, was a member of the team that drafted the 1996 macroeconomic strategy and served on the Interdepartmental Task Team on Social Security and Retirement Reform.

In 2013 he was appointed Acting Head of the Government Technical Advisory Centre, an agency of the National Treasury which supports public finance management, public-private partnerships, employment facilitation and infrastructure investment.

He is chairperson of the Steering Committee of the Research Project on Employment, Income Distribution and Inclusive Growth located at the University of Stellenbosch. Andrew is the key player in Project Spider Web. Some of the people that find themselves at Treasury were once students of the Emperor at Rhodes university. The Fox and the Iron Master were once handled by the Emperor at Rhodes university when they were members of IESEC.

Asset and Liability Unit

Asset and Liability Management division manages government's asset and liability portfolio in order to ensure prudent cash management, asset restructuring, financial management and optimal management of government's domestic and foreign debt portfolio.

Ms. Avril Halstead

Spider Web Code Name: The Fog

National Treasury and the Project Spider Web

The National Treasury is responsible for managing South Africa's national government finances. Supporting efficient and sustainable public financial management is fundamental to the promotion of economic development, good governance, social progress and a rising standard of living for all South Africans.

The Constitution of the Republic (Chapter 13) mandates the National Treasury to ensure transparency, accountability and sound financial controls in the management of public finances.

The Ministry of Finance is at the heart of South Africa's economic and fiscal policy development. The Minister of Finance and Deputy Minister of Finance are responsible for a range of state entities that aim to advance economic growth and development, and to strengthen South Africa's democracy.

The white establishment through the private sector has a huge influence in the running of the National Treasury. The history of this influence dates back during the early 90's when the ANC and the National Party were negotiating the talks about talks. The white establishment felt it was too risky to leave the running of the government solely in the hands of the ANC. The white establishment came with the first project to influence the fiscal and monetary position of the country through a project known as "Project Grapevine".

The project's objective was to attract high level ANC officials to agree to hold economic transformation talks in Stellenbosch. When the ANC was winning the political war in Kempton Park, the ANC was also losing the economic war in Stellenbosch. Roelof Meyer and Professor Andre Kriel of Stellenbosch were the key drivers of Project Grapevine.

Post 1994, Project Grapevine was handed to Professor Hugo Nel from the University of Stellenbosch. Professor Hugo changed the structure of Project Grapevine and renaming it Project Spider Web. Professor Hugo restructured the project with new objectives and a new structure. The new project also attracted funding from the Rupert, Oppenheimer and the Rothschild families. The Oppenheimers withdraw their funding for project Spider Web in 2010. The Ruperts are still the biggest funders of Project Spider Web.

Professor Hugo Nel was instrumental in ensuring that Johan Rupert is appointed the vice chancellor of the University of Stellenbosch. Since Rupert's appointments, Project Spider Web has grown from strength to strength. The project has the following objectives:

- Influence the design and Implementation of the economic, fiscal and economic policy
- Influence the appointment of key leaders in Reserve Bank, National Treasury, DTI and SOE's that fall under these three Institutions.
- Manage the outcomes of these institutions
- Defend the position of the Spider Web through the media
- Attack and prosecute critics of project spider web through SARS and the other means

This paper focuses on how National Treasury is managed and influenced through project spider web.

The project is responsible for coordinating macroeconomic policy and promoting the national fiscal policy framework. The project also coordinates intergovernmental financial relations, manages the budget preparation process and exercises control over the implementation of the annual national budget, including any adjustments budgets.

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Terrienne DeJong • 4 years ago • edited

I was in stitches - literally...

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Isaac Newton • 4 years ago

This tells us that there will be no soft landing for South Africa at any time in the future. The "factions" are already positioning themselves for the mother and father of all battles over who will control the pipes of gravy that flow from the Union Buildings into the feeding troughs of the elite. Therefore, after the departure of Jacob Zuma, just when one might expect things to return to a more normal state of good governance, the exact opposite will take place - and we will be plunged into a cesspit of unrestrained looting supervised by the new faction chief, who will have elbowed himself past the once functioning democratic institutions such as the Treasury. The principles of democracy mean nothing to these factions, and we should take note of that.

^ | v • Share

pw

TruthExtractor → Isaac Newton • 4 years ago

Please. Do you attach any degree of lucid thinking to this pre-pubescent drama piece. !?

^ | v • Share

pw

Isaac Newton → TruthExtractor • 4 years ago

You've missed the point. While the content of this piece is pure balderdash, the method of operation of those who wrote it is well formulated and cannot be ignored - because the same method has been effective in the past, and it will be effective in this case also. Watch.

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Sindi M → Isaac Newton • 4 years ago

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State Owned Enterprises

Minister Nene stated that treasury must play a key role in the management of SOE's. He expects his officials to play a firm hand in managing the affairs of the SOE's. A number of changes will be happening at the SOE's. One the key actions that treasury must do, is to facilitate the participation of the private sector in the SOE's. Minister Nene stated that GTAC from treasury will be given a huge task of identifying private sector companies to partner with the SOE's.

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Maria Ramos

Maria Ramos was also invited by the Minister to give a word of support to the staff at National Treasury. Maria praised the staff for the wonderful work they are doing. She stated that she will be assisting Minister Nene to identify skills for the key positions at treasury. She has already assisted in placing the key Chief Investment Officer at the GEPP. She will be assisting in identifying the CEO of GTAC, since Andrew Donaldson will be the Chairman.

Transcribed from PDF. The original version can be accessed, in PDF format with pictures, on the BDLive site [here](#). See also the Business Day analysis by Carol Paton [here](#).



NN2**National Treasury and the Project Spider Web**

The National Treasury is responsible for managing South Africa's national government finances. Supporting efficient and sustainable public financial management is fundamental to the promotion of economic development, good governance, social progress and a rising standard of living for all South Africans. The Constitution of the Republic (Chapter 13) mandates the National Treasury to ensure transparency, accountability and sound financial controls in the management of public finances. The Ministry of Finance is at the heart of South Africa's economic and fiscal policy development. The Minister of Finance and Deputy Minister of Finance are responsible for a range of state entities that aim to advance economic growth and development, and to strengthen South Africa's democracy.

The white establishment through the private sector has a huge influence in the running of the National Treasury. The history of this influence dates back during the early 90's when the ANC and the National Party were negotiating the talks about talks. The white establishment felt it was too risky to leave the running of the government solely in the hands of the ANC. The white establishment came with the first project to influence the fiscal and monetary position of the country through a project known as "Project

Grapevine". The project's objective was to attract high level ANC officials to agree to hold economic transformation talks in Stellenbosch. When the ANC was winning the political war in Kempton Park, the ANC was also losing the economic war in Stellenbosch. Roelof Meyer and Professor Andre Kriel of Stellenbosch were the key drivers of Project Grapevine.

Post 1994, Project Grapevine was handed to Professor Hugo Nel from the University of Stellenbosch. Professor Hugo changed the structure of Project Grapevine and renaming it Project Spider Web. Professor Hugo restructured the project with new objectives and a new structure. The new project also attracted funding from the Rupert, Oppenheimer and the Rothschild families. The Oppenheimers withdraw their funding for project Spider Web in 2010. The Ruperts are still the biggest funders of Project Spider Web. Professor Hugo Nel was instrumental in ensuring that Johan Rupert is appointed the vice chancellor of the University of Stellenbosch. Since Rupert's appointments, Project Spider Web has grown from strength to strength. The project has the following objectives:

- Influence the design and implementation of the economic, fiscal and economic policy

- Influence the appointment of key leaders in Reserve Bank, National Treasury, DTI and SOE's that fall under these three Institutions.
- Manage the outcomes of these institutions
- Defend the position of the Spider Web through the media
- Attack and prosecute critics of project spider web through SARS and the other means

This paper focuses on how National Treasury is managed and influenced through project spider web. The project is responsible for coordinating macroeconomic policy and promoting the national fiscal policy framework. The project also coordinates intergovernmental financial relations, manages the budget preparation process and exercises control over the implementation of the annual national budget, including any adjustments budgets.

Project Spider Web has a codename membership system allocated to different members who play a key role in this project. Trevor Manuel is codenamed as the King of Leaves and Maria Ramos as the Queen of Leaves. Members of the project who work in different position in government are also coded through various names, for instance, Dr Dan Majila is coded as the Iron Master. There are different levels of disclosure for members. Most members of this project are not aware

that they are part of a covert project to influence fiscal and monetary policy since they are handled through various handlers. This paper will identify individuals who are key members of Project Spider Web. These individuals are being handled through various means to achieve the objectives of Project Spider Web.



Members of the Project Spider Web inside National Treasury

Government Technical Advisory Centre (GTAC)



Andrew Donaldson

Spider Web Code Name: The Emperor

Andrew Donaldson studied at the University of Stellenbosch for a degree in economics, he studied together with Professor Hugo Nel. Andrew also studied in UNISA and Cambridge University. He taught Economics at the former University of Transkei, Rhodes University and the University of the Witwatersrand. Before 1991, He was also the strategic planner for the National Intelligence and Secret Services (NISS) for the Apartheid government.

He joined the then Department of Finance in 1992, and in 2001 was appointed Deputy Director-General with responsibility for the Budget Office and Public Finance in the National Treasury. His work covered spending

policy, social development and reform of the budget process and budget documentation.

He contributed to the work of the Katz Commission on tax policy, served on the Committee of Inquiry into a National Health Insurance System, was a member of the team that drafted the 1996 macroeconomic strategy and served on the Interdepartmental Task Team on Social Security and Retirement Reform.

In 2013 he was appointed Acting Head of the Government Technical Advisory Centre, an agency of the National Treasury which supports public finance management, public-private partnerships, employment facilitation and infrastructure investment.

He is chairperson of the Steering Committee of the Research Project on Employment, Income Distribution and Inclusive Growth located at the University of Stellenbosch. Andrew is the key player in Project Spider Web. Some of the people that find themselves at Treasury were once students of the Emperor at Rhodes university. The Fox and the Iron Master were once handled by the Emperor at Rhodes university when they were members of IESEC.

Asset and Liability Unit

Asset and Liability Management division manages government's asset and liability portfolio in order to ensure prudent cash management, asset restructuring, financial management and optimal management of government's domestic and foreign debt portfolio.



Ms. Avril Halstead

Spider Web Code Name: The Fog

Ms Halstead holds an MSC in Economic Policy from the University of London, an MBA from the University of Cape Town and an MA in Organisational Consulting from the City University, London she also holds a B Com honors and Social Science degrees. Ms Halstead is a Chief Director at the National Treasury in South Africa

where she has responsibility for overseeing approximately 40 of the largest state owned enterprises (SOEs). Prior to joining the National Treasury, Ms Halstead worked for McKinsey & Company, Old Mutual and Wipcapital, a subsidiary of Wiphold. She has also worked with a number of NGOs, notably the Nelson Mandela Foundation as well as the Family and Marriage Association of South Africa (FAMSA) and Ikageng, an organisation responsible for caring for HIV/AIDS orphans. She was nominated as a Young Global Leader and one of the Mail & Guardian's Top 200 Young South Africans in 2011.



Anthony Julies

Spider Web Code Name: The Jackal

The team is still searching for the CV. This is one member of the spider web who is the most secretive and extra careful.

Budget office

Coordinates the national budgeting process. This includes coordinating the allocation of resources to meet the political priorities set by government. While the standard of documentation produced with the budget is already impressive, the Budget Office constantly strives to improve the quality, usability and coverage of the publications produced. The division also provides fiscal policy advice, oversees expenditure planning and the national budget process, leads the budget reform programme, coordinates International technical assistance and donor finance, supports public-private partnerships (PPPs) and compiles public finance statistics.

**Marissa Moore****Spider Web Code Name: The Hustler****University of Johannesburg**

Johannesburg, South Africa | 1990 - 1993
Bachelor of Science (BSc) (Honorary) Cum Laude -
Industrial Sociology

University of Witswatersrand
Johannesburg, South Africa | 1990 - 1993
Master of Science (M.Sc.) - Social Science

Corporate Services

The Corporate Services division is responsible for the department's governance framework, and aims to create a productive and creative working environment that enhances effectiveness. No presence of the spider web, it's not a strategic unit.

Economic Policy

The Economic Policy division plays a central role in formulating and coordinating appropriate growth-enhancing policies that strengthen employment creation. The key responsibility of the Economic Policy division is to provide policy advice on macroeconomic developments, international economic developments and microeconomic issues. The division does this through policy analysis, scenario testing and the production of macroeconomic forecasts, in particular on growth, the external account and inflation. The forecasts inform economic policy, the fiscal framework, tax forecasts and debt management strategy. Still

searching for the presence of the spider

Tax and Financial Sector Policy

The Tax Policy unit is responsible for advising the Minister of Finance on tax policy issues that arise in all three spheres of government. The Financial Sector Policy unit is responsible for the design and legislative framework of the financial sector as a whole, and works closely with regulatory agencies such as the Financial Services Board, Banking Supervision and Exchange Control (now to be called Financial Surveillance) departments of the Reserve Bank, and the Financial Intelligence Centre. The unit is responsible for liaison between the National Treasury and the Reserve Bank on matters related to bank supervision, financial stability and the national payments system.



Mr Ismail Momoniat

Spider Web Code : The Bull

International and Regional Economic Policy

**The division comprises of two chief directorates:
International Finance and Development and Africa Economic
Integration.**

**South Africa aims to promote reform of the IMF and the
World Bank. Policy is focused on exploring ways to reduce
global financial market volatility and promote balanced
global growth and development, including through
government's participation in the G20, which South Africa
chaired in 2008.**

**South Africa also plays an important role in encouraging
these institutions to seek innovative solutions for poverty
alleviation, and to promote regional and African growth and
development with strategic alliances on the continent and
with other emerging economies.**

Intergovernmental Relations

This division is responsible for coordinating fiscal relations between national, provincial and local government as well as promoting sound provincial and municipal financial planning, reporting and management

Office of the Accountant General

The division seeks to achieve accountability to the general public by promoting transparency and effectiveness in the delivery of services. It sets new government accounting policies and practices, and improves on existing ones, to ensure compliance with the standards of Generally Recognised Accounting Practice. It also focuses on the preparation of consolidated financial statements and an improvement in the timeliness, accuracy and efficiency of financial reporting.

Public Finance

Public Finance is primarily responsible for assessing budget proposals and reviewing service delivery trends in national government departments and their entities. The division also manages the National Treasury's relations with other national departments, provides budgetary support to departments, and advises the Minister and the National Treasury on departmental and government cluster matters.

Office of the Chief Procurement Officer(O-CPO)

The purpose of the O-CPO is to: Modernise the state procurement system to be fair, equitable, transparent, competitive and cost-effective; enable the efficient, economic, effective and transparent utilisation of financial and other resources; including state assets, for improved service delivery; and promote, support and enforce the transparent and effective management of state procurement and the sound stewardship of government assets and resources.



Kenneth Brown

Spider Web Code Name: The Tiger

Mr Kenneth Brown is deputy director general: Intergovernmental Relations, a position he has held since July 2009. He has a MSc in Public Policy from the University of Illinois in the United States (USA),

BA (Hons) in Economics from the University of the Western Cape, and a primary teacher's diploma. After a career in teaching, Mr Brown joined National Treasury in 1998 as a deputy director: Financial Planning. He then went to the USA to study for his Master's degree and returned to National Treasury in 2001 as director: Provincial Policy, a role that underpins national transfers to provinces. Mr Brown was later appointed the chief director: Intergovernmental Policy and Planning, a responsibility which involves sector policies that impact on provinces and local government. He was a Vula operative.



SOE's Under National Treasury and under the Influence of the spider web

The South African Revenue Service (SARS) is mandated by the South African Revenue Service Act (1997) to collect all tax revenues that are due, to provide a customs service, to protect national borders and to facilitate trade. SARS also works to expand the pool of tax contributors by promoting awareness of the obligation to voluntarily comply with tax and customs laws. SARS aims to conduct its activities in a way that enhances economic growth and social development. SARS reports to Deputy Minister of Finance. At the present moment the Spider Web suffered a huge setback when their top members were suspended by the new commissioner. This unit was regarded as the enforcers of the spider web.

The Public Investment Corporation (PIC)

PIC is a government-owned investment management company – and one of the largest investment managers in the country. Founded in 1911, it became a corporate entity in terms of the Public Investment Corporation Act (2004). The PIC invests funds on behalf of public-sector entities. Its largest client is the Government Employees Pension Fund. PIC is governed by a Board of Directors with 10 members, of whom 7 are non-executive directors, excluding the traditionally

non executive Chairman. The Board's overarching role is to maintain sound corporate governance within PIC. As such, its responsibilities include appointing executive management, developing and approving corporate strategies, ensuring an effective governance framework, overseeing risk management and ensuring that PIC's business is managed prudently and responsibly.

The Board is assisted by six Board committees, namely the Audit and Risk Committee, the Investment Committee, the Human Resources and Remuneration Committee, the Directors' Affairs Committee, the Social and Ethics Committee and the Property Committee. The Board has also established four Fund Investment Panels to assist the Board in discharging its statutory duties and responsibilities in relation to investment in South Africa and the rest of the African continent. Board members are appointed by the Minister of Finance, who represents PIC's shareholder, the South African government, on the grounds of their knowledge and experience, mainly in the financial services environment. No fewer than seven Directors on the current Board are chartered accountants, with the other six Directors holding advanced qualifications in fields such as financial economics, business leadership, applied mathematics and tax law. The

members of project spider web have been identified through codenames.

The spider web has huge influence in the PIC. This unit it's very important for the white establishment since the PIC owns 34% of the JSE. White asset management firms rely on the PIC for the mandates. PIC has placed more than R70 Billion with Investec alone. The spider web being controlled by the queen of Leaves, she has started making moves to ensure that ABSA benefits from the Asset Management mandates.



Spider Web Code Name: The Fox

Mr Mcebisi Jonas, Chairperson

- Chairperson of the PIC Board of Directors
- Chairperson of the Directors' Affairs Committee
- Bachelor of Arts in History & Sociology (Rhodes)
- Higher Diploma in Education
- Deputy Minister of Finance at National Executive (Executive)
- Member at National Assembly (Parliament)
- Member at African National Congress (ANC) Party



Master

Spider Job Code Name: The Iron

Mr Daniel Matjila, Chief Executive Officer

- Member of the Investment Committee
- Member of the Property Committee
- Member of the Fund Investment Panels
- BSc (Hons) in Applied Mathematics (Fort Hare)
- MSc Applied Mathematics (Rhodes)
- PhD in Mathematics (WITS)
- Postgraduate Diploma in Mathematical Finance (Oxford)
- Senior Management Programme (University of Pretoria)
- Advanced Management Programme (Harvard)
- Member of the Board of Comprop
- Member of the Board of Ecobank Transnational Incorporated

**Spider****Code Name: The Mistress****Ms Matshepo More, Chief Financial Officer**

- Member of the Fund Investment Panels
- CA(SA)
- Bachelor of Business Science (Finance)
- Certificate in the Theory in Accounting (CTA)
- Member of the Board of CBS Property Management (Pty) Ltd
- Member of the Board of Pareto Limited
- Member of the Board of ADR International Airports Company South Africa
- Member of the Board of ABASA

**Spider Web Code****ie: The Countess****Ms Moira Moses, Independent Non-Executive Director**

- Chairman of the Property Committee
- Member of the Directors' Affairs Committee
- Member of the Audit and Risk Committee

- **Member of the Human Resources and Remuneration Committee**
- **Member of the Investment Committee**
- **BA**
- **Management Advancement Programme (Wits Business School)**
- **Member of the GEPF Board of Trustees**
- **Member of the Thusanang Trust, a non-profit organisation focused on Development Phase Education**



The Government Employees Pension Fund (GEPF) was established in terms of the Government Employees Pension Law (YEAR) to manage and administer pension matters/schemes related to government employees. The GEPF is self-funded. With a membership of about 1,2 million and 225 000 pensioners, it is one of South Africa's largest pension funds. This is one unit that the queen of leaves has placed an agent.



**HemalNaran
Head of Investments and
Actuarial**

**Spider Web Code : ame: The
Professor**

- Bachelor of Commerce degree in Actuarial Science
- Insurance and Risk Management from the University of the Witwatersrand and CAIA Charter holder
- He serves on the Investment Committee of the Pan African Infrastructure Development Fund
- Member of the Social Finance and Impact Investing

Committee of the Institute of Actuaries (UK).

- **Previously with ABSA Investments**



Ms Adri van Niekerk
Head: Board Secretariat

Spider Web Code Name: The Fixer

- **University of Pretoria: BAdmin Public Management**
- **University of Pretoria: Honours Degree in Public Management**
- **Member of the Integrated Reporting Committee of South Africa**
- **Previously with the University of Stellenbosch as the head of admissions**

Key actions moving forward

The spider web has brought back the queen of leaves to restructure National Treasury moving forward. There are talks with the white establishment to position treasury as a strategic benchmark for most African Treasuries. Cyril Ramaphosa is seen as one of the most important events in the history of the Spider Web. There is a believe that once he is appointed the state president of South Africa, he will be able to achieve most objectives of the spider web that Thabo Mbeki failed to implement. Cyril has a long relationship with the King of leaves. They have worked together in many projects including the establishment of the NDP. Cyril's younger brother also worked with the Queen of leaves at ABSA bank for a brief period. Minister Nene is being handled by the Queen of Leaves.

During the recent World Economic Forum in Cape Town, Nene assembled all the DDG's and Chief Directors from National Treasury at a Cape Town hotel for a brief meeting. The Deputy Minister was not part of the meeting since he was travelling to Paris. These are the outcomes of the meeting:

The DG's position

Lungisa Fuzile, the current DG for National Treasury will not be extending his contract at the end of August 2015. He will be joining the faculty of economics at the University of Stellenbosch. His departure will be a catalyst for some big changes inside National Treasury. It is being heard through the grapevine that Avril Halstead will be promoted to the position of DG at treasury. She will be promoted to position of DDG very soon as a stepping stone for her to become the next DG. Michael Saks, the current DDG will be transferred to one of the SOE's. Tumi Moleko, will be transferred to another ministry as a DDG that works with treasury.

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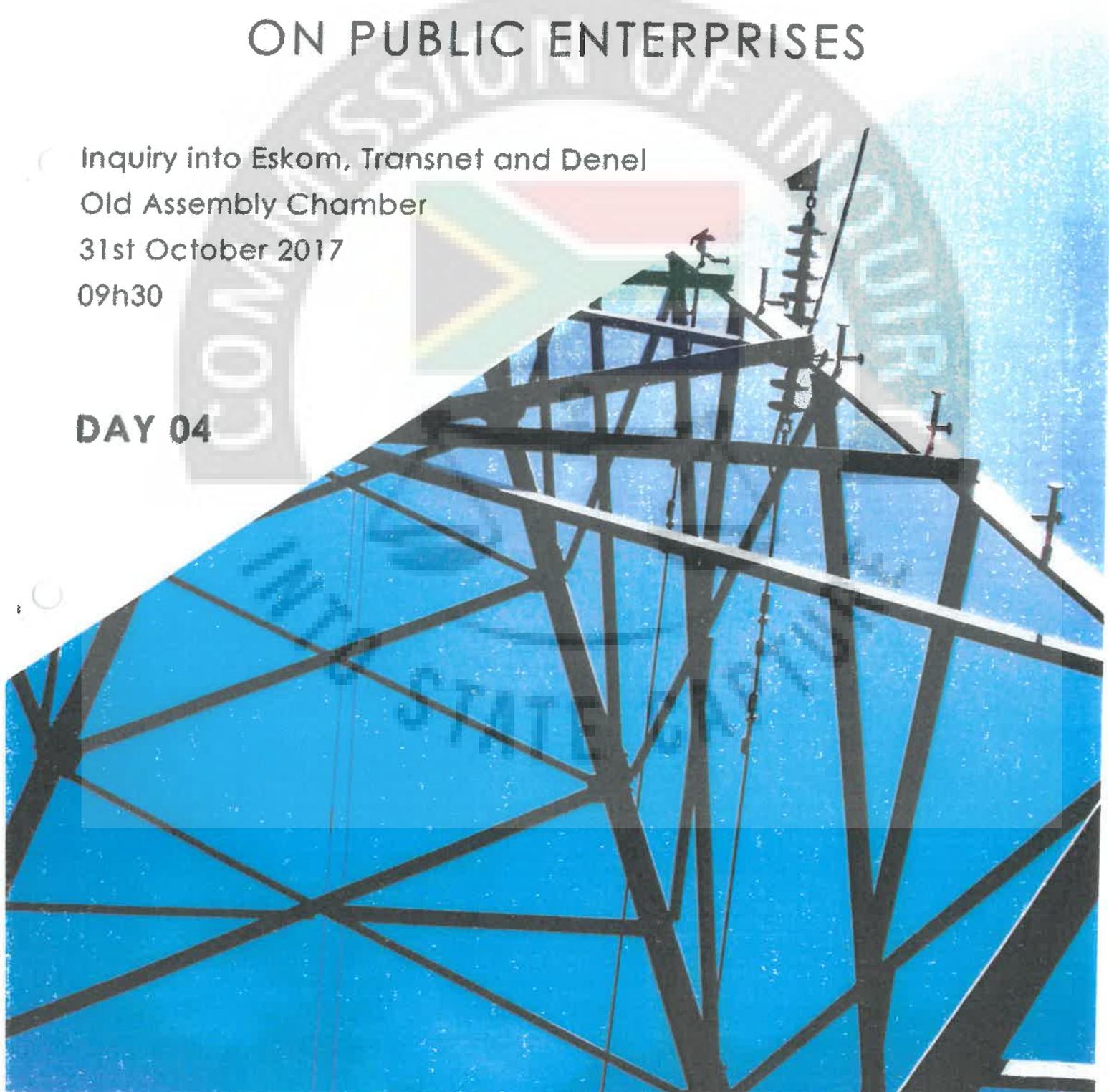
public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES

Inquiry into Eskom, Transnet and Denel
Old Assembly Chamber
31st October 2017
09h30

DAY 04



31st October 2017 – Parliament RSA

Ms Mosilo Mothepu - Yes I'm aware.

Advocate Vanara - We'll come back to... that particular issue. But can we briefly just deal with the South African Express as another state owned company which was your client. In brief can you just draw us to the silent features of the relationship between your company and this state owned company?

Ms Mosilo Mothepu - The relationship started at Regiments. SA Express through CEO Mr Inati Ntshanga and the CFO Mr Mark Shirley were appointed Regiments, I'm not sure how the appointment was made, to a system in section 54 application they wanted to buy or lease new fleet for the airline. And Regiments was the financial advisor in terms of the modelling and affordability. When I started there, there was a funding shortfall they needed 567 million rand and they issued an RFP to the banks and it was subsequently cancelled because they wanted an additional requirement which they couldn't include without cancelling that tender and issuing another tender. So just to hurry things along, there was lack of interest from the banks so Eric Wood proposed a bond issue. SA Express had never issued a bond issue, so through Regiments Asset Management they had identified them as the potential investors. It was going to be a private placement, it was going to be unrated but listed, so while at Trillian my team and myself along with Mr Inati Ntshanga and Mark Shirley we went to see the department of DPE to get the necessary approvals and National Treasury. There was concern with regards to the pricing and the structure and they didn't understand why SA Express could just go to and get a normal bank loan.

[01h53:01]

Eventually it needed a government guarantee. Treasury was not happy with the pricing and they declined the guarantee so the deal...the bond issue never took place and Trillian was paid I think a breakage fee of 5.7 million rand. Now in terms of market practice, when you are lead manager on a bond issue you get paid when there's on the successful placement of the bond. If there's no money you get nothing so essentially I got a that update from Eric, he told me that Mr Salim Essa had a meeting with Mr Inati Ntshanga and he said he will pay us anyway, so we went to go see Mr Ntshanga who confirmed this. Of course after my meeting I said, "no but it doesn't make sense that we get a breakage fee when there's no money in the bank?" And well he just said; "no we will get paid. It was approved by the CEO Mr Ntshanga". So I think of recent, there has been some media reports with regards to the 5.7 million rand that was paid by SA Express. So that's correct but, it says it's for a I think, it's balance sheet optimisation and a funding plan that's not the correct description of the services rendered. That 5.7 million was for advisory service for a bond issue that never took place and of course SA Express did not have a contract with Trillian. I made the submission to the public protector as well.

Advocate Vanara - Just as we wrap up. The prior knowledge of the firing of the former Minister of Finance, let's start with Mr Nhlanhla Nene. How, you seem to have had prior knowledge before this happening. How did you become aware of this?

Ms Mosilo Mothepu - This is a date I think I will never forget, the 26th of October 2016. We were still at Regiments, I normally had informal meetings with Eric in the morning and then he called me into his meeting in his office and he told me that Minister Nhlanhla Nene will be fired. For me I didn't understand the significance of what he was telling me, there have been many reshuffles of ministers before. I didn't understand why he was telling me because we never dealt with National Treasury or the Minister of Finance, so I didn't ask him 'how do you know' 'why are you telling me'. I just said, "Oh ok". Later on in that morning he emailed me a document, a Word document, that essentially outlined the initiatives that the new minister was going to approve, there were about 12 of them and the potential fees that, I would say, Regiments at the

31st October 2017 – Parliament RSA

time was going to earn. Now 6 Weeks later the nation of course is shocked at midnight when indeed the former minister is fired. So in the morning I tell him, "oh you were right" and he said, "yes I was" and he told me that a certain colleague of mine his name is Muhammad Bobat, was appointed the advisor to the new minister and his role essentially was to channel all the work from whether it's state owned companies or a National Treasury to Trillian or Regiments because this was in December. So, Mr Bobat was given the courtesy of a driver going to Pretoria every morning, there, Eric had appointed a PR company to write the new minister's speeches. They started working on the finance minister's speech but unfortunately on the Sunday he was replaced so he never got a chance to deliver it, so they had to write COGTA speech.

[01h57:58]

I remember quite clearly that that Friday was a, our Christmas party and Eric Wood and Muhammad Bobat were not present. So on the Monday I asked them but it was the last time that Regiments would have a Christmas party together because next year we're going our separate ways and Eric tells me, 'no he spent the whole day with the minister and Muhammad essentially assisting him in his new role.' I'm told but it's not that Muhammad complained that he was getting a 30% salary reduction so it was envisioned that his wife would be a phantom employee at Trillian and she would be paid the balance. I don't know if this ever happened and Mohammed, during my time at Trillian, he spend a quite a significant time in Eric's office and Salim Essa's office and he would, I mean you could see in the media that he used to send documents to Eric and Salim and he's still there. On the 16th of March I was in my office. I used to share an office with the financial director Tebogo Leballo and Bianca was there as well and then he told me that Minister Pravin was going to be removed and I couldn't hear him, and he because he was whispering because we had an open plan, and then he wrote it down on my book which I still have, I made a copy for you, it's part of the annexures as well. He wrote 'change in finance minister' and of course I was this time I was shocked because the first time I didn't understand the significance but now I realise that that plan was still happening.

[02h00:11]

Advocate Vanara - Ok. You made reference to a date between your encounter with Mr Eric Wood in his office having this informal meeting. Can you just repeat the date of that meeting, when did that meeting take place?

Ms Mosilo Mothepu - The 26th of October 2015

Advocate Vanara - In respect of the firing of former Finance Minister Mr Pravin Gordhan, on page 26 you then say I think that's line 1, 2, 3, 4 the beginning of the sentence there you say, "I was shocked as I thought this plan was long abandoned", what do you mean by that statement?

Ms Mosilo Mothepu - The first minister only lasted one weekend and because the financial market negatively responded and he was replaced by Mr Pravin Gordhan, so I think I just naively thought the plan was abandoned.

Advocate Vanara - Now that you've put all the issues on record. There's just a few issues I just want to converse with you and I require your assistance. Eric Wood and Salim Essa they are not public representatives, is this correct?

Ms Mosilo Mothepu - You are correct.

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Advocate Vanara - The appointment and removal of ministers is the responsibility of the state president, correct?

Ms Mosilo Mothepu - That is correct.

Advocate Vanara - On your own version that Eric Wood knew of the removal of former ministers of finance Ministers Nene and Gordhan. In your own understanding of the company which you worked in, the people that you worked with, how would Eric Wood have known of such an impending decisions which later on prove to be accurate?

Ms Mosilo Mothepu – Unfortunately, I cannot speculate how he knew. If you recall my earlier response, I didn't even ask him how he knew. The second time I was told by the CFO Tebogo Leballo. So unfortunately I'm not sure if Salim told him or another cabinet member told him. I mean even on the Nenegate I'm told but it's unconfirmed sources that Eric Wood being a trader, traded on this information so in November he bought dollars because he knew that the removal of a finance minister was going to affect the rand. And the day now when the announcement was made while our investments and the rand was crashing he reversed the trade and apparently made hundreds of millions of rands... I can't confirm this but this is what I'm told.

[02h04:43]

Ms Daphne Rantho - What? The statement that she's doing she's saying... [Overtalking off mike and inaudible]... Can you repeat what you have said ma'am?

Ms Mosilo Mothepu - Certainly [Overtalking]... on Nenegate I'm told but it's unconfirmed because this whistleblower's also scared, that Eric Wood and his people traded on the pre-knowledge of Nenegate because he is a trader, he knew that that announcement was going to affect the rand so he bought dollars in November and when our investments in the rand was crashing he reversed the trade and made hundreds of millions of rand.

Advocate Vanara - Mohammad Bobat went with the minister of, the former minister of finance to Treasury. They listed the periods which is well known and the Minister then was moved to CoGTA. Where is Mohamed Bobat at the moment?

Ms Mosilo Mothepu - He is still working at CoGTA and he is still the advisor to the minister of CoGTA.

Advocate Vanara – Whilst at CoGTA, and you might not be privy to this, but I am in my responsibility to this committee, on Friday we will get a witness and that witness has sent me a statement and in the statement she alleges that Mr Bobat has been meeting with her in line with your earlier testimony of a program or particular transactions that must be channelled to your company and that she would have or she worked with Mr Bobat assisting Trillian to prepare proposals, furnishing inside information from CoGTA to your company. I know you're not be here by the time she testifies and I don't expect you to confirm what she say, but all of that I want to find out in line with your testimony today that kind of practice will it be foreign to your understanding of Mr Bobat's role in the office of a political office bearer?

[02h08:02]

Ms Mosilo Mothepu - Indeed, I was essentially told of the plan about how Mr Bobat was going to use his new proximity with the minister and other state owned companies to essentially channel work to Trillian so that they can economically benefit.

31st October 2017 – Parliament RSA

So he was supposed to provide technical and pricing assistance to give Trillian a competitive advantage over other service providers who tendered. Indeed is foreign, I don't...I'm sure it's not his own ethics in terms of being a public servant I'm sure there are many policies that it goes against. So I was told of the plan and the witness that you are referring to was essentially asked to execute it. That is why I had testimony essentially confirms what the plan was and so I was just told and she was supposed to execute it. But the two are completely aligned and of course they have denied this many times but that denial is false.

[02h09:48]

Advocate Vanara - So you might not know where Eric Wood got the information but he would have received this information either from the decision maker or people very close to the decision maker. When I'm referring to a decision make I'm referring to the President who has got the powers to fire and hire ministers.

Ms Mosilo Mothepu - You are correct. In one of the Regiment's bundles in the High Court there's an email that Eric sends to Salim Essa, I think he sent it around 8:30 on the 26th of October, it's the same document that he sent me later but he writes "Hi Salim, attached please find some points for the Minister." Then he tells me that the Minister of Finance will be fired and then he sends me the same document, so I suspect that Mr Essa also knew, but unfortunately I cannot speculate where he got that information from.

Advocate Vanara - From your testimony you can't say that the Minister of Finance who is now on...the former minister of finance, is now the minister of CoGTA knew that he was coming with this special advisor in the form of Mohamed Bobat and that he knew of the plan to be executed at Treasury and through other SOEs; you can't confirm that; is that correct?

Ms Mosilo Mothepu - I can't confirm that because I never had that conversation with him, but what I know is what I was told by Eric Wood.

Advocate Vanara - All you know is that Eric Wood knew the former Minister of Finance was to be fired and there was going to be a new replacement and the new replacement would have a special advisor in the name of Mohamed Bobat and that there were transactions that Bobat would facilitate and channel through your company.

Ms Mosilo Mothepu - That is correct.

Advocate Vanara - This...or these number of transactions that I've lost count of throughout these SOCs, where there was no competitive bidding processes, where there were no contracts, people were paid for a mere submission of a proposal, where you testify that the actual technocrats were not even receptive at least at Eskom to your expertise, and you did mention that there was support though at the higher levels; did you get the distinct impression that Regiments / Trillian was getting these transactions through wrongful conduct of senior officials only. Or were there bigger role players that facilitated these... the award of these transactions and the payment without any contracts.

[02h14: 24]

Ms Mosilo Mothepu - I can't speculate on certain things, but let me just make this enquiry. When I started at Regiments in 2007 to 2010, I was the 8th employee and we had...it was very humble beginnings. When I left in 2010 there were 50 people. When I rejoined them in 2015 there were 270 people and they had what I called Blue Chip public sector clients. So in the time I had left Regiments fortunes had changed favourably. They had the client's of Denel, SA Express, Transnet and I asked the Chief Financial Officer, wow, what's



REPORT

for

MR T M G SEXWALE

CHAIRPERSON, TRILLIAN CAPITAL PARTNERS (PTY) LTD

on

**ALLEGATIONS WITH REGARD TO THE TRILLIAN GROUP OF
COMPANIES, AND RELATED MATTERS**

GEOFF BUDLENDER SC

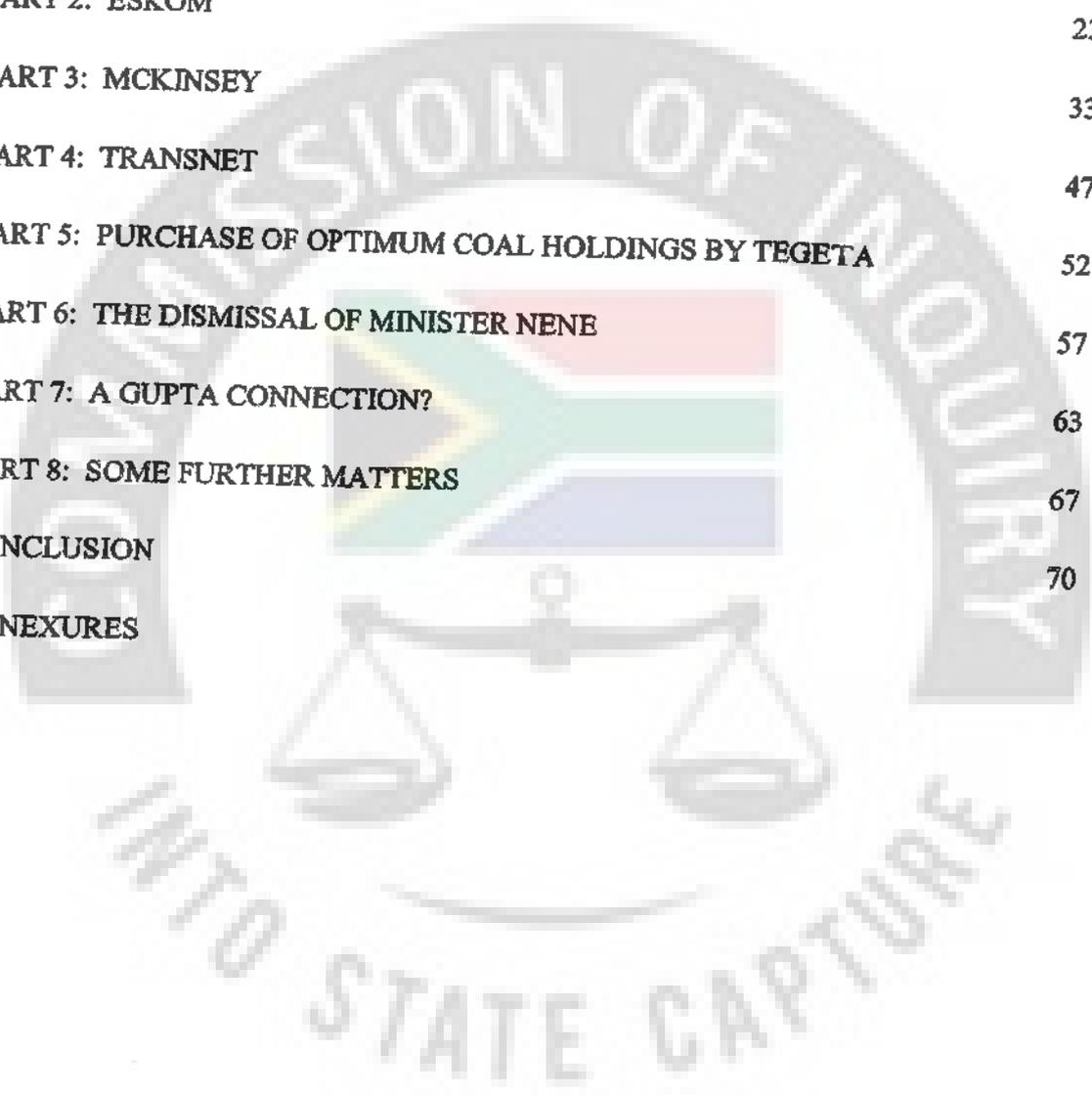
29 June 2017

Instructed by S Sirkar

Herold Gie Attorneys

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PART 6: THE DISMISSAL OF MINISTER NENE

133. On 8 December 2015, the President dismissed Mr Nhlanhla Nene as Minister of Finance. The announcement had a significant impact on financial markets.

134. On 26 October 1995, Dr Wood had sent an e-mail to Mr Essa as follows:

"Hi Salim

As discussed, I have quickly jotted down a few points for the FM. These are not comprehensive. In time I'm sure I can develop a more comprehensive list.

Regards

Eric".

135. The former CEO and Executive Director of TFA says that on that day (26 October 2015), Dr Wood called her into his office for an informal meeting. He informed her that the President was going to fire the Finance Minister. He subsequently sent her an e-mail outlining National Treasury's new initiatives, which he had drafted.

136. Dr Wood denies that he ever told the former CEO that the President was going to dismiss Minister Nene, or that he had advance knowledge of this. He set out his version of the events in his answering affidavit in the application against him by Regiments Capital. He states that during May 2014, he had a discussion with Minister Nene and prepared a list

of financial ideas and initiatives which he thought might be of interest to the Minister. Sixteen months later, in September 2015, he mentioned this to Mr Essa, who expressed interest in the idea. The following month, on 26 October 1995, he sent Mr Essa the list of ideas which he had proposed to the Minister. After a telephonic discussion with Mr Essa, he updated the list, and sent the updated list to Mr Essa and also to the CEO of TFA.

137. Mr Nene has publicly denied having had such an engagement with Dr Wood.
138. The former CEO also states that on 9 December 2015, the morning after the President had made the announcement of the dismissal of Minister Nene and his replacement with Minister Van Rooyen, she went to Dr Wood's office. She said to him "So you were right", and he said "Of course I was". He informed her that Mr Mohammed Bobat would be the new Finance Minister's special advisor. Mr Bobat was a principal at Regiments Capital in the management consulting division, reporting directly to Dr Wood. She says that Dr Wood said that Mr Bobat would appoint a team of experts at Trillian with public finance experience and expertise, and would channel tenders from National Treasury and State-owned companies to this team. He would subsequently provide guidance on technical and pricing elements of any tenders channelled from that office.
139. She states that Dr Wood further informed her that Mr Bobat would remain as the Minister's advisor for two years and would return to TCP upon the expiry of his contract. He said that he had given Mr Bobat the option of returning to any Trillian subsidiary of his choosing, and that Mr Bobat had chosen Financial Advisory. It was therefore

important that relations between her and Mr Bobat be improved if they were going to work together.

140. She also states that she saw Mr Bobat in Dr Wood's office on several occasions during her tenure at Trillian (ie after 1 March 2016, by which time Mr Bobat was Advisor to Minister Van Rooyen as Minister of Co-Operative Government and Traditional Affairs). She refers to two such occasions:

140.1. She says that on 4 March 2016, she came into the office after attending a presentation outside the office, to find that he was sitting at her desk, as Dr Wood's secretary had allocated him the desk on the assumption that she was not coming into the office that day. She says that Mr Bobat sat, worked and chatted with the Financial Advisory team for the remainder of the day.

140.2. She says that she saw him again on 22 March 2016 walking towards Salim Essa's office at Melrose Arch. She was at a meeting at Integrated Capital at the time. The office of Integrated Capital is next door to Mr Essa's office.

141. There is thus a dispute as to whether Dr Wood had advance knowledge of the dismissal of Minister Nene. The e-mail of 26 October 2015, referring to a list for "the FM" is said to support the assertion that he had this advance knowledge, on the basis that the "FM" was the Finance Minister to be appointed in place of Mr Nene (Mr Van Rooyen). Dr Wood's version is diametrically opposed to this: he denies having the advance

knowledge. He says that the reference to the "FM" is a reference to the then Finance Minister, Mr Nene.

142. If one wants to determine the truth of the matter, it is necessary to look at corroborating or contradictory evidence, and to assess the probabilities.
143. The most obvious source of corroborating or contradictory evidence would be Dr Wood's electronic devices, which would record e-mails and sms's which he had sent and received, and his diary appointments. That is one of the reasons I asked for access to the electronic devices. Dr Wood and Trillian refused to provide them to me, in my opinion for no good reason. The reason provided was that Dr Wood contended that the devices would not assist me in my investigation. That is of course hardly a matter for him to determine, given that he was one of the subjects of the investigation.
144. It is now more than four months since that request was made and refused. It is safe to assume that if there was inculpatory evidence¹¹ on the electronic devices, it will by now have been removed. As a result of Dr Wood's and Trillian's unjustified refusal to give me access to his electronic devices, I have been prevented from carrying on the inquiry in this regard. If there is inculpatory evidence which contradicts Dr Wood's version (and I cannot say whether there is or is not), it will by now most likely have been destroyed.
145. It is not possible to make a definitive finding of fact on this issue. Factors relevant to the probabilities include the following:

145.1. Mr Nene has contradicted the version given by Dr Wood. I recognise, however, that Ministers have very many meetings, and it is possible that he may not have total recall in this regard, although one would expect him to remember a meeting of this kind, particularly given that Dr Wood claims to have had a further discussion with him about the matter at another meeting.

145.2. The conduct of Trillian Management in this inquiry has left me with the impression that what it says cannot be trusted. It undertook to participate fully in the inquiry and to provide all information required, and then reneged on that. It then made a further undertaking to provide all information required, and again reneged. It issued a false statement to the media attempting to explain why it had not provided the information requested. It has on two occasions attempted to bring the enquiry to an end, on spurious grounds. This is not the conduct of an entity which can readily be trusted.

145.3. Underlying all of this is the question why Trillian Management, having agreed to co-operate with the inquiry, and having initially done so, then refused to continue to do so, and in fact attempted to shut down the inquiry. It seems to me that the most likely explanation is that it was concerned at some of the questions which I had raised, and concerned with what would emerge if it disclosed the truth.

145.4. The CEO struck me as a straightforward person, who was anxious to make full information available to the inquiry. She answered directly any questions which

¹¹ Evidence which tends to confirm the allegations of the former CEO.

were put to her, and immediately provided whatever documents I requested to the extent that she could.

146. As I have said, it is not possible to make a definitive finding without access to all the relevant material and without questioning witnesses. However, it seems to me likely that the version given by the former CEO is the truth. If that is indeed the case, it raises the very troubling question as to how information about how the President was going to exercise his Constitutional prerogative came to be in the hands of a private company – and particularly where the information was commercially very sensitive.
147. I was required by the Terms of Reference to investigate whether Trillian acted upon this information for commercial purposes with the aim of collaborating with Minister Van Rooyen so as to position it to benefit from the appointment of the new Minister. One cannot answer this question without access to the relevant materials, which are not available to me. I have also not interviewed Mr Bobat. Under the circumstances, I cannot make any finding. However, what I can say with regard to the role of Mr Bobat is that the material disclosed in the report of the Public Protector and in the litigation between Regiments Capital and Dr Wood gives rise to grounds for deep concern, which call for an answer. To the best of my knowledge he has not provided such an answer.
148. These are matters which can only be finally determined by a proper inquiry which has the power to compel witnesses to give evidence and to produce documents.

PART 7: A GUPTA CONNECTION?

149. Paragraph 1.2.3 of the Terms of Reference provides that I am to enquire into the *“role or impact, if any, of members of the Gupta family and persons associated with it, on the activities of Trillian”*.
150. In a media statement issued on 23 October 2016, Trillian Capital Partners said the following:
- “The Gupta family has no shareholding or other interest whatsoever in Trillian Holdings. It has no link to Trillian Holdings or to any of the other constituent members of the Trillian Group of Companies”*.
151. As appears from the Trillian organogram (annexure “A”), Trillian Holdings owns 60% of the shares in Trillian Capital Partners. Dr Wood (through Zara W (Pty) Ltd) appears to be the beneficial holder of 25% of the shares in Trillian Capital Partners. I have not received any information as to the identity of Aerion Nominees (Pty) Ltd, who hold 12% of the shares in TCP.
152. According to the Trillian organogram, all of the shares in Trillian Holdings (Pty) Ltd, the majority shareholder in TCP, are held by Mr Salim Aziz Essa.

153. As far as I am aware, Mr Essa is not a member of the Gupta family in the sense of having a blood relationship with them. However, there have been extensive and repeated reports in the media that he is a very close business associate of the members of the Gupta family. The report of the Public Protector is replete with examples of business connections and common investments between Mr Essa and the Gupta family. It has never been denied that he is a very close associate of the Gupta family.
154. Two matters referred to in this report may further connect Mr Essa with the Gupta family:
- 154.1. If the withdrawal of R160 million from the Trillian Bank of Baroda account was indeed destined to pay for the purchase of OCH by Tegeta, as appears to have been the case, then that payment was made very substantially for the benefit of members of the Gupta family. There is no apparent reason why Trillian would have made that payment, other than to benefit them.
- 154.2. It is also unclear why Trillian holds an account with an Indian bank, the Bank of Baroda. It has been widely reported, without any contradiction, that Oakbay, the Gupta company, similarly holds an account or accounts at that bank. Trillian opened this account long before the Gupta companies ran into difficulty with their South African banks. And Trillian denies that it has any link with the Guptas. There is no apparent reason why Trillian, a company owned by South Africans and conducted in South Africa, and which asserts that it has no link with the Guptas, would want or need an account with a bank in India. Standing by itself, one would not attach much significance to the opening of an account with a bank

with which the Guptas also do business. In the light of the other evidence, however, it is suggestive of a connection between Trillian and the Guptas.

155. Mr Sexwale informed me that on a number of occasions over a period of a few months, he unsuccessfully attempted to arrange a meeting with Mr Essa, the majority shareholder of the company of which he (Mr Sexwale) was the Chairman. He recorded this in a letter of 2 June 2017 to Mr Essa, stating:

"Sadly you have failed to respond to all our telephonic and sms's communications. This includes messages we have sent via the CEO of Trillian Dr Eric Wood... The reason I have been trying to have a sit down meeting with you, was to be able to get your assistance in providing replies to weekly media reports which continue to repeat corruption related allegations about you and your associates, but such a meeting has not come to be."

156. The assertion that Mr Essa is a very close business associate of the members of the Gupta family is widely reported (he is sometimes referred to in press reports as *"the fourth brother"*). Neither Mr Essa nor the Guptas have ever disputed this. The evidence appears overwhelming that Mr Essa is indeed a person very closely associated with the Gupta family, and in business with them.
157. Given that Mr Essa is the owner of the majority of the shares in TCP, which in turn holds all of the shares of the other members of the Trillian Group, and given the activities of Trillian to which I have referred, it seems reasonable to conclude that at least one of the

key “members of the Gupta family and persons associated with it” has a very substantial role in and impact on the activities of Trillian.

158. The connection between Mr Essa and the Guptas must be known to the leadership of Trillian, as it is known to anyone in South Africa who reads a newspaper. Under the circumstances, the assertion in TCP’s media release that the Gupta family “has no link to Trillian Holdings or to any of the other constituent members of the Trillian group of companies” was at best misleading, and in my opinion was in fact dishonest. The Gupta family does have such a link, through its close association with Mr Essa.¹²

¹² It takes very little reading between the lines to conclude that this is one of the reasons why Trillian failed the McKinsey risk review.



Nene merely a nominee for Brics bank Africa position

Clearly he does not see harm done by Nene axing

Business Day · 12 Jan 2016 · NTSAKISI MASWANGANYI Economics Writer maswanganyin@bdlive.co.za

FORMER finance minister Nhlanhla Nene is a mere nominee to head the Africa regional centre of the Brazil, Russia, India, China and SA (Brics) nations' New Development Bank.



A month after Mr Nene was fired unceremoniously from his post, questions remain around the reason for his hasty removal, as he has still not taken up the Brics job. Officials of his seniority usually move only once they have a confirmed a position elsewhere.

New Development Bank vicepresident and chief financial officer Leslie Maasdorp has confirmed that Mr Nene was a formal nominee of the South African government to head the Africa regional centre.

"The appointment is high-priority and we will seek to fill this role as soon as the recruitment process is complete," Mr Maasdorp said. He did not provide details on when the process would be completed.

Mr Maasdorp said, however, that since the bank's recruitment was "an internal confidential process, we are not in a position to disclose names of other candidates for the role".

The bank was working towards opening the interim offices of the Africa regional centre in Johannesburg by late this month or early next the next, he said.

Speculation has been rife that Mr Nene was axed after he stood firm against a South African Airways deal that would have had dire financial consequences for the airline and the fiscus, and for his strong stance against an unaffordable nuclear energy build programmes.

In an interview with eNCA at the weekend, President Jacob Zuma said: "We took a decision that he (Nene) heads the Brics bank as it needs an experienced person."

Despite Mr Zuma's wishes, the final decision on who is appointed rests with senior Brics bank officials. But there was still the important question of whether Mr Nene would indeed accept the job should he be the successful candidate, MD for emerging markets and Africa at Deloitte-Frontier Advisory, Martyn Davies, said. While a regional office was important, as it would help identify development projects on the continent, the main decision-making roles were at the bank's headquarters in Shanghai, China.

"I would rather have Mr Nene in Shanghai," Mr Davies said.

Mr Nene could not be reached for comment.

The New Development Bank's main aim is to mobilise resources for infrastructure and sustainable development projects in Brics member states.

The bank is expected to start lending in the second quarter of this year and will have initial capital of \$100bn.

THE African National Congress (ANC) celebrated its 104th birthday at the weekend with the usual gala dinner and other public events.

At the dinner and a rally, party and South African president Jacob Zuma delivered reasonably crafted speeches that, although not zeroing in on economic growth as they should have, made some of the right noises about fiscal prudence, partnerships with the private sector, and halting corruption.

He also spoke of the need to deal with low growth and to stabilise public debt, and mentioned structural reforms.

His speeches would not have won the ANC any particular favour with investors, but they would not have done any more damage than the ruling party and the government had already done in the past month with the ignominious firing of former finance minister Nhlanhla Nene.

But then Mr Zuma revealed in post-birthday interviews with eNCA and the SABC what he really thinks when he is not constrained by the prepared text. And it was disturbing.

It was hard to imagine that Mr Zuma could do more damage to investor perceptions, but he may have done just that in the interviews.

He was unrepentant about the damage he caused when he fired Mr Nene, nor did he show any sign of understanding the effects of his actions. Instead, he blamed investors for "overreacting" and "exaggerating" when he put a novice in charge of the public purse.

Markets are funny that way, said Mr Zuma, who assured us that the Treasury would have been just fine under his chosen, but short-lived neophyte — David Desmond van Rooyen — as finance minister even though talk at the time was that much of the Treasury's senior leadership was prepared to resign on the spot.

But Mr Zuma did not explain why he had reversed his decision a mere four nights later and reappointed Pravin Gordhan to the position.

Funny, the markets may be, but Mr Zuma's antics crashed the rand, which never recovered and was left particularly vulnerable to the routs in global markets we have seen so far this year.

The rand is really just the share price of SA Inc. It is now exchanged at about R16.50/\$ compared to the R14.50/\$ before Mr Zuma fired Mr Nene. Hundreds of billions of rand have been wiped off the value of pension funds' equity and bond holdings.

But Mr Zuma just does not get it, it seems.

He is not the first political leader to be dismissive of market moves, nor will he be the last. But he and his colleagues would do well to heed the words of former US treasury secretary Larry Summers: "Policymakers who dismiss market moves as reflecting mere speculation, often make a serious mistake."

The best executives manage their companies with an eye to long-term profitability, not the daily stock price, says Mr Summers in an article in the Financial Times. But since markets are constantly

It was hard to imagine he could do more damage to investor perceptions, but he may have done just that

assessing the future and aggregating the views of a huge number of participants, “they often give valuable warning when conditions change”.

Conditions have changed in SA — for the worse.

Mr Zuma can be dismissive about the concerns of many over his ties with the Gupta family, as well as matters of race or the management of the economy. But all of that, along with his apparent failure to understand why markets had a problem with his December moves, will erode SA’s credibility even further. Investors are not giving SA the benefit of the doubt anymore.

That erosion of credibility is bad for the rand and other assets, at a particularly difficult time globally. The effect, on the real economy and on the living standards of most South Africans, will be severe.

As Mr Summers put it in relation to the global economy, “policymakers should hope for the best and plan for the worst”.



Nene's Brics bank job up for grabs

Justin Brown

2016-03-13 16:30

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The New Development Bank job that President Jacob Zuma nominated former finance minister Nhlanhla Nene for after axing him last year is being advertised -- but there is no guarantee that Nene will get the position.

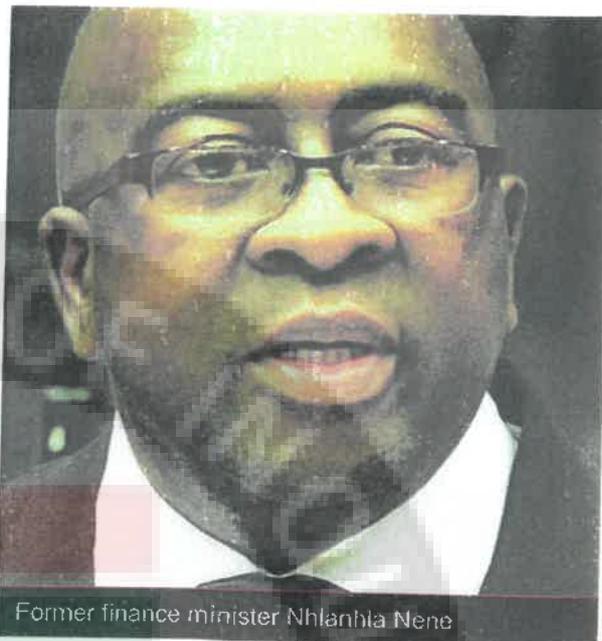
Leslie Maasdorp, the bank's chief financial officer, said this week that Nene would be "considered" for the role of director-general of the New Development Bank's African regional office, as the South African government had formally nominated Nene for the position.

"He was nominated for the role, so he will be considered. However, the New Development Bank does have its own processes and it is independent of the member countries," he added this week during a telephonic interview from Shanghai.

When contacted this week, Nene declined to comment or respond to any questions. Nic Borain, a political and investment analyst at BNP Paribas Securities SA, said this week: "Let's see if Nene gets the job. I will be surprised."

The position of the head of the New Development Bank's African regional office was a "lightweight admin job" relative to the job of finance minister that Nene once held, Borain added.

The New Development Bank website shows that the finance ministers of the five participating countries sit on the bank's highest decision-making body, its board of governors, so if Zuma wanted Nene to participate in the New Development Bank, it could have been through this board.



Former finance minister Nhlanhla Nene

Brics governance structure

BOARD OF GOVERNORS

 Nelson Filho Brazilian minister of finance	 Anton Siluanov Chairman of the board of governors Russian minister of finance	 Anur Jaitley Vice-chairman of the board of governors Indian minister of finance, corporate affairs and broadcasting
 Lou Jiwei Chinese minister of finance	 Pravin Gordhan South African minister of finance	

BOARD OF DIRECTORS

 Luís Carneiro Chairman of the board of directors Brazilian secretary of international affairs and ministry of finance	 Serguei Storchak Director: Russian deputy minister of finance	 Dinesh Sharma Director: Indian ministry of finance economic affairs secretary
 Zhijun Cheng Alternate director: Chinese deputy director-general of economic and financial cooperation	 Tito Mboweni Director: Former SA Reserve Bank governor	 Kandapur Vaman Kamath President of the New Development Bank

SENIOR MANAGEMENT BASED IN SHANGHAI

 Kandapur Vaman Kamath President of the New Development Bank	 Paolo Barletta Chief risk officer	 Vladimir Kuznetsov Chief administrative officer
	 Xin Zhu Chief operations officer	 Leslie Masudorp Chief financial officer

AFRICA REGIONAL CENTRE IN JOHANNESBURG

 **Director-general**
 Position being advertised

Source: ndb.int/leadership

Graphics24

Finance Minister Pravin Gordhan sits on the board, which was founded by the Brics countries – Brazil, Russia, India, China and South Africa – last year.

Borain said: “Nene would be way overqualified to be head of the bank’s African regional office. That position is a major step down for Nene. Nominating Nene to that position was just a smoke screen [after firing him].”

The reason for the shock at the time that Zuma fired Nene in December was that no explanation was provided for his axing and the explanation of the move to the bank came as an afterthought, Borain added.

Two days after removing Nene, Zuma said: “The urgency of the changes in the leadership of National Treasury was occasioned by the need to send nominations to Shanghai, of the head of the African regional centre of the New Development Bank ... Nene is our candidate for this position.”

Borain said the fact that the position of director-general of the New Development Bank’s African regional office had been advertised was probably part of a normal recruitment process.

Zuma replaced Nene with little-known ANC MP David "Des" van Rooyen before reappointing Pravin Gordhan as finance minister.

Borain said it appeared that Zuma had fired Nene because of a number of factors, including his interventions to rescue a troubled SAA and his stance on the financing of the nuclear procurement programme.

"The markets also interpreted Nene's firing as a raid on National Treasury by interests that wanted to get their hands on the coffers," added Borain.

In the aftermath of Nene's firing, the rand plunged to a record low against the US dollar and JSE stocks lost an estimated R170 billion in value.

Maasdorp said: "All the roles for the New Development Bank, not only this role for the director-general of the Africa regional centre, are being advertised, and people will be interviewed and appointed after a process, which our human resources department is managing.

"An impression should not be created that there is a different or unique process for the director-general role of the Africa regional centre," said Maasdorp.

For all the positions advertised, preference would be given to candidates from Brics countries, he added.

Former Reserve Bank governor Tito Mboweni is a member of the New Development Bank's board of directors.

"For now, we are looking for a director-general in Johannesburg," said Mboweni in a posting on his Twitter page this week.

Maasdorp said that the director-general, the post the New Development Bank was advertising on its website, would be the bank's most senior official at the African regional office in Johannesburg.

"This position is responsible for managing African regional operations, and provides the primary strategic and operational interface between the headquarters of the bank, and its clients in South Africa and Africa," said the job description on the bank's website.

The director-general of the African regional office would report to the New Development Bank's chief operating officer, Xian Zhu, added Maasdorp.

He was not able to clarify how many staff members the African regional office would have, but he said staff levels would grow as the bank's lending book expanded.

The closing date for applications for the New Development Bank position is March 21.

Maasdorp said that once the deadline for applications had closed, the bank would short-list and interview prospective candidates.

Even without there being an African regional office set up, the New Development Bank was building up a pipeline of African projects from its headquarters in Shanghai, he said.

Next month, the bank would announce its full project list, he revealed.

In a statement this week, Treasury said the New Development Bank was formally "open for business".

"The People's Republic of China and the bank signed an agreement regarding the headquarters of the bank in Shanghai, China, on February 27," added Treasury.

"The bank is in the process of establishing its Africa regional centre in Johannesburg ... Furthermore, the bank has begun its recruitment process and South Africans are encouraged to apply," stated Treasury.

Phumza Macanda, a Treasury spokesperson, declined to answer further questions about the bank job.

Bongani Majola, a presidency spokesperson, did not return calls seeking comment.

The New Development Bank is aimed at helping emerging economies to fund their infrastructure and other development projects.

The bank was launched in July 2015 after a formal agreement on the bank's establishment between Brics leaders at the group's fifth annual summit, held in South Africa in March 2013.

The New Development Bank has started with subscribed capital of \$50 billion (R763 billion), which is expected to increase to \$100 billion over time.

Statement by President Jacob Zuma on the appointment of new Finance Minister*09 December 2015*

I would like to announce changes to the Finance portfolio in Cabinet.

I have decided to remove Mr Nhlanhla Nene as Minister of Finance, ahead of his deployment to another strategic position.

Mr Nene has done well since his appointment as Minister of Finance during a difficult economic climate.

Mr Nene enjoys a lot of respect in the sector locally and abroad, having also served as a Deputy Minister of Finance previously.

I have decided to appoint a Member of Parliament, Mr David Van Rooyen, as the new Minister of Finance. Mr Van Rooyen serves as a Whip of the Standing Committee on Finance and as Whip of the Economic Transformation Cluster.

He is a former Executive Mayor of Merafong Municipality and a former North West provincial chairperson of the South African Local Government Association.

I wish Mr Van Rooyen all the best in this new appointment.

The new deployment of Mr Nene will be announced in due course.

Statement issued by Bongani Majola, The Presidency, 9 December 2015

Nene's Brics job up for grabs – again

Justin Brown

2016-04-24 15:00

It
is

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Nene accepts a full-time position – and it's not at the New Development Bank

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Nene: 'Just watch this space'



Former finance minister Nhlanhla Nene was awarded an honorary doctorate from the Mangosuthu University of Technology in Umlazi, Durban, this week. The award was given in recognition of Nene's contribution in the field of finance and government. Picture: Tebogo Letsie

proving tough for the New Development Bank to fill the position of African Regional Centre director-general – the job that former finance minister Nhlanhla Nene was apparently nominated for.

This week, the bank readvertised the position on its website on the same day that Nene was appointed to the board of Allan Gray as a nonexecutive director.

The latest deadline for applications for the job is May 2. When the job was first listed on the bank's website, the deadline was March 21, then the cutoff date was extended to May 28.

Prior to the relisting of the job, Leslie Maasdorp, the bank's chief financial officer, told City Press that it had come up with a short list for the African Regional Centre director-general position, but interviews had not begun.

The new advertisement pitches the target market for the job as "global recruitment", which might mean there is a greater chance now that the job may not go to a South African.

Nene this week firmly closed the door on taking up the position after Thebe Investment Corporation announced that he would join the investment company from May 1 as a resident adviser for two years.

"While this is a full-time appointment, Mr Nene will continue with his nonexecutive directorships that were declared prior to this appointment because these are not in conflict with his envisaged role at Thebe," the company said.

Nene said this week that the Thebe and Allan Gray roles were as much as he was willing to take on for now.

"I wouldn't take on any further roles for now. I would first like to see how my work schedule goes," he said.

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Nene's Brics job up for grabs – again | City Press

However, Nene declined to comment on whether he was in talks to take up other nonexecutive roles.

"I hope my life is going to be private from now on. I'm no longer in the public sector; I'm in the private sector," Nene said jokingly.

Nene, who was unceremoniously sacked from his position as finance minister in December, resigned from Parliament a few days later. He was replaced by a little-known backbencher, Des van Rooyen, and the rand plummeted.

President Jacob Zuma reassigned Van Rooyen to a new portfolio four days later, and appointed Pravin Gordhan to his old portfolio as finance minister.

Two days after removing Nene, Zuma said: "The urgency of the changes in the leadership of National Treasury was occasioned by the need to send nominations to Shanghai for the head of the African Regional Centre of the New Development Bank ... Nene is our candidate for this position."

Earlier this month, Nene said in an interview with eNCA: "I have not heard from the bank to this point ... The Brics bank job has not come up."

Brics is the acronym for an association of five major emerging national economies: Brazil, Russia, India, China and South Africa.

Phumza Macanda, National Treasury spokesperson, referred questions regarding the director-general of the New Development Bank's African regional office to the presidency.

Bongani Majola, spokesperson for the presidency, didn't reply to an email seeking comment regarding the position, or whether the South African government had nominated another candidate to fill the position.

Nene has been swift to capitalise on the experience he gained at National Treasury and will take a position in the part of the economy that he used to regulate.

Just over four months after he left government, he has taken roles in two well-known financial companies. While there is no law against this, a six-month cooling-off period between government and private sector roles is usually the norm.

Trevor Manuel, South Africa's finance minister from 1996 to 2009, and then minister in the presidency for the National Planning Commission from 2009 to March 2014, joined Rothschild as an adviser and deputy chairman in October 2014 – seven months after leaving government.

Tito Mboweni left his position as SA Reserve Bank governor in November 2009. In June 2010, Mboweni got his first private sector appointments when he became an international adviser for Goldman Sachs, the chair of Nampak and the chair of AngloGold Ashanti.

Meanwhile, Nene was this week awarded an honorary doctorate in finance by the Mangosuthu University of Technology in KwaZulu-Natal.

7/14/2019

Nene's Brics job up for grabs – again | City Press

Nene told Mangosuthu students in his graduation speech: "Never, even for one moment, be confused; money isn't everything. There's more to life than making money. It includes living a life with a purpose and building a successful career."







THE REPUBLIC OF SOUTH AFRICA
**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 19529/2015

Before the Hon. Mr Justice Bozalek and the Hon. Ms Justice Baartman

Hearing: 13 December 2016; 22 – 24 February 2017
Judgment Delivered: 26 April 2017

In the review application between:

EARTHLIFE AFRICA – JOHANNESBURG
SOUTHERN AFRICAN FAITH COMMUNITIES'
ENVIRONMENT INSTITUTE

1st Applicant

2nd Applicant

and

THE MINISTER OF ENERGY
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA
SPEAKER OF THE NATIONAL ASSEMBLY
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES
ESKOM HOLDINGS (SOC) LIMITED

1st Respondent

2nd Respondent

3rd Respondent

4th Respondent

5th Respondent

6th Respondent

JUDGMENT

BOZALEK J (BAARTMAN J concurring)

[1] This application concerns challenges to various steps taken by the State between 2013 and 2016 in furtherance of its nuclear power procurement programme. The steps

challenged are two separate determinations made by the Minister of Energy in 2013 and 2016, respectively, in terms of sec 34 of the Electricity Regulation Act, 4 of 2006 ('ERA'), whilst the second main focus of the challenge is the constitutionality of the tabling by the Minister before Parliament of three intergovernmental agreements (IGA's) during 2015.

THE PARTIES

[2] First applicant is Earthlife Africa – Johannesburg, a non-governmental non-profit voluntary association which mobilises civil society around environmental issues. The second applicant is the Southern African Faith Communities' Environmental Institute, a registered public benefit and non-profit organisation which also concerns itself with environmental and socio economic injustices.

[3] First respondent is the Minister of Energy ('the Minister') who issued the two sec 34 determinations in question and tabled the three IGA's relating to nuclear cooperation with other countries. The President of the Republic of South Africa ('the President') is cited as second respondent by reason of his decision in 2014 authorising the Minister's signature of an IGA concluded in 2014 with the Russian Federation. Third respondent is the National Energy Regulator of South Africa ('NERSA'), a statutory body set up in terms of the National Energy Regulator Act, 40 of 2004 ('NERA'), which body concurred in the sec 34 determinations made by the Minister. The Speaker of the National Assembly and the Chairperson of the National Council of Provinces are the fourth and fifth respondents, cited because of their interest in the question whether the IGA's were properly tabled before their respective houses. During the course of proceedings, Eskom Holdings (SOC) Limited ('Eskom') was joined as sixth respondent but it, as well as the fourth and fifth respondents, abide by the Court's decision. All the

relief sought is opposed by the Minister and the President to whom I shall refer as ‘the respondents’.

BACKGROUND

[4] In late 2013, the Minister (with NERSA’s concurrence), acting in terms of sec 34 of ERA determined that South Africa required 9.6GW (‘gigawatts’) of nuclear power and that this should be procured by the Department of Energy. The Minister purported to make the determination on or about 17 December 2013. It was, however, only gazetted on 21 December 2015 and delivered to the applicants as part of the record in this matter on or about 23 December 2015. The gazetting and production of this sec 34 determination was at least partly in response to the applicants’ initial case in which, inter alia, a declarator was sought that, prior to the commencement of any procurement process for nuclear new generation capacity, the Minister and NERSA were both required in accordance with ‘*procedurally fair public participation processes*’ to have determined that new generation capacity was required and must be generated from nuclear power in terms of sec 34(1)(a) and (b) of ERA.

[5] The applicants commenced their review application in October 2015. Prior thereto, on or about 10 June 2015, the Minister had tabled the three IGA’s before Parliament which are the subject of the present constitutional challenge. In chronological order these were agreements between the Government of the Republic of South Africa and the United States of America, concluded in August 1995, the Government of the Republic of Korea, concluded in October 2010 and the Government of the Russian Federation, concluded in September 2014, all in regard to cooperation in the field of nuclear energy.

[6] On or about 8 December 2016, during these proceedings, the Minister issued a second sec 34 determination along similar lines to the previous sec 34 determination, but now identifying Eskom as the procurer of the nuclear power plants. The determination was made public at the commencement of the initial hearing in this matter on 13 December 2016, occasioning its postponement for several months, and was gazetted on 14 December 2016.

EVOLUTION OF THE LITIGATION

[7] The applicants' case has evolved through three stages. The relief initially sought was a review and setting aside of the Minister's decision to sign the Russian IGA, the President's decision authorising the Minister's signature, and the Minister's decision to table the Russian IGA before Parliament in terms of sec 231(3) of the Constitution. Certain declaratory relief was also sought in relation to how the nuclear procurement process should unfold in relation to the issuing of determinations under sec 34(1) of ERA and sec 217 of the Constitution which deals with the requirements for a fair procurement system for organs of state.

[8] After the respondents furnished the first sec 34 determination as part of the record, the applicants filed an amended notice of motion seeking the review and setting aside of that determination and any '*Request for Proposals*' issued by the Department of Energy pursuant thereto.

[9] Finally, after postponement of the proceedings in December 2016, the Minister filed a supplementary affidavit explaining the circumstances surrounding, and the rationale for, the second sec 34 determination. The applicants were afforded an opportunity to file answering affidavits to which they attached a draft order indicating

that further relief being sought was the review and setting aside of the Minister's sec 34(1) determination gazetted on 14 December 2016, and the setting aside of any Requests for Proposals or Requests for Information issued pursuant to either determination.

[10] The hearing resumed on 22 February 2017 when the matter was fully argued.

OUTLINE OF THE PARTIES' CASES

[11] In broad terms the applicants' challenge to the three IGA's is largely procedural in nature and based on the different procedures set out in sec 231(2) and 231(3) of the Constitution to render such agreements binding over the Republic. Section 231(2) provides that an IGA binds the Republic only after it has been approved by resolution in both the National Assembly ('the NA') and the National Council of Provinces ('the NCOP') '*unless it is an agreement referred to in subsection (3)*'. The latter subsection provides that IGA's of a '*technical, administrative or executive nature*' binds the Republic without the approval of the NA or the NCOP '*but must be tabled in the Assembly and the Council within a reasonable time*'. The applicants aver that inasmuch as the US IGA was entered into more than two decades before it was tabled in terms of sec 231(3), and nearly five years previously in the case of the Korean IGA, the delay in so tabling them rendered them non-compliant with sec 231(3) and therefore non-binding. The Russian IGA was also tabled in terms of sec 231(3) but in its case the applicants aver that it was not an international agreement as envisaged in sec 231(3) and thus should have been tabled before the two houses in terms of sec 231(2) with the result that it would only become binding after it had been approved by resolution of those houses.

[12] In regard to the challenge to all three IGA's the respondents raise various preliminary points, namely, that there has been a material non-joinder inasmuch as none

of the three countries have been joined as parties to the proceedings. In any event, the respondents contend that all three agreements, being international agreements, are not justiciable by a domestic court. As regards the Russian IGA the respondents contend in the alternative that upon a proper interpretation and construction thereof it is '*an international framework agreement for cooperation between sovereign states*' (and not a procurement contract) to cooperate on an executive level in the field of nuclear energy and nuclear industry; furthermore, the respondents contend, the decision of the Minister to table the Russian IGA in terms of sec 231(3) of the Constitution was beyond reproach inasmuch as it falls within the general category of a '*technical, administrative and executive agreement, not requiring ratification or accession*'. It is also contended by the respondents that, in any event, even if the Russian IGA was tabled in Parliament in terms of the incorrect procedure, the applicants have no standing to claim any relief in relation thereto, this being a matter for Parliament to take up with the Minister.

[13] In regard to the US and Korean IGA's the respondents, for the reasons given above, again assert that the applicants have no standing to claim any relief. They assert further that there was no unreasonable delay in tabling either IGA and that what is reasonable in any particular instance must depend on the facts and circumstances pertaining to each IGA. They contend further that, even if there was an unreasonable delay in the tablings, it is only the delay itself that is unconstitutional and this does not affect the validity or effectiveness of the tabling themselves nor render the two treaties without any binding effect.

[14] As regards to the sec 34 determinations, in broad outline, the applicants' case is that both the Minister's decision as contained in the determinations and NERSA's concurrence therein constituted administrative action but breached the requirements for

such action to be lawful, reasonable and procedurally fair. Amongst the grounds that they rely on in this regard are that neither the Minister's decision nor that of NERSA's was preceded by any public participation or consultation of any ground. Secondly, as regards the first sec 34 determination the applicants contend it was unlawful by reason of the two year delay in gazetting it; thirdly, they contend, both determinations were irrational, unreasonable and taken without regard to relevant considerations or with regard to irrelevant considerations.

[15] The applicants rely on certain additional grounds in relation to the 2016 determination, more specifically that NERSA's decision to concur therein was unlawful in that its key reason was that it believed that it would be *'mala fide for it not to concur in the Minister's proposed determination'* and was thus predicated on a material error of law or fact. It is also contended that NERSA failed to apply its mind to further relevant considerations, relating to the Minister's proposed determination, which arose after the 2015 determination.

[16] A further specific ground upon which the 2013 and 2016 determinations is challenged is the absence therein of any specific system for the procurement of nuclear new build capacity which is said to be in violation of sec 34 of ERA, read together with sec 217 of the Constitution.

[17] A further procedural ground of review is based on the applicants' contention that since the 2016 determination failed to withdraw or amend the 2013 sec 34 determination it resulted in the anomalous situation of two gazetted sec 34 determinations which are mutually inconsistent. As such the determinations violate the principle of legality and fall to be reviewed and set aside. The applicants contend, furthermore, that even if the

Minister's decisions as expressed in the sec 34 determination are not administrative but executive action they are nonetheless susceptible to review by virtue of the principle of legality and, even on this standard, fall to be set aside on the basis of irrationality.

[18] For their part the respondents contend that neither the decisions of the Minister nor those of NERSA in concurring with the sec 34 determinations constitute administrative action. Instead, they contend the determinations amount to '*encased policy directives*' and that a ministerial determination under sec 34 of ERA amounts to '*executive policy*'. They argue that no actual procurement decisions, nor a decision to grant a generation licence, were taken and the sec 34 determinations were in substance nothing more than policy decisions by the national executive binding only upon NERSA. The respondents dispute, furthermore, the specific grounds of the applicants' challenge to the sec 34 determinations and contend that there is no requirement that a determination must specify the procurement system for the nuclear new generation capacity. They contend further that neither the Minister's decision nor NERSA's decision was required to be made in accordance with a procedurally fair and public participation process. The respondents concede that the determinations are subject to review for rationality but contend that both determinations meet that standard.

[19] The respondents dispute, on various grounds, the specific bases upon which the applicants contend that NERSA's concurrence in the 2016 determination was unlawful, unreasonable or irrational. As regards the general ground advanced by the applicants that the 2013 and 2016 determinations are mutually inconsistent and stand to be struck down for this reason, the respondents' case is that, properly interpreted, the first determination was impliedly repealed by the second determination but that, in any event, even if both determinations stand separately from each other they are not mutually inconsistent.

THE ISSUES

[20] The following main issues fall to be determined:

1. Did the Minister and NERSA breach statutory and constitutional prescripts in making the 2013 and 2016 sec 34 determinations?
2. Did the President and the Minister breach the Constitution in deciding to sign the 2014 Russian IGA in relation to nuclear procurement and then in tabling it under sec 231(3) of the Constitution rather than sec 231(2)?
3. Did the Minister breach the Constitution in tabling the US IGA and South Korean IGA in relation to nuclear cooperation two decades and nearly five years, respectively after they had been signed?

CHRONOLOGY OF EVENTS

[21] Before dealing with the issues it is useful to set out a chronology of events as they relate to the sec 34 determinations and the various IGA's concluded by the respondents relating to nuclear issues.

1. In March 2011 the Minister gazetted the Integrated Resource Plan for Electricity 2010-2030 (IRP2010) which the Department of Energy itself stated should be revised every two years, but which, as at the date of hearing, had yet to be revised.
2. On 11 November 2013 the Minister signed a determination under sec 34(1) of ERA in relation to the requirement for and procurement of 9 600MW of electricity from nuclear energy which secured NERSA's concurrence on 17 December 2013.
3. On 20 September 2014 the President signed a minute approving the Russian IGA in relation to a strategic nuclear partnership and authorised the Minister to sign the agreement.
4. The following day, the Minister signed the agreement on behalf of the Government.

5. A day later, on 22 September 2014, the Department of Energy and Russia's atomic energy agency ('Rosatom'), released identical press statements confirming their joint understanding of what the two governments had agreed, and advising that on 22 September 2014 the Russian Federation and the Republic of South Africa had signed an Intergovernmental Agreement on Strategic Partnership and Cooperation in Nuclear Energy and Industry.¹
6. The press releases recorded inter alia that:
'The Agreement lays the foundation for the large-scale nuclear power plants (NPP) procurement and development programme of South Africa based on the construction in RSA of new nuclear power plants with Russian VVER reactors with total installed capacity of up to 9.6 GW (up to 8 NPP units). These will be the first NPPs based on the Russian technology to be built on the African continent. The signed Agreement, besides the actual joint construction of NPPs, provides for comprehensive collaboration in other areas of the nuclear power industry, including construction of a Russian-technology based multipurpose research reactor, assistance in the development of South-African nuclear infrastructure, education of South African nuclear specialists in Russian universities and other areas.'
7. In a subsequent press release, however, the Department of Energy described the Russian IGA as initiating *'the preparatory phase for the procurement for the new nuclear build programme'* and stated that *'(s)imilar agreements are foreseen with other vendor countries that have expressed an interest in supporting South Africa in this massive programme'*.²
8. In further press releases in late 2014 and early 2015 the Department of Energy advised that it had conducted vendor parades in relation to nuclear procurement, first with Russia and then with China, France, South Korea and the United States.

¹ Media Release "Russia and South Africa sign agreement on strategic partnership in nuclear energy" Pretoria, 22 September 2014 – record volume 1 p 131.

² Media Release "Minister Joemat-Peterson concludes her visit to Vienna, Austria" 23 September 2014 – record volume 4 p 1293.

9. After entering into the Russian IGA, the Government also entered into IGA's with China and France in late 2014.
10. On 10 June 2015 the Minister authorised the submission for tabling in Parliament of various IGA's signed with various nuclear vendor countries in accordance with sec 231(3) of the Constitution.
11. The following IGA's were tabled:
 - 11.1 Agreement for Cooperation between the Government of the Republic of South Africa and the United States of America concerning Peaceful Uses of Nuclear Energy ('the US IGA'), signed on 25 August 1995;
 - 11.2 Agreement between the Government of the Republic of Korea and the Government of the Republic of South Africa regarding Cooperation in the Peaceful Uses of Nuclear Energy ('the South Korean IGA'), signed on 8 October 2010;
 - 11.3 Agreement between the Government of the Republic of South Africa and the Government of the Russian Federation on Strategic Partnership and Cooperation in the fields of Nuclear Power and Industry ('the Russian IGA'), signed on 21 September 2014;
 - 11.4 Agreement between the Government of the Republic of South Africa and the Government of the French Republic on Cooperation in the Development of Peaceful Uses of Nuclear Energy, dated 14 October 2014;
 - 11.5 Agreement between the Government of the Republic of South Africa and the Government of the People's Republic of China on Cooperation in the field of Civil Nuclear Energy Projects, signed on 7 November 2014.
12. On 21 December 2015 the Minister's 2013 sec 34 determination was made public by publication in the government gazette.

13. On 8 December 2016 the Minister issued a further determination under sec 34(1) of ERA in relation to the requirement for and procurement of 9 600MW of electricity from nuclear energy with NERSA's concurrence, and published it in the government gazette on 14 December 2016.

THE SECTION 34 DETERMINATIONS

[22] Before setting out the terms of the 2013 sec 34 determination regard must be had to the relevant empowering legislation. The preamble to ERA records that its purposes were inter alia to establish a national regulation framework for the electricity supply industry and to make NERSA the custodian and enforcer of the national electricity regulatory framework. Section 2 provides that amongst the objects of ERA are to:

- (a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in South Africa;*
- (b) ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic;*
- ...*
- (g) facilitate a fair balance between the interests of customers and end users, licensees, investors in the electric supply industry and the public.'*

[23] Section 34 of ERA deals with the subject of new generation capacity and provides in part as follows:

- (1) The Minister may, in consultation with the Regulator –*
 - (a) determine that new generation capacity is needed to ensure the continued uninterrupted supply of electricity;*
 - (b) determine the types of energy sources from which electricity must be generated, and the percentages of electricity that must be generated from such sources;*

- (c) *determine that electricity thus produced may only be sold to the persons or in the manner set out in such notice;*
- (d) *determine that electricity thus produced must be purchased by the persons set out in such notice;*
- (e) *require that new generation capacity must:*
 - (i) *be established through a tendering procedure which is fair, equitable, transparent, competitive and cost-effective;*
 - (ii) *provide for private sector participation.*

2. ...

3. *The Regulator, in issuing a generation licence –*

- a) is bound by any determination made by the Minister in terms of subsection (1);*
- b) may facilitate the conclusion of an agreement to buy and sell power between a generator and a purchaser of that electricity.'*

[24] Section 34(1) therefore operates as the legislative framework by which any decision that new electricity generation capacity is required and any decision taken by the Minister in that regard, has no force and effect unless and until NERSA agrees with the Minister's decision.

[25] Commenting on the role of administrative law in the field of electricity regulation Klees³ states as follows:

'The significance of administrative law for environmental law is beyond dispute. Glazewski describes environmental law as "administrative law in action, as environmental conflicts frequently turn on the exercise of administrative decision-making powers". Something similar could be said of NERSA's decision-making powers under the ERA.'

³ A Klees *Electricity Law in South Africa* (2014) p 16 para 3.4.3.

[26] The Minister's 2013 determination read, insofar as it is relevant, as follows:

The Minister of Energy ... in consultation with ... ("NERSA"), acting under section 34(1) of the Electricity Regulation Act 4 of 2006 ... has determined as follows:

- 1. that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy ("nuclear programme"), which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 ...;*
- 2. electricity produced from the new generation capacity ("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective;*
- 3. the nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement;*
- 4. the electricity may only be sold to the entity designated as the buyer in paragraph 7 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;*
- 5. the procurement agency in respect of the nuclear programme will be the Department of Energy;*
- 6. the role of the procurement agency will be to conduct the procurement process, including preparing any requests for qualification, request for proposals and/or all related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial closure which are within its control;*
- 7. the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and*

8. *the electricity must be purchased from the special purpose vehicle(s) set up for the purpose of developing the nuclear programme.'*

[27] On 11 November 2013 the Minister's predecessor wrote to the Chairperson of NERSA requesting its concurrence in the proposed determination as set out above. Some five weeks later, on 20 December 2013, the Chairperson advised the Minister's predecessor that NERSA had resolved to concur in the proposed determination. NERSA's decision was taken at a meeting of its board held on 26 November 2013, two weeks after receiving the Minister's proposed determination. Minutes of those meetings record its reasons for concurring with the Minister's proposed determination.

WERE THE SECTION 34 DETERMINATIONS ADMINISTRATIVE ACTION AND, IF SO, WERE THEY LAWFUL, REASONABLE AND PROCEDURALLY FAIR?

[28] The right to just administrative action is enshrined in sec 33 of the Constitution and provides that everyone has the right to '*administrative action that is lawful, reasonable and procedurally fair*' and that national legislation must be enacted to give effect to the right. Administrative action is then defined in section 1 of the Promotion of Administrative Justice Act, 3 of 2000 ('PAJA') in part as follows:

'...any decision taken, or any failure to take a decision, by -

(a) an organ of state, when -

(i) exercising a power in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation; or

...

which adversely affects the rights of any person and which has a direct, external legal effect, but does not include -

(aa) the executive powers or functions of the National Executive, including the powers or functions referred to in ...'

[29] Amongst the excluded powers or functions is sec 85(2)(b) of the Constitution which provides that the President exercises the executive authority, together with other members of the Cabinet by,

'(b) developing and implementing national policy'.

[30] On behalf of the applicants it was contended that it was unnecessary to determine whether the 2013 sec 34 determination amounted to executive action or administrative action since even if it was the former it was subject to rationality review; therefore, the argument continued, the real question was whether the determination amounted to nothing more than policy (or as it was put on behalf of the respondents - *'an encased policy directive'*). In *SARFU*⁴ the Constitutional Court declared that the distinction between executive and administrative action boils down to a distinction between the implementation of legislation, which is administrative action, and the formulation of policy, which is not. The Court stated that where the line is drawn will depend primarily upon the nature of the power and the factors relevant to this consideration which are in turn, the source of the power, the nature of the power, its subject matter, whether it involves the exercise of a public duty and whether it is related to policy matters or the implementation of legislation.

[31] *Woolman*⁵ cautions against the over extension of executive policy decisions so as to exclude a large range of actions from the application of the right to just administrative action. The authors contend that it is important to distinguish between policy in the narrow sense and policy in the broad sense, of which only the latter should be excluded

⁴ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC).

⁵ S Woolman and M Bishop *Constitutional Law of South Africa* 2nd ed vol 4 [original service: 06-08] p 63-32.

from the ambit of administrative action. In *Ed-U-College*⁶ O'Regan J stated on behalf of the Court:

'Policy may be formulated by the Executive outside of a legislative framework. For example, the Executive may determine a policy on road and rail transportation or on tertiary education. The formulation of such policy involves a political decision and will generally not constitute administrative action. However, policy may also be formulated in a narrower sense where a member of the Executive is implementing legislation. The formulation of policy in the exercise of such powers may often constitute administrative action.'

[32] In the present matter the source of the power exercised by the Minister was sec 34(1) of ERA and the nature of the power was one which had far reaching consequences for the public as a whole and for specific role-players in the electricity generation field. The determination also had external binding legal effect in that, at the very least, it bound or authorised NERSA to grant generation licences for nuclear energy subject to an overall limit of 9 600MW. Specific affected parties in this case would be not only those engaged in the field of nuclear energy generation but other electricity generation providers such as oil, gas or renewable energy inasmuch as their potential to contribute to the need for extra capacity would be removed. These factors all point towards the sec 34 determination constituting administrative action.

[33] Given the critical role that NERSA has in the making of a ministerial determination in terms of sec 34 of ERA, regard must also be had to its powers and the manner in which it is required to exercise these. NERSA itself was established in terms of NERA which was promulgated to establish a single regulator to regulate the electricity, piped-gas and petroleum pipeline industries.

⁶ *Permanent Secretary, Department of Education and Welfare, Eastern Cape, and Another v Ed-U-College (PE) (Section 21) Inc* 2001 (2) SA 1 (CC) para 18.

[34] Section 9 of NERA sets out the duties of members of the energy regulator who must inter alia:

- (a) act in a justifiable and transparent manner whenever the exercise of their discretion is required;*
- ...
- (c) act independently of any undue influence or instruction;*
- ...
- (f) act in the public interest.'*

[35] Section 10 of NERA, which plays an important role in this matter, sets out the requirements for the validity of NERSA's decisions and provides as follows:

1. Every decision of the Energy Regulator must be in writing and be –

- (a) consistent with the Constitution and all applicable laws;*
 - (b) in the public interest;*
 - (c) ...*
 - (d) taken within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to the Energy Regulator;*
 - (e) based on reasons, facts and evidence that must be summarised and recorded; and*
 - (f) explained clearly as to its factual and legal basis and the reasons therefor.*
- 2. Any decision of the Energy Regulator and the reasons therefor must be available to the public except information that is protected in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).*
- 3. Any person may institute proceedings in the High Court for the judicial review of an administrative action by the Energy Regulator in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).*

4. a) *Any person affected by a decision of the Energy Regulator sitting as a tribunal may appeal to the High Court against such decision.*

...

[36] There is nothing to suggest that the decision taken by NERSA to concur in the Minister's proposed 2013 sec 34 determination was one which fell outside the ambit of sec 10 of NERA. An independent requirement for a valid decision of this nature was thus that it be taken '*within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to the Energy Regulator*'. Section 10(3) specifically provides for judicial review of administrative action by NERSA.

[37] Against this background, when regard is had to the definition of administrative action in PAJA it is clear that all its elements are satisfied at least as far as NERSA's role in the sec 34 determination. NERSA is undoubtedly an organ of state which, in taking the decision to concur with the Minister's proposed determination, was '*exercising a public power or performing a public function*' in terms of legislation, namely, sec 34 of ERA and sec 10 of NERA. That decision had a direct, external legal effect and, at the least, adversely affected the rights of energy producers outside the stable of nuclear power producers. None of the exemptions or qualifications referred to in sec 1(b)(aa) – (ii) of PAJA are met.

[38] In regard to the requirement that the action must '*adversely affect the rights of any person*' there is authority that this threshold must not be interpreted restrictively. In *Grey's Marine*⁷ the Supreme Court of Appeal dealt with this requirement, Nugent JA stating as follows:

⁷ *Grey's Marine Hout Bay (Pty) Ltd and Others v Minister of Public Works and Others* 2005 (6) SA 313 (SCA).

*'While PAJA's definition purports to restrict administrative action to decisions that, as a fact, "adversely affect the rights of any person", I do not think that a literal meaning could have been intended. For administrative action to be characterised by its effect in particular cases (either beneficial or adverse) seems to me to be paradoxical and also finds no support from the construction that has until now been placed on s 33 of the Constitution. Moreover, that literal construction would be inconsonant with s 3(1) [of PAJA], which envisages that administrative action might or might not affect rights adversely. The qualification, particularly when seen in conjunction with the requirement that it must have a "direct and external legal effect", was probably intended rather to convey that administrative action is action that has the capacity to affect legal rights, the two qualifications in tandem serving to emphasise that administrative action impacts directly and immediately on individuals.'*⁸

[39] In *Steenkamp*⁹ Moseneke DCJ held that a decision to award or refuse a tender constitutes administrative action because the decision *'materially and directly affects the legal interests or rights of tenderers concerned'* giving further weight to a non-restrictive interpretation of this requirement.

[40] The power exercised by the Minister in terms of sec 34(1) of ERA is unusual in that any decision on his part is inchoate until such time as NERSA concurs therein and the sec 34 determination is thereby made. It is, however, the sec 34 determination which is challenged as unfair, unlawful and unreasonable administrative action. Having concluded that NERSA's role in concurring in the proposed determination amounts to administrative action for the reasons furnished, it is conceptually difficult to view the sec 34 determination, as a whole, as anything other than administrative action. Moreover, if NERSA's action, as a vital link in the chain which makes up the sec 34 determination, does not meet the test for fair administrative action, little point is served in scrutinizing any decision by the Minister, prior to the sec 34 determination being made, for fair

⁸ *Grey's Marine* n 7 para 23.

⁹ *Steenkamp NO v Provincial Tender Board, Eastern Cape* 2007 (3) SA 121 (CC) para 21.

administrative action. One link, namely NERSA's action having proved to be fatally flawed from an administrative law point of view, the chain, i.e. the sec 34 determination, is broken.

[41] On behalf of the respondents it was contended that the requirement that '*every decision*' of NERSA had to comply with the requirements of sec 10 of NERA could not be taken literally. Although internal decisions of NERSA which fall outside the requirements of sec 10 can readily be imagined, its decision to concur in the Minister's proposed determination can hardly be categorised as a rote, everyday decision. Indeed the decision to formally expand the nuclear procurement programme to 9 600MW must surely rank as one of the most important decisions taken by NERSA in the recent past.

[42] Section 3 of PAJA echoes sec 10 of NERA to the effect that administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair. It stipulates that a fair administrative procedure will depend on the circumstances of each case. Also pertinent is sec 4 of PAJA which deals with administrative action affecting the public and provides that the administrator:

'(In order to give effect to the right to procedurally fair administrative action, must decide whether -

- (a) to hold a public inquiry in terms of subsection (2);*
- (b) to follow a notice and comment procedure in terms of subsection (3);*
- (c) to follow the procedures in both subsections (2) and (3);*
- (d) ... or;*
- (e) to follow another appropriate procedure which gives effect to section 3.'*

[43] NERSA did not oppose the application and therefore offered no explanation as to what procedure, if any, it followed to give effect to the right to procedurally fair administrative action. The minutes of the meeting of NERSA at which the decision was

taken reveal no indication of any prior process whereby *'affected persons'* or the public had the opportunity to submit their views to NERSA. Nor is there any indication in the record of any such procedure having been followed. The short period of time between the Minister's request to NERSA to consider the proposed determination and its final decision, a matter of weeks, renders it most unlikely that a fair procedure could have been carried out even if NERSA had been minded to follow one.

[44] There is no serious dispute that the decision to procure 9.6GW of nuclear new generation capacity will have far reaching consequences for the South African public and will entail very substantial spending on a particular type and quantity of new infrastructure. The applicants estimated that the costs, which will ultimately be met by the public through taxes and increased electricity charges, could be approximately R1 000 000 000 000 (one trillion Rand) and this estimate was not disputed by the respondents. As the applicants point out, the allocation of such significant resources to the project will inevitably effect spending on other social programmes in the field of education, social assistance of health services and housing. They also point out that the decision embodied in the sec 34 determination has potentially far reaching implications for the environment.

[45] In my view, in light of these considerations, a rational and a fair decision-making process would have made provision for public input so as to allow both interested and potentially affected parties to submit their views and present relevant facts and evidence to NERSA before it took a decision on whether or not to concur in the Minister's proposed determination.

[46] For these reasons, I consider that NERSA's decision to concur in the Minister's proposed 2013 determination without even the most limited public participation process renders its decision procedurally unfair and in breach of the provisions of sec 10(1)(d) of NERA read together with sec 4 of PAJA.

[47] Even if I am wrong in concluding that NERSA's decision to concur (or the combined decision of the Minister and NERSA) amounted to administrative action, the decision/s still have to satisfy the test for rational decision-making, as part of the principle of legality. Applying this to the applicants' challenge on the basis of an unfair procedural process the question is whether the decision by either the Minister or NERSA (or the combined decision of the Minister and NERSA) fell short of constitutional legality for want of consultation with interested parties.

[48] Our courts have recognised that there are circumstances in which rational decision-making calls for interested persons to be heard. In *Albutt v Centre for the Study of Violence and Reconciliation, and Others*¹⁰ the Court had to decide inter alia whether the President was required, before exercising a power to pardon offenders whose offences were committed with a political motive, to afford a hearing to victims of the offences. It was held that the decision to undertake the special dispensation process under which pardons were granted without affording the victims an opportunity to be heard had to be rationally related to the achievement of the objectives of the process.¹¹

[49] In *Democratic Alliance v President of the Republic of South Africa and Others*¹² Yacoob ADCJ stated:

¹⁰ 2010 (3) SA 293 (CC).

¹¹ *Albutt* n 10 para 68-69.

¹² 2013 (1) SA 248 (CC) para 34.

'It follows that both the process by which the decision is made and the decision itself must be rational. Albutt is authority for the same proposition.'

He went on to state:

*'The conclusion that the process must also be rational in that it must be rationally related to the achievement of the purpose for which the power is conferred, is inescapable and an inevitable consequence of the understanding that rationality review is an evaluation of the relationship between means and ends. The means for achieving the purpose for which the power was conferred must include everything that is done to achieve the purpose. Not only the decision employed to achieve the purpose, but also everything done in the process of taking that decision, constitutes means towards the attainment of the purpose for which the power was conferred.'*¹³

[50] In the present matter NERSA must have been aware that there were sectors of the public with either special expertise or a special interest regarding the issue of whether it was appropriate for extra generation capacity to be set aside for procurement through nuclear power. In addition, in taking the decision, NERSA was under a statutory duty to act in the public interest and in a justifiable and transparent manner whenever the exercise of their discretion was required but also to utilise a procedurally fair process giving affected persons the opportunity to submit their views and present relevant facts and evidence. These requirements were clearly not met by NERSA in taking its far reaching decision to concur in the Minister's sec 34 determination. It has failed to explain, for one, how it acted in the public interest without taking any steps to ascertain the views of the public or any interested or affected party. For these reasons I consider that NERSA's decision fails to satisfy the test for rationality based on procedural grounds alone.

¹³ *Democratic Alliance* n 12 para 36.

A FURTHER PROCEDURAL CHALLENGE BASED ON DELAY

[51] There is another procedural challenge to the 2013 sec 34 determination which is based on the delay in gazetting the decision. The facts were that the Director-General in the Department of Energy submitted a decision memorandum to the Minister on 8 November 2013. The recommendation to the Minister was that she:

- 7.1. approves the sec 34 determination in annexure A for promulgation in the government gazette, so that the Nuclear Procurement process can be launched; and*
- 7.2. signs the attached letter to NERSA seeking their concurrence'.¹⁴*

[52] The Minister approved and adopted the recommendation on 11 November 2013 whilst NERSA concurred in the decision, sending a letter to this effect to the Minister on 20 December 2013.

[53] There was no suggestion in either the decision memorandum, the Minister's approval of the recommendation or in NERSA's concurrence in the decision that it should not be gazetted. This last aspect is not surprising given that sec 9 of NERA provides that NERSA must act in a *'justifiable and transparent manner and in the public interest'*. More pointedly sec 10 of NERA requires that any decision of NERSA and the reasons therefor *'must be available to the public'*. It was, however, only on 21 December 2015, some two years after the sec 34 determination was made that it was gazetted. This was the first occasion on which the 2013 sec 34 determination was made public. The gazetting followed a further decision memorandum from the Director-General to the

¹⁴ Memorandum – Department of Energy “Determination in respect of the Nuclear Programme” (11 November 2013) – record volume 2 p 488 para 8.6.

Minister dated 1 December 2015¹⁵ which sought to explain why the determination had not been gazetted earlier as follows:

'3.4 Although the determination process was completed in 2014 with NERSA and signed by the previous Minister of Energy, Ben Martins, the determination was not gazetted due to change in the leadership in the Ministry and to further conduct some work prior to gazetting. As a result there has been progress on the nuclear build work done by the Department and relevant stakeholders, it is therefore deemed appropriate to publish it. The determination needs to be gazetted ...'

There is, however, no indication what work had to be conducted prior to gazetting and no evidence thereof in the record.

[54] As the applicants point out, however, the sec 34 determination might never have been communicated had the present application not been launched and the record obtained from the respondents. This is borne out by the decision memorandum in which the Director-General explained to the Minister that the publishing of the determination had *'become urgent'* as the Department was facing the present litigation wherein the applicants claimed that *'the Minister has not published a Section 34 determination nor conducted a public participation process and therefore any decisions to facilitate, organise, commence or proceed with the procurement of nuclear new generation capacity is unlawful'*.¹⁶ The memorandum proceeds:

'3.6 During the meeting of 27 November 2015 to brief the legal counsel defending the Department ... (t)he legal counsel requested to include the determination when filing the record for the court papers. The legal counsel (sic) advised that the inclusion of the determination in the answering affidavit will weaken the case for the applicant as it will show that their application is based on false assumption.'

¹⁵ Memorandum – Department of Energy “Determination under Section 34 (1) of the Electricity Regulation Act No. 4 of 2006 – Nuclear Procurement Programme” (1 December 2015) – record volume 7 p 108 document no. 19.2.

¹⁶ Memorandum n 15 p 110 para 3.5.

[55] It requires mention that in July 2015 the applicants' attorney wrote to the Minister raising a number of questions regarding nuclear new generation capacity procurement and compliance with any related statutory or legal processes. One of the questions was whether the Minister had, in consultation with NERSA, made any determinations in terms of sec 34(1)(a) and (b) of ERA that new generation capacity was needed and must be generated from nuclear energy sources. No substantive reply was received from the Minister where after the present application was launched in October 2015.

[56] Various consequences flow from the Minister's failure to gazette the 2013 sec 34 determination after NERSA's concurrence therein. Firstly, until the gazetting in December 2015 the Minister was in breach of his/her own decision. Secondly, it is open to serious question whether the 2013 sec 34 determination could have had any legal effect until such time as it was gazetted. Although ERA does not require that a sec 34 determination be gazetted this is one of the recognised means for giving public notice of a decision. In *SARFU*¹⁷ the Constitutional Court held in regard to the President's appointment of a commission of enquiry that:

'In law, the appointment of a commission only takes place when the President's decision is translated into an overt act, through public notification. [...] Section 84(2)(f) does not prescribe the mode of public notification in the case of the appointment of a commission of inquiry but the method usually employed, as in the present case, is by way of promulgation in the Government Gazette. The President would have been entitled to change his mind at any time prior to the promulgation of the notice and nothing which he might have said to the Minister could have deprived him of that power. Consequently, the question whether such appointment is valid, is to be adjudicated as at the time when the act takes place, namely at the time of promulgation.'

¹⁷ *SARFU* n 4 para 44.

[57] The inordinate delay in gazetting the 2013 sec 34 determination raises a further problem inasmuch as NERSA's consent to the gazetting in December 2015 was neither sought nor obtained. This raises the question of whether NERSA's concurrence in 2013 in the Minister's proposed determination necessarily constituted a valid concurrence in 2015. Developments in the intervening two years may well have afforded NERSA material reason to question whether nuclear new generation capacity was required, the amount required or other elements of the 2013 sec 34 determination. Furthermore, had NERSA's concurrence been sought afresh in December 2015, new factors which might have emerged from a fresh public participation process may have changed its initial views.

[58] In these circumstances the failure to gazette or otherwise make the determination public for two years not only breached the Minister's own decision, thus rendering it irrational and unlawful, but violated the requirements of open, transparent and accountable government. Furthermore, since the sec 34 determination was in effect only made on publication, the Minister's failure to consult NERSA anew in December 2015 on her decision to gazette the determination in unaltered form constituted a breach of sec 34 of ERA, a mandatory empowering section.

[59] These defects, in my view, rendered the Minister's 2013 sec 34 determination unconstitutional and unlawful, in the latter case by virtue of breaches of the principle of legality and thus liable to be set aside.

SUBSTANTIVE CHALLENGES TO THE 2013 SECTION 34 DETERMINATION

[60] Apart from the grounds relating to the procedural fairness of the 2013 sec 34 determination, the applicants raise several substantive grounds of review in challenging

the 2013 determination. They contend that the decision contained in the 2013 sec 34 determination was irrational, unreasonable and taken without regard to relevant considerations, or with regard to irrelevant considerations. Commencing with the Minister's decision, the applicants contend that he irrationally relied upon the outdated IRP2010. It would appear that at the time the Minister took the decision which led to the sec 34 determination, the IRP2010-had been updated although it was still in draft form and a further ground of review is that the Minister had failed to have regard to the contents of the draft update. A further ground is that the determination contained no specific procedure for the procurement of nuclear new build capacity, the applicants contending that this was in breach of sec 34 of ERA, read with sec 217 of the Constitution. As far as NERSA's role is concerned, the applicants' substantive challenges are firstly that NERSA erroneously viewed its role as no more than a rubber stamp for the Minister's initial decision and, secondly, that it too relied on the outdated IRP2010.

[61] Given the finding that the challenges based on the procedural fairness of the 2013 determination and its delayed publication must succeed, I consider that no point is served by considering the merits of the substantive challenges to the 2013 determination based on reasonableness or rationality.

THE 2016 DETERMINATION

[62] I turn now to deal with the challenge to the 2016 determination which was gazetted on 14 December 2016. The core of the 2016 sec 34 determination is the same as that of the 2013 determination, namely, *'that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement'* of the country's *'greenhouse gas emission targets ... accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy'*; secondly, that the electricity so

produced is to be procured through *'fair, equitable, transparent, competitive and cost-effective'* tendering procedures. However, the 2016 determination provided *'that the procurer in respect of the nuclear programme shall be the Eskom Holdings (SOC) Limited or its subsidiaries'* as opposed to 2013 determination which appointed to the Department of Energy to this role.¹⁸

[63] The background to the 2016 determination appears from the Minister's supplementary affidavit and the documents that form the Minister's and NERSA's record of decision which were attached thereto. During September 2016 the Minister received legal advice with regard to the development of a procurement strategy for the nuclear programme. This advice *'resulted in revisiting of the appointment and role of the DOE (Department of Energy) as the designated procurement agency in respect of the nuclear procurement programme'*. Thereafter, on 29 September 2016, the Department's Director-

¹⁸ The 2016 sec 34 determination reads in full as follows:
'NUCLEAR PROGRAMME

DETERMINATION UNDER SECTION 34(1) OF THE ELECTRICITY REGULATION ACT 4 OF 2006

PART A

The Minister of Energy ("the Minister"), in consultation with the National Energy Regulator of South Africa ("NERSA"), acting under section 34(1) of the Electricity Regulation Act 4 of 2006 (as amended) (the "ERA") has determined as follows:

1. that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy ("nuclear programme"), which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 (published as GN 400 of 06 May 2011 in *Government Gazette* No. 34263) ("IRP 2010-2030" or as updated);
2. that electricity produced from the new generation capacity ("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective and provide for private sector participation;
3. that the nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement;
4. that the procurer in respect of the nuclear programme shall be the Eskom Holdings (SOC) Limited or its subsidiaries.'

General provided the Minister with a decision memorandum, for approval, in relation to the proposed 2016 determination.¹⁹

[64] The rationale for the 2016 determination is contained in paras 3.1 – 3.4 of the decision memorandum and which read as follows:

- 3.1 *On 27 September 2016, the Minister of Energy informed the Department that it was her intention to have Eskom Holdings (SOC) Limited (hereinafter referred to as "Eskom") procure and be the owner operator of the new nuclear power plants.*
- 3.2 *It appeared that one of the factors the Minister considered in her decision, was that it was indicated in a legal opinion sought from Adv Marius Oosthuizen that the Minister and/or the Department of Energy is not empowered by law to directly procure on behalf of other juristic entities, which are also organs of state (such as Eskom) unless their consent is obtained. It was indicated by an authorised representative from Eskom that Eskom would not provide consent for the Minister and/or the Department of Energy to procure on their behalf.*
- 3.3 *In order effect (sic) the Minister's desired change(s) to the Determination, it is required that the existing Section 34(1) Determination be amended.*
- 3.4 *Accordingly, the attached revised Section 34(1) Determination (Annexure A) makes provision for Eskom (or its subsidiaries – in the event that a special purpose vehicle will be created and utilised by Eskom to procure new generation capacity from nuclear power) to be the procurement agency and be the owner operator of the new nuclear build programme.'*

[65] The Minister duly approved the 2016 decision memorandum on 18 October 2016. On 5 December 2016 a letter was sent to the Chairperson of NERSA, attaching a draft of the proposed 2016 determination and seeking its concurrence therein. The board of NERSA took its decision by way of a round robin resolution on or about 8 December

¹⁹ Decision Memorandum – Department of Energy “Determination under Section 34(1) of the Electricity Regulation Act 4 of 2006 – Nuclear Procurement Programme” (29 September 2016) – record volume 5A p 1546.

2016.²⁰ The resolution was approved by the acting CEO of NERSA on 5 December 2016 (the same day as the Minister's letter requesting NERSA's concurrence was sent) and subsequently by the Chairperson on 8 December 2016. On 13 December 2016, at the initial hearing of this matter the applicants, together with the public, learnt for the first time that the 2016 determination had been made and it was published in the government gazette the following day. The applicants seek to review the 2016 determination on various procedural and substantive grounds.

[66] Again, relying on sec 3 and 4 of PAJA and sec 10(1)(d) of NERA, they contend that the 2016 sec 34 determination was procedurally unfair inasmuch as it was not preceded by any public participation process or consultation, whether by way of a notice and comment procedure or otherwise.

[67] From the record it appears that NERSA gave its concurrence to the 2016 sec 34 determination within three days of being asked by the Minister and there was therefore no question of any public participation process or any form of external consultation prior to NERSA's decision. Given the elapse of two years since NERSA's concurrence in the 2013 determination and the changed format of the determination, most particularly in its designation of Eskom Holdings (SOC) Limited or its subsidiaries as the procurer in respect of the nuclear programme it was, in my view, incumbent upon NERSA to afford members of the public and/or interested and affected persons (including the applicants) an opportunity to influence the decision. My reasons for reaching this conclusion are in principle the same as those underlying the same conclusion in respect of the 2013 sec 34 determination.

²⁰ Round Robin Resolution – NERSA “Confirmation of the Approval of the Round Robin Resolution: Concurrence with the Proposed Amendment of Section 34(1) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) Determination.” (8 December 2016) – record volume 5A p 1566.

CAN THE 2013 AND THE 2016 SECTION 34 DETERMINATIONS CO-EXIST?

[68] A further procedural challenge to the 2016 sec 34 determination arises from the fact that it fails to expressly withdraw or amend the 2013 determination. When the Minister wrote to NERSA requesting its concurrence in the 2016 determination she indicated that the 2013 determination had to be '*amended*'. According to its resolution, NERSA similarly took the view that it was concurring in an amendment to the 2013 sec 34 determination. The recommendation which it approved was that '*(c)oncurrence with the proposed amendment by the Minister ...*' and the '*amendment of the decision of the Energy Regulator of 26 November 2013*'.²¹ However, the determination does not on its own terms amend, revise or withdraw the 2013 sec 34 determination and nor does it purport to do so. It makes no reference at all to the 2013 sec 34 determination which results in the anomalous situation of there being two gazetted sec 34 nuclear determinations which are mutually inconsistent. By way of example, the first designates the Department of Energy as the procuring agency in the nuclear power programme whilst the second designates Eskom.

[69] In these circumstances, contend the applicants, the 2016 determination is irrational or based on material errors of law or fact, thereby violating the principle of legality. In response, the respondents contend that this ground of review is based on no more than semantics since the 2016 determination was in substance an amendment and was intended and accepted as such by the Minister and NERSA respectively.

[70] This line of argument does not, however, take into account the consequences of this Court finding that the 2013 determination was unconstitutional and invalid. In that event, the earlier determination was valid *ab initio* i.e. a nullity from the outset and could

²¹ Round Robin Resolution n 20 p 1570 para 6.1.

not be amended.²² This principle was confirmed by the Constitutional Court in *Kruger v President of the Republic of South Africa*²³ which dealt with a proclamation issued by the President which the High Court had held to be null and void and of no force and effect. The President issued a second proclamation in substitution for the first in order to correct a bona fide and acknowledged error in the first and was worded as ‘amending’ the first proclamation.

[71] The Court found that the first proclamation was objectively irrational and therefore regarded as a nullity from the outset. It found further that whilst the President could have withdrawn it before it came into force he did not have the power to amend it inasmuch as it was void from its commencement and thus could not be amended. In so finding the Court dismissed an argument that the second proclamation should be judged on its substance and not on its form, Skweyiya J stating in this regard:

*‘While I support in general the principle that substance should take precedence over form, that principle must yield in appropriate cases to the rule of law’.*²⁴

Accordingly, if notwithstanding that the 2016 sec 34 determination does not purport to be an amendment of the 2013 determination, it in fact was, and given the finding that the 2013 determination was invalid and unconstitutional, the 2016 determination is also invalid as an impermissible attempt to amend a nullity.

[72] I understand the respondents to also advance the argument that the 2016 determination impliedly repealed the 2013 determination. However, as the applicants point out, it does not purport to repeal the 2013 determination and neither NERSA nor

²² C Hoexter *Administrative Law in South Africa*, 2nd ed (2012) at p 547: ‘An invalid act, being a nullity, cannot be ratified, “validated” or amended’.

²³ 2009 (1) SA 417 (CC) para 61- 64.

²⁴ *Kruger* n 23 para 62.

the Minister claim that they intended to repeal the 2013 determination, which remains gazetted.

[73] On the assumption that the 2013 and 2016 sec 34 determinations (or at least part thereof) remain valid, their co-existence is in my view, highly problematic. What is the reader or interested member of the public to make of them? Are there two procurement agencies i.e. both Eskom Holdings (SOC) Limited and the Department of Energy? To whom may the electricity generated from the 9.6 GW of nuclear energy be sold? Are there no constraints in this regard (as per the 2016 determination) or must it only be sold to Eskom Holdings (SOC) Limited (as per the 2013 determination)? What is the role of the procurer? Is it as set out in para 6 of the 2013 determination or does it remain unspecified, as per the 2016 determination?

[74] Possible answers to these questions can be advanced but the lack of certainty and the need for conjecture is inimical to the rule of law. Although vagueness is not specified in PAJA as a ground of review, under the common law such a ground appears to have been recognized under the new constitutional dispensation.²⁵ This ground requires administrative action to be reasonably capable of meaningful construction for it to be valid although absolute clarity is not required.²⁶ In any event the grounds of review set out in PAJA are not exhaustive, sec 6(2)(i) being a catch-all provision providing that administrative action may be reviewed on other than the listed grounds if it is *'otherwise unconstitutional or unlawful'*.

[75] Given the mutual inconsistency of the 2013 and 2016 sec 34 determinations, and the failure of the latter to expressly withdraw or amend the earlier determination, I

²⁵ See in this regard *SARFU* n 4 para 227-231.

²⁶ *Durban Add-Ventures Ltd v Premier, KwaZulu-Natal, and Others (No 2)* 2001 (1) SA 389 (N) at 400C-D.

consider that the 2016 determination was irrational and must be set aside on this basis as an independent ground of review.

SUBSTANTIVE CHALLENGES TO THE 2016 SECTION 34 DETERMINATION

[76] The applicants also challenge the 2016 determination on various substantive grounds, contending that the Minister's decision was irrational and/or unreasonable and taken without regard to relevant considerations or with regard to irrelevant considerations. These attacks are largely based on what the applicants contend was the Minister's and NERSA's reliance on the outdated IRP2010 and the designation of Eskom as the procurer, apparently because it refused to give its consent to allow the Department of Energy to procure on its behalf. Given the finding that the 2016 determination falls to be reviewed and set aside both by reason of NERSA's failure to hold any public participation process and for its inherent irrationality, I consider it necessary to consider only one of these substantive grounds.

[77] The ground in question is directed at NERSA's role in concurring with the 2016 determination and the basis of the challenge is that the key reason for NERSA giving its concurrence was that it believed that it would be *'mala fides'* for it not to concur in the Minister's proposed determination. This contention was based on an extract from NERSA's round robin resolution approving its concurrence in the Minister's proposed determination by the acting CEO of NERSA on 8 December 2016 and reads in part as follows:²⁷

2.1 Background

2.1.4 The Minister has proposed an amendment to the determination regarding the Department of Energy as the procuring agency and to be replaced by Eskom. The

²⁷ Round Robin Resolution n 20 p 1568-1570.

amendment of the determination cannot be complete without the concurrence of the Energy Regulator therefore the Minister is requesting the Energy Regulator to concur.

2.2 Issues

2.2.1 *Without a decision by the Energy Regulator on the proposed amendment, the determination will not be in compliance with the Act and can negatively impact on the nuclear procurement programme.*

...

2.3 Problem Statement

2.3.1 *Without the Energy Regulator decision to concur with the proposed amendment, the nuclear procurement programme can be negatively affected.*

2.3.2 *Considering that the proposed amendment is on a determination that the Energy Regulator has already concurred (sic), it can be viewed as mala fide for the Energy Regulator to delay or refuse to concur with the proposed amendment by the Minister.*

2.4 Motivation

2.4.1 *The proposed amendment is procedurally and legally valid at (sic) the Energy Regulator can concur and bring finality to the implementation of the nuclear procurement programme.*

...

6 RECOMMENDATIONS

It is recommended that Electricity Subcommittee approve the:

6.1 *Concurrence with the proposed amendment by the Minister in relation to clause 5 of the Energy Regulator decision of 26 November 2013.*

6.2 *The amendment of the decision of the Energy Regulator of 26 November 2013.'*

[78] It was submitted on behalf of the applicants that the key reason for NERSA giving its concurrence was that it believed that it would be *'mala fides'* for it not to concur or, put differently, on the basis that since it had previously concurred some three years earlier in the 2013 sec 34 determination, it was under an obligation to approve the amendment or be seen to be acting *'mala fides'*. However, the applicants contend, there was no legal or factual basis for any understanding that it would be *'mala fides'* for NERSA not to concur. The 2016 sec 34 determination was, as was the 2013 determination, a culmination of the exercise of a discretionary statutory power vested in NERSA irrespective of whether it was an amendment of the prior sec 34 determination or not. In terms of sections 9 and 10 of NERA, NERSA was required, in exercising its discretion and its duty to decide whether to concur or not, to form an independent judgment and was not bound by its past concurrence in the 2013 determination. NERSA was not required to accept that the Minister's proposed determination was correct or appropriate particularly since three years had passed since it had concurred in the 2013 determination and thus underlying circumstances may well have changed. It bears repeating that sec 9(c) of NERA provides that the members of the Energy Regulator must *'act independently of any undue influence or instruction'*.

[79] In the absence of any further explanation by NERSA as to why it took its decision to concur, and bearing in mind that the terms of NERSA's resolution was clearly an attempt to comply with sec 10(1)(f) of NERA i.e. *'to explain clearly its factual and legal basis and the reasons'* for its concurrence, these expressed reasons must be accepted. On its own version, NERSA's concern was that it would be seen as acting *mala fides* if it did not concur with the Minister's proposed determination and this was one of its prime, if not the primary reason, for its decision. In these circumstances the applicants have, in my

view, established that NERSA's concurrence was predicated on a material error of law or fact and/or that it failed to act independently, as required by NERA.

THE IGA'S

[80] Two further issues to be determined in this matter are:

1. Whether the President and the Minister violated the Constitution when deciding to sign and then table the 2014 Russian IGA in relation to nuclear issues under sec 231(3) of the Constitution rather than sec 231(2)?
2. Whether the Minister violated the Constitution in tabling the US and South Korean IGA's in relation to nuclear cooperation 20 years and almost five years respectively after they had been signed?

[81] Against the factual background set out in para 21 above, I deal firstly with the question of whether the Russian IGA was properly tabled under sec 231(3) of the Constitution. In relation to this IGA the applicants seek an order declaring:

1. the President's decision to authorise the Minister's signature, and the Minister's decision to sign, and;
2. the Minister's decision to table the IGA under sec 231(3), (rather than sec 231(2)),

unconstitutional and invalid, and reviewing and setting aside these decisions.

[82] This relief is sought on the basis that the Russian IGA contains binding commitments in relation to nuclear procurement when no similar commitments were made in the IGA's concluded with other governments in relation to nuclear cooperation and it should therefore have been tabled under sec 231(2) in order to give Parliament an opportunity to consider whether to approve the agreement. The contents of the Russian IGA will be discussed below.

[83] As mentioned earlier in response to the applicants' case, the respondents raise a number of preliminary points, namely non-joinder of the foreign governments, the alleged non-justiciability of the IGA's and the applicants alleged lack of standing to challenge the manner of tabling the IGA's in terms of sec 231 of the Constitution. On the merits, the respondents contend that failing the upholding of any of these preliminary points the Russian IGA is, upon a proper interpretation, not a '*procurement contract*' with immediate financial application and falls within the category of a '*technical, administrative or executive agreement*' as envisaged by sec 231(3) of the Constitution, thus not requiring ratification or accession, and was therefore properly tabled.

[84] Section 231 of the Constitution deals with international agreements and provides, in part, as follows:

- (1) *The negotiating and signing of all international agreements is the responsibility of the national executive.*
- (2) *An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).*
- (3) *An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.*
- (4) *Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.*
- (5) ...'

NON-JOINDER

[85] The respondents maintain that the foreign contracting states – Russia, the United States of America and South Korea – are ‘*essential parties*’ which have a direct and substantial interest in any orders which the Court might make and which thus cannot be made or carried into effect without prejudicing such parties. They contend further that the relief sought in relation to the Russian IGA is in substance an order to invalidate it by nullifying the conduct of the South African government in entering therein. As regards the US and South Korean IGA’s, the respondents contend that the order sought by the applicants declaring the manner of their tabling unconstitutional and unlawful and reviewing and setting these tabling decisions aside, is also in substance an attempt to invalidate the two treaties and thus by the same token these two governments are also necessary parties.

[86] Our law recognises a limited right to object to non-joinder, the limits of which were defined as follows by Brand JA:²⁸

‘The right to demand joinder is limited to specified categories of parties such as joint owners, joint contractors and partners, and where the other party(ies) has (have) a direct and substantial interest in the issues involved and the order which the court might make.’

[87] A full bench of this Court has held that:

‘It is well established that the test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject-matter of the litigation, that is, a legal interest in the subject-matter which may be prejudicially affected by the judgment or the order.’²⁹

[88] In the present matter, leaving aside the relief relating to the Minister’s signature of the agreement, no order is sought against any foreign government, the Court being asked

²⁸ *Burger v Rand Water Board and Another* 2007 (1) SA 30 (SCA) para 7.

²⁹ *Tlouamma and Others v Speaker of the National Assembly and Others* 2016 (1) SA 534 (WCC) para 159.

rather to determine whether the Minister's actions in terms of sec 231 of the Constitution were lawful, as a matter of domestic law. The Minister's obligations to act constitutionally and in accordance with sec 231 are owed to the citizens of this country and not to foreign governments. Seen from this perspective none of the foreign governments that are party to the IGA's have any direct and substantial legal interest, as a matter of South African domestic law, in the constitutionality of the Minister's actions. This view is borne out by recent decisions of our courts which have never required the joinder of foreign governments even where the judicial review of the executive's exercise of its domestic powers related to affairs with a foreign government.

[89] In *President of the Republic of South Africa and Others v Quagliani*,³⁰ the Constitutional Court was required to determine the validity of the government's actions in entering into an international agreement in relation to extradition with the USA in circumstances where it had been alleged that the agreement had not been validly entered into because the President had delegated his own responsibility in that regard to members of his cabinet. The Court ultimately held that the government had acted lawfully in entering into the international agreement but it was noteworthy that the United States government was not a party to the litigation and there was no suggestion that it should be, merely because the constitutional validity of the South African government's action in entering into the international agreement was to be determined.

[90] Furthermore, our courts have never required a joinder of foreign governments in cases involving challenges to the legality of executive conduct which directly implicated

³⁰ 2009 (2) A 466 (CC).

foreign governments.³¹ In my view, it is a misnomer on the part of the respondents to state that the applicants seek orders to 'invalidate' any international agreements. The relief sought by the applicants is, at its broadest, a declaration that the decisions by the Minister and the President in signing, approving and tabling the IGA's before Parliament were unconstitutional and invalid, this as a matter of domestic constitutional law. Section 172(1)(a) of the Constitution places an obligation on the courts to declare any law or conduct inconsistent with the Constitution invalid to the extent of its inconsistency. The Court has not been asked to determine whether the IGA's are valid as a matter of international law at the international level. In the circumstances the relevant foreign governments have, as a matter of South African law, no legal interest in the domestic constitutionality of the actions of the South African government. It is not surprising therefore that the respondents were unable to cite any direct authority for the proposition that a foreign government should be joined in a matter such as the present. Instead they rely only on the authorities relating to the validity of domestic contracts enforceable as a matter of South African law.

[91] In the circumstances of this matter I consider that there is no need to join the foreign states and therefore the joinder point has no merit.

DO THE APPLICANTS HAVE STANDING?

[92] The respondents contend that the applicants have no standing to claim any relief in relation to the tabling of the Russian IGA since, if the incorrect tabling procedure has

³¹ See in this regard *Mohamed and Another v President of the Republic of South Africa and Others* (Society for the Abolition of the Death Penalty in South Africa and Another Intervening) 2001 (3) SA 893 (CC); *Kaunda and Others v President of the Republic of South Africa and Others* 2005 (4) SA 235 (CC); *Geuking v President of the Republic of South Africa and Others* 2003 (3) SA 34 (CC); *National Commissioner of Police v Southern African Human Rights Litigation Centre and Another* 2015 (1) SA 315 (CC); *Krok and Another v Commissioner, South African Revenue Service* 2015 (6) SA 317 (SCA); and *Minister of Justice and Constitutional Development and Others v Southern African Litigation Centre and Others* 2016 (3) SA 317 (SCA).

been utilised, this is a matter for Parliament to take up with the Minister. By implication this contention extends also to the relief sought in relation to the US and South Korean IGA's. If this proposition were correct one might expect that the Speaker of the NA and the Chairperson of the NCOP would enter these proceedings and assert that point of view but instead neither opposes the relief sought in this regard.

[93] Whilst it is correct that in terms of sec 92 of the Constitution, members of the cabinet, which includes the President, are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions, it does not follow that the applicants lack standing in relation to these issues, either acting in their own interests or in the public interest. The first applicant, Earthlife Africa-Johannesburg, is a non-governmental, non-profit voluntary association having the power to sue and be sued in its own name. The second applicant is a registered public benefit and non-profit organisation and both brought this application in terms of sec 38 of the Constitution in their own right and in the public interest as contemplated by sec 38(d).

[94] Section 38 deals with the enforcement of rights and, insofar as it is material, reads as follows:

38 Enforcement of rights

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are –

(a) anyone acting in their own interest;

(b) ...

(c) anyone acting as a member of, or in the interest of, a group or class of persons;

(d) anyone acting in the public interest; and

(e) an association acting in the interest of its members.'

[95] It has been held that the provisions of sec 38 '*introduces a radical departure from the common law in relation to standing. It expands the list of persons who may approach a court in cases where there is an allegation that a right in the Bill of Rights has been infringed or threatened ...*'³²

[96] Section 19 of the Bill of Rights guarantees every citizen certain political rights. Many of these rights find fulfilment in the representation of such citizens in Parliament which, in terms of sec 42(2) of the Constitution, consists of the NA and the NCOP. Section 42(3) provides that the NA '*is elected to represent the people to ensure government by the people under the Constitution*'. On these grounds alone, I consider that parties other than Parliament or members of Parliament have a legitimate interest in the question of whether IGA's have been properly tabled in Parliament in terms of the Constitution.

[97] In making their argument the respondents placed reliance on *Metal and Allied Workers Union and Another v State President of the Republic of South Africa and Others*³³ where the court dealt with a challenge to certain emergency regulations made in terms of sec 3 of the Public Safety Act, 3 of 1953 which had been promulgated in the government gazette but not tabled in Parliament within 14 days of promulgation as required by the Act. Didcott J, on behalf of the full bench, held that the purpose of tabling was to inform members of Parliament and therefore conceived for the benefit of, and enforceable by, no one but such members. However, apart from the fact that this

³² *Kruger* n 23 paras 20–23.

³³ 1986 (4) SA 358 (D).

judgment obviously predates the new constitutional dispensation, the court took this view 'with some hesitation', recognising the force of the argument to the contrary.³⁴

[98] In any event the Constitutional Court has now repeatedly confirmed the broad grounds of standing in relation to constitutional challenges, including those relating to executive action.³⁵ Furthermore, the fact that the executive is accountable to Parliament in relation to the exercise of its power does not detract from the principle that the exercise of all public powers must be constitutional, comply with the principle of legality and that these powers are subject to judicial review at the instance of the public. This was well illustrated by *Economic Freedom Fighters v Speaker, National Assembly and Others*³⁶ where Parliament and the President's failure to fulfil a constitutional obligation was vindicated at the instance of a political party. As was contended on behalf of the applicants, any action by the President and the Minister in violation of the Constitution are matters of legal interest to the public and to applicants representing that interest and are not merely a concern of Parliament.

[99] Finally, as the Constitutional Court has held, it is the courts that must ultimately determine whether any branch of government has acted outside of its powers. This was made clear by the following dictum of Moseneke DCJ on behalf of the Constitutional Court in *International Trade Administration Commission v SCAW South Africa (Pty) Ltd*³⁷:

'In our constitutional democracy all public power is subject to constitutional control. Each arm of the state must act within the boundaries set. However, in the end, courts must determine whether unauthorised trespassing by one arm of the state into the

³⁴ *Ibid* at 364C-D.

³⁵ *Kruger* n 23 paras 20 – 23.

³⁶ 2016 (3) SA 580 (CC) paras 22-24.

³⁷ 2012 (4) SA 618 (CC) para 92.

terrain of another has occurred. In that narrow sense, the courts are the ultimate guardians of the Constitution. They do not only have the right to intervene in order to prevent the violation of the Constitution, they also have the duty to do so.'

[100] In short, if the challenge to the constitutionality of the procedure whereby the relevant IGA's have been placed before Parliament has merit, such conduct must be declared unconstitutional irrespective of at whose behest this relief is sought. In the circumstances, I find that the applicants have standing both in their own right and in the public interest to challenge the constitutionality of the tabling of the relevant IGA's.

IS THE RUSSIAN IGA JUSTICIABLE?

[101] The respondents contend that the Russian IGA, being an international agreement, is not or should not be justiciable by a domestic court, which may not even interpret or construe such an agreement nor may it determine the legal consequences arising therefrom. In doing so they rely primarily on the authority of *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others*³⁸ where it was held that a domestic court may not interpret or construe an international agreement nor determine the true agreement allegedly concluded between South Africa and another sovereign state.

[102] The role of the international treaty in *Swissborough* appears to have been quite different to that in the present matter. The plaintiffs had instituted action against the defendants, the first of which was the South Africa government, arising out of an alleged interference with certain mining rights held by the plaintiffs in Lesotho. The alleged interference related to the implementation of a treaty between the South African government and Lesotho's government which provided for the Lesotho Highlands Water

³⁸ 1999 (2) SA 279 (T) at 329J-330C.

project. It became necessary for the court to decide whether the determination of the true agreement between the South Africa government and the Lesotho government, as an international law agreement between two sovereign states and not incorporated into South African municipal law, was a justiciable issue. The rationale for the court's approach was that it would have to be a very particular case, even if such a case could exist, that would justify a court interfering with a foreign Sovereign. However, the court did find that it could take cognisance of the agreements between the governments of the two countries as well as the contents thereof as facts. The court was unwilling, however, to take decisions in regard to the alleged unlawful conduct of the government of Lesotho, the control of the government of Lesotho, and its relationship with the South African government. It found, as far as the latter was concerned, that there could be little doubt that this was not an area for the judicial branch of government.

[103] The situation in the present matter is quite different inasmuch as the scope of the enquiry into the Russian IGA is limited to a determination of whether it should have been tabled in Parliament in terms of sec 231(2) or 231(3) of the Constitution. There are a number of reasons why, at least for this limited purpose, the Russian IGA cannot be regarded as non-justiciable. Firstly, the conclusion and tabling of an international agreement before Parliament in terms of either sec 231(2) or 233 of the Constitution is an exercise of public power and the Constitutional Court has made clear that all such exercises of public power are justiciable in that they must be lawful and rational. These include exercises of public power relating to foreign affairs.³⁹ Secondly, should an international agreement be tabled incorrectly under sec 231(3) rather than sec 231(2) the review of any such decision can be seen as upholding rather than undermining the

³⁹ See *Kaunda and Others v President of the Republic of South Africa and Others* 2005 (4) SA 235 (CC) para 78.

separation of powers. The separate but interrelated roles of the executive and the legislature in relation to international agreements were clarified by Ngcobo CJ in *Glenister v President of the Republic of South Africa and Others*⁴⁰ as follows:

[89] The constitutional scheme of s 231 is deeply rooted in the separation of powers, in particular the checks and balances between the executive and the legislature. It contemplates three legal steps that may be taken in relation to an international agreement, with each step producing different legal consequences. First, it assigns to the national executive the authority to negotiate and sign international agreements. But an international agreement signed by the executive does not automatically bind the Republic, unless it is an agreement of a technical, administrative or executive nature. To produce that result, it requires, second, the approval by resolution of Parliament.

...

[95] To summarise, in our constitutional system, the making of international agreements falls within the province of the executive, whereas the ratification and the incorporation of the international agreement into our domestic law fall within the province of Parliament. The approval of an international agreement by the resolution of Parliament does not amount to its incorporation into our domestic law. Under our Constitution, therefore, the actions of the executive in negotiating and signing an international agreement do not result in a binding agreement. Legislative action is required before an international agreement can bind the Republic.'

[104] Accepting that the constitutionality and lawfulness of the exercise of powers under sec 231(2) or (3) of the Constitution by the President and the Minister is justiciable, then clearly a review of the lawfulness and rationality of the exercise of those powers may well require a court to consider the content of the relevant international agreement. It would not be possible for a court to determine whether or not a particular IGA should have been tabled under sec 231(2) or 231(3) of the Constitution without it having regard

⁴⁰ 2011 (3) SA 347 (CC).

to the nature and contents of that agreement. If this Court were to be precluded from having regard to the contents of the Russian IGA for the limited purposes of determining whether it should have been tabled under sec 231(2) or 231(3) of the Constitution, this would render nugatory its power to subject the executive's conduct to constitutional scrutiny. An argument to the contrary was rejected by the Constitutional Court in *Mohamed v the President of the Republic of South Africa*.⁴¹

[105] For these reasons I consider that not only is it permissible for this Court to interpret the Russian IGA to determine its proper tabling procedure and whether the Minister acted unconstitutionally or not, but it is the Court's duty to do so. I find therefore that the respondents' contention that the Russian IGA is non-justiciable is without merit.

THE TERMS OF THE RUSSIAN IGA

[106] In broad outline the applicants' case is that the Russian IGA contains binding commitments in relation to nuclear procurement, including providing the Russian Federation with an indemnification, which takes the IGA well outside the category of those of a '*technical administrative or executive nature*' requiring only tabling in the NA and the NCOP within a reasonable time to bind the country. They contend further that the terms of the Russian IGA are much more far-reaching than those in any of the comparable IGA's relating to nuclear cooperation that were either tabled before Parliament at the same time or earlier. The applicants contend that as a result it was irrational for the President to approve the signature of the Russian IGA and for the Minister to sign it. They contend further that, at the very least, the Russian IGA should

⁴¹*Mohamed* n 32 paras 70 and 71.

have been tabled under sec 231(2) of the Constitution, thereby requiring Parliamentary approval.

[107] For their part the respondents contend that should the Court find that the Russian IGA is indeed justiciable or not, a subject for the exercise of judicial restraint, it is not a procurement contract of any sort but an *'international framework agreement for cooperation between sovereign states'*. They submit that the Russian IGA makes it clear that it is a bilateral international agreement providing for cooperation between two sovereign states and is not, nor was it ever intended to be, a binding agreement in relation to the procurement of new nuclear reactor plants from a particular country; the only purpose for such cooperation being the creation of conditions in which the establishment of a self-sufficient nuclear programme can be pursued.

[108] Turning to the contents of the Russian IGA certain key provisions stand out:

1. Both the overall description of the agreement and the preamble refer to the establishment of a *'strategic partnership'* in the field of nuclear power and industry between the two countries;
2. The preamble records by way of background, furthermore *'the intentions of the Government of the Republic of South Africa for the implementation of a large-scale national plan for the power sector development, involving the construction by 2030 of new nuclear power plant (hereinafter referred to as "NPP") units in the Republic of South Africa'*;
3. The preamble concludes with a reference to the *'legal fixation'* of the strategic partnership in the field of nuclear power before setting out the terms of the agreement.
4. Article 1 provides that the agreement *'creates the foundation for the strategic partnership in the fields of nuclear power and industry... aimed at the successful implementation of the national plan for the power sector*

development of the Republic of South Africa...'. It is noteworthy that none of the other IGA's make reference to the agreements creating a 'strategic partnership'.

5. Article 3, using peremptory language, provides that:

'The Parties shall create the conditions for the development of strategic cooperation and partnership in the following areas:

- i. development of a comprehensive nuclear new build program for peaceful uses in the Republic of South Africa, including enhancement of key elements of nuclear energy infrastructure ...;*
- ii. design, construction, operation and decommissioning of NPP units based on the VVER reactor technology in the Republic of South Africa, with total installed capacity of about 9.6 GW;*
- iii. design, construction, operation and decommissioning of the multi-purpose research reactor in the Republic of South Africa. ...'*

It is common cause that the VVER reactor technology is unique to Russia.

6. Article 4 of the agreement is noteworthy for its specificity and detail, providing:

- '1. The Parties collaborate in areas as outlined in Article 3 of this Agreement which are needed for the implementation of priority joint projects of construction of two new NPP units with VVER reactors with the total capacity of up to 2,4 GW at the site selected by the South African Party (either Koeberg NPP, Thyspunt or Bantamsklip) in the Republic of South Africa and other NPP units of total capacity up to 7,2GW at other identified sites in the Republic of South Africa and construction of a multi-purpose research reactor at the research centre located at Pelindaba, Republic of South Africa. The mechanism of implementation of these priority projects will be governed by separate intergovernmental agreements, in which the Parties shall agree on the sites, parameters and installed capacity of NPP units planned to be constructed in the Republic of South Africa.'* [my underlining]

7. Article 6.1 provides for the establishment of a Joint Coordination Committee *'to provide guidance, to coordinate and to control the implementation of this Agreement'*.

8. Article 6.4 provides as follows:

'In three years of entry into force of this Agreement the co-chairs of the Joint Coordination Committee shall make comprehensive review of the progress in the implementation of this Agreement and provide appropriate recommendations to the Competent Authorities of the Parties regarding further implementation of this Agreement'.

9. Article 7 provides that:

'Cooperation in areas as outlined in Article 3 of this Agreement, will be governed by separate agreements between the Parties, the Competent Authorities' and goes on to state '(t)he Competent Authorities of the Parties can, by mutual consent, involve third countries' organizations for the implementation of particular cooperation areas in the framework of this Agreement.'

It was contended on behalf of the applicants that the latter part of this clause would appear to preclude, absent Russia's consent, a situation where at least some of the proposed nuclear power plants are constructed or operated by other countries in addition to Russia.

10. Article 9 provides as follows:

'For the purpose of implementation of this Agreement the South African Party will facilitate the provision of a special favourable regime in determining tax and non-tax payments, fees and compensations, which will be applied to the projects implemented in the Republic of South Africa within the areas of cooperation as outlined in Article 3 of this Agreement, subject to its domestic legislation'.

This commitment by the South African government to afford Russia a favourable tax regime in relation to the construction of new nuclear power plants is not to be found in any other IGA under consideration.

11. On behalf of the applicants it was contended that in terms of Article 15 the government of the Republic of South Africa agreed to incur liability arising out of any nuclear incident occurring in relation to any nuclear power plant to be constructed in terms of the agreement, or agreements arising therefrom, and also provides an indemnification to Russia and its entities from any ensuing liability. Insofar as it is relevant, Article 15 reads:

'1. The authorized organization of the South African Party at any time at all stages of the construction and operation of the NPP units and Multi-purpose Research Reactor shall be the Operator of NPP units and Multi-purpose Research Reactor in the Republic of South Africa and be fully responsible for any damage both within and outside the territory of the Republic of South Africa caused to any person and property as a result of a nuclear incident ... and also in relation with a nuclear incident during the transportation, handling or storage ... of nuclear fuel and any contaminated materials ... both within and outside the territory of the Republic of South Africa. The South African Party shall ensure that, under no circumstances shall the Russian Party or its authorized organization nor Russian organizations authorized and engaged by their suppliers be liable for such damages as to the South African Party and its Competent authorities, and in front of its authorized organizations and third parties.'

It is unnecessary to analyse in detail the structure of liability indemnification which this Article provides. It suffices to state that it clearly has potentially far-reaching financial implications for the South African government or state agencies, quite apart from any persons or instances which may be involved in a nuclear incident.

12. Article 16 provides for all disputes arising from the interpretation or implementation of the agreement to be settled '*amicably*' by '*consultations or negotiations through diplomatic channels*'. Significantly, it provides that '*(i)n*

case of any discrepancy between this Agreement and agreements (contracts), concluded under this Agreement, the provisions of this Agreement shall prevail'. This provision appears to make it clear that the Agreement is to take precedence over any subsequent agreement, underscoring the importance of its provisions.

13. Article 17 provides in part as follows:

'This Agreement shall enter into force on the date of the receipt through diplomatic channels of the final written notification of the completion by the Parties of internal government procedures necessary for its entry into force'.

14. It provides further that the agreement shall remain in force for a period of 20 years and thereafter be renewed automatically for a period of 10 years unless terminated by either party giving one year written notice thereof. Article 17.4 provides, significantly, *'(t)he termination of this Agreement shall not affect the rights and obligations of the Parties which have arisen as a result of the implementation of this Agreement before its termination, unless the Parties agree otherwise*' and further provides that its termination *'shall not affect the performance of any of the obligations under agreements (contracts) which arise during the validity period of this Agreement and are uncompleted at the moment of such termination, unless the Parties agree otherwise*'.

[109] Apart from the tone and content of these provisions, which speak for themselves, as a whole they illustrate that three hallmarks of the Agreement are its degree of specificity, the frequent use of peremptory language and the scope and importance of key elements which form the bedrock of the Agreement. All these factors combine to

suggest a firm legal commitment by the contracting parties to the 'strategic partnership' which the Agreement establishes between the two countries, as well as in relation to the future, steps and developments which the far-reaching Agreement clearly foreshadows. Although it is clear that the Agreement could or will be followed by further agreements, the importance and permanence of many of its provisions are, in my view, unmistakable.

[110] It may well be difficult to delineate the precise line between an agreement relating to the procurement of new nuclear reactor plant as distinct from one dealing with cooperation towards this end. In my view, however, seen as a whole, the Russian IGA stands well outside the category of a broad nuclear cooperation agreement and, at the very least, sets the parties well on their way to a binding, exclusive agreement in relation to the procurement of new reactor plants from that particular country.

[111] It would appear that the competent authorities under the agreement, the Department of Energy and Rosatom, laboured under a similar apprehension when, the day after the Agreement was concluded, they issued a joint press statement announcing that the 'Agreement lays the foundation for the large-scale nuclear power plants (NPP) procurement and development programme of South Africa based on the construction in RSA of new nuclear power plants with Russian VVER reactors with total installed capacity of up to 9,6 GW (up to 8 NPP units)' which would be 'the first NPPs based on the Russian technology to be built on the African continent.'⁴² Be that as it may, whatever its true nature the Russian IGA is, in my view, clearly more than a mere 'framework' or non-binding agreement as contended by the respondents.

⁴² Media Release n 1 p 131.

[112] The conclusion which I have reached in this regard is reinforced by a comparison of the 2014 Russian IGA with the 2004 Russian IGA and each of the other IGA's tabled in June 2015. The 2004 Russian IGA contains no liability or indemnification clause in relation to the construction and operation of nuclear power plants indemnifying the Russian government or its agencies from any damages and placing responsibility on the South African government both within and outside the country. Nor is there firm commitment, let alone any reference, to the construction of new nuclear plants based on Russian reactor technology. Likewise there is no prohibition, save with the consent of Russia, on involving third countries' organisations in the construction, operating or decommissioning of nuclear power plants. The 2004 IGA contains no undertaking by the South African government to facilitate a special tax regime applying to the construction and operation of new nuclear power plants in South Africa. Nor is there any provision envisaging the conclusion of further 'agreements (contracts)' under the 2004 IGA or that its provisions would prevail over the terms of later contracts. The presence of the above-mentioned terms in the 2014 Russian IGA begs the question why it was concluded when a general nuclear cooperation agreement, concluded in 2004, already existed.

THE CORRECT PROCEDURE TO RENDER THE RUSSIAN IGA BINDING

[113] The structure of and rationale behind sec 231 of the Constitution has been addressed by academic writers. Professor Dugard has commented that '*the practice of the government law advisors is to treat agreements 'of a routine nature, flowing from daily activities of Government departments' as not requiring parliamentary approval. Where, however, there is any doubt the agreement is referred to Parliament*'.⁴³ Professor Botha,

⁴³ J Dugard *International Law – A South African Perspective* 4th ed (2011) p 417.

⁴⁴ noting that the Constitution is silent on the question of who makes the classification as to whether an IGA is to be tabled under sec 231(2) or (3), comments as follows:

*'Current practice is that the determination of whether a treaty falls under section 231(3) and therefore does not require parliamentary approval, vests in the line-function minister within whose portfolio the subject matter of the treaty falls. This decision must be taken in conjunction with the law advisors of the Departments of Justice and Foreign Affairs.'*⁴⁵

However, Professor Botha expresses his reservations about the wisdom of this practice insofar as the party negotiating the treaty also decides upon its classification for tabling purposes.

[114] I agree with the argument made on behalf the applicants that sec 231 and, in particular, the interplay between sec 231(2) and 231(3), must be interpreted in order to give best effect to fundamental constitutional values and so as to be consistent with the constitutional scheme and structure.⁴⁶ The tabling of an IGA under sec 231(3) permits the executive to bind South Africa to an agreement without parliamentary approval or the public participation that often accompanies any such parliamentary approval process.

⁴⁴ N Botha 'Treaty making in South Africa: A reassessment' (2000) 25 South African Yearbook of International Law 69 p 77-78.

⁴⁵ Professor Botha goes on to state at p 77 that: *'Ideally, this decision should lie outside of the party negotiating the treaty. Without in any way impugning the integrity of these decision-makers, one must question the wisdom of a process in terms of which the party who negotiated a treaty at the same time decides on its nature and therefore on the way in which it will be dealt with by parliament. There is, after all, a considerable difference between an agreement being subjected to parliamentary approval (with the possibility of rejection which this process holds) and the mere tabling of a provision in both houses which, although allowing an opportunity for debate and criticism, is in the final instance no more than a process of notification of a fait accompli. The provisions of sec 231(2) imply a democratisation of the treaty process unprecedented in South African law before 1993. In terms of this section, the individual citizen has, through parliamentary representation, at least as much say in what treaties will bind the Republic as he or she has in what laws will govern his or her life. It would appear that by failing to specify the instance which must decide on the nature of a treaty, section 231(3) holds the potential for the manipulation of the system and the undermining of this democratisation in a very real sense.'*

⁴⁶ See *Matatiele Municipality and Others v President of the RSA and Others (No 2)* 2007 (6) SA 477 (CC) para 36-37 where Ngcobo J stated, *'Our Constitution embodies the basic and fundamental objectives of our constitutional democracy. [...] Individual provisions of the Constitution cannot therefore be considered and construed in isolation. They must be construed in a manner that is compatible with those basic and fundamental principles of our democracy. Constitutional provisions must be construed purposively and in the light of the Constitution as a whole. [...] Any construction of a provision in a constitution must be consistent with the structure or scheme of the Constitution.'*

Limiting those international agreements which may be tabled under sec 231(3) to a limited subset of run of the mill agreements (or as Professor Dugard puts it, agreements '*of a routine nature, flowing from daily activities of government departments*') which would not generally engage or warrant the focussed attention or interest of Parliament would give optimal effect to the fundamental constitutional principles of the separation of powers, open and accountable government, and participatory democracy. For the reasons given earlier the Russian IGA is, in my view, certainly not an agreement of a routine nature.

[115] The treatment of the Russian IGA by the State Law Advisor (International Law) (and presumably the drafter or co-drafter of the IGA) also casts light on the issue of the correct procedure to be followed in laying it before Parliament. In an explanatory memorandum which served before the Minister and the President, the senior State Law Advisor concluded: '*The Agreement falls within the scope of section 231(2) of the Constitution and Parliamentary approval is required*'. The Minister's decision not to act in accordance with this view but rather to table the Russian IGA under sec 231(3) of the Constitution is explained on behalf of the respondents on the basis that the State Law Advisor's view '*was and is wrong*'. There is no indication in the record however that the Minister sought or obtained any alternative legal advice and her decision to proceed in terms of sec 231(3) is not explained in any documents forming part of the record.

[116] Having regard to all these factors I consider that the Russian IGA cannot be classified as falling within that category of international agreements which become binding by merely tabling them before Parliament. I am unable to accept that the Russian IGA can notionally be considered a routine agreement. The Agreement's detail and ramifications are such that it clearly required to be scrutinised and debated by the

legislature in terms of sec 231(2) of the Constitution. It follows that the Minister's decision to table the agreement in terms of sec 231(3) was, at the very least, irrational. At best the Minister appears to have either failed to apply her mind to the requirements of sec 231(2) in relation to the contents of the Russian IGA or at worst to have deliberately bypassed its provisions for an ulterior and unlawful purpose.

THE ALLEGED UNLAWFUL AUTHORISATION BY THE PRESIDENT AND SIGNATURE, BY THE MINISTER, OF THE RUSSIAN IGA

[117] The relief sought by the applicants in relation to the Russian IGA is not confined to its review and setting aside on the basis that the Minister employed the incorrect procedure in placing it before Parliament. They seek also a declaration that the Minister's decision to sign the agreement and the President's decision to authorise the Minister's signature were unconstitutional and unlawful, as well as the reviewing and setting aside of these decisions.

[118] The applicants' case in this regard is based on the argument that the Agreement violates sec 217 of the Constitution which requires that when the national sphere of government *'contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective'*. The applicants contend that, viewed as a whole the Russian IGA contains sufficient particularity and commitment as to fall within the ambit of a contract *'for goods and services'* under sec 217 although, at the time the Minister signed and the President authorised her signature, there was no procurement system in place that complied with sec 217 in relation to the procurement of nuclear new generation capacity. It will be recalled that the 2013 sec 34 determination (and the 2016 determination) merely repeated the key wording of sec 217(1) of the Constitution without specifying the tendering procedures. In the alternative,

the applicants contend that even if the Russian IGA did not fall within the meaning of a contract under sec 217, at the very least it expressly formed part of the first steps of a procurement process.

[119] In my view it is neither necessary nor desirable to address this ground of review in these proceedings. Doing so at this stage could well offend against the doctrine of the separation of powers and could be an instance of the court interpreting an international agreement when it would be appropriate for it to exercise judicial restraint. In this regard it will be recalled that the findings in relation to the nature of the Russian IGA were made solely for the purposes of determining whether the Agreement was one which should have been put before the legislature in terms of sec 231(2) or 231(3) of the Constitution.

[120] The underlying reason why the applicants' argument in this respect should not be entertained at this stage arises from the nature of the further relief they seek in relation to the Russian IGA, namely, that the decision to table it under sec 231(3) be reviewed and set aside. If such relief is granted the effect thereof will be that the Agreement will have no binding effect in domestic law. Should the executive then choose to table the Agreement before Parliament in terms of sec 231(2), a parliamentary/political process will follow in which the Agreement will be debated in both the NA and the NCOP with a view to its approval or disapproval by Parliament. It may very well also be the subject of a process of public participation conducted through Parliament. The outcome of this process cannot be foreseen nor should it be anticipated. In these circumstances it would be invidious if the Court were, at this stage, to declare that certain of its provisions are inconsistent with the Constitution and, more specifically, sec 217 thereof. This is not to suggest, however, that the Court will lack jurisdiction to deal with such a question in future if the need should arise.

[121] For these reasons I consider that the principle of separation of powers calls for the Court to exercise judicial restraint at this stage and to decline to consider the further relief sought by the applicants in relation to the Russian IGA.

WERE THE US AND SOUTH KOREAN AGREEMENTS PROPERLY TABLED IN TERMS OF SEC 231(3)?

[122] The final issue to be addressed is whether the IGA's concluded with the United States of America and South Korea relating to nuclear cooperation were properly tabled in Parliament in terms of sec 231(3) of the Constitution.

[123] The parties appeared to be in agreement that in the ordinary course the two IGA's would properly fall to be tabled in Parliament in terms of sec 231(3) in that they were treaties or agreements of a *'technical, administrative or executive nature'* or not requiring either ratification or accession. Where they differed was on the consequences of the delay in tabling the agreements. It will be recalled that on or about 10 June 2015 the Minister decided to table five separate IGA's relating to nuclear matters before Parliament in accordance with sec 231(3) of the Constitution. Three of these IGA's, the Chinese, the French and the Russian, were signed or concluded in late 2014 but the remaining two, the US and the South Korean IGA's were signed on 25 August 1995 and 8 October 2010, respectively. They were, therefore, as at the date of tabling, concluded more than two decades previously and just more than four years and eight months, respectively.

[124] The applicants' challenge to the constitutionality of the tabling of the US and South Korean IGA's is based upon what they consider to be the unlawful and unconstitutional delay in tabling those agreements before Parliament. They contend that the only reasonable inference to be drawn from these delays is that the two IGA's in

question were tabled as *'mere window dressing'* and to minimise the damage caused by the revelations regarding the Russian IGA and the joint press statement portraying it as a *fait accompli* that Russia would construct nuclear power plants in South Africa. The applicants contend that this ulterior purpose rendered the Minister's decision unlawful and unconstitutional since it was not rationally connected to the purpose for which the power was conferred and was therefore in breach of the principle of legality. In the view that I take of this matter, however, it is not necessary to determine whether the Minister acted with an ulterior motive in tabling the US and South Korean IGA's under sec 231(3) of the Constitution.

[125] The second leg of the applicants' challenge is simply that the length of the delay could not constitute a *'reasonable'* period and therefore the tablings violate sec 231(3). For their part the respondents seek to justify the delays on the basis that the reasonableness thereof must be determined with regard to the relevant surrounding circumstances and, secondly, contend that the purpose of tabling under sec 231(3) is simply to notify or inform Parliament of a treaty that binds the Republic and that, at worst, it is only the delay itself that is unconstitutional.

[126] I cannot agree with this latter interpretation which seeks to remove the obvious linkage in sec 231(3) between the tabling of the agreement in Parliament, and thus it being rendered binding, and the requirement that this be done within a reasonable time. As was stated by Ngcobo CJ in *Glenister*, *'The constitutional scheme of s 231 is deeply rooted in the separation of powers, in particular the checks and balances between the executive and the legislature'*⁴⁷. Section 231(3) establishes a procedure whereby the State is bound by a particular class of international agreements without the formal approval of

⁴⁷ *Glenister* n 41 para 89.

Parliament. The requirement that the tabling takes place *'within a reasonable time'* and the use of the word *'must'* clearly indicates that this is a prerequisite for the lawful invocation of sec 231(3) or, put differently, a jurisdictional requirement of the procedure. The interpretation contended for on behalf of the respondents would result in a situation where the executive can, as one arm of government, bind the State on the international plane whilst at the same time keeping another arm of government, the legislature, in the dark about such international agreements. Such an interpretation pays scant respect to the principles of openness and accountability which are enshrined in the Constitution. Section 41(1) requires all spheres of government and all organs of state within each sphere to *'provide effective, transparent, accountable and coherent government for the Republic as a whole'* whilst sec 1 of the Constitution sets out these attributes as founding values in a multi-party system of democratic government.

[127] Seen in this light it is clear that where the national executive utilizes sec 231(3) to render the Republic bound under an international agreement, its exercise of the power is subject to the requirement that it makes such agreement public and tables it before Parliament within a reasonable time. In this sense it is a composite requirement, the power not being properly exercised unless the agreement is tabled before Parliament within a reasonable time.

[128] On behalf of the respondents the delays were explained on the basis that although the two IGA's were signed much earlier there was no need to rely on them as binding agreements until 2015 since prior thereto there was *'no practical or immediate need for nuclear cooperation'*. This explanation fails to explain why, in the first place, if there was no need for nuclear cooperation at those times, the IGA's were concluded in 1995 and 2010. Nor does it offer an adequate explanation as to why, having gone to the trouble of

signing the two IGA's, they were then not simply tabled in Parliament and thereby rendered binding, against the eventuality that the *'practical need'* for cooperation might arise in due course. However, even if one accepts at face value the respondents' explanation for the delays, they are in my view of such magnitude that they could never qualify as reasonable, not least because accepting such delays would render the time requirement in sec 231(3) meaningless.

[129] The respondents also contend that any alleged unreasonable delay in the tabling of the US and South Korean IGA's in Parliament is a matter for that body to deal with. However, as was pointed out on behalf of the applicants, the Speaker of the NA and the Chairperson of the NCOP are also respondents in this matter and have neither opposed the relief sought nor made any submissions regarding Parliament's disagreement with the interpretation of sec 231(3) contended for by the applicants. In any event, as stated earlier, it is the duty of the courts to determine whether the executive has failed to comply with the Constitution and declare such failure invalid and/or unconstitutional to that extent. For these reasons I conclude that the tabling of the US and South Korean agreements violated the provisions of the Constitution and fall to be set aside.

THE APPROPRIATE RELIEF

[130] Largely as a result of the introduction by the respondents of the two sec 34 determinations well after the commencement of the litigation, the applicants amended the relief initially sought. For the sake of convenience the applicants put up a draft order in which they set out the range of relief sought.

[131] In considering the appropriate relief to be granted the Court is guided firstly by sec 172 of the Constitution which provides that:

(1) When deciding a constitutional matter within its power, a court -

(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and

(b) may make any order that is just and equitable, including -

....

(ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.'

[132] The respondents have not suggested that any declarations of invalidity sought in this matter should be suspended or offered a justification as to why any such suspension would be just and equitable. The Constitutional Court has emphasised, moreover, that *'the Constitution, and the binding authority of this court all point to a default position that requires the consequences of invalidity to be corrected or reversed where they can no longer be prevented. It is an approach that accords with the rule of law and the principle of legality.'*⁴⁸

[133] In the applicants' draft order there are four sections dealing respectively with the Russian IGA, the tabling of the US and South Korean IGA's, the processes to be followed by the Minister in regard to a procedurally fair public participation process prior to the commencement of any procurement process for nuclear new generation capacity and, finally, the sec 34 determinations. I shall deal with them in that order.

THE RUSSIAN IGA

[134] The applicants seek an order declaring unlawful and unconstitutional, and reviewing and setting aside, the Minister's decision to sign the Russian IGA, the President's decision to authorise the Minister's signature thereof, and the Minister's

⁴⁸ *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency and Others* 2014 (4) SA 179 (CC) para 30.

decision to table the Russian IGA before Parliament in terms of sec 231(3) of the Constitution.

[135] As concluded earlier, the Minister's decision to table the Russian IGA before Parliament in terms of sec 231(3) of the Constitution must be declared unlawful and unconstitutional and reviewed and set aside. However, for the reasons given relating to the separation of powers and the Court's reluctance to consider at this stage whether the Russian IGA in its present form is unconstitutional for lack of compliance with sec 217, the balance of the relief is refused.

THE TABLING OF THE US AND SOUTH KOREAN IGA'S

[136] The applicants seek a declaration that the tabling of the US and South Korean IGA's in terms of sec 231(3) was unlawful and unconstitutional and reviewing and setting aside the Minister's decision to so table them. In this regard the respondents submitted that, on its interpretation of sec 231(3), namely that tabling within a reasonable time is not a jurisdictional requirement, the Court should, at worst for the respondents, merely declare that the Minister's delay in the tabling of the IGA's was unconstitutional. No such order is competent, however, given the finding which this Court has made, namely that tabling within the reasonable period is a jurisdictional requirement for compliance with sec 231(3).

[137] The question of what steps the respondents should or might take in consequence of our holding the Minister's tabling decision invalid is not a matter which we have been asked to consider, leaving the Minister free to take whatever steps, including steps on the international plane, may be considered necessary in the light of the Court's order. A consequence of such a finding is that the US and South Korean IGA's in their present

form cannot be tabled under sec 231(3). It is apposite to point out, however, that it may well be open to the executive to utilise the more onerous procedure set out in sec 231(2) of the Constitution with a view to rendering the US and South Korean IGA's binding. In my view that procedure is non-exclusive in the sense that the executive is not precluded from utilising its provisions in relation to treaties which fall within the ambit of sec 231(3). If I am correct in this view it serves to emphasise that the executive will not be stultified by the Court's order.

[138] In the result the applicants are entitled to the declarator which they seek and the review and setting aside of the Ministers' decisions to table the US and South Korean IGA's under sec 231(3) of the Constitution.

THE 2013 AND 2016 SEC 34 DETERMINATIONS

[139] The applicants seek a declaration that the 2013 and 2016 sec 34 determinations are unlawful and unconstitutional and reviewing and setting them aside. For the reasons given the basis for such relief has been established and in my view it would be just and equitable to grant such relief.

[140] The applicants seek an order setting aside any '*Requests for Proposals*' or '*Requests for Information*' issued pursuant to the aforesaid determinations. There is limited information in the papers on the extent to which such Requests have been issued and the consequences thereof. However the 2013 sec 34 determination makes it clear that part of the procuring agency's role is to prepare, and presumably issue, Requests for Proposals. Since both sec 34 determinations fall to be set aside as unlawful and unconstitutional, it follows that identifiable steps taken pursuant to those determinations

must suffer the same fate and thus relief sought in this regard is appropriate and must be granted.

FUTURE PUBLIC PARTICIPATION PROCESSES

[141] The applicants seek a declarator that, prior to the commencement of any procurement process for nuclear new generation capacity, which stage they define, the Minister and NERSA:

'are required in consultation, and in accordance with procedurally fair public participation processes, to have determined that:

- (a) new generation capacity is required and that the electricity must be generated from nuclear power and the percentage thereof;*
- (b) the procurement of such nuclear new generation capacity must take place in terms of a procurement system which must be specified and which must be fair, equitable, transparent, competitive and cost effective.'*

[142] This Court has not dealt specifically with the question of whether the Minister must follow a procedurally fair public participation process before exercising his/her powers under sec 34(1) of ERA and accordingly it would be inappropriate to make any order in this regard. It has, however, considered the question of whether NERSA, before concurring in any such decision, must follow a public participation process. The finding that it is under such a duty is central to this judgment and does not require restatement in a declarator and to that extent the declaratory relief sought in this regard is unnecessary and superfluous.

[143] Similarly, the Court has not found it necessary to address to the question of whether any sec 34 determination must specify the terms of the procurement system which must apply to nuclear new generation capacity. Given that the 2013 and 2016 sec

34 determinations fall to be set aside and that the Minister must, so to speak, start with a clean slate it would in our view be inappropriate for the court to prescribe to the Minister the form of any procurement process to be adopted. In any event it is self-evident that any large scale procurement process initiated by the state or its agencies must comply with sec 217 of the Constitution and other relevant legislative enactments and that it be specified before any procurement process commences. In my view it would be unnecessary to restate these obvious requirements and indeed, both sec 34 determinations provided that the electricity produced from such new generation capacity should be procured through a tendering procedure with the aforementioned attributes although the procedure was not specified. For these reasons the declaratory relief sought in this section is refused.

COSTS

[144] The applicants have achieved substantial success in the application and therefore it is appropriate that they are awarded their costs. The applicants sought the costs of three counsel. Given the complexity, novelty and importance of the matter there can be no quarrel with an order on such terms. Although the applicants sought a costs order against both the President and the Minister, jointly and severally, and the application was opposed by the President, no specific relief was granted against him or in relation to any conduct on his part. In the circumstances any costs order should be against the Minister alone.

[145] The applicants sought also a special order of costs in relation to that aspect of the relief in which it sought a declarator on the assumption of there being no relevant sec 34 determination in place. The Minister only revealed in the Rule 53 record that such a determination was in place, despite having been pertinently asked about the existence of

any such determination prior to the commencement of the litigation. For these reasons the applicants contend that the Minister should be held responsible for the wasted costs associated with them having to amend their relief and the delays created by having to supplement their challenge. The circumstances in which the 2013 sec 34 determination was only revealed at a comparatively advanced stage in this litigation, and apparently in order to gain some advantage, have been set out earlier. In my view it is appropriate that the Minister should have to pay the extra costs on the scale of attorney and client as a mark of this Court's displeasure at the manner in which this issue was handled on her behalf.

[146] In the result the following order is made:

1. It is declared that:

- 1.1 The first respondent's (the Minister's) decision on or about 10 June 2015 to table the Russian IGA before Parliament in terms of sec 231(3) of the Constitution is unconstitutional and unlawful and it is reviewed and set aside;
- 1.2. The first respondent's decisions on or about 10 June 2015 to table the following agreements before Parliament in terms of sec 231(3) of the Constitution:
 - 1.2.1 The Agreement for Cooperation between the Government of the Republic of South Africa and the United States of America concerning Peaceful Uses of Nuclear Energy; and
 - 1.2.2 the Agreement between the Government of the Republic of Korea and the Government of the Republic of South Africa regarding Cooperation in the Peaceful Uses of Nuclear Energy;

are unlawful and unconstitutional, and are reviewed and set aside.

- 1.3. the determination under sec 34(1) of the Electricity Regulation Act, gazetted on 21 December 2015 (GN 1268, GG 39541) in relation to the requirement and procurement of nuclear new generation capacity, made by the first respondent on 11 November 2013, with the concurrence of NERSA given on 17 December 2013, is unlawful and unconstitutional, and it is reviewed and set aside;
- 1.4. the determination under sec 34(1) of Electricity Regulation Act gazetted on 14 December 2016 (GNR 1557, GG 40494) in relation to the requirement and procurement of nuclear new generation capacity, signed by the first respondent on 5 December 2016, with the concurrence of NERSA given on 8 December 2016, is unlawful and unconstitutional, and it is reviewed and set aside;
2. Any Request for Proposals or Request for Information issued pursuant to the determinations referred to in paras 1.3 and 1.4 above are set aside;
3. The first respondent is to pay the costs of this application;
4. The first respondent is to pay those costs incurred by the applicants as a result of the late disclosure of the 2013 sec 34 determination, on an attorney and client scale.

BOZALEK J

BAARTMAN J

APPEARANCES*For the Applicants*

: *Adv D Unterhalter (SC)*
Adv M Du Plessis
Adv A Coutsoudis
Adv S Magardie

As Instructed by

: *Adrian Pole Attorneys*
Ref: A Pole

For the 1st & 2nd Respondents

: *Adv MM Oosthuizen (SC)*
Adv K Warner
Adv RM Molea

As Instructed

: *State Attorney: Pretoria*
Ref: E Snyman





19529/2015

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION CAPE TOWN)

CASE NUMBER: 19529/2015

DATE: 13 DECEMBER 2016

5 In the matter between:

EARTHLIFE AFRICA & 1 OTHER Applicants

and

THE MINISTER OF ENERGY & OTHERS Respondents

10 **COURT ASSEMBLES ON 13 DECEMBER 2016 (at 10:15)**

MR UNTERHALTER: May it please the Court. Together with my learned friends Mr Du Plessis, Mr Coutsoodis and Mr Magardi I appear for the applicants.

MR OOSTHUIZEN: May it please the Court. Together with Mr
15 Warner and Mr Molier I appear for the respondents – Marius Oosthuizen from the Pretoria bar.

BOZALEK, J: Mr Unterhalter.

MR UNTERHALTER: As the Court pleases. The Court will know that in chambers our learned friend has told us that there
20 has apparently been a fresh determination made in the last few days and I wondered whether it might not be appropriate for us to deal with that issue at the outset for various reasons. We were told shortly before proceedings, we haven't seen the determination but we would want to explain briefly to the Court
25 why it is that this remains a matter that the Court should

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nevertheless determine but perhaps I should invite my learned friend firstly to disclose to the Court what has happened, how it has happened, as it has happened and then we will make some brief submissions on the point, M'Lord.

5 BOZALEK, J: Yes, all right. Mr Oosthuizen.

MR OOSTHUIZEN ADDRESSES COURT: M'Lord, may I hand up two copies of the determination. M'Lord, I received this document yesterday around noon. I received it from the Directorate of Legal Services of the Department of Energy.

10 This is a determination that was concurred upon on the 8th December 2016 by NERSA and it will substitute, and it has substituted the 2013 determination that is at stake in this matter. Under the circumstances I respectfully submit that the review of that determination, as well of the request for

15 proposals yet to be formulated, has become moot. The main reason for this determination you will find in paragraph 4. You will remember that under the 2013 determination the designated agency to oversee and have political responsibility for the nuclear programme was the Department of Energy.

20 Now it is shifted to Eskom Holdings SOC as the state controlled company. That would in my submission make the review aspect of the determination and of the request for proposals academic and therefore I had to bring this to the attention of the Court first thing this morning, M'Lord.

25 BOZALEK, J: So is it agreed between the parties this will then

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attended to.

The issue as to mootness really falls to be considered in the following way. The first is that we have just been handed the so-called determination and the Court will now also for the first time have seen it, but in its terms it is a contradiction because it doesn't purport to repeal or withdraw the determination that is the subject matter of attack in these proceedings. Now maybe that is the intent but it is certainly not the content of the so-called determination that has been handed up. It is therefore with respect to those responsible for these matters an inept effort to try at the last moment to avoid the scrutiny that this case brings to the determination that has been made and is an incurably vague and uncertain determination that perhaps in due course may be the subject of further proceedings but for now does not mean that there is no legal efficacy that is enjoyed by the 2013 determination that is the subject of scrutiny by this Court. That is our first submission.

The second submission is this, that the challenge that is brought before this Court, and as appears from our amended notice of motion, as this Court will know firstly deals with the legality and constitutionality of the agreements that have been struck, one the Russian agreement and secondly the Korean and United States agreements that have been struck. Those are entirely unaffected by the determination and I don't

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understand our learned friend to suggest otherwise. So plainly
in respect of those challenges this matter is clearly one that
requires determination by the Court. But even in respect of
the – let me call it neutrally the existing 2013 determination –
5 there is no warrant at all to suggest that this matter has
become moot and for three reasons. The first I have already
given, which is that the 2013 determination remains live. It
has the force of law and even if this determination comes into
force in some way it has to live apparently alongside the 2013
10 determination, which hasn't been withdrawn or overwritten.

The second point though is this. We seek – and perhaps it
would be of assistance to the Court if the Court would turn up
our amended prayers which are at page 360 of the papers. It
is in volume 2 of the papers, commencing at page 359. So as
15 the Court will know ...

BOZALEK, J: We are in volume 2.

MR UNTERHALTER: We are in volume 2. Volume 2, the
notice of motion commences at page 359. The first two
prayers concern the orders that we seek in respect of the
20 Russian IGA and the South Korean and US IGA. I have made
my submission as far as that's concerned. Turning, however,
to the declaratory relief that we seek, which concerns what the
role of section 34(2) determination is in the scheme of
procurement one will recall that the government parties have
25 contended for the proposition that it is superfluous to the

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requirements of procurement and procurement – nuclear procurement can take place with or without a determination under section 34(2). Now unless our learned friends are abandoning their contentions as to that proposition then that is
5 very much a live controversy because whatever determination may survive the recent gymnastics of the government the fact of the matter is that the proper legal sequencing as between the determination that is made under section 34(2) of the ERA and the subsequent questions of procurement needs to have
10 an authoritative determination by the Court, and that is what the declarator posites, that is very much a live issue.

The second of course is that we raise a variety of issues concerning legality and constitutionality as to the determination, both in respect of the ministerial decision and
15 also the concurrence of NERSA. Now it appears just facially that the new determination which is sought to be relied upon has been through no more of a public process than the 2013 determination that we attack.

BOZALEK, J: But, Mr Unterhalter, aren't these things which
20 should be clarified?

MR UNTERHALTER: Clarified, M'Lord, in this ...

BOZALEK, J: In the sense that this document must be put up before the Court in the proper manner and then perhaps you or your client has to consider what its attitude is and perhaps if
25 necessary there has to be some affidavits...

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MR UNTERHALTER: Yes.

COURT: ... which pass between the parties and perhaps this hearing – is really what I am saying to you this matter is now not ripe for hearing.

5 MR UNTERHALTER: Yes.

BOZALEK, J: Because I am concerned about – and I obviously haven't taken my learned sister's view – I am concerned about sort of piecemeal hearing here.

MR UNTERHALTER: Yes.

10 BOZALEK, J: And you know you must carry on but I am wondering whether in the light of this very unexpected development the parties shouldn't take a little bit of time to think about it ...

MR UNTERHALTER: Yes.

15 BOZALEK, J: ... and possibly reconsider how this litigation can or may play out.

MR UNTERHALTER: Yes. M'Lord, our learned friend has raised the issue of mootness. Your Lordship has raised the issue of ripeness. I wonder if I could just briefly finish
20 mootness and then perhaps ...

BOZALEK, J: Yes.

MR UNTERHALTER: ... deal with – and I may need to take an instruction following Your Lordship's indication – but if I could just finish briefly the question of mootness because we do
25 contend and submit to the report that no mootness arises in

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this case. No mootness for two ... (intervention)

BOZALEK, J: Well at best prayer 4.

MR UNTERHALTER: Yes.

BOZALEK, J: At best prayer 4 may have become moot.

5 Prayer 4A.

MR UNTERHALTER: Yes at best, M'Lord, but the reason that we say it isn't moot is for a variety of reasons that are expressed in a number of Constitutional Court decisions of Feko, Pillay, Mohamed and the like, all of which are cases in a variety of permutations where the Court has explained that what is important is the interests of justice in making a determination around mootness and even where there are circumstances for example in the Mohamed case where the individual concerned had already been taken to the United States and the mootness issue was raised the Court said not at all, the issue is that if there are important questions of constitutional principle that are at stake in the case the Court will entertain them. Here is an even clearer case where what has happened is that through the indication of the new determination all of the points of legality that we have raised in respect of the 2013 determination have been ignored by the state. So this is not a situation in which the government seeks to cure their past failures to for example consult properly, cures their past irrationalities in respect of the 2013. All of these are issues which are live controversies between the

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parties because the grounds of challenge on constitutional and legal grounds remain before the Court and they remain just as applicable to this late arising effort by the government parties in respect of this new determination, if that is what it be, as it is in respect of the 2013. So we would respectfully submit that on the consideration – and I will obviously if the Court wishes give the Court the citations for these cases but it is particularly pertinent to paragraph 71 in the Mohamed case and paragraph 32 in both the Pillay and the Feko case where again instances where it would appear that the particular relief or the particular individual may no longer be relevant but the Court said it is not in these kinds of cases simply a question of the particular individual, it is concerned with the general interests of justice that are applicable to the questions that arise and need to be determined and since these are all directly applicable to determinations of this kind and now would be equally applicable to the new determination these issues must be determined, there is no question of mootness that arises on a consideration of the interests of justice.

If I could then just come to the question of ripeness. I will obviously need to take an instruction on this question. If it is the case that our learned friends are able to procure the requisite affidavit and all that it says is that this determination has been made we feel relatively certain that the matter can be dealt with because all that we would do is seek to amend our

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relief to say that both the 2013 determination and the new one stand challenged on identical grounds and so we would seek the determination of the matter on that basis.

BOZALEK, J: But we don't know anything about the process
5 which has taken place at the moment ...

MR UNTERHALTER: That is so, M'Lord.

BOZALEK, J: ... which led to this.

MR UNTERHALTER: No we don't, M'Lord. And that certainly is – there are certain facts but perhaps our learned friend
10 could tell us whether any – because we know – my clients are plainly interested parties in this particular field – we have heard of no process and indeed our learned friend has told us that he working up the matter in his chambers was as surprised as everybody else to learn that this determination
15 had been made and we can see from the date which is that it was - apparently a determination was made the Minister on the 5th and rushed to NERSA which made a decision on the 8th and one would assume therefore that there is no process that has been followed by way of public participation, but perhaps our
20 learned friend could simply confirm that for us and that we could then be in a position – our anxiety is simply to have the matter heard is simply that we would like to begin what may prove to be a long process of challenge to get a determination but certainly we would want completeness and we would not
25 want a loose thread hanging which I think is the force of Your

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Lordship's point to me and I suppose the question is whether we can just practically include this determination for the purposes of this litigation to resolve it or whether it is going to remain a hanging issue in which event we would be able to
5 deal with part of the application dealing with the agreements but this aspect of the determination may have to wait and then Your Lordship and Your Ladyship would have a discretion as to whether this would be piecemeal or whether you would want to hear it all in the round but I would take an instruction but
10 perhaps we should hear from my learned friend. As the Court pleases.

BOZALEK, J: Yes, Mr Oosthuizen.

MR OOSTHUIZEN: M'Lord, the argument for my learned friend ... (intervention)

15 BOZALEK, J: Were you contending initially this whole case – all these questions have become moot?

MR OOSTHUIZEN: No, M'Lord.

BOZALEK, J : No.

MR OOSTHUIZEN: No, no. Only the actual review of the 2013
20 determination itself. That was my original submission.

BOZALEK, J: Ja.

MR OOSTHUIZEN: But given – and I made that submission from the perspective of the theory of my case but having listened to my friend there is a debate about whether
25 publication in the Government Gazette is necessary to make a

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determination effective, and that is still alive for both determinations. There is also apparently a line of argument in the applicants' case that a valid section 34 determination was actually a prerequisite for the Russian treaty. So it is also
5 alive in that sense. So my initial submission that prayer 4 would become moot was perhaps overstated. Then as far as this other determination is ... (intervention)

BOZALEK, J: Well then doesn't it all boil down to (1) how this is going to be properly put before the Court and then secondly
10 whether any process must follow, whether there must be an affidavit which explains it and maybe an answering affidavit and – that is the first issue. And the second issue is whether in these circumstances we can proceed with this hearing today.

MR OOSTHUIZEN: M'Lord and M'Lady I don't have any further
15 instructions other than what I have already communicated to you. The one other thing my learned friend has already communicated and I was also told that the determination is already on its way to the Government Printer but I don't have
20 any indication as to when it is going to be published. Under those circumstances I first have to consult with the Department, then we have to settle those affidavits and obviously we will have to deal with the process that was followed as well.

25 BOZALEK, J: And then of course the *via media* is that we can

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start hearing argument on any of these issues. This can be attended to in the course of time but on the understanding that this 2-day hearing will not be able to resolve this matter, it will have to take up again.

5 MR OOSTHUIZEN: M'Lord, there is a longstanding tradition against piecemeal litigation for very good reason. I have already – the moment that I heard about M'Lord and M'Lady's concern I immediately asked my attorney for instructions and if this matter has to be postponed for that purpose we are
10 tendering wasted costs. We have no choice, we must do so.

BOZALEK, J: Well I think perhaps what the best thing to do in these circumstances is that we will take a 15-minute adjournment to give you a little bit of time to think about this
...

15 MR OOSTHUIZEN: As it please the Court.

BOZALEK, J: ... and then you can be ready to say well you either agree on a certain course of action and it is a joint proposal or application or your contention is that the matter must be postponed and you tender wasted costs and Mr
20 Unterhalter has a different proposal, that the matter must go forward well then we will hear that but I think perhaps everyone needs a little bit of time to reflect and to take an instruction.

MR OOSTHUIZEN: As it pleases the Court, M'Lord.

25 BOZALEK, J: Mr Unterhalter, you wanted to say something?

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MR UNTERHALTER: No, M'Lord. We would be grateful for the
15 minutes.

BOZALEK, J: We will take 15 minutes. If you need a little bit
more time then let us know but I don't want this to drag on for
5 too long. The Court will adjourn briefly.

COURT ADJOURNS (at 10:36)

COURT RESUMES (at 11:54)

BOZALEK, J: Mr Unterhalter.

MR UNTERHALTER: As the Court pleases. M'Lord and
10 M'Lady, it is a requirement that government parties, as the
Constitutional Court has made plain in the Matatiele case,
must show candour to a Court. What Justice Sachs said on
the score is that the constitution requires candour on the part
of government.

15 "What it involves is not simply a matter of showing
courtesy to the public and to the Court, desirable as that
always is, it is a question of maintaining respect for the
constitutional injunction that our democratic government
be accountable, responsive and open."

20 It is with regret that I must report to the Court that the
government is not being candid with the Court. We have spent
a not inconsiderable amount of time attempting to find an
acceptable basis upon which this matter could be sensibly
postponed, retaining the *status quo* in the interim. What was
25 not drawn to our attention was something that has only just

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surfaced on the news wires and to that effect if I may hand to
the Court both what has just been released press wise as also
what was – and let me put it on this basis – a draft order that
we have proposed to our learned friends acting for the
5 government parties. If I could hand that to the Court with the
press release that has just been released across the wires.

Let me begin if I may with the press release, which is the
second of the two documents. Mr Koko, who is the acting CEO
of Eskom and sits in Court behind me today announced that
10 Eskom is to release the nuclear RFP this week - this came to
our attention just a few minutes ago – and that this is taking
place upon a gazetting of the let me call it the new
determination. We now of course see what is happening
before this Court, which is that the new determination is
15 signed off by the Minister on the 5th December, NERSA signs it
on the 8th December. No word of this is communicated either
to the Court or to the applicants before this Court, and what is
disclosed in Court this morning is simply that unbeknown
certainly – and we criticise our learned friends not at all – but
20 unbeknowns to our learned friends this determination has
descended from the heavens onto the desk of our learned
friend yesterday and nothing more is said as to what hinges
upon this determination. Well it is now perfect apparent what
is happening. The determination, the new determination, has
25 been hatched as a device to try and postpone these

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proceedings so as to then go ahead with an RFP in the interim, avoiding the determination that this Court would make in respect of the legalities of the determination that already been made and which is the subject of challenge so as to try to precipitate a nuclear process of procurement whilst the Courts have had to postpone matters and a date is procured for a later determination of the question of legality concerning these determinations. That, with respect, is not a proper way for government parties to approach Courts. If they seek, as they do, a postponement they must make full and complete disclosure as to what has happened, why it has happened and what is the best mechanism for procuring that a *status quo* order stays in place that will do no detriment to the applicants, the South African public and that the legalities can be properly determined by the Court in due course without as it were seeking to take steps which may give rise to irreversible consequences such as the commencement of an RFP. We, before we had seen this breaking news, had been endeavouring to negotiate an agreement on the basis set out in the draft order and if I could simply refer that to the Court, which is that we had sought an adjournment to an expedited date as this Court may be able to facilitate and give us. We had provided for expedited filings of supplementary affidavits so that the papers which would then traverse both the new determination and the record relevant to that determination

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could be the subject of an exchange of papers in short order so as to have the matter ripe again for hearing by after the 9th January, I should say without disclosing the negotiations, prayers 2 and 3 are uncontroversial to the government parties

5 but whilst we engaged in extensive negotiations around 4 and had at least understood at a point that this may be acceptable prayer 4 has proved at the last ditch unacceptable and I will leave it to my learned friend in accordance with the constitutional duties that his clients have to the Court and to

10 the litigants before this Court to explain why this order is apparently not acceptable to his clients and/or Eskom. If I could just point out to the Court that in terms of the new determination paragraph 4 of the new determination provides the following. That it is determined, and determined by the

15 Minister with the concurrence of NERSA that the procurer in respect of the nuclear programme shall be Eskom's Holdings Limited or its subsidiaries. So what is sought to be done by way of the new determination is to use the provisions of the ERA to designate Eskom as the procurer but plainly a procurer

20 in these circumstances is designated as the delegate of the Minister for the purposes of the exercise of this power. What we had therefore sought, in fact unbeknowns to us it was just sheer prudence on our part that we were seeking this order because we hadn't yet seen the breaking news, we sought an

25 order which was framed in the following form:

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"The first and second respondents will procure ..."

And the language of procurement is precisely because they should procure that their delegate, who is Eskom the procurer under the new determination – the President and the Minister
5 will procure –

"... that there will be no issuance of a request for proposals in relation to the procurement of nuclear power plants prior to 3 months after the hearing of this matter, alternatively judgment in this matter, whichever comes
10 first. In the event that the Court is unable to render its judgment within three months of the hearing the applicants are granted leave to approach the Court seized with the matter for further and/or alternative relief."

Our desire was simply this, that since the legality of the
15 determination is a vital step in the process that might one day lead to any form of procurement, it was essential that that – that the legalities of the determination be decided by a Court. The efforts on the part of government to furnish a new determination to derail the litigation and postpone was
20 something that we could live with in circumstances where there was a proper timetable set for the legalities to be determined and there was no threat that the RFP would somehow be interleaved into this process before the Court had had a proper opportunity to consider the legalities of the determination – we
25 say a necessary first step before any procurement process

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could be entertained. What is now sought to be done by way of frustrating the order that we had hoped to persuade the government parties of is that they will not grant it, they will not accede to this order and I will leave it to my learned friend to
5 disclose why that is so, under his duties of disclosure to the Court. If our learned friends persist on behalf of the government parties with that then we will move for this order before the Court and we will seek the protection of this Court so that the Court may in accordance with its prerogatives to
10 determine that no harm is done in the interim whilst the legalities of the determinations are made by the Court that the *status quo* is retained. We will move for that order if it be necessary but I invite my learned friend to make full disclosure as to how the sequence of the new determination came about,
15 its timing, how it has only surfaced now, what is the relationship between the new determination and the announcement of the RFP that Eskom says will take place as soon as the gazetting of the new determination has taken place and why it is that relief should not be granted to secure
20 the *status quo*. Absent such relief we would need to press on and have the legalities determined.

BOZALEK, J: You would move to press on?

MR UNTERHALTER: Well, M'Lord, if we cannot secure some form of interim relief, which we would hope sensible parties
25 would agree to, then we would have to try and find a way of

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having these legalities determined because the RFP are threatened but I am hoping that we can avoid that out. As the Court pleases.

BOZALEK, J: Mr Oosthuizen.

5 MR OOSTHUIZEN: M'Lord, first of all I am not here on behalf of Eskom. I cannot explain or convey anything on behalf of Eskom to this Court I am here on behalf primarily of the Department of Energy but also for the Office of the President. Now I know from general knowledge that it has already been
10 discussed and disclosed in the public press that government has decided to move the nuclear programme from the Department of Energy to Eskom. That has already been in the news by the latest the 22nd November 2016. So that Eskom was involved in this nuclear programme is no big surprise for
15 anybody. Furthermore there is also reference in some of the annexures in the papers before you to a separate process that Eskom has started in terms whereof they sought a site licence at Tuispunt and at the Koeberg plant for a site for new nuclear plants and that process was already ongoing in 2015 and
20 earlier in 2016. That is a separate process that is parallel to this. So Eskom's involvement and interest in the nuclear programme has always been a matter of public record.

Now as for the determination that is before you, my learned friend colours this in as if Eskom now becomes a
25 delegate of the Minister. I don't agree with that interpretation

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and view of section 34. Section 34 results in a determination that is binding on NERSA and on whoever from the public or the private sector applies for a generation licence and that person that applies for a generation licence does not do so as
5 delegate of the Minister. So the idea that the respondents must now stop Eskom is simply not possible in law. Eskom is a separate company, it has got its own board, it has got its own CEO and what Eskom does is their business. They act within the powers, responsibilities, functions and duties
10 entrusted to them. So I cannot answer on their behalf and my clients cannot dictate to them how they must conduct their own business. It is precisely because of the looming privatisation and it is precisely because of the need for a body like Eskom to be independent that there was a Conversion Act in 2001
15 which made Eskom a public company. So we simply can't procure what the applicants wants us to procure, and that is why I couldn't get a mandate and why I couldn't get authority to give that undertaking as mentioned in prayer 4.

I must also point out something else. This case was
20 launched last year round about October. Already then there were statements of a request for proposal and every time whoever was busy with those requests were very optimistic because every time it was a question of a few weeks, a few months, the request for proposals are looming and here we
25 stand today on the 13th December 2016 and in that year's time

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the request for proposals hasn't seen the light of day.

BOZALEK, J: Explain to me what these - explain to us what this request for proposals entails.

MR OOSTHUIZEN: M'Lord, the request for a proposal is
5 something that you use in the procurement context where you don't yet have enough information to formulate your own bid specifications, to decide precisely what you want. So what you do is you invite people that can give you some technology, you ask them for a proposal and from their proposal you basically
10 gather information that will enable you to specify your bid, to put out the tender there and then ask for somebody to tender on those bid specifications.

BAARTMAN, J: In this case the proposals will be sought from the countries ...

15 MR OOSTHUIZEN: From the vendor countries.

BAARTMAN, J : From the vendor countries.

MR OOSTHUIZEN: That has...

BAARTMAN, J: The agreement.

MR OOSTHUIZEN: ...or their specialised agencies. Like
20 Rosatom or Areva in France. In other words it will – all that it will do is it will provide Eskom with more information about the different technologies. If you have a vendor parade then everybody sits there and if you have vendor parade for instance with China and Canada together they are not going to
25 give you all their technology and all their trade secrets. They

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are going to give you a general idea of their technology but not the detail that you want. With a request for proposal each proposal is basically supplied on a confidential basis. You can now look at that information and you can then decide to use it.

5 The request for proposals does not create an offer, it is also not an acceptance. It doesn't create any right and obligations, it is an effort to obtain information.

BOZALEK, J: And what is the approximate timeline we can bear in mind with this sort of process?

10 MR OOSTHUIZEN: M'Lord, I don't know because this doesn't involve something on a domestic level. There are other countries and other international agencies involved with their own timelines and their own time constraints. I am not in a position to help you there. But under these circumstances I
15 respectfully submit that one thing has now become clear...

BOZALEK, J: But are we in the area of months, years, weeks?

MR OOSTHUIZEN: No, we are in the area of months, M'Lord, not years.

BOZALEK, J: Yes sorry, carry on.

20 MR OOSTHUIZEN: M'Lord, another thing that has now become clear is that Eskom also because of this determination that was now made as a direct interest in this they are going to be affected by whatever order you make and under those circumstances, M'Lord, and in order to prevent piecemeal
25 litigation I repeat that this is a matter where we shouldn't deal

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with something as important as this in a piecemeal fashion. Eskom should be given an opportunity to consider whether they will join this party or whether they should be joined as a matter of necessity and under those circumstances I respectfully submit that the matter is not ripe.

As far as the blame for that is concerned, M'Lord, it is abundantly clear that whatever postponement there is the state must be in for the wasted costs. In this regard I will ask that any order for wasted costs be made against the Department of Energy, the second respondent. No, sorry the first respondent, M'Lord. The first respondent.

BOZALEK, J: That is the Minister.

MR OOSTHUIZEN: Ja, that is the Minister, ja. Originally in court I also indicated that I have got no problem with an order of costs – wasted costs in respect of four counsel although they are only asking for three counsel, my offer is still for four counsel, M'Lord.

BOZALEK, J: So what is that you propose, Mr Oosthuizen?

MR OOSTHUIZEN: M'Lord, I propose that we follow the postponement agreed upon – or tentatively agreed upon on paragraph 1, 2 and 3 and in the process and now that Eskom is here they will obviously consider whether they want to become involved in this case. If my learned friend – I mean for a year now there has not been real anxiety or interest about a request for proposals, it has been looming on the

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horizon and there was no need and the applicants didn't pursue any sort of an interim order for that. If they are serious about an interim order then they should pursue that against Eskom because it is Eskom that is now asking or saying that

5 they are going to do that and in doing so ... (intervention)

BAARTMAN, J: Mr Oosthuizen, with respect they found out about Eskom the same time the Court did almost.

MR OOSTHUIZEN: Ja. I realise that, M'Lady. The point is ... (intervention)

10 BAARTMAN, J: And if Eskom could wait all these months for that proposal why can they not wait longer?

MR OOSTHUIZEN: M'Lady ...

BAARTMAN, J: I know you don't represent ... (intervention)

MR OOSTHUIZEN: ... on the 22nd November Eskom already

15 made the public statement at some or other function here in Cape Town and that was also published in News 24 about their request for proposals that are going to be prepared and sent out. So I know it was only a week or two ago, I know that but it is isn't as if this only exploded today in the public domain. It

20 has already been out there in the media as from the 22nd November 2016 at least.

BAARTMAN, J: But that was at a time when Eskom was not a procurer. The Department of Energy was.

MR OOSTHUIZEN: That is so, M'Lady, but Eskom at that

25 stage announced its intention to issue a request for proposals.

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BAARTMAN, J: Yes.

MR OOSTHUIZEN: Now the point that I am simply making is this, the interim relief that they now seek is an exercise in futility because Eskom is an independent separate body.

5 Secondly, if they need protection then they must go and do it against Eskom, they can't get it from us because we can't give them that protection.

BOZALEK, J: But that is because Eskom in a sense has been made a party to this entire case and that has been done at the
10 last minute essentially by reason of your client's act in doing this determination a few days before the court hearing and one thing that does trouble me is that the Minister is your client and you basically have come to court today and told us, and we accept that of course, you knew nothing about that.

15 MR OOSTHUIZEN: Well, M'Lord ...

BOZALEK, J: How is it that the Minister can, knowing of this – presumably knowing of this case – can take a decision of this nature without it even being communicated to her legal team?

MR OOSTHUIZEN: M'Lord, I can't explain that. Mine is not
20 the reason why, mine is but the do or die. Unless there is any further submissions those are my submissions, M'Lord.

BOZALEK, J: Yes thank you. Mr Unterhalter.

MR UNTERHALTER: As the Court pleases. If I could deal firstly with the question of the RFP. As recently as the filing of

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our learned friend's heads of argument on the 2nd December they took the point on us which is to say that their submission was that the relief was completely premature in that to date no request for proposal has been issued. Now ... (intervention)

5 BAARTMAN, J: Can you give me the paragraph in their heads?

MR UNTERHALTER: It is paragraph 75 of our learned friend's heads. So that was the state of affairs that ... (intervention)

BOZALEK, J: Sorry, it says no request ...

10 MR UNTERHALTER: It says:

"In the second place we submit that this relief is completely premature in that to date no request for proposals has been issued."

So their stance was you don't need any of this relief because
15 there is no issue around the request for proposals, nothing to suggest otherwise. We had in our replying affidavit – at paragraph 207 and at page 1446 of the papers – dealt with the RFP and we said well no RFP has yet been published. The RFP is to be published so we then thought on the 30th
20 September and it must have its legal and factual validity based on the 2013 determination. In other words the very point of bringing this case was to test the validity of the determination because it is a precursor and seemingly now accepted as such although they contended otherwise in their heads of argument,
25 accepted as such by the government parties. So they

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recognise that the whole point of these proceedings or a point
of these proceedings is to test the legal validity of a
determination as a precursor to procurement. And we said that
we reserve our position in respect of the RSP if anything
5 should change but they said in their heads of argument no
don't worry the RFP is not on the horizon at all. They now
contend before the Court that it is a matter of general public
knowledge that Eskom was going to be involved at some point
in November but some notion of Eskom's involvement and a
10 legal foundation for it are two quite different and separate
things. So what we now know is that what has been done is to
use – and I use this word with regret of a government party – a
manoeuvre has been practised before this Court to put in this
new determination on the ground that that somehow renders
15 the challenge to the 2013 determination moot so as to try and
lay a new foundation for what we know they are always aiming
at, which is the RFP which has been announced in the course
of these court proceedings and now it is said well government
can't control its own creature, Eskom, although it has actually
20 designated Eskom and it is the only shareholder of Eskom
because Eskom apparently has a life of its own and the only
way in which orders can ever be granted against Eskom is of
Eskom is brought before the Court and orders are made
against it. Well the proposition is that somehow or another
25 Eskom's position as having an ability to now engage the RFP

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process, not a simple preliminary matter but a matter of enormous significance because what the RFP is is the bids that parties make and they are then appraised to then be ranked in the ordinary way as the process by which one then
5 selects the winning bid and a contract is then entered into so it is a vitally significant part of the process and ... (intervention)

BOZALEK, J: I am sure it is, Mr Unterhalter, but having read all these papers I get the sense that it is not decisive in the sense that a die is case if a request for proposals goes out.
10 There is still – there is a long road still ahead for “binding” contracts are entered into or bids are accepted. Am I correct?

MR UNTERHALTER: No, with respect M'Lord we would respectfully suggest not because the RFP process, if it is at all like tender processes in other areas of public procurement is
15 basis upon which the transparent competitive bidding takes place and what emerges out of that is a preferred bidder and all that flows after that is simply the final negotiation of the agreement with the preferred bidder.

BOZALEK, J: But Mr Oosthuizen has told us having obtained
20 these proposals then bid specifications are drawn, then it goes out.

MR UNTERHALTER: M'Lord, I am not certain where my learned friend – because he has instructions seemingly on a selective basis and again I offer no criticism of him, but the
25 fact is that RFP's and our law reports are replete with RFP's

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as the essential bidding mechanism which determines the preferred bidder with whom in nine cases out of ten the contract is entered into. So we are now about to enter into the phase that will determine who is going to be the party that is responsible for this enormous build programme which is an intergenerational commitment by South Africa to upwards of a trillion rand's worth of expenditure. So we are talking about the beginning of the last part of the process save for the actual signing of the agreement that will then bring about this commitment of the greatest significance for every single person in this country, not just in this generation but every generation to follow. So, M'Lord – sorry.

BOZALEK, J: Sorry, Mr Unterhalter, the other thing that troubles me is this was never – this is *de facto* sort of an interdict against the RFP, the request for proposals process, which has never really been part of your case.

MR UNTERHALTER: Yes, M'Lord.

BOZALEK, J: And it seems to me whether this section 34 – new section 34 determination came about or not it was always open to the parties on the structure of this case or the respondents to go ahead and move this RFP process forward and then you would have not really had any remedy would you, unless you had brought separate interdict proceedings.

MR UNTERHALTER: Well except for this, M'Lord, that the predicate upon which this litigation was undertaken was

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always, as I have indicated, that this was the necessary step before the RFP and there was never any indication that the government parties were seeking to somehow accelerate the RFP to avoid a determination of the legalities of a determination, the section 34 determination. What has now happened precisely because the legality of the determination has now crystallised before a Court and the government parties no doubt are alarmed at the thought that it will take some time to have that determination made that they have resorted to the manoeuvrings which we have witnessed before this Court this morning. So we simply say this – two things – one is we had always reserved our position on the RFP but there was no necessity whatsoever to press for any relief about that because as our learned friend's heads of argument indicated the RFP was not going to be actuated or accelerated or indeed commenced until this litigation had taken its course. We were told the litigation, and certainly the remedy, was premature. That is only the conduct of a party that says don't worry the RFP is a long time away, we can litigate these matters and have the determinations made by the Court. Could I, however, deal – now that the issue has crystallised and we need a *status quo* order because now interim relief is necessary and it hinges directly on the postponement that is now being sought because they seek a postponement to avoid this Court to terminate the questions of legality that are

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relevant to the determination and it is so self-evident that the balance of convenience must be struck so as to hold the *status quo* so this crucially important determination of legality can take place before an RFP is put in place where millions and
5 millions are spent assessing bids, getting bids put up when none of that may be lawful at all. So it is perfectly clear in our respectful submission what the *status quo* order would require where the balance of convenience rests but could I just briefly deal with the proposition that the government parties come to
10 court and say to this Court, as my learned friend has said, but we have no control over Eskom, how could we possibly agree to an order that the government parties will procure that the RFP does not proceed until the Court has made the determination on the prior step of the section 34
15 determination. Well if I could just take the Court back to the new determination. It makes it plain that what the Minister has determined under section 34 firstly in paragraph 2 is that the electricity produced from the new generation capacity shall be procured through tendering procedures which are fair and then
20 it has in 4 made Eskom the procurer so for the purposes of the exercise of the power under section 34 the Minister has determined that Eskom will do these things. Eskom is for this purpose, because it is for the section 34 purpose, an instrument of the Minister's exercise of power. Eskom is a
25 delegate for the purposes of undertaking the procurement that

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the Minister has determined must take place and therefore the notion that the Minister both can grant the power to procure and run a tender so too can the Minister, as with any delegation, withdraw or render conditional the delegation that

5 has taken place. It would be unlawful for the Minister to make a delegation to Eskom in circumstances where that delegation was not subject to recall or not subject to conditionality as to the manner in which the agent exercises the mandate that has been given by the principal and our learned friend has

10 advanced no proposition under section 34 to suggest that the power exercised somehow renders Eskom autonomous and incapable of discipline by the principal, the Minister, who has designated Eskom as the procurer, which is precisely the power that exists under section 34. The power to designate

15 includes the power to either withdraw the designation or, as we would seek here, simply to condition the designation by way of a temporary hold on the power to undertake the very procurement that is envisaged in paragraph 2 of the determination. Therefore it is not correct as a matter of law

20 that Eskom is simply incapable of being made subject to ministerial determinations. That is why we framed the order on the basis that the Minister must procure – that is how we framed the order – because Eskom is at the moment not a party before the Court but the Minister has the power to

25 discipline her own agent and for that purpose the order is

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perfect competent and it is an order that we say is properly sought and should be granted so as to ensure that in an orderly fashion the Court can determine legality of the determinations and then if legality thresholds are past and we are unsuccessful well then Eskom will go about the business of the RFP. There is no suggestion either by the Minister or the President that something about this RFP has to happen immediately. They don't suggest that there is any urgency that attaches to this. What we do see, however, is a variety of manoeuvring that is occurring here to try to avoid judicial scrutiny and thereby with indecent haste proceed with an RFP in advance of the proper orderly determination of legality. That is something we respectfully submit that this Court will not countenance.

15 BOZALEK, J: If your client's argument's case about the lawfulness of the section 34 determinations is eventually proved to be correct then all these steps taken to issue request for proposals and so on, they will be of no force and effect in all likelihood. Correct? They will be without force of law.

MR UNTERHALTER: Yes, M'Lord, that is so if the legal predicate for the issuance of the RFP is wanting that is so but in the interim just consider what the prejudice is that occurs.

BOZALEK, J: Yes.

25 MR UNTERHALTER: The prejudice is that an RFP is issued

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that bidders come along and at an enormous expense, both
expense to the state, the taxpayer and to the bidders
themselves, engage in the biggest RFP bidding process that
this country will ever have seen – I am not certain whether this
5 Court has had the unfortunate experience of looking at what an
RFP document looks like – in a tender that goes to tens of
millions or even 100 million the papers are half a metre high.
In the case of a nuclear procurement for a billion rand there
have to be legions of experts appointed, all at state expense,
10 to start working out what the RFP will look like, how it is to be
assessed, what the relevant documentation is that must be
provided and then the potential bidders must start this process
of actually making their bids, which run into literally hundreds
of millions of rand, all of this to the cost of the bidders, to the
15 cost of the public purse whilst a point of legality that may be
determining that none of this RFP work was ever proper or
lawful would have been the best illustration of wasteful
expenditure that one could imagine because of the scale and
dimension of a procurement that could run to a trillion rand.
20 Well in those circumstances we would respectfully submit to
the Court that a Court will not lightly allow this scale of
financial folly to be engaged in by a delegate of the Minister
on the premise that we can all come back another day and
determine legalities and in the meanwhile we are told that the
25 RFP is planned to take place over a few months. So the RFP

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would be in all likelihood done and completed and potentially a contract awarded within the period that we will need to have the legalities determined and that again is something which will not be, we respectfully submit, countenanced. And there
5 is one further point which is that we could get to the position if this RFP was done in a hurry and the bids were assessed that the government, no doubt through Eskom wishing to proceed before the scrutiny of legality has taken place by the Court, will sign this agreement and then we run into all the legions of
10 difficulties that occur with tender ... (intervention)

BOZALEK, J: Sorry, just repeat your submission in that regard please.

MR UNTERHALTER: Yes, so M'Lord what would happen potentially we are told that the RFP is proposed for a few
15 months. The outcome of the RFP is to determine a preferred bidder. Let's just say for argument sake that preferred bidder is France, against all the indications that we suggest is more likely that it is Russia now on the papers before the Court, but let's take a neutral example and assume it is France that wins.
20 There will be – and this is typical of these processes – that the contract is usually being drawn up at the same time as the RFP has been engaged and so the actual conclusion of the contract, which is the outcome of the RFP, can take place very, very quickly and that would commit potentially this
25 country to vast expenditure in circumstances where the very

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legalities of the RFP have not even been yet scrutinised by a Court, on the basis that as we say – and it seems that the government parties now agree because this new determination is said to be the precursor, the necessary precursor to the RFP, so they are doing this because presumably they now agree with our argument that they had to produce another determination as the predicate for an RFP. That is what they are doing, that is what they have put up before the Court and no Court will have scrutinised the legality of these matters and the RFP runs its course. So that is hugely risky, both to the country, it is hugely risky to the interests of justice and we would submit that these are circumstances where a Court will intervene and say no the *status quo* must prevail whilst the legalities are determined.

Just finally as far as Eskom's interests are concerned if Eskom had understood, as apparently according to our learned friend though he says he holds no instructions for them, that they were going to be part of this process at least in November they could have come into this litigation if they wished to do so and they can still do so even if the Court grants the interim relief that we seek, which is that if they seek to somehow reverse the order or claim some interest that would suggest that such an order should not be granted, they can come on proper notice to the parties to seek some alteration or reversal of the interim relief that we seek. But for now we would cast

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the obligation upon the Minister and the President to do what is required in the public interest because this is a self-evident case where legalities must be determined before there is this headlong rush to try and precipitate an RFP with quite
5 extraordinarily significant consequences for the country and those who would necessarily get drawn into the RFP because if one thinks about this from the perspective of the bidders once the RFP is announced the starting gun has gone off. They have to start putting in their bids in accordance with the
10 terms of the RFP and that has very significant consequences. Could I just see if there is anything else I need to ...

Just two supplementary points if I may in respect of the interim relief. We did foreshadow to some degree what the consequences are of precisely the kind of conduct that the
15 government parties are now engaging in. At page 116 of the papers in paragraph 230 of the founding affidavit we are dealing with the question of these agreements that have been entered into. Now at the stage of this application we are dealing simply with intergovernmental agreements that are
20 styled cooperation agreements but what the RFP is about is actually getting to the point where there is a contract that is entered into with a winning bidder but what we said of the significance of this process is just, if not more so, of what would be the outcome of the RFP. This may place South
25 Africa in a position where it owes obligations to foreign

countries and/or companies in international law plus possibly with damages claims being subject to international arbitration which, depending on the terms of such international agreements, may not be negated by any findings of domestic
5 unlawfulness by South African courts of law.

Now if I could just again alert the Court to what the risk is here because many countries around the world have found themselves in this situation. One of the features of the Russian IGA is that it affirms the bilateral treaty between
10 South Africa and Russia in respect of international arbitration concerning investments and agreements of this kind. What is very, very likely to happen if this process is allowed to run on without firstly putting a stop to it with the RFP and determining the legalities of the determination, is that if the government in
15 its headlong haste to enter into one of these agreements then seeks to rescile from it on the basis that a constitutional determination has been made that it was illegal from a domestic perspective that does not alter the incidence of the obligations from an international law perspective and South
20 Africa will be taken to ICSID arbitration as a result of its bilateral treaties with one or other of the bidding countries and it can be liable for a trillion rand's worth of damages. Now this causes countries to go bankrupt. It has been part of what has been a major feature of Argentina's difficulties in restoring its
25 credibility as a borrower in international markets for upwards

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of a decade. So it is hard to exaggerate the risks to the country if this process is allowed to be continued and the Russian RFP – I beg your pardon, the Russian IGA – affirms South Africa's obligations to Russia under its bilateral investment treaties and presumably, even though South Africa has sought to cancel certain of its bilateral treaty investments with European countries, they are still current because the termination period has a notice which has not yet run out. So there is very high risk that is at stake. The affidavit also said:

10 "It is therefore essential that the process leading up to any such procurement is lawful and conducted in an open and transparent manner."

And none of that has happened for reasons we explained in great detail in our affidavit. So we do submit that the peril is very, very great and the importance of ensuring that this is done in a proper orderly fashion where legalities are established could not be placed at a higher premium and there is no urgency. We do ask that this relief should be granted by the Court, retain the *status quo*, we will return to deal with the legalities on, as we have been happy to agree to, an expedited basis subject to the Court being able to accommodate us.

As to the costs what is at stake here is about a great deal more than the costs of bringing the litigation, important though they are to my clients as NGO's, but let me just briefly say on that score that whilst our learned friend has extended the

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costs order to four counsel in the light of the circumstances of what has gone on here my clients should not have to suffer any cost detriment. The costs should be costs on an attorney client scale in the light of the extraordinary conduct and postponement sought at the last moment in this fashion but I should say that no costs order is ever going to make good the danger and risk to this country because that is really what is at stake in respect of the interim relief that we seek. As the Court pleases.

10 BOZALEK, J: Anything on the attorney client costs aspect?

MR OOSTHUIZEN: Yes, M'Lord. M'Lord, my learned friend raised numerous new issues now in his answer. May I please have an opportunity to reply thereto?

BOZALEK, J: I thought you weren't listening, your head was so bowed. Yes.

MR OOSTHUIZEN: M'Lord, first of all my learned friend and I differ about the nature of an RFP. He says basically it is the first step in creating a contract and I say it is not, it is a market enquiry. Can I take you to page 707 of the papers. In paragraph 45.5 we explain the International Atomic Energy Agency's milestone approach where they also have this three-faced approach for establishing nuclear power capacity, and this is the approach that in the papers you will see cabinet has approved also for the South African nuclear programme.

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In the papers the case is made out that we are now only in the pre-project phase, the first phase. This is the phase leading to a knowledgeable commitment to a nuclear power programme and it is in the context of that phase that the request for proposals is issued.

If I can take you to page 764. In paragraph 68.3 you will see that there was a decision that cabinet approved, the Department issuing a request for proposals. But what is also clear is that the final funding model will only be informed by the response from the market to that request for proposals. The request for proposals is an attempt to gather information, it is a market enquiry. It is not yet an invitation for an offer that has to be considered. Can I also take you to page 850.

BOZALEK, J: Is this process described in any statute or regulations?

MR OOSTHUIZEN: M'Lord, at the moment they doing this in terms of the powers under section 85 as part of the policy powers of the government.

BOZALEK, J: Section 85 of?

MR OOSTHUIZEN: 85(2) of the constitution.

BOZALEK, J: Constitution?

MR OOSTHUIZEN: Yes, M'Lord. Then if I can take you to page 850, there they deal with the process, the request for proposals and this is described in the context of:

25 "... to establish and define the need of an organ of state

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for goods and services ...”

As part of an internal process. This is what the request for proposals is all about. It is not about signing on the dotted line for a trillion dollar contract or a trillion rand contract.

5 BOZALEK, J: I actually meant to ask you in this regard is this a process that can be scrutinised by the public or does this happen behind closed doors?

MR OOSTHUIZEN: No, M'Lord, the policy part thereof is the domain of the executive. The moment that it goes further – the
10 moment that they go over to actual procurement, when they now decide okay we are going to issue a tender, we are going to invite bids then from that moment onward it is in terms of the procurement power of the state and then PAJA kicks in but at the moment ... (intervention)

15 BOZALEK, J: So you are telling us that essentially this request for proposals process will happen so to speak behind closed doors.

MR OOSTHUIZEN: Yes, M'Lord. It is a market enquiry, it is for the government to precisely determine its needs and then
20 also to look at the affordability and as the question from the bench have indicated this is going out to other countries so section 231 of the constitution and foreign relations are immediately impacted upon and that might – an order interfering with this kind of thing with respect something where
25 a Court should exercise restraint.

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May I then also point out that Eskom in any event already has a procurement system and that procurement system in itself will also allow it to issue a request for proposals. I do not agree with my learned friend that a determination is a *sine*
5 *qua non* for the exercise of that power in terms of section 217 as an organ of state. Section 217 of the constitution already gives Eskom the constitutional right to procure and that section is part of the supreme law of the land. Why now interpret section 34 as if over and above what the constitution
10 already entrusted to you you now need the Minister to give you the green light and say okay now you can go and procure nuclear. There is simply no rational basis for that interpretation. Eskom already has a procurement system.

Then my learned friend talked about the balance of
15 convenience.

BAARTMAN, J: Mr Oosthuizen, let me understand you. Are you saying that generic process or procurement process that Eskom has in place would be sufficient for this purpose?

MR OOSTHUIZEN: On the legality basis, yes. I mean Eskom
20 entered into contract for Medupi, for power stations that are also a contract with a value of a few billions of rand. Now it is only the scale that differs with nuclear and coal. It is the scale that differs from a procurement perspective. So why then any new generation capacity, whether it is coal or gas or nuclear, I
25 respectfully submit that the existing procurement law already

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authorises that. The problem is that my learned friend sees section 34(1) determination as a key that unlocks the door to procurement. Section 34(3) of that statute deals with the legal consequences of a determination. It is not some kind of
5 authorisation, it is a regulatory mechanism that binds NERSA. So the determination doesn't speak to Eskom, it doesn't speak to the general public, it doesn't even speak to the state, it speaks to the custodian and enforcer of the electrical supply industry framework and it says to him when thou considers an
10 application for a generation licence thou will not go outside these boundaries, I fix the boundaries of the generation licence that you can issue by means of this determination. Let us look for instance at the designation ... (intervention)

BOZALEK, J: Mr Oosthuizen, let's not stray too far from the
15 issues in front of us. We are obviously not going to hear the case today so let's just stay with the issues. The issue is the terms of a postponement. That is what it comes down to.

MR OOSTHUIZEN: M'Lord, can I then – can I just finish this point because my learned friend raised it as part of this
20 debate. The determination isn't an authorisation, it is a control mechanism. So it isn't a question of Eskom now being appointed as a delegate or an agent of the state. That doesn't arise. If you look at section 34, and even when you looked at the designation of the Department of Energy, not a single one
25 of the sub clauses in section 34(1) requires or empowers the

Minister to identify a specific entity as a procurement agent, (a) determine that new generation capacity is needed, (b) determine the source and the percentage, (c) determine that the electricity thus produced may only be sold to a certain person, determine that it must be purchased by a specific person, require that it must be established through a tendering procedure, provide for public sector participation. There is no requirement in section 34(1)(a) that a specific body must be designated and appointed and determined as the agency responsible for the procurement. It is superfluous, it is a political responsibility that is identified by the Minister. That is not part of the determination in terms of section 34(1). So Eskom is not the agent, it is not the delegate for the Minister.

Now as far as prejudice is concerned my learned friend talk about all this expenses that will be incurred in the preparation of these RFP's, the response thereto and the consideration thereof. This is to be done by Eskom with their own in-house experts and they have already prepared it, they are ready to issue it. Whoever responds thereto will of course do so at their own risk. It is one of those realities of commercial life and in comparison to the delay that is caused – and you would have seen from the papers the lead time for nuclear is 15 years and longer. If we want to have nuclear power 15 years from now we have to start as soon as possible. These expenses today will be minor in comparison to the

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problems that 15 years from now we are going to face if there is a shortage of electrical supply. These are pennies in comparison with what is caused by a delay in this regard.

As for the position in Argentina there is no evidence about
5 that and it is not such general knowledge that this Court ...
(intervention)

BOZALEK, J: Well most of what I have heard today there is no evidence about.

MR OOSTHUIZEN: Well, M'Lord, I take that point. M'Lord,
10 then as far as the balance of convenience is concerned I refer
you to The National Treasury v The Opposition of Urban
Tolling Alliance Act 2012(6) p223 paragraph 67:

15 "The harm and inconvenience to motorists which the Court
relies on results from a National Executive decision about
the ordering of public resources over which the executive
government disposes and for which it and it alone has the
public responsibility thus the duty of determining how
20 public resources are to be drawn upon and reordered lies
in the heartland of executive government function and
domain. What is more, absent any proof of unlawfulness
or fraud and corruption, the power and the prerogative to
formulate and implement policy on how to finance public
25 projects resides in the exclusive domain of the National
Executive, subject to the budgetary appropriations by
parliament. Another consideration is that the collection

and ordering of public resources inevitably call for a policy laden and polycentric decision-making. Courts are not always well suited to make decisions of that order.]

M'Lord, the same considerations apply here. We are talking
5 about an allocation of public resources in the public interest. It is not something where a Court should interfere and under those circumstances I respectfully submit that no case at all for such interim relief has been made out. In any event there is the alternative remedy. If the legality is decided in favour of
10 the applicants then all that follows can be set aside. They have an alternative remedy. This isn't irreparable harm that we are talking about and if there is a problem with the cost, M'Lord, then I suggest that the cost order be reserved so that we can get a full explanation as to why this determination was made in
15 this manner and brought to the attention of the Court in this fashion.

BOZALEK, J: What is the problem with a costs order?

MR OOSTHUIZEN: The scale, M'Lord.

BOZALEK, J: The scale?

20 MR OOSTHUIZEN: The scale, ja. Our offer is party and party, four counsel, but if my learned friend persists with asking for attorney and client scale then I suggest, M'Lord, that the cost order be reserved so that that can be ascertained. Unless there are any further submissions, M'Lord, with your

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permission, M'Lord, may I quickly have a word with my attorneys?

BOZALEK, J: Certainly.

MR OOSTHUIZEN: Those are our submissions, M'Lord.

5 COURT: Thank you. I will only want to hear you – because this is becoming like a game of tennis ...

MR UNTERHALTER: Yes I am sorry, M'Lord.

BOZALEK, J: I only want to hear you on the notion that a costs order should possibly be reserved so some affidavits can
10 be put up to explain this. That is all I want to hear you on, Mr Unterhalter.

MR UNTERHALTER: All right, as the Court pleases, M'Lord. There is no warrant to trouble the Court further in respect of affidavits, the Court knows exactly what the position is as to
15 how these costs are wasted. It is a question for the Court's discretion as to whether the Court thinks that we should be put to some cost which is not entirely paid by the state or not and the Court has heard all the circumstances as far as that is concerned.

20 There are two very short points I would like to make but if the Court has heard it sufficiently, M'Lord, I don't want ...

BOZALEK, J: Tell me what they are about. Tell us what they are about.

MR UNTERHALTER: Perhaps I could just – if I could just
25 indicate just very briefly it just concerns the proposition that

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this is about the implementation of policy which is suggested somehow not to be about procurement and I can make the point in 30 seconds, M'Lord.

BOZALEK, J: We needn't hear you on that, Mr Unterhalter.

5 Thank you.

MR UNTERHALTER: As the Court pleases.

BOZALEK, J: We will take time to consider and we will make a ruling at quarter past two. In the meantime it is very likely that both I and my colleague will be available to hear any
10 continuation of this matter between the 13th and the 27th February. I would like counsel in the interim to look at those times and come back with a view to identifying what dates is suitable and I have always had a reservation that two days were going to be sufficient for this matter and if given these
15 new developments if anything that has confirmed my *prima facie* view so I think counsel must allocate – must identify more than two days.

MR OOSTHUIZEN: Can I just ask those dates again. The 12th February.

20 BOZALEK, J: It is something like the 13th to the 27th.

MR OOSTHUIZEN: 13-27. Thank you ...

BOZALEK, J: I think there is a 2-week period, it will be from Monday to Monday – Monday to Friday and Friday's don't – generally are not used for hearing applications in this division
25 so it is Monday to Thursday one week and then Monday to

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Thursday another week. That is the envelope. Yes all right, then we will adjourn until 2:15.

COURT ADJOURNS (at 13:00)

COURT RESUMES (at 14:15)

5 **ORDER**





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Your Reference: Paul Pretorius SC

My Reference: AP/LP

To: Mr. Paul Pretorius S.C.

From: Adrian Pole

Date: 4 October 2018

Memorandum:

Earthlife Africa & Another v. Minister of Energy & Others Case No. 19529/15

We refer to our previous correspondence and your email dated 13 September 2018.

1. Background

This case arose out of concerns by Earthlife Africa – Johannesburg (Earthlife) and the Southern African Faith Communities' Environmental Institute (SAFCEI) regarding the Minister of Energy's and government's pursuit of what would be the largest public procurement ever entered into by South Africa, namely the procurement of a fleet of nuclear reactors generating 9.6GW of electricity. Some estimations suggested the cost would exceed R1 trillion.

The primary concern was that the decision to procure a nuclear fleet had been taken without the necessary statutory and constitutional decisions having been taken in a lawful manner. A series of press statements suggested that the actual procurement process would start in the second quarter of 2015 and be completed by the end of 2015 (this date shifted in various subsequent press statements).¹

At the time the case was launched in October 2015, very little information about decisions relating to

¹ Various press statements (sourced primarily from official government websites) are set out in the Founding Affidavit.

the nuclear fleet procurement programme were in the public realm (save for policy statements, media reports and official government press releases). Additional important information came to light as a consequence of Rule 53 processes during the course of the litigation.

The case can conceptually be divided into two main components:

- *The Agreement on Strategic Partnership and Co-operation in the fields of Nuclear Power and Industry between South Africa and Russia ... ('Russian IGA');* and
- Determinations made in 2013 and 2016 by the Minister of Energy (with the concurrence of the National Energy Regulator of South Africa (NERSA)) in terms of section 34 of the Electricity Regulation Act, 2006 (ERA) relating to the need for and procurement of 9.6GW of nuclear energy ('nuclear s34 determinations').

2. Russian IGA

The decision to table the Russian IGA under section 231(3) of the Constitution formed a central part of the challenge. Tabling the Russian IGA under this provision meant that the agreement became binding on South Africa merely by its tabling. Our clients' contention was that due to the content of and binding commitments contained in the Russian IGA, it should have been tabled under s231(2) of the Constitution, which would have subjected the agreement to a Parliamentary approval process. Parliamentary approval and scrutiny was thus avoided by tabling the Russian IGA under s231(3). The Minister's decision to table the Russian IGA in terms of s231(3) was found by the Court to be unconstitutional and unlawful, and was reviewed and set aside.

As background, some of the interesting features of the Russian IGA include:

- On 22 September 2014 the DOE and Russia's atomic energy agency (Rosatom) both released identical press statements confirming their joint understanding of the agreement, namely that it laid the foundation for the large-scale nuclear power plant (NPP) procurement and development programme based on the construction of Russian VVER reactors with a total installed capacity of 9.6GW.²
- In the face of a public outcry, the DOE and Nuclear Energy Corporation of South Africa (NECSA) subsequently sought to 'clarify' this joint statement, stating that there was no procurement deal

² See Applicant's Founding Affidavit, paragraph A, para 65 onwards, at page 26.

- but a country-to-country framework agreement, and that similar agreements were to be signed with other nuclear vendor countries.
- In response to the Earthlife litigation and Rule 53 process, an explanatory note by the Minister of Energy dated 19 September 2014 was provided. This explanatory note indicates that the Russian IGA had been ready for signature in November 2013 but that signature had been delayed after several [unspecified] technical issues were identified.³
 - A copy of an explanatory memorandum by the state law advisor (on 24 November 2014) was also attached to a draft of the Russian IGA provided in the rule 53 process.⁴ The state law advisor indicated that the Russian IGA 'falls within the scope of section 231(2) of the Constitution and Parliamentary Approval is required'.⁵
 - It was reported in November 2014 that vendor parades hosted by the DOE had been held with a Russian delegation (in October 2014), while similar parades were hosted with China, France, Korea and the US (in November 2014) and Canada and Japan (March 2015).
 - On 30 January 2015 Adrian Pole Attorneys wrote to the Minister of Energy expressing various concerns relating to the Russian IGA and nuclear procurement process, and seeking various assurances. No substantive response was ever received.
 - The content of the Russian IGA had not been made public in South Africa until it was tabled in Parliament in July 2015. However, an unofficial English translation of a Russian version of the IGA was leaked to the press and reported in the media on 13 February 2015.

It may be relevant to note media reports referring to a cabinet sub-committee responsible for implementing the nuclear programme and chaired by former President Zuma; namely the National Nuclear Energy Executive Co-ordinating Committee or NNEECC (subsequently renamed the Energy Security Cabinet Sub-Committee or ESCSC).⁶ This report also makes reference to a recommendation that the DOE be appointed as the procuring agency. Other reports suggested that the nuclear procurement process would be presented to the ESCSC for approval and endorsed by Cabinet.

Decisions to table two other IGAs under s231(3) of the Constitution were also challenged on the basis that these were not tabled within a reasonable period of time. The *Agreement for Cooperation between the Government of the Republic of South Africa and the United States of America concerning Peaceful Uses of Nuclear Energy* (US IGA) was tabled some twenty years after it was signed (in 1995),

³ See paragraph 29 of the Supplementary Founding Affidavit at page 380 of the paginated case record, and Annexure 43.10.

⁴ See paragraph 31 of the Supplementary Founding Affidavit at page 381 of the paginated case record, and Annexure 43.11).

⁵ See paragraph 38 of the Supplementary Founding Affidavit, at page 385 of the paginated case record).

⁶ See for example: <http://mg.co.za/article/2015-02-19-top-secret-nuclear-plan-ducks-scrutiny>.

while the *Agreement between the Government of the Korea and the Government of the Republic of South Africa regarding Cooperation in the Peaceful Uses of Nuclear Energy* (Korean IGA) was tabled about five years after it was signed.

Decisions to table IGAs signed with China and France under s231(3) were not challenged.

3. Nuclear s34 determinations

At the time of launching this case, no nuclear determinations made under s34 of the ERA had been made public. No responses had been received to correspondence (dated 26 July 2015) addressed to the DOE⁷ and NERSA querying (among other things) whether a nuclear s34 determination had been made.

Following a protracted Rule 53 process⁸ calling upon the Minister and NERSA to provide records in relation to the decisions impugned in the notice of motion, the record provided revealed that in late 2013 the (then) Minister of Energy (Mr. Dikobe Ben Martins), with the concurrence of NERSA, had made a nuclear s34 determination. The 2013 nuclear s34 determination had thus not been made public for a period of approximately two years. On 21 December 2015, this nuclear s34 determination was also published in the Gazette.⁹ NERSA also eventually provided its 'record', which included the minutes of a NERSA meeting held on 26 November 2013 at which a resolution was taken to concur with the Minister of Energy's nuclear s34 determination.¹⁰

After close of pleadings, the case was set down (on an expedited basis) for hearing on 13-14 December 2016. In chambers prior to the commencement of the hearing, Mr. Oosthuizen SC (for the 1st and 2nd Respondents) revealed that a fresh nuclear s34 determination had been made by the Minister of Energy (Ms. Tina Joemat-Pettersson) with the concurrence of NERSA, which he had received around noon the preceding day.¹¹ This resulted in the hearing being adjourned to February 2017 (an order was made that wasted costs were to be paid on an attorney-client scale, including the costs of four counsel). A supplementary affidavit¹² was subsequently filed by the Minister of Energy providing background to her 2016 nuclear s34 determination. The decision record was attached to this affidavit,

⁷ See for example Applicant's Founding Affidavit, paragraph 119 onwards, page 52.

⁸ For a summary of the various steps required to secure the 'record' and 'supplementary record' from the Minister of Energy as well as from NERSA, see Part III of the Supplementary Founding Affidavit, at pages 369 - 379 of the paginated case record.

⁹ GN1268 of 21 December 2015. See also Applicant's Supplementary Founding affidavit, paragraph 9 onwards, page 367 of the paginated case record.

¹⁰ See Applicant's Supplementary Founding affidavit page 494 of the paginated case record.

¹¹ See the court transcript included in the DropBox folder (file name: 19529 15 Vol 1 – 13 December 2016.pdf).

¹² See Volume 5A of the paginated case record, at page 1516.

and included the DOE's decision memorandum¹³ as well as a NERSA document confirming NERSA's approval of a round robin resolution concurring with Minister's 2016 nuclear s34 determination.¹⁴ Among other things, this determination designated Eskom (replacing the DOE) as the procurer for the nuclear power plants. As with the 2013 nuclear s34 determination, no public participation process had been followed.

It might be mentioned that while not a party to the proceedings at the time, Eskom acting CEO Mateshela Koko was present at court on 13 December 2016 (Mr. Koko had replaced Mr. Brian Molefe following his 'resignation' in November 2016 in the wake of the Public Protector's 'State of Capture' report). Journalists present advised the writer that Mr. Koko had engaged with them in court at the hearing. Press reports indicate that Mr. Koko stated that Eskom would release its Request for Proposals (RFP) for the nuclear power stations when the determination was gazetted.¹⁵ Eskom were subsequently joined in the proceedings.

The court hearing went ahead in February 2017, with judgment handed down in April 2017. Both the 2013 and 2016 nuclear s34 determinations were found by the Court to be unconstitutional and unlawful, and were reviewed and set aside.

By this time Minister Joematt-Petterson had been replaced as Minister of Energy by Minister Kubayi. On 13 May 2017 Minister Kubayi issued a media statement advising that the Western Cape High Court ruling would not be appealed.

4. November 2017 Application

On 17 October 2017, [then] President Zuma announced a cabinet reshuffle in terms of which Minister Kubayi was replaced by former Minister of State Security, Minister Mohlobo.

On 5 November 2017, Eskom's spokesperson was reported in the media as having stated that if the [revised] integrated resource plan (IRP) showed that the nuclear programme could go ahead, Eskom would begin the tender process immediately. This announcement came at a time when the Minister of Finance had stated that South Africa would not have the money for a major nuclear build programme for at least the next five years,¹⁶ while other statements suggested that Minister Mohlobo

¹³ See Volume 5A of the paginated case record, at page 1546.

¹⁴ See Volume 5A of the paginated case record, at pages 1566-1572.

¹⁵ See for example: <https://www.fin24.com/Economy/Eskom/breaking-eskom-to-release-nuclear-rfp-this-week-koko-20161213> and http://www.engineeringnews.co.za/article/renewables-body-baffled-by-timing-of-nuclear-determination-and-proposed-rfp-2016-12-13/rep_id:4136

¹⁶ Pre-speech briefing to Medium-Term Budget Speech, reported in the media on 26 October 2017.

was fast-tracking the finalising of a revised IRP.¹⁷

In the belief that this line of conduct evinced a clear intention to disregard the requirement that there should be a lawful and procedurally fair s34 determination in place before a procurement process for new nuclear generation capacity commenced, an urgent application was brought in the Western Cape High Court by Earthlife and SAFCEI (assurances had been sought from the Minister, Eskom and NERSA that procurement would not proceed without a lawful and procedurally fair nuclear s34 determination having been made, but were not provided prior to the litigation).

In its responding affidavit, Eskom explained that statements attributed to its spokesperson had been misinterpreted.

The matter was adjourned *sine die* after written undertakings had been obtained from the Minister of Energy and Eskom to the effect that no further steps would be taken towards the procurement of new nuclear generation capacity without a lawful s34 determination having been made.

5. Nuclear Build Programme Costs / Affordability

The cost (and affordability) of the proposed 9.6GW nuclear procurement programme has never been made public, with government (and Eskom) typically taking the view that the true cost would only be known during the procurement process (i.e. once potential vendors provided detailed information on costs).

The nuclear cost estimates relied upon in the IRP2010 were viewed as severely unrealistic (in respect of both construction and capital costs), while the IRP2010 itself acknowledged that further research was required around the costs of decommissioning (at end of life) and management of nuclear waste (in particular spent nuclear fuel).¹⁸

To our knowledge the cost of the programme was thus never included in the annual budget.

A report by the Energy Research Centre (ERC) of the University of Cape Town (commissioned by Earthlife) indicates that there was a 94% chance electricity prices would be higher in 2030 as a result of the proposed nuclear build programme, and that the risks of a negative impact on the economy

¹⁷ <https://www.fin24.com/Economy/mahlobo-instructs-officials-to-fast-track-sas-energy-plan-20171031>

¹⁸ See for example letter to Minister of Energy dated 30 January 2015, with report by Prof. Steve Thomas attached, Applicants' founding affidavit, Annexure PL10, at pages 140-169 of the paginated case record;

were 'high'.¹⁹

6. Other

- In 2011, a 'policy adjusted' Integrated Resource Plan 2010-2030 (IRP2010) was published which included 9.6GW of new nuclear power generation capacity. Various statements by government suggested (erroneously in our view) that the IRP2010 constituted the necessary approval for new nuclear power plants.²⁰
- A draft update to the IRP2010 was concluded during or about 2013, which suggested that an alternative to a fixed capacity plan was a more flexible approach taking into account changing assumptions. In October 2014 Mr. Fikile Majola (Parliamentary Committee on Energy Chairperson) was reported in the press as having said that the IRP2010 update would not see the light of day.
- On 12 October 2017 the Department of Environmental Affairs granted environmental authorisation for the construction and operation of a nuclear power station and associated infrastructure at Duynefontein (adjacent to the existing Koeberg nuclear reactor site). This authorisation is currently under administrative appeal. The EIA process commenced prior to 2000, and reliance was placed on the IRP2010 as the 'departure point' justifying the need and desirability for the proposed new nuclear power station.
- A number of media reports indicate that Oakbay Resources is the majority stakeholder in Shiva Uranium. It has been reported that it was sold to Oakbay by Uranium One, said to be a subsidiary of Russia's Rosatom.²¹ Media speculation was that this mine would become highly profitable if it became the uranium supplier to South Africa's proposed nuclear reactor fleet.
- A fairly in depth overview of some of the reported links between President Zuma, the Guptas and the Russians has been published.²²
- Media reports in September 2016 indicate that South Africa's 'first contract for the nuclear build programme' was secured by Mr. Shantan Reddy, a son of Mr. Vivien Reddy (reported to be a close friend of former President Zuma). This contract, reported to be worth as much as R171million, was for the procurement of a nuclear build programme management system.²³ This

¹⁹ Energy Research Centre, 2015 *South Africa's proposed nuclear build plan: an analysis of the potential socio-economic risks*. Technical Report, University of Cape Town, November 2015, available online at: http://www.erc.uct.ac.za/sites/default/files/image_tool/images/119/Papers-2015/15-ERC-Nuclear_build_plan_Technical_report.pdf

²⁰ See for example Applicant's Founding Affidavit, paragraph 56, page 30 of the paginated case record.

²¹ <https://businesstech.co.za/news/government/124993/zuma-the-guptas-and-south-africas-r1-trillion-nuclear-plans/>

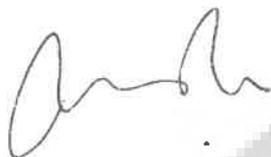
²² <https://www.businesslive.co.za/rdm/politics/2017-01-18-zuma-the-guptas-and-the-russians--the-inside-story/>

²³ See for example: <https://mg.co.za/article/2016-09-16-00-zuma-pals-clinch-first-nuclear-deal> and <https://www.timeslive.co.za/politics/2017-08-23-nuclear-contracts-flagged-as-irregular/>

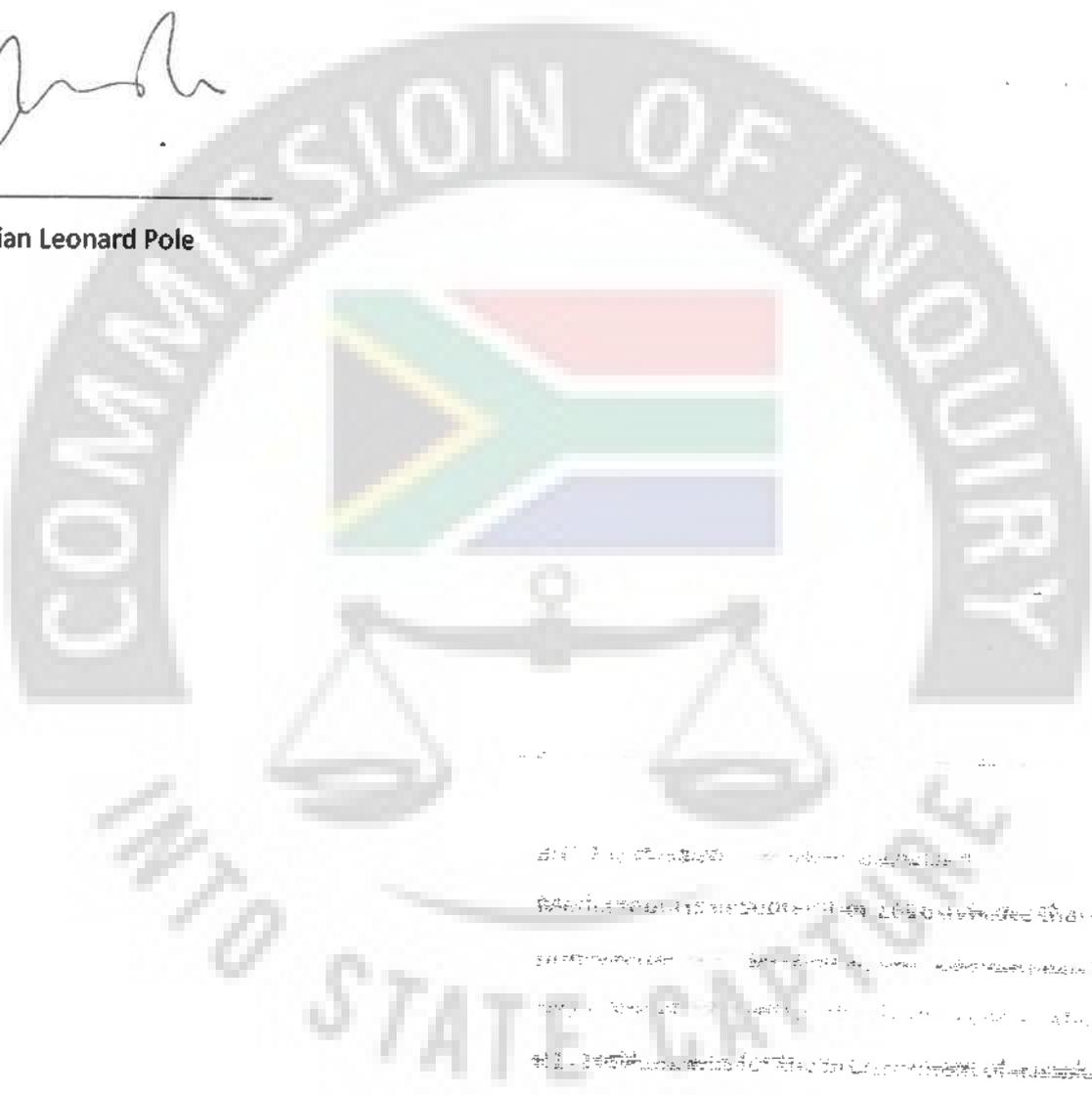
contract is also referred to in the DOE Portfolio Committee on Energy's *Report of the Nuclear New Build Programme Procurement of sixteen (16) Service Providers (29 November 2016)*.²⁴

We hope that the above is of assistance to the Commission. Should the Commission require any further information or clarification, please do not hesitate to contact us.

Yours sincerely



Adrian Leonard Pole



²⁴ <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/161129report.pdf>



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2 February 2016



Part 1: In pursuit of satisfying his insatiable greed — Jacob Zuma will liberate us from our constitutional democracy, and destroy the chance of a 'better life for all'

FOUL PLAY

On 9 of December 2015 president Jacob Zuma fired finance minister, Nhlanhla Nene. In his place he installed David van Rooyen, a treasury outsider of little reputation[1], and who — when mayor of the Merafong city local municipality — had his house fire-bombed before being chased out of town by the incensed residents[2] [3]. The question remains of why did Zuma do it, or as someone caught up in the whole intrigue exclaimed, "What the f**k is going on here?"[4]

With the assistance of an "outside hand" and a patronage network, Zuma has been strategizing for years — from the nuclear procurement programme, to South African Airways (SAA), to the obstruction of our rights and freedoms, to castle-in-the-sky voter promises. Each time, ratcheting-up the pressure and moving his players into position.

Below exposes Zuma's game-plan, from ignoble start to dictatorial end, and the multitude of fouls in between.

PART 1: CORRUPTION GOES NUCLEAR

I wish to make it clear from the outset that this piece is not about arguing the merits or demerits of nuclear energy. It is whether Zuma's decision for nuclear energy is based on sound economic principles for the good of the country, or for some other purpose.

Zuma's (rabid) pet project

On 9 of December 2015 (and hours before Nene was fired), Zuma's cabinet approved the 9 600 MW nuclear procurement programme (nuclear programme). This paves the way for nuclear vendors to present proposals in March

2016 to build 6 to 8 nuclear reactors, at an estimated cost of between R800-billion and R1.6-trillion (\$50-billion to \$100 billion)[5] [6] [7].

The nuclear programme, however, glows with controversy. According to Peter Attard Montalto (an emerging market economist at Nomura), the nuclear programme is Zuma's "pet project", and is highly interwoven with politics and the succession issue[8]. His analysis is supported by a Mail and Guardian [M&G] source who said that the programme was regarded as one of Zuma's "presidential legacy projects" [9]. Professor William Gumede, of Democracy Works, added that the programme is being implemented essentially from a purely patronage point of view[10]. While Andrew Feinstein, executive director of Corruption Watch UK (and former ANC MP), said simply, "I fear that the corruption in this deal might dwarf the arms deal" (News24)[11].

A nuclear procurement process in a constitutional democracy should be transparent, logical, considered, legal, participatory, and unbiased.

Yet Zuma has assumed personal control of the nuclear programme, and it has been characterised by: secret meetings; undisclosed documents and classified financial reports; deceit; aggressive campaigning; damage control exercises; illegality; use of apartheid ('national key-point') legislation[12]; sidestepping of Eskom's technical and financial oversight; destruction of oversight organs of state; disregarding of industry experts; refusal of public consultation; ignoring of the ANC's national executive committee (NEC) and ANC resolutions; and the removal of any government opponents, the most notable of whom was Nene.

From Russia with love of all things nuclear

Russia is Zuma's "preferred partner" for the 9 600 MW nuclear build, according to energy experts, analysts and journalists. He has had numerous personal negotiations (some undisclosed) between 2009 and 2014 with his Russian counterparts — Vladimir Putin and Dmitry Medvedev[13] — and within that time two agreements were signed (and both concealed from public scrutiny[14] [15] [16]).

Should the nuclear programme go ahead as Zuma and his benefactors have planned, Rosatom — Russia's state-owned nuclear company — will build the nuclear power plants.

Rosatom consists of 360 companies, with 34 reactors in operation, and 29 under construction, including nine in Russia [M&G][17]. It is a nuclear mass production machine designed and dependent on worldwide nuclear energy expansion and domination[18].

Over the past five years, Rosatom has quietly cornered the market in nuclear energy, systematically seeking out agreements and contracts with roughly 30 nations interested in the installation of nuclear power plants. According to Global Risk Insights, Russian-built nuclear power plants in foreign countries become more akin to embassies — or even military bases — than simple bilateral infrastructure projects. The long-term or permanent presence that accompanies the exportation of Russian nuclear power will afford president Vladimir Putin a notable influence in countries crucial to regional geopolitics[19] [20].

Vladimir Sliviyak (senior lecturer on Environmental Policy at the Russian National Research University and part of a Russian organisation called Eco Defence) stated that Rosatom is a cross between a state organization and a private-owned company. It is, in essence, a “state within the state,” functioning under no one’s control but its own[21]. Consequently, it is nothing short of a breeding ground for abusive practices, said Sliviyak.

In 2010, Ecodefense and Transparency International (Russia) conducted a study into Rosatom and found that 83 out of 200 (41%) of Rosatom’s purchasing contracts had violated the company’s own procurement rules. Several years after the study was published more than 300 Rosatom employees were fired over corruption allegations, several cases involving top officials (reports Sliviyak)[22].

Recently, a director of Rosatom’s fuel supply arm — which supplies almost half of the enriched uranium fuel used at Koeberg (thanks to a deal struck by Zuma) — was arrested by the FBI [Fin24][23]. In September 2015 the director pleaded guilty to charges of conspiracy to commit money laundering and for facilitating \$2-million bribes[24]. As of writing, he is still to be sentenced, but could face up to 28 years in prison[25].

Sliviyak concludes that “With vast resources and solid state support at its disposal, the Russian nuclear industry remains under almost no external control. The lack of transparency, widespread corruption, failure to demonstrate high levels of safety, and the unresolved waste and decommissioning issues must be of high concern to any potential customer of Rosatom’s on the international market.”[26]

Radioactive idea goes rogue

To and try grasp the scale of the nuclear programme, the initial costs of the controversial arms deal announced in 1999 was only about 13% of the year’s budget. By contrast, the nuclear programme — at an estimated maximum cost of R1.6-trillion[27] — equals approximately 100% of 2015’s total budget and a third of our gross domestic product (M&G’s amaBhungane)[28].

The National Union of Mineworkers (NUM) — an affiliate of Cosatu — described the energy investment as “national suicide”[29].

And the figures exclude the cost of delays (and a depreciation rand). Nuclear plants can be completed in as little as four to six years[30], yet it took an average of 13.8 years to finish the reactors that were completed in 2011[31]. And as of July 2015, 75% (47) of all nuclear building sites globally are delayed, often by years.[32]

Questions have also been raised as to Russia’s ability to fund its overall worldwide nuclear projects.

World Nuclear Association strategist Steve Kidd said that it was highly unlikely that Russia would succeed in carrying out even half of the projects in which it claims to be closely involved. While a world nuclear report by two independent international energy consultants concludes that, “the lack of realism and overblown market expectations drive nuclear companies and traditional utilities into ruin”[33]. This may explain why rating agencies consider nuclear investment risky and the abandoning of nuclear projects explicitly ‘credit positive’[34].

Slivyak, speaking on South Africa's \$100-billion nuclear programme, said that even at better times, Russia has never funded foreign reactor construction with anything close to this amount [Fin24][35].

Montalto maintained that treasury under Nene found initial evidence that the 9 600 MW deal was unaffordable [Business Day and Fin24][36]. In fact, the energy department's own updated Integrated Resource Plan (IRP2013) concluded that the nuclear programme should be "delayed"[37] until at least 2025 and even until 2035[38] [39], and should be "abandoned" altogether if costs exceeded \$6 500/kW[40]. (Costs were estimated in July 2015 to be about \$8 000 per kilowatt installed, by Prof Steve Thomas[41] [42] [43]— and these are just for "overnight costs", which excludes finance, insurance, operational costs, conversion and enrichment, fuel manufacture and substitution, waste disposal and decommissioning[44]).

The government's IRP2013 findings were confirmed by international consultants at KPMG and Deloitte, who were commissioned by the energy department (but whose findings were withheld from the public as being classified)[45]. Moreover, independent energy experts (at UCT's Energy Research Centre; the CSIR; and the University of Stellenbosch) concluded that the nuclear technology is not needed, as there are viable alternatives[46].

Before Nene's firing, he told Business Day in an interview that he would not sign off on the nuclear power deal if it was unaffordable, and would not be swayed by political meddling[47].

Like Nene, Pravin Gordhan — as newly appointed finance minister — stated that the nuclear procurement would go ahead only if it was "affordable" [48].

Nevertheless Russia will tailor-make its procurement proposal so that it seems attractive, such as a 20 year loan repayment agreement, at low interest rates, and a grace period such that South Africa only begins to pay once a nuclear plant is operational. However, the costings will exclude delays, inflated prices from tenderpreneur practices, rand depreciation, insurance costs, operational costs, conversion and enrichment, fuel manufacture and substitution, waste disposal and decommissioning[49].

Steve Thomas (energy policy professor at the University of Greenwich Business School UK - who has monitored South Africa's nuclear plans since 1997) said that the South African government was not alone in being misled by uncritically accepting over-optimistic cost forecasts made by nuclear proponents[50].

A law unto oneself

Montalto maintains that if Zuma's cabinet approved the 9 600MW programme without national treasury cost-benefit analysis and affordability sign off, it is an illegal move under the Public Sector Finance Management Act [Fin24][51].

It would also be in direct conflict with the ANC's National Development Plan (NDP) [52] and ANC 2015 national general council resolutions, both which stipulated that it was vital an in-depth cost-benefit investigation into the financial viability of nuclear energy was performed, including a re-assessment of such a programme, and that "Government must also announce publicly that nuclear energy can only be procured in line with the legal prescripts"[53].

Policy makers have also expressed grave concern over a 2014 signed agreement between Russia and South Africa (which was leaked to the media by Slivyak)[54] [55]. It is said to contain clauses that are against our country's national interests, is in conflict with our constitution, and leans heavily in Russia's favour.

Over and above that, the project as it stands threatens our country's sovereignty, since our energy supply will be solely in the hands of Russia, which Allister Sparks describes as a country with "one of the world's nastiest dictatorships" [Business Day][56].

Gordhan, after being newly appointed as finance minister, stated that the nuclear programme would only go ahead if it was not only affordable, but that the formal procurement process would be in accordance with South African law [57]. As shown above, that pirate ship has already sailed.

Who Benefits?

Will the nuclear programme at least result in cheaper electricity?

Based on findings from the Council for Scientific and Industrial Research (CSIR), the (levelised) cost of electricity from nuclear power is 25% more expensive than new coal or solar photovoltaic, and 67% more expensive than wind [Fin24] [58]. Columnist Allister Sparks wrote that the nuclear programme would result in 10 to, maybe, 50 times higher electricity costs than we are paying now [Business Day][59].

UCT energy policy expert Hilton Trollip said the government's rush to sign a nuclear deal is unnecessary and unwise as South Africa did not need 9 600 MW of new baseload power by 2025. Trollip said, "That is nonsense. There are alternatives. We did recent modelling which shows that we can have a growing mining and minerals economy without nuclear power."[60]

The question then arises, if South Africans won't benefit from the nuclear programme, who will?

A report by independent researcher Brenda Martin and an African Energy scholar, Dr David Fig, noted in July 2015 that Zuma is a firm advocate of nuclear power supply and has made it clear since 2010, that nuclear power investment in South Africa is non-negotiable, and that all necessary actions should be taken to ensure realisation of a new nuclear power programme[61].

Below exposes the reasons why Zuma is so hell bent on forcing the Russian 9 600 MW programme through, irrespective of: the evidence against it (from independent and government sources); the laws that stand in his way; the people that advise against it; and the grave concerns of his own party.

Radioactive plant-feed

Nuclear reactors require uranium to function, in particular low-enriched uranium (LEU). But first one must mine the uranium, and for South Africa's 9 600MW nuclear programme, plus the existing Koeberg Nuclear Plant, the demand for

uranium would steadily increase as the nuclear power plants come online. Luckily South Africa is said to have 6% of global identified resources of uranium (or 970 000 tons), the seventh highest share in the world [OECD-NEA, 2013][62].

With a 9 600MW nuclear deal, local uranium reactor demand would grow from the current 290 tons of Uranium (U) per year, to eventually 3300 U per year, once all the reactors are operational [OECD- Nuclear Energy Agency, 2014][63]. That's a dramatic 11 times increase in local demand for uranium.

And as it just so happens, in 2010 the Guptas (a family well-known for their backing of Zuma), along with Zuma's son, Duduzane, emerged as buyers of a South African uranium mine — the Dominion Rietkuil Uranium Project — amid claims that Zuma intervened to ease state funding for the project (according to amaBhungane - M&G's investigative arm)[64].

[For summaries of the Guptas' influence with Zuma and his family, read Verashni Pillay's 2013 M&G article, or Franz Wild's 2015 Bloomberg article. There are also excellent standalone articles on the Guptas dealings with the state, such as the Sunday Times piece by Sabelo Skiti on how Eskom allegedly went to extraordinary lengths to make sure the Gupta family landed a R4-billion coal deal, or M&G's amaBhungane articles on a former Gupta associate allegedly involved in R835-million Transnet kickbacks]

All mine

Uranium One Incorporated (Uranium One) — a public company in Canada — owned a number of uranium mines around the world, including a uranium and gold mine in the North West province, South Africa[65] [66]. The local mine was called the Dominion Rietkuil Uranium project, which proved to be a disappointment to the company and so it was mothballed in late 2008.

Uranium One's global uranium holdings attracted the attention of Rosatom, which from 2009 onwards began buying up the company's shares through one of its many wholly-owned subsidiaries. (Rosatom would eventually indirectly secure 51% ownership of Uranium One in 2010, and 100% in 2013, after which it was delisted[67][68].

As Rosatom (through its subsidiary) was buying into Uranium One, the company sold the South African Dominion Rietkuil Uranium project. Reporters picked up on Uranium One's "low-key announcement" in April 2010 of the sale of the mine to an undisclosed party[69] [70]. The mine was sold for \$37.3-million, at a loss to the company of \$242-million (based on the company's interim financial statements)[71]. Thus the mine was sold for about 14% of its reported value.

One month later, in May 2010, the media got wind that the mine — which would come to be known as Shiva Uranium — was bought by Oakbay Resources and Energy Limited (a Gupta-controlled company) together with minority shareholders, which consist of companies within companies (like a Russian nesting doll), including indirectly the ANC's MK war veterans and its women's group[72], and the black economic empowerment group Mabengela Investments (Mabengela).

Mabengela is headed by Zuma's son Duduzane and Rajesh "Tony" Gupta (the youngest of three Gupta brothers). 45% of Mabengela is owned by Duduzane Zuma; 25% by Rajesh "Tony" Gupta (the youngest of the three Gupta brothers);

20% by an array of Gupta employees, former business partners and friends; and the last 10% is owned by an obscure offshore company, with its sole owner a Dubai resident with discernible traces in South Africa[73] [M&G]. The M&G wrote that Mabengela appears to be the vehicle for the Zuma family's empowerment by the Gupta family[74].

(The North West province — where the mine is situated — is governed by Supra Mahumapelo, the province's premier, and he is said to be a member of the so-called "premier league", which consists of premiers loyal to Zuma. The other premier-league provinces are the Free State and Mpumalanga[75]. For the 2014/15 period, the auditor-general found the number of "clean audits" — that is, financial statements that present a fair and accurate picture and comply with accepted accounting principles — for the departments and public entities in Mpumalanga and the North West came to 24% and 4% respectively, while 32% of the Free State's audits were deemed clean[76] [77]. This excludes financial statements by departments not submitted on time, or at all[78].

amaBhungane and the Sunday Times uncovered that the Guptas had expected the Public Investment Corporation (PIC) to facilitate funding for the Uranium mine purchase. (The state-owned PIC is the country's largest institutional investor, with more than R750-billion — as at 2010 - in civil servants' pensions under its management[79]).

Brian Molefe, the then chairman of PIC, was set to leave in April 2010 when his contract expired. However Molefe's last day on the job would have been 12 April — two days before the Dominion Rietkuil transaction was finally clinched. The Sunday Times uncovered that Zuma had phoned the then deputy finance minister Nhlanhla Nene — who doubled as PIC chairperson — during the week preceding 12 April to ask that Molefe be kept on. A source confirmed that Zuma had asked Molefe to stay on, and so he did, and his contract was extended for a further three months.

M&G reported that it had seen internal documentation showing that the PIC was intimately involved in the Shiva Uranium project, and that a PIC employee at the time said Molefe pushed for the project, but the investment committee eventually rejected it as too risky[80].

However, the Industrial Development Corporation (IDC) was less perturbed by the risk, and provided the loan.

After the Guptas had succeeded in allegedly lobbying Zuma for his assistance, the IDC loaned Oakbay Resources and Energy (Oakbay) R250-million for the purchase price of R275-million (April 2010 R/\$ exchange rate for \$37.3-million) [81]. The Gupta family effectively owns 64% of Oakbay[82] [Business Day], and Oakbay obtained a 74% stake in Shiva Uranium[83] [84]. The Gupta family, in March 2011, said that it never benefited from BEE, but had sponsored BEE deals [City Press][85].

Later, when Oakbay listed on the Johannesburg Stock Exchange (JSE) in November 2014, the IDC received a 3.57% share of the company in exchange for the R250-million loan[86] [City Press]. Based on the company's February 2015 net assets (instead of using the company's market cap, which is "way off kilter" [87]), IDC's 3.57% shareholding equates to R182-million, giving Oakbay a discount on its loan of at least R68-million[88] [89] [90] [M&G calculations updated to Feb 2015]. There are also more than R300-million interest charges on the loan that is payable by 2018 [City Press][91].

(The IDC is a state-owned development financier set up to stimulate industry and create jobs. Thus each loss on an investment means it is less able to fulfil its mandate on behalf of all South Africans [M&G][92]. The activity of the IDC

centres on, amongst other policies, the National Development Plan, which has advised caution and reassessment of the nuclear programme.)

At the time of the purchase of the Dominion Rietkuil Uranium mine, journalist Brendan Ryan [Fin24] pondered, "Who in their right mind would buy one of the most notorious dogs in the entire South African mining sector — the failed Dominion Uranium mine — and do it at a time when uranium prices are still depressed? That's the \$64 000 question following news that the Gupta family — the ultimate controlling shareholder in Shiva Uranium — has bought Dominion for \$37.3-million. It's either the steal of the century — given that developers Uranium One wrote off an investment of \$1.8-billion when they shut Dominion down in October 2008 — or it's a classic case of throwing good money after bad." [93]

Unbeknownst to Ryan, at the time, was that Zuma and his benefactors had set the course for a large-scale nuclear programme.

Atomic timeline: 2000 to 2010

In the early 2000's, Zuma — then South African deputy president — met the Guptas for the first time, as a guest at a business function held by a Gupta company, Sahara Computers [94].

In 2005, during the power struggle between Zuma and Thabo Mbeki for the presidency, the Guptas were said to have sided with Zuma, even after he had been fired as deputy president. The Guptas had tried to court Mbeki, but did not get far. (The Guptas claim that they were friends with Mbeki as much as they are friends with Zuma). The Guptas don't mind telling whoever cares to listen that they were there for Zuma when his days were dark [Business Day] [95].

Early in 2007, Eskom approved a plan to expand South Africa's overall electricity capacity by the year 2025. The plan included the construction of 20 000 MW of new nuclear capacity, consisting of up to 12 nuclear reactors. France's Areva and the United States' Westinghouse were contenders [96].

In December 2007, Zuma was elected as ANC president [97].

Six month's later, in June 2008, Duduzile and Duduzane, Zuma's daughter and son joined the board of the Gupta-controlled company, Sahara Computers [98] [99]. (Duduzile resigned from the position in 2010 [100]. Duduzane and Gupta family members are directors of at least 11 of the same companies, as at December 2015 [Timeslive] [101].)

In September 2008, Mbeki resigned as South African president.

In December 2008, Eskom abandoned the 20 000MW nuclear plan for being unaffordable in the wake of the 2008 global financial crisis and the renewed appreciation for coal production [102] [103] [104] [Professor J. van Wyk of Political Sciences]

Zuma was inaugurated as South African president in May 2009. In November 2009, the Guptas' formed a new company, which would come to be known as Oakbay Resources and Energy Limited[105](Oakbay).

One month later, in December 2009, Zuma declared at the United Nations Climate Change Conference in Copenhagen that South Africa was going to reduce its carbon emissions by 34% by 2020[106]. His announcement took both local and international commentators by surprise, but it revealed Zuma's nuclear ambitions.

Four months after that, in April 2010, the Guptas, Duduzane Zuma, and other investors bought the mine - soon to be called Shiva Uranium — with Zuma allegedly ensuring state assistance. The Guptas and Duduzane then jumped into action, refurbishing the uranium and gold plant "very aggressively"[107] to make the plant operational for production. They also possessed due diligence studies and a comprehensive bankable feasibility study (a document required to raise capital)[108] [109].

A couple of months later, in June 2010, the Guptas accompanied Zuma on his first state visit to India (the Gupta's original birthplace, and where some of their family members are still based[110]). It was an important trade meeting, intended to entice investment in South Africa. However, the Guptas appeared to have acted as gatekeepers for Zuma on the trip. At one banquet ... Zuma made it clear that interested investors had to go through the Guptas, prompting several high-powered businessmen to leave in disgust". One businessperson told the M&G at the time, "It was clear that the family wanted to use Zuma to establish connections for themselves." [Verashni Pillay's 2013 M&G article][111].

In August 2010, Zuma met with his Russian counterpart, Dmitry Medvedev, during his first official visit to Russia. Zuma was accompanied by 11 cabinet ministers and more than 100 South African business people[112].

During the trip, Zuma concluded a deal with Medvedev for Rosatom to supply 40% of Koeberg's enriched uranium needs until 2017 to 2018[113] [114]. The Head of Rosatom told reporters that the company hoped to eventually control 45% of the low-enriched uranium (LEU) market in South Africa[115]. "Our share of the market in South Africa will rise," he said.

Atomic timeline: 2011 to 2013

In January 2011, the CEO of Shiva Uranium said, "We're looking at very shortly starting up the uranium processing plant" [Bloomberg].[116] By February 2011 Shiva produced 1.4 tons of elemental Uranium (U)[117] [118] (or 0.25% of South Africa's yearly uranium production[119]).

In March 2011 Zuma's cabinet approved the Integrated Resources Plan (IRP2010) 2010-2030, which was a 20 year road map, outlining the mix of the country's future electricity generation, which included the need for 9 600 MW of nuclear power[120] [121] [122]. That same month the Gupta-Zuma plan hit a wall, or more specifically a tsunami hit Japan, causing the Fukushima Daiichi nuclear plant disaster. As a result, the South African government put its nuclear programme on hold pending a nuclear safety review[123] [124].

In April 2011, Russian president Medvedev and Zuma meet in China's Sanya City while attending a BRICS summit. This was the first time South Africa was taking part in the forum[125].

Two months later, in July 2011, the two presidents held talks at a luxury spa in Sochi, on the side-lines of a Russian-Nato council meeting. The content of the talks is unknown[126].

In September 2011, the energy department submitted its nuclear tender proposal to the cabinet, and the then energy minister said it would finalise the proposal before the end of the year. Bidding was said to begin in 2012[127].

At the end of 2011, the OECD Nuclear Energy Agency made puzzling findings on Shiva's activities, stating that beside the initial 1.4 tons of uranium in February 2011, "no [more] information is available on 2011 production."

As for 2012, The OECD-NEA found that, "Shiva did not produce uranium in 2012 and no information on the reasons for not producing uranium as planned are available. It is also not known when uranium production will resume[128]."

In March 2013, Russia's Rosatom opened offices in Johannesburg. The nuclear company said at the time that it had not yet decided if it would pursue nuclear energy production in South Africa or other African states. (According to the International Atomic Energy Agency, Nigeria, Kenya and Egypt were considering nuclear technology[129]).

That same month, Zuma and Putin met before a BRICS summit in Durban, and again two months later, in May 2013, at the Black Sea resort of Sochi. Engineering News reported that the then energy minister, Dipuo Peters, held talks with the director general of Rosatom during the Sochi visit, and Russian news agencies reported that nuclear co-operation was discussed at presidential level too[130]. (Peters had successfully led the procurement of renewable energy from independent power producers, before being removed in a cabinet shuffle in July 2013, and replaced with Ben Martins. [131])

In July 2013, Zuma took control of the inter-ministerial National Nuclear Energy Executive Co-ordinating Committee (NNEECC), by replacing its Chair, deputy president Kgalema Motlanthe, with himself. The NNEECC guided all spheres of government that had a stake in the nuclear programme[132] [133]. The M&G reported at the time that Zuma's move was not widely known, and took well-placed industry insiders by surprise[134].

In November 2013, in the run up to the Atomex African Forum, Russia's state-owned news agency reported that Rosatom is "to build eight nuclear electricity units [9 600 MW] in South Africa. Formal agreements about this are to be signed....on the fringes of Atomex[135]." It had been suggested that Rosatom embarrassed South Africa by letting the cat out of the bag about the reactor deal before the government was ready to make an announcement (M&G)[136].

At a G20 Summit and at Atomex, in September and November 2013 respectively, the Russians became increasingly impatient, and were said to have pushed Zuma "aggressively" for the signing of the nuclear agreement[[137] [138].

The M&G uncovered that Zuma in turn appealed to finance minister Gordhan at the G20 Summit to make the necessary financial commitments needed to conclude the Russian nuclear deal. Gordhan apparently declined and warned Zuma such a step would be unwise[139].

Montalto said Gordhan had always objected to the nuclear programme, due to the cost and the possibility of corruption[140].

On 21 of November 2013, the energy department released its revised Integrated Resource Plan (IRP2013), which advised that South Africa should delay its nuclear plans until at least 2025 and even 2035[141], and abandon it altogether if it proves too expensive. The revised findings were — and still are — ignored by Zuma and his cabinet.

On 25 of November 2013 — four days after the IRP2013's release which advised the delay of the nuclear build — the then minister of energy Ben Martins acted as witness to the signing of an agreement between Rosatom and the South African Nuclear Energy Corporation (Necsa), which gave the energy department the go-ahead to procure 9 600MW of nuclear power from Russia[142]. (A government gazette noting the agreement was only published two years later in 2015, quietly sneaked through on the eve of Christmas [Rand Daily Mail][143], and a couple of weeks after the firing of Nene).

Atomic timeline: January to October 2014

In Zuma's State of the Nation address in February 2014, he said, "We expect to conclude the procurement of 9 600MW of nuclear energy." [144]

In May 2014, Zuma announced his new cabinet, including a shock transfer of Gordhan as finance minister to a lesser portfolio, and replacing him with the low profile but respected Nene[145] [146].

Zuma also appointed a new energy minister, the "political lightweight" Tina Joemat-Pettersson. M&G reported at the time that her appointment sparked the strongest reaction, ranging from concern to absolute outrage — "particularly in light of the possibility that a nuclear build, involving trillions of rands in tenders, may be on the horizon", and that "poor decisions will result in problems that will dog the country for 30 or 40 years to come and have huge economic impact"[147].

In July 2014 Zuma met with Putin at a BRICS summit in Brazil. A month later, in August 2014, Zuma flew to Russia for a six day visit; this was his fifth trip to the country. Both Russian and South African journalists were surprised by the visit[148]. It was called a "working visit", but strangely, Zuma was only accompanied by an international relations deputy minister and, curiously still, the state security minister. The delegation did not include any of cabinet's economic cluster, despite the reason for the trip being to discuss trade and investment between the two countries[149] [150].

TimesLIVE noted at the time that Zuma and Putin had become pretty close, meeting at every available opportunity (four times in 15 months). The newspaper pondered what benefit Zuma derived from his relationship with Putin, and that trip specifically [151].

In September 2014, Zuma made himself chair of the cabinet's energy security subcommittee (which Zuma had established a few months earlier to replace the NNEECC.) The Subcommittee was led by the minister of energy Joemat-Pettersson. This then sidestepped Eskom as the owner and operator of the nuclear fleet[152], and excluded

any technical and financial oversight by them [Business Day], while also neutralising minister of public enterprises Lynne Brown, who is more sceptical of the nuclear programme [M&G][153].

The stage was thus set for an opaque "country-to-country" negotiation process, without the necessary participatory checks and balances [M&G].

On 22 of September 2014 a joint media release by Rosatom and the South African government announced that the two countries had signed an intergovernmental framework agreement[154] which laid the foundation for the large-scale nuclear power plants procurement and development programme of South Africa, based on the construction of new nuclear power plants with Russian VVER reactors with total installed capacity of up to 9 600MW (up to 8 nuclear power plant units)[155].

The media statement goes on to quote Joemat-Pettersson as saying. "I am sure that co-operation with Russia will allow us to implement our ambitious plans for the creation by 2030 of 9.6 GW [equal to 9 600MW] of new nuclear capacities based on modern and safe technologies."

The announcement caught politically nuclear lobbyists, industry insiders, as well as the ANC's own NEC all off guard [M&G]. And there was such an outcry over Russia's unfair advantage that the energy department tried to downplay the agreement and instituted damage control by asking other vendor countries for agreements, including the USA, South Korea, France, Japan and China[156]. Nonetheless, Hartmut Winkler, Professor of Physics, University of Johannesburg, stated that the perception remains that the Russian nuclear developer Rosatom had already been assured of its front runner status[157].

The agreement (which was leaked to the media in January/February 2015 by Slivyak) showed that Russian technology would be used exclusively for the 9 600MW deal and that it appeared to be written to sidestep constitutional requirements for open and competitive tendering [M&G][158].

Prof Winkler wrote (in 2015) that "The speedy and secretive manner in which government initiated a process with massive and long-term cost implications, and the inexplicable decision to declare Russia as a preferred partner ahead of other potential options, immediately led to intense suspicion of corruption." He went on to say that the nuclear build became labelled as an arms deal "on steroids" [159].

Atomic timeline: November 2014

From 2012 to November 2014, the Shiva Uranium mine operated under management allegedly without up-to-date permits for many of its environmental impacts [M&G][160]. Its signboards on the property became bleached almost illegible by the sun, and the anticipated jobs for the local residents never materialised[161]. The company funded the care and maintenance of the plant through open-pit gold mining[162].

On 28 of November 2014, three months after Zuma's "working visit" to Russia, and two months after the nuclear SA-Russia cooperation agreement was signed, Oakbay listed its shares on the Johannesburg Stock Exchange (JSE)[163]. (JSE's listing time frame is normally about two to three months)[164].

City Press wrote that no matter the declarations of innocence, the timing of the Oakbay listing and the discussions around the state's massively contentious trillion-rand nuclear build programme saw eyebrows meet hairlines among jaded South Africans[165].

In Oakbay's press statement, the then CEO George van der Merwe declared that it was an opportune time to list given the strong global uranium market and Shiva's turnaround under Oakbay. He said, "Demand for uranium is generally driven by nuclear power plants. With 439 in operation worldwide, 62 under construction and 465 more in planning, the market is wide." The statement added that current uranium production lags consumption (190 million pounds pa) by 50 million pounds[166] [167]. (The figures also appear in the company's pre-listing statement.[168])

It may be coincidental, but the number of nuclear power plants and pounds of uranium he quotes to justify the timing of the company's 2014 listing, as opposed to doing it sooner, matches precisely that of an article written by Virginia Uranium Inc in 2011/12 (article link) — nearly three years prior to Oakbay's listing. (Even so, the numbers could be confused since they have changed relatively little from 2012 to end 2014[169] [170].) There is one numerical difference between the two sources, though — where van der Merwe refers to a 50 million pound lag in uranium production versus consumption, the article concurs but adds that for that period the difference was made up by secondary sources. (The article goes on to say that those secondary sources will drop by 50% over the next decade, while global demand is expected to increase, widening the supply-demand gap.) According to figures by Morgan Stanley research in December 2014, there was global oversupply from 2010 to 2013 and an estimated oversupply for 2014[171].

At the end of 2014 when Oakbay listed, Nuclear Engineering International and Morgan Stanley stated that there was a uranium oversupply, which was forecasted to continue through the year 2020[172][173]. (To illustrate with a more recent example, Cameco Corp. the world's second-largest uranium producer, reported lower adjusted quarterly earnings in October 2015, "as an oversupply in the market continued to affect demand and price."[174]). The oversupply has led to significant stock build-up in Japan (with a 6 year stockpile)[175] and China (with a 10 year stockpile)[176] that could reduce future demand growth. Local producer Sibanye Gold (Oakbay's only publicly listed rival for uranium and gold production) has also been stockpiling its uranium[177].

David Sadowski, a mining analyst with Raymond James, said in July 2014, "For years now, analysts have been touting the uranium supply shortage, but looking at the current market, that prospect no doubt seems laughable."[178] (He added that the supply deficit that was once expected to hit the market in 2018 has been delayed until 2020 at the earliest.)[179]

So it appears somewhat doubtful that the number of reactors worldwide and overall uranium demand can be attributed to the timing of Oakbay's listing.

In Oakbay's November 2014 pre-listing statement, it referred to the nuclear programme thus, "The South African government has developed a master plan for the roll-out of a nuclear build plan and has commenced signing co-operation agreements with various countries with nuclear expertise. Should this plan commence, there will be a local demand for uranium in addition to the increased international demand for the commodity."[180]

(Varun Gupta would later caution — in 2015 as the new CEO — against linking Oakbay's operations and the SA nuclear programme, saying that Shiva Uranium would be producing uranium within about two years, whereas SA's new nuclear power would only come on stream several years later[181].)

CEO van der Merwe said in November 2014 that it expected an increase in [global] demand for uranium, and so had begun the process of commissioning a definitive feasibility study on its mineral deposits with a view to raising R800-million, and anticipated the study to be completed in 12 months' time[182].

Atomic Timeline: January to August 2015

In Zuma's State of the Nation Address in February 2015, Zuma reiterated, "Government is also exploring the procurement of the 9 600MW nuclear build programme as approved in the Integrated Resource Plan 2010-2030" [183] (Once again he ignores the revised IRP2013 findings). He added that, "Our target is to connect the first unit to the grid by 2023, just in time for Eskom to retire part of its aging power plants."

Also in February 2015, M&G reported that the board of the South African Nuclear Energy Corporation (Necsa) — which is a state-owned entity that is earmarked to drive the nuclear programme's local skills development and industrialisation plans - suspended its chief executive, Phumzile Tshelane, for disciplinary lapses, including allegedly donating state money to the ANC, the company's financial position had "nose-dived" from a cash surplus to a projected shortfall of tens of millions of rands, and there were irregular payments to the Necsa chairperson Mochubela Seekoe (who received triple the remuneration of the next highest board member). Necsa declined to confirm or deny these figures, but said "no such scenario has occurred or been envisaged" [M&G].

M&G stated that Tshelane and Seekoe are considered as the "lynchpins" in Zuma's contested plan for new nuclear power stations. (Seekoe denied the allegations.)[184]. Like Zuma, Tshelane held several meetings with the nuclear build front runners of Russians; and Seekoe is the former South African ambassador to Russia (and Russian-educated and Russian-Speaking). (Necsa had signed an undisclosed agreement in November 2013 with Rosatom for the go-ahead to procure 9 600MW of nuclear power.)

The energy minister acts as Necsa's nominal shareholder; however, the board she appoints is legally entitled to perform an independent oversight role [M&G]. Nevertheless, energy minister Joemat-Pettersson was accused of stepping in to protect Tshelane, allegedly under pressure "from above".

Four months later, in June 2015, Necsa board members were in open conflict with Tshelane and wrote to Joemat-Pettersson about their implacable opposition to his reappointment and questioned his fitness for office[185]. The board then attempted to "summarily dismiss" Tshelane for allegedly "withholding information" from the auditor general [M&G] [186] while also questioning his suitability to perform a key role in the impending nuclear programme. The board wrote to the energy minister: "The nuclear industry is one that prides itself in transparency, especially when it comes to compliance, safety and financial accounting. The very future of nuclear in South Africa depends on these pillars to assure that nuclear energy should not be feared, but embraced. The actions and conduct of the CEO ... have trampled these very values and made a mockery of the government's efforts to ensure a world-class nuclear industry, in preparation of the planned nuclear new-build programme." [M&G][187]

(Update: Carol Paton reported in Business Day in October 2015, that Necsa is in financial and organisational disarray: it failed to finalise its annual financial statements; the board has collapsed; and the CEO is holding on to his job by a tenuous thread[188]. As of December 2015, Tshelane and Seekoe retain their positions at Necsa, while some board members have since left.)

In May 2015 Zuma and Putin held yet another 'bilateral' meeting. Timeslive observed that Putin was the world leader Zuma had spent the most time with since coming to office in 2009[189].

In July 2015 a frustrated Zuma summoned Nene and Joemat-Pettersson to a meeting, where he demanded answers as to why the nuclear build programme procurement process had not resumed in June that year as planned[190]. "The president instructed them to iron out issues between the two departments when they return home [from a BRICS summit in Russia]," said a senior government official who was privy to the meeting. The official, who did not wish to be named, said the departments had failed to agree on a way forward — with the treasury maintaining that the project was "unaffordable" [Sunday Times][191] [192].

In mid-July 2015 — shortly after Zuma, Nene and Joemat-Pettersson returned from the BRICS summit in Russia — the energy department announced that the procurement would start that same month and that the vendor would be selected by the end of the financial year in March 2016[193].

In Zuma's August 2015 mid-year State of the Nation speech, he said, "For the medium to long term electricity supply, the nuclear build programme is at an advanced stage of planning and the procurement should be concluded within the current financial year." [194]

That same month, due to growing resistance to the scale and cost of the nuclear programme, Joemat-Pettersson denied that the government had ever said it would build 9 600 MW (or 9.6 GW) of nuclear power, describing the number as "a thumb-suck"[195] [196]. This is in blatant contradiction over the previous two years of direct quotes from her, her department, Zuma's State of the Nation Addresses, the nuclear procurement agreement between Russia and South Africa, and budget speeches.

On 27 of August 2015 Nene reaffirmed that he would not sign off the \$100-billion deal to build nuclear power stations, struck between Zuma and Putin, if it was "unaffordable"[197].

Atomic Timeline: September to December 2015

In September 2015, nearly a year after Oakbay listed on the JSE: its shares were gyrating from R10 to R50 and back to R30 in the past year, reflecting thin volumes [Business Day][198] [199]; and, the company spoke of refining its bankable feasibility study to raise between R800-million and R1-billion to achieve optimal uranium production[200] [201], which is exactly what the former CEO van der Merwe had stated the previous year, with the feasibility study having been expected to be completed by this time[202] [203] [204]. From 2012 to September 2015, the company had produced no uranium.

Varun Gupta (as CEO) announced that once the capital had been raised, the company's first (suboptimal) uranium production would be enabled within about 18 months to two years. On this basis, he denied there was a direct link between Oakbay and SA's nuclear programme, as the reactors would only come on stream several years later [205]. However, as with the case with Japan, China, and other nuclear-powered countries — if the 9 600MW nuclear programme goes ahead, Zuma's government may choose to stockpile uranium in anticipation of fuel requirements for the nuclear reactors as they attain criticality, and thus create an early demand for uranium. Moreover, the then CEO van der Merwe said the R800-million investment was needed to be raised over a five year period, allowing the company to ultimately achieve the mine's maximum annual uranium output of 1100 Ut per year[206] [207]. Which — if the nuclear deal goes ahead — would more or less match the uranium demand South Africa will have five years after construction commences (barring delays), for the first phase of the nuclear build [OECD-NEA][208] [209].

In that same month, September 2015, the mineral resources minister Ngoako Ramathodi was in the middle of dealing with mine industry layoffs, a commodity-price slump, and an investment squeeze[210], when he was suddenly recalled from his ministerial post by Zuma, in a late-night cabinet reshuffle[211][Rand Daily Mail]. He was moved to the Public Service and Administration position, a post that had been vacant since March that year[212]. No other positions were changed.

In hindsight, Ramathodi's (and Gordhan's 2014) removal was a precursor to Nene's shock firing. As Natasha Marrian observed in Business Day, Zuma and his cohorts were probably emboldened by how swiftly the noise died down after replacing Ramathodi with their man, Mosebenzi Zwane, at the helm of the strategic mining portfolio[213]. Like Nene, Ramathodi too was replaced with a person with no track record[214]. In less than two years, Zwane had moved from being MEC for economic development, small business, tourism and environmental affairs in the Free State to heading the province's agriculture and rural development portfolio for three months, before being sent to Parliament [M&G] [215] [216].

The M&G found that Zwane had reported business links that were in close proximity to the Guptas[217]. And he had also been linked to at least two government scandals involving the Guptas[218]: Guptagate, where Zwane was used as a pretext to explain why the Gupta's private plane was allowed to land on route to a wedding at the Waterkloof Air Force base without having diplomatic status (the Guptas insisted they did nothing wrong, but issued an apology[219] [220] [221]) [Business Day]; and, during Zwane's tenure as Free State MEC for Agriculture, he was linked to a R570 million Gupta-related dairy project in his home town of Vrede - the project was riddled with irregularities and was investigated by the treasury before being shut down (the Guptas deny any involvement[222] [223] [224]) [M&G]. (The Free State province is governed by the premier, Ace Magashule, who is a member of the Zuma-loyal "premier league"[225].)

Gupta and Gupta-linked companies involved in mining - including Shiva Uranium - have several times run into trouble with regulatory requirements, as well as those on environmental compliance[226] [227][TimesLive]. Due to changes in environmental and mining legislation, Zwane is in charge of enforcing those regulations[228] [229].

In January 2016 it was reported that Zwane allegedly travelled with a delegation from the Gupta-owned Tegeta Exploration and Resources company to visit Glencore in Switzerland to negotiate the purchase of Optimum Colliery. (Asked if the minister had joined the Tegeta delegation, the company's director said it was "absolute rubbish".) (Optimum is a coal mine that was placed in business rescue, after: Eskom slapped the company with a R2.5-billion penalty for supplying sub-specification coal; Eskom refused to renegotiate a debilitating supply contract; and the

company's mining rights were revoked by government for a few crucial days[230] [231] [232]. It was bought out by its fellow competitor, the Gupta-controlled Tegeta Exploration and Resources company. An executive at Glencore, who asked not to be named, said the company had been strong-armed into selling [IOL][233].

The buyout of Optimum Coal may allegedly be an example of corporate hijacking, with state assistance [or "private grabification" — definition to follow in Part 2 below]. IOL reports that Exxaro's Arnot mine closed recently after Eskom refused to renegotiate its supply contract[234]. The truth about all this is yet to be told.)

In October 2015, Nene allocated R200-million to the energy department over two years (half in 2016/17 and half in 2017/18) for preparatory work to consider the costs, benefits and risks of building nuclear power stations in South Africa, and told journalists that treasury will conduct a "transparent budget process" [Fin24][235] [236].

South Africa has become one of the leading destinations for renewable energy investment, so said a 2015 research report by the Energy Research Centre UCT. The Renewable Energy Independent Power Producers Project (REIPPP) is a joint private-public initiative for renewable energy generation, mainly from wind, solar PV and concentrated solar power. Since its inception, the REIPPP has been hailed an unprecedented success. The programme is unique in that for projects to qualify, developers must contribute to the reduction of socio-economic inequity, through community ownership and economic development benefits[237].

As of October 2015, 92 projects had been selected as part of the REIPPP, mobilising private investment of R193-billion, and with a combined capacity of 6 327MW. In addition, 37 out of the 92 projects had been completed by then and they contributed 1 827MW of power to the national electricity grid (this is equivalent to one Koeberg nuclear power station), while also providing social upliftment[238] [239] [240][241]. In June 2015, the energy department issued a determination to procure a further 6 300 MW for the project[242]. The national treasury expected the REIPPP to eventually contribute 17 000 MW of electricity capacity to the grid by 2022[243].

Yet, in October 2015, just when bidding by renewable power producers was set to start for the additional capacity[244], Brian Molefe — now CEO of Eskom — halted the process, with the non-issuance of budget quotes for the programme. He said it was a temporary measure taken to protect the financial sustainability of Eskom. Effectively, he was saying Eskom could not afford to support new REIPPP connections as well as energy purchases. He added that, "very soon a lasting solution will be found to address this matter" [Fin24][245] [246] [247]. (As of writing, no reports on Eskom's future commitment to the REIPPP could be located.)

On Wednesday, 9 of December 2015, Zuma held a cabinet meeting to discuss key government programmes and decisions. Amongst them was the nuclear procurement programme for 9 600 MW, which was then approved by cabinet (but excluded the then Cooperative Governance and Traditional Affairs minister Gordhan, who was off sick) [Carol Paton of Business Day uncovered cabinet's decision][248].

Just hours after the meeting, and to the cabinet's great consternation and surprise (according to Jeff Radebe, who is a cabinet member, an ANC NEC member, and minister of the presidency)[249], they heard along with the rest of the public that Zuma had fired Nene, and replaced him with a parliamentary backbencher, David van Rooyen. The move was met with shock and disbelief in all sectors at home and abroad[250].

Two days later, on Friday, 11 of December 2015, the post-cabinet media briefing by Radebe and accompanying press statement made no mention of the fact that the 9 600MW nuclear deal had been approved[251] [252] [253]. It was only on Monday, 14 December 2015, after Gordhan had taken the helm of treasury that cabinet's decision was publically confirmed by him.

Uranium enrichment

"Global uranium demand is predominantly driven by its use in nuclear power generation plants,"[254]declared Oakbay, the majority shareholder in Shiva Uranium. But uranium cannot be used as fuel to run nuclear reactors until it has been converted into low enriched uranium (LEU)[255] [256].

The World Nuclear Organisation states that Eskom procures its conversion, enrichment and fuel fabrication services from world markets, and that nearly half of its enrichment is from Russia. However, historically, South Africa has sought self-sufficiency in its fuel cycle[257].

In the 1970s the Apartheid government established a uranium enrichment company, which later, in 1999, was restructured to become Necsa (currently under the management of Zuma's "lynchpins" Seekoe and CEO Tshelane). But actual enrichment operations ceased in 1995, and the only two conversion plants were both demolished. Much of the high-enriched uranium (HEU) is still stored away. (Some say there's a 250kg cache[258]).

With the prospect of 9 600MW of nuclear power, local enrichment operations are again a priority. Necsa's CEO Tshelane told the M&G in October 2013 that his board was "seized" about whether to re-open the country's enrichment facilities, adding that it was an opportunity for the parastatal to "localise the back end of this procurement; we should localise as much as we can".

One month after M&G's interview, in November 2013, Necsa and Rosatom signed an agreement giving the energy department the go-ahead to procure 9 600MW of nuclear power from Russia (and which was only acknowledged publically in a government gazette two years later).

But besides the prospect of local LEU demand, there are even greater incentives over the horizon for an enrichment plant[259]. Several African countries have expressed an interest in nuclear power plants, including Algeria, Egypt, Ghana, Kenya, Morocco, Namibia, Niger, Nigeria, Tunisia and Uganda[260][261] — and they will all have uranium and enrichment requirements, and be dependent on those who provide them.

In an African Policy Brief (by Egmont — Royal Institute for International Relations) it stated that Putin is quietly, but with determination, executing a sound plan to build up Moscow's economic and political power on the African Continent[262]. And it looks like Zuma wants to ride on his coat tails.

According to a December 2014 report by Earthlife, Rosatom promised that a nuclear fuel assembly facility will be built in South Africa in case the country decides to go for the ambitious 9 600MW nuclear program with Russia[263]. This was confirmed by OECD-NEA which stated that there are plans under consideration by Zuma's government to restart enrichment for both domestic and export purposes[264].

Nuclear dating

The possibility of an enrichment plant may shed some light on Oakbay and the timing anomaly with the nuclear programme.

Construction on the first reactor is said to begin in 2019. As stated earlier, Zuma's government may well decide to begin stockpiling uranium before any reactors come online, thus the government will look to secure long-term contracts with suppliers early on. On that score, Oakbay will be ahead of the queue due to Shiva Uranium's unique processing capabilities that produces a higher grade uranium (according to Oakbay), as well as their unnaturally close proximity to Zuma.

Over and above all that, Oakbay plans to produce their first uranium production in 18 months to 2 years after having raised capital, while opening discussions with agents and nuclear-power firms about securing long-term supply contracts[266]. They said that they are focusing in particular on India and China[266] (both of which Rosatom has extensive dealings). There are examples of Rosatom taking 2 to 3 years to build large centrifugal enrichment plants[267], and that is from scratch, whereas South Africa has plants that can be recommissioned.

Theoretically, the first reactor is to become operational in 2024[268]. As stated earlier, Oakbay's objective is to eventually achieve an annual uranium output of 1100 Ut per year[269] [270], which is the estimated uranium demand South Africa will have when the first reactor/s comes online [OECD-NEA][271] [272]. Moreover, Oakbay are not shy about looking for other acquisition opportunities in the energy and mining sector to boost their production output[273].

Again theoretically, the remaining reactors will come online in 2025, 2026, 2027, with the final reactors being completed in 2029 and 2030[274] [275]. This in turn will bump up uranium demand each time, until finally the full 9 600MW nuclear build will be up and running (consisting of 3 nuclear power plants, each with two or three reactors, depending on the configuration[276]), creating a steady uranium demand of 3300 Ut per year[277].

Besides the possibility of local uranium demand, as stated earlier there is the potential for a continental-scaled uranium market and enrichment need, if African countries decide to procure nuclear energy.

In 2010, journalist Brendan Ryan posed the question: "Who in their right mind would buy one of the most notorious dogs in the entire mining sector — the failed Dominion Uranium mine ...?"[278] Well finally it can be answered — the Guptas, with alleged help from Zuma and his 9 600MW nuclear deal.

What a steal

Uranium is not the only commodity with dubious links to the nuclear programme.

In July 2013, John Helmer (a provocative American journalist who focuses on the Russian business sector) flagged a strange deal with a company Nemascor which had links to Zuma's associates (including his son - Duduzane, Zuma's legal advisor - Michael Hully, and another lawyer associated with Zuma)[279].

Nemascore had been registered for only a month, when it made an offer (with the assistance of a Russian bank) of \$320-million to buy a majority stake in a Russian-owned steel producing company, Highveld Steel & Vanadium, based in eMalahleni, Mpumalanga, for double its market value. (Highveld Steel & Vanadium is the second-largest steel maker in South Africa.) Occurring almost in tandem with Russian negotiations on the nuclear deal, led Helmer to speculate that the two deals were perhaps connected[280] [281] [282].

Furthering Helmer's theory about the link between the deals, was that the buy-out was endlessly deferred together with South Africa's decision about the nuclear deal[283]. (For further reading: [M&G article link](#) AND [Business Insider article link](#))

As of December 2015, and still in keeping with the nuclear programme delays, Highveld Steel & Vanadium is currently in business-rescue proceedings, and has shut down operations "temporarily"[284].

(As an aside, in December 2011, the Procurement Director of the machine engineering division of Rosatom was charged with collaborating to steal more than \$4.5 million, or R36.5 million at that time, with his cohorts by forging supply certificates for reactors at home and abroad, including India, for what was low quality, cheaper steel in order to fake compliance with industry standards while keeping the difference in price for himself[285]. As of writing, no reports on the outcome of the case could be located.)

Stacked deck

Overall, the tendering process for the 9 600MW nuclear build programme will include 80% South African sourced construction companies, engineers, waste management system suppliers, security systems providers, cabling, cement, steel, finance, transport, IT firms, mining, and more[286] [287].

Which on the face of it sounds wonderful, but not when one considers it is for a nuclear programme that has already been declared by government and independent studies to be unnecessary and unaffordable, will ultimately result in 10 to 50 times higher electricity costs than we are paying now, and already exhibits alarming signs of fixed tendering through devious means[288].

Although the Guptas allegedly occupy much of Zuma's attention as benefactors, that attention is not wholly undivided - there are other benefactors too, in various industries. For example, see the M&G article by Lionel Faulk and Sam Sole on the alleged influence of Vivian Reddy (who reportedly paid R450 000 for a table at the ANC's anniversary gala dinner). He secured a R1.25 billion "smart" electricity meter tender with City Power: "Joburg's R1-billion 'present' to Zuma benefactor"(M&G article link).

Loane Sharp — economist for the Free Market Foundation - stated in Business Day, that the Department of Trade and Industry (DTI) aims to create 100 black South African industrialists in Zuma's present term. She said, "It is probable that the Department of Trade and Industry DTI is forcing through the new BEE codes to prejudice "white" businesses and advantage "black" businesses (the DTI's terms) ahead of the R1-trillion rollout of government infrastructure projects." She added that the new regulation proposed fines and mandatory prison sentences[289].

Economic development minister Ebrahim Patel announced in parliament in May 2015 that the IDC would set aside R23-billion to fund the black industrialists programme over the next five years. In addition, the IDC has committed to fund expansionary investments by R100-billion over the same period [Financial Mail][290].

The Financial Mail notes that there are questions over how the 100 black industrialists will be chosen. There is concern that the billions of rand in government resources will be used to dispense patronage to people who may not meet the requirements. Ajay Lalu, MD of Black Lite (a consultancy that also owns a controlling stake in a photovoltaic manufacturing company), said, "The biggest threat to this scheme comes from politicians masquerading as entrepreneurs. We have to vigorously guard against that." [291]

As with Nene, Gordhan is adamant that the current nuclear procurement programme will go ahead only if it is affordable and is in accordance with South African law [292]. Yet, Gordhan has left the door open for Zuma, by stating that this does not mean the nuclear programme would never happen, "just that it may have to wait."

What Gordhan perhaps fails to realise is that Zuma and his patronage network have constructed a tender house of cards, founded on the Russian 9 600MW nuclear deal, and they cannot afford to let it blow in the wind for very much longer. They have been building up to this moment since 2009...

Zuma is the bomb

Besides LEU, enrichment plants can also produce high enriched uranium (HEU), which is used in nuclear weaponry.

In March 2012, at a Nuclear Security Summit in Seoul, Zuma stated on the subject of HEU, "...South Africa has adopted a policy on the beneficiation of our mineral resources, including uranium." [293] What Zuma meant by "beneficiation" was that SA has a policy of enriching Uranium and does not want to limit its options by forswearing the production or use of HEU [IOL]. Officials further explained that Zuma was not only keeping SA's options open for producing HEU in the future, but also defended its decision to hold on to its existing stock of HEU from the nuclear weapons programme of the Apartheid government [IOL].

In December 2012, the Draft Mineral and Petroleum Resources Development Amendment Bill was approved. It regulates uranium production and provides for the implementation of an approved beneficiation strategy through which strategic minerals can be processed domestically.

In March 2015, the M&G reported that an initiative started in 2009 by United States President Barack Obama, and which is endorsed by the United Nations Security Council, has resulted in ridding HEU from 28 out of 30 Nuclear Security Summit participating countries. However, together with Belarus, South Africa under Zuma has stubbornly refused to agree to dilute or dispose of its quarter-ton cache of bomb-grade HEU left over from the apartheid-era weapons programme [294] [295].

Simon Barber (veteran Washington-based correspondent and former Brand South Africa's US country manager) observed in March 2015 that the timing of the disagreement between the USA and SA over foodstuffs related to the African Growth and Opportunity Act (Agoa), together with Zuma's obduracy over relinquishing the country's weapon-

grade HEU uranium, was interesting[296]. (Agoa allows South Africa to export duty free to the United States market, which accounts for R70 billion of South African exports[297].)

Barber's musings over trade and geopolitical manoeuvrings relate to another subject. Economic analysts and Western (US and European Union) business representatives have raised concerns and are puzzled by Zuma's government — and the ANC under his leadership — of being unnecessarily hostile to Western trade partners[298] [299] [300]. This is despite the West accounting for 31.2% of South Africa's exports versus 12.2% from China and Russia (2014 numbers) [301]. The West also contributes 85% of our cumulative foreign direct investment (FDI) and 90% indirect investment, compared with China that contributes 1.5% of FDI and indirect investment (November 2015 figures)[302] [303], and Russia even less so.

This is not to say South Africa must not look for new markets and trading partners; just that a balance must be found between retaining the country's existing gains, while finding constructive ways to add to them, which takes skill, ingenuity and diplomacy.

That said, Zuma's bias towards Russia (his preferred nuclear and trading partner) and China (his preferred trading partner), to the exclusion of the West, is unnecessarily placing hundreds of billions of rands, together with hundreds of thousands of SA jobs, at risk[304] [305].

In addition, it is endangering the sustainability of South Africa's democracy and its institutions (according to Dr Frans Cronje, CEO of the Institute for Race Relations - IRR)[306]. Russia and China are known for their severe lack of transparency, regulatory enforcement, and human rights protections[307].

(In December 2015, possibly just ahead of Nene's firing, Zuma signed into law the Promotion and Protection of Investment Bill[308] — the so-called Investment Protection Bill — which makes foreign investments in SA less rather than more secure[309]. The Investment Protection Bill will create "flight of investment out of South Africa", in the words of the USA Chamber of Commerce in South Africa. Moreover, the Chairman of the EU Chamber of Commerce, Stefan Sakoschek, said in September 2015 that because of the uncertainty created by the Bill, "some investors have started divesting and reinvesting elsewhere on the continent." [310] Sakoschek felt that there was "preferential dealing with Russia and China" by Zuma's government, and that there is "something fishy" about the regulations being presented[311]. The American chamber represents R278 billion worth of investment and 220 000 jobs in South Africa, while Europe accounts for 77% of total foreign direct investment in South Africa, creating more than 300 000 jobs and about 150 000 indirect jobs.)

It appears Zuma has designs on despotism, at great cost to us all.

Conclusion

Zuma's 9 600MW nuclear procurement programme and its accompanying contracts are tainted with alleged vested interests of the most deplorable kind.

If the country has any hope of having a rational, legal, and transparent evaluation of the need for nuclear energy,

the procurement process has to start afresh.

This however can only occur under new leadership, which places the country's interests ahead of its own.

If this does not occur, the future of South Africa will consist of a dark and discontented nuclear winter.

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