



EXHIBIT SS 22

**ELIZABETH DIPUO
PETERS**



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

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

SUPPLEMENTARY AFFIDAVIT OF DIPUO ELIZABETH PETERS

I, the undersigned,

ELIZABETH DIPUO PETERS

Hereby make oath and say that:

1. I am the former Minister of Transport, having been so appointed by the former President Jacob Gedleyihlekisa Zuma ("the President") of the Republic of South Africa as from 9 July 2013 until I was removed from that office on 30 March 2017. Prior to that I was the Minister of Energy from 2009 until 2013.
2. My primary residence is 3 Field Street, Monument Heights, Kimberley, while my secondary is the E 113 Acacia Park, Parliamentary, Cape Town.
3. I am currently a Member of Parliament ("MP") in the 6th administration and having been so sworn in on 22 May 2019.



4. The contents of this affidavit are within my personal knowledge and are true and correct, save where the context indicates otherwise in which case, I verily believe them to be true and correct.
5. I depose to the affidavit pursuant to an email invitation from Ms Shannon Van Vuuren (Legal Advisor: Operations and Investigative Support) having received a further affidavit from Pop Simon Molefe, the erstwhile Chairman of the Prasa Board of Control ("the Prasa Board"), as well as annexures thereto in so far as reference is made to me in my representative capacity ("the Minister of Transport").

6. **BACKGROUND TO THIS AFFIDAVIT**

- 6.1 I depose to this affidavit willingly and voluntarily, with a view to setting the record straight with reference to assertions made by Mr Simon Popo Molefe ("Molefe") against me.
- 6.2 This is necessitated by what he regards as a prelude to his testimony, *"I submit that my experiences at PRASA equip me to assist the Commission to better understand different strategies that were used by those involved in state capture. In this affidavit, I will set out how, in my view, state capture was implemented at PRASA and how people who occupied positions of influence, especially in the award of tenders, had been made vulnerable by manipulations of those at the heart of state capture. I will also seek to show that individuals and institutions that were under a duty to protect PRASA and those who were made vulnerable failed to fulfil that duty and as a result allowed the capture of*

 T.S.

PRASA to succeed and benefit certain individuals and entities connected to the”¹

6.3 It is clear that the language used by Molefe is quite strong and very assertive, hence the need, having been afforded an opportunity to do so, to state my own side of “the story”.

6.4 I wish to emphatically deny that was used by anybody to aid state capture in general and with specific reference to PRASA.

6.5 I never involved myself in the award of tenders or allowed myself to influence directly or indirectly any decisions that were aimed at benefiting certain individuals or entities connected to the.

6.6 Most importantly, I *never* protected or sought to protect anyone accused of wrongdoing from the rule of law or any other applicable processes. I had no business doing so. To the contrary, when I took certain actions in my representative capacity, I did so, in an attempt to discharge my fiduciary responsibilities and also to protect and promote good governance at PRASA.

6.7 To the extent that I questioned “a *never ending*” mandate of the Werksmans’s attorneys², which was in any event and *budgeted for* and running to hundreds of millions of rands with no end in sight, which

¹ See paragraph 5 at page 2 of 30 of Molefe’s affidavit

² see paragraph 32 of page 9 of 30 of Molefe’s affidavit

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decision I still stand by today, I emphatically deny that I did so in order to cover up what the particular law firm was either uncovering or trying to do so. I will deal with that more fully later here under.

6.8 It is indeed so that prior to and most importantly during the term of office of Mr Molefe, PRASA was indeed in serious financial and governance turmoil. It had been in the news for a myriad of wrong reasons. It's main object and business is correctly captured by Mr Molefe. I also readily accept that its existence and goings on fall within the mandate of this Commission, hence my preparedness to be of assistance³. I also confirm that as the then Minister of Transport, PRASA fell within the remit of state owned entities, which I was responsible for.

6.9 For the sake of precision, I will now proceed to deal with those parts of the Molefe's affidavit insofar as they relate to me, as well as to the extent that I believe might be of assistance to the Commission. I propose to do so *ad seriatim*.

7. AD PARA 29

7.1 I have never conspired with Molefe or anyone against Mr Montana ("Montana"). I have no knowledge of why according to Molefe, Montana would have such a misapprehension of view.

³ See paragraph 10 at page 3 of 30 of Molefe's affidavit

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8. **AD PARA 75**

8.1 I confirm that I was invited to the meeting on 20 August 2015, however I am in no position to comment about how others came to the said meeting. To the extent that the President in whose cabinet I served, had invited me to a meeting, there is nothing untoward with that. In fact, it happened very often.

8.2 I am unaware of who might have had a meeting with the President and whoever he might have been with at the time, prior to my being invited into the meeting with Molefe.

8.3 I do not recall in exact terms how Minister Radebe might have introduced the subject relating to Montana vis-à-vis public media statements about PRASA, however I do confirm that such developments were indeed a concern to me as the responsible Minister. Given what I perceived to be a relatively close relationship between Montana and Minister Radebe, I collegially asked him to impress upon Montana to refrain from such as I held the view that those spats, regardless of who was right or wrong, did not assist with the public image of PRASA. It must be borne in mind that at this stage Montana had already left (resigned from) PRASA and in the result I had no jurisdiction over him, hence my collegial approach to Minister Radebe.



T. J. S.

8.4 I further sought clarity about the alleged report which was reportedly titled "PRASA in turmoil" which I had not had sight of as the responsible Minister. I asked if Minister Radebe had in fact seen it and further lamented the fact that, for some reason, that was never brought to my attention. I raised that concern genuinely and *not* in an attempt to discredit or cast aspersions on anyone. Of course, I was visibly upset about the turn of events given the fact that I had hoped that the PRASA board, as led by Molefe, should have taken proper charge of the affairs of PRASA and most importantly turning it around to ensure that it focuses on its core mandate, as opposed to what I regard it as unhelpful and unnecessary public sideshows.

8.5 I expressed the view that it appeared Montana was fighting the PRASA board unfairly so, as I believed they were discharging their fiduciary responsibilities by investigating all malfeasance in PRASA. I publicly pledged my support to the Molefe- led board⁴. Which is why I am still astounded by Molefe's later suggestions that, I was either protecting those involved or allegedly involved in wrongdoing, when I raised what I still regard as legitimate concerns about the never ending the Werksman's mandate, coupled with its exorbitant bill at the time, approximately R197 million. (I stand corrected on the exact figure).

8.6 I also confirm that at some point after our joint meeting with, the President (Honourable Jacob Zuma) Minister Radebe and myself, Montana was indeed invited in. I am unable to comment on what gave

⁴ See paragraph 83 at page 22 of 30 of Molefe's affidavit

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Molefe an impression that Montana was briefed beforehand. Montana raised what he raised in my presence and I responded accordingly to the extent necessary and I was able to do so. As a Minister, I was not privy to some of the inner details of the administrative day-to-day activities of PRASA, hence my contribution in a litany of his issues were accordingly limited. I deliberately refrained from entering the fray about matters which I knew little or nothing of. It was very clear that there was no love lost between Montana and Molefe. I also gained an impression that Molefe, on the version of Montana, might have also overstepped the mark by not respecting the separation of roles. Molefe, as contended by Montana, appeared to have become too *operationally* involved, *which is what* could have further bedevilled the relationship. I put it no higher than that.

9. **SECONDMENT OF MR LETSOALO FROM THE DEPARTMENT OF TRANSPORT TO PRASA AS ACTING CHIEF EXECUTIVE OFFICER**

9.1 I strongly deny having frustrated the Molefe led board attempts to appoint a CEO. It was their prerogative and call to make. In my view, the board was involved in what I still regard as unhelpful mudslinging and not focusing on governance and core mandate related activities of PRASA. The decision to second Mr Collins Letsoalo ("Letsoalo") to PRASA was not unilaterally imposed on the Molefe led board. In fact, it was meant to be an interim and stopgap measure pending the finalisation of the appointment of the CEO. This was discussed with Molefe and resulted in Molefe writing a letter of appointment (himself

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on behalf of the same Board) to Letsoalo in which he, amongst others, congratulated him for the appointment. He starts off and ends respectively, by stating "The Board is pleased that you have agreed to be seconded.....The Board wishes you all the best". I am thus at loss for words to reconcile his assertion that somehow, I insisted unilaterally or much against the Board's wishes to have Letsoalo seconded. I had nothing personal to gain from Letsoalo's secondment. [Underlining for emphasis]. A copy of that letter of appointment is attached and marked **"EDP 1"**

- 9.2 I also attach a copy of the statement made in relation to the *rationale* for the secondment of Letsoalo, which give a clear indication of how such secondment came about. This is at odds with Molefe's contentions and suggestion that I *"... insisted that Collins Letsoalo, who was at the time the Chief Financial Officer of the department of transport, be seconded to the post of CEO with effect from 1 July 2016, despite initial opposition by the Board to his secondment"*.

A copy of the statement is attached and marked **"EDP2"**, read with **"EDP3"** and **"EDP4"**. From these annexures, it is very clear that Letsoalo was not imposed by me on PRASA, I approved his secondment to PRASA. Even when there was a suggestion that he might be receiving incorrect remuneration, I wrote to Mr Nazir Allie (as per EDP4) asking him as the Chairman of PRASA at the time to facilitate the receipt of a report from Werksmans and also investigate the allegation pertaining to Letsoalo's salary as the acting CEO of PRASA. As fate would have it, Letsoalo later took PRASA to court and

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he was vindicated, regarding his entitlement to receive the disputed salary. This can be independently verified.

10. **AD PARAGRAPH 95**

10.1 I deny that I attempted to stop the Werksman's investigations. All I did and repeatedly so, was to demand an explanation of when is the work being undertaken by Werksmans, likely to be concluded, mindful of the ever increasing legal fees (running close to R 200 m at the time), which was unbudgeted for, and also having been flagged by the Auditor General ("the AG"). It would have been irresponsible, just because they were busy with what is undoubtedly an important investigation, **NOT** to demand some accountability and fiscal discipline. I am surprised that Molefe sees my role in that regard as "attempting to stop" the investigation. It would be interesting to see what the final figure paid to Werksmans was and also what the AG's take on that expenditure is. I raise this with a view to providing the Commission with a complete picture, so that my concern can be objectively appreciated⁵. I also wrote to the AG myself but I am unable to locate the actual signed letter, however, I attach an unsigned version to Mr Kimi Makwetu, wherein I raise sharply my concerns around PRASA issues in general. I thus fail to see how I could be described in such unflattering terms as Molefe does. He is not the only one who was concerned and did something about corruption or maladministration in PRASA, I was too. I

⁵ See my letter addressed to Dr. Molefe dated 18/08/2016 in which I preface my concerns in the very opening paragraph "As a shareholder, I hereby write to express my concern over the long and protracted investigation by Werksmans Attorneys into several irregularities identified in the AG's report and the ever rising costs thereof"

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also acted accordingly. The fact that I did not broadcast my actions, does not negate from the fact that I did what I deemed appropriate at the time.

10.2 Where I refer to “*closing off*” the investigation, I did *not* suggest that it be stopped immediately. I predicated it upon receipt of a report first, which had to be considered and then later a way forward be determined thereafter, which is a far cry from just terminating it with impunity at the instance of those who might have been fingered in that report. My letter is self-explanatory and it is attached as “**PM7**” in Molefe’s Affidavit.

10.3 I further state unambiguously that I would appreciate it if the report could reach my office by end of August 2016. Once again, it is clear that I was insisting on a report, which at that point, had not been forthcoming. What was wrong with my request? [underlining for emphasis]

10.4 He concedes in his reply⁶ that my issue is “*not whether or not a forensic investigation is necessary, but that it seems endless and without a clear scope, constitutes excessive spending and is not budgeted for and can be regarded as irregular expenditure*”. That was indeed my concern, from my vantage point, whether I was right or wrong. I submit that there was nothing irrational about that concern and still stand by that view.

⁶ See second paragraph of his letter to me dated 24 August 2016.



T.S

10.5 The fact that we (Molefe and I) never met to resolve this matter, does not in and of itself suggest that I deliberately avoided the meeting and thus an inference should be drawn based on *such*, that I was aiding and abetting the capture of PRASA or protecting anyone for that matter. There is simply no basis for that contention or suggestion. I had no personal difficulty with Werksmans attorneys, but I will always have a problem with any service provider with a never ending scope and corresponding spiral of fees, as from my experience, such *looseness*, can easily be open to abuse. That is where I was coming from. It is thus disingenuous to give an impression that when I raised these concerns; I was seeking to suppress an ongoing investigation.

10.6 That cannot be correct when one takes into account that I had publicly gone on record pledge my support for PRASA board, much against Montana. My support was also the specific reference to all the attempts to restore good governance at PRASA which included, but was not limited to, ongoing forensic investigations.

10.7 It must also be borne in mind that over and above the AG having flagged some issues, this investigation (Werksmans) also followed that of the Public Protector titled "PRASA derailed" or words to that effect.

10.8 Lastly, it is common cause that I dissolved the Molefe –led Board, as I lost confidence in them and felt they were clearly failing to turn PRASA

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around. They exercised their rights to challenge their dismissal in court and the Court subsequently ruled in their favour and I accepted the Court's ruling. I cannot take the issue further than that, as I respect the rule of law. After all, I never personalised the issue, hence I accepted that the Court overturned my decision, in my representative capacity. Courts of Law are there to adjudicate over different points of view.

11. However, in the event that Molefe continues to aver that I indeed assisted state capture in the manner he suggested before the Commission, I apply to the Honourable Chairman for leave to cross-examine him on his testimony insofar as he seeks to implicate me, and further I may be given an opportunity, to the extent necessary, also to testify and be cross-examined by the evidence leaders, or subject me to whatever terms and conditions as the Honourable Chairman may deem appropriate in the circumstances, and to call any other witnesses in support thereof.
12. My commitment to being of service to the Country remains unchanged, hence my preparedness to appear before the Commission or otherwise comply with any of its directives. Needless to say, I remain aggrieved by these untrue and scandalous accusations and hope that my application would be duly and expeditiously considered, mindful of the Commission's programme. For every passing day with these allegations remaining untested, I continue to suffer immense reputational harm to a point of being career limiting.

 T. S.

I therefore humbly pray that the Honourable Chairman grant me the appropriate relief as sought in this application.



DEPONENT

This signed and sworn before me at Johannesburg on this 16th day of October 2020 by the Deponent, who has acknowledged that she knows and understands the contents of this affidavit and has no objection to taking the prescribed oath, and considers same to be binding on his conscience.



COMMISSIONER OF OATHS

Name: Thabo Joseph Seabane

Address: Seochane Street, Carletonville
Kimberley

Capacity: u/o

SOUTH AFRICAN POLICE SERVICE	
GALESHEWE	
2020 -10- 16	
SHUD	RELIEF C
ANSE POLISIENERS	



"EDP1"

Office of Dr. Popo Molefe
Chairman of the Board

www.prasa.com



prasa
PASSENGER RAIL AGENCY
OF SOUTH AFRICA

PRASA HOUSE
1040 Burnett Street
Hatfield
Pretoria

Private Bag X101
Ikraam/Orlando, 2017
T: +27 12 748 7800

Mr Collins Letsoalo
Acting Group Chief Executive Officer
1040 Burnett Street
Hatfield
PRETORIA
0001

**APPOINTMENT AS ACTING GROUP CHIEF EXECUTIVE OFFICER (AGCEO) OF
PRASA**

Dear Mr. Collins Letsoalo,

The Board is pleased that you have agreed to be seconded from the Department of Transport and serve as Acting Group Chief Executive Officer of the Passenger Rail Agency of South Africa (PRASA) during the period leading to the finalisation of the appointment of a permanent Group Chief Executive Officer. This letter agreement (the "Agreement") sets forth the terms of your employment as PRASA's Acting Group Chief Executive Officer and is effective as of 1st July 2016 (the "Effective Date") until further notice.

Directors: Dr P Molefe (Chairman), C Letsoalo (Acting Group CEO)
C Cele, X George, NS Khoswa, ZP Manase,
C Monyengwana, MJ Mollala, L McMillan,
TB Phasane, WS Steenkamp

Company Secretary:
L. Zide

T. J.



1. Position.

In your position as Acting Group Chief Executive Officer, you will report to the Board of Control (the "Board"). The Acting GCEO position is a full-time position with its principal work place at the company's headquarters, PRASA House, 1040 Burnett Street, Hatfield, Pretoria. While you render the services to PRASA as Acting GCEO, you will not engage in any other employment, consulting or other business activity(whether full-time or part-time) that would create a conflict of interest with PRASA; provided, however, that you may continue to serve on any boards of directors or committees on which you served as of Effective Date. By signing this agreement, you confirm to PRASA that you have no contractual commitments or other legal obligations that would prohibit you from performing your duties for PRASA.

2. Term.

From the Effective Date, your position as Acting GCEO may continue until further notice, at the latest, until the date on which a permanent successor Group Chief Executive Officer is hired and commences employment with PRASA. Notwithstanding the foregoing, your employment may be terminated by you or the PRASA at any time with or without cause or with or without advance notice.

3. Compensation and Benefits.

During the term of service as Acting Group CEO, the PRASA will pay you at the annualized salary rate applicable to this position and in accordance with the applicable remuneration policy, payable at such times as the company's normal payroll being the 27th day of every month. You will be eligible to receive all the benefits applicable to this position and to the PRASA's Senior Officers. The details related to your compensation and benefits will be discussed and shared with you by the Group Executive responsible for the Human Capital Portfolio.

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T.S



4. Expenses.

PRASA will reimburse you for all reasonable and necessary expenses incurred by you in connection with your performance of services as Acting GCEO on behalf of PRASA in accordance with applicable company policies and guidelines.

5. Entire Agreement.

The terms of this agreement and the resolution of any disputes as to the meaning, effect, performance or validity of this agreement or arising out of, related to, or in any way connected with this agreement, your employment with the PRASA or any relationship with the PRASA will be governed by the South African law. In any action between the PRASA and yourself arising out of or relating to any dispute you submit to the to the exclusive jurisdiction of the South African courts.

The Board wishes you all the best.

DR P.S. MOLEFE

CHAIRMAN OF THE BOARD

DATE 2016/07/07.

Accept/Not Accept

MR COLLINS LETSOALO

DATE 06/07/2016

T.J

"EDP 2"



MEETING OF THE MINISTER OF TRANSPORT, MS DIPUO PETERS, AND THE BOARD OF PASSENGER RAIL AGENCY OF SOUTH AFRICA AT PRASA HOUSE HATFIELD OFFICES

26 September 2016

The Board of PRASA is appointed to oversee the organisation on behalf of the shareholder, which is the Minister and as such we are not apologetic when we hold it to account. There is no malice and nothing untoward with that.

The overall performance of PRASA against the set targets at 40%, from a Governance point of view and in terms of financial performance is unsatisfactory. This should be our main preoccupation and not these other side shows.

The appointment of Mr Letsoalo as the Acting Group CEO of PRASA was done in line with the due processes and enjoys my full support. As such, the Board of Control, the management and staff of PRASA is expected to rally behind him and give him the necessary support.

I am already seeing the initial signs of improvements and turnaround tendencies, especially in terms of prudent financial management. I am

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T. J.

still convinced that Mr Letsoalo is the right man for the job and we should allow him the space to do his job.

The issue of Board not responding to Minister's correspondence, which is still perpetuating itself in spite of my repeated concerns raised, is worrisome and must stop. For example,

✘ In the letter regarding safety and security within our rail services, you were requested to engage with other stakeholders and come up with a mitigation plan, which is still awaited.

✘ Numerous letters on quarterly performances with clear instructions, which remain, unanswered.

✘ On the performance of the Board, a request on the turn around plan was requested by end July 2016 and has not been received, and

✘ The status report on the Werksmans investigation was requested by the end of August 2016. To mention but the few.

Remuneration of Board Members which is above what has been approved and excessive number of meetings remains of great concern to me. The PCOT has resolved that the monies be repaid and I support that.

52% of Employee costs is way above the standard norm of 30 – 40% and is not sustainable. Compounding the problem is that these costs at R4.826 billion way exceeds the fare revenue of R2.736 billion. The Board and the Acting GCEO must come up with a plan to address this anomaly with immediate effect.



T. J.

Engagements with DPE and National Treasury on MLPS and Access charges must happen in earnest.



T.S.

"EDP3"

Office of Dr. Pupo Molefe
Chairman of the Board

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The Honourable Ms. Dipuo Peters, MP
Minister of Transport
National Department of Transport
159 Forum Building
Corner Bosman and Struben Streets
Pretoria

Dear Honourable Minister Peters,

SECONDMENT OF ACTING GROUP CEO

I write to advise the Honorable Minister that on the 29th November 2016, and following the presentation by Management and deliberation of the turnaround strategy, the Board had a meeting to consider matters that needed its urgent approval. Amongst the matters deliberated by the Board was the contract of the Acting Group CEO, Mr. Collins Letsoalo. The Board reflected on the meeting that took place between the Minister and Board that was held post the PRASA Annual General Meeting (AGM) on the 26th September 2016 Meeting. At the said meeting, and amongst the issues deliberated upon, was the duration of the appointment of the Acting Group CEO, given that in the appointment letter of the Acting GCEO's the duration of the appointment was not fixed, but was expressed as an appointment that will continue "until further notice and/or until the process of the recruitment of the permanent Group CEO was finalised." The Board noted that at the said meeting, when one of the Board members asked the duration of the appointment of the

Directors: Dr P Molefe (Chairman), C Letsoalo (Acting Group CEO)
C Cole, X George, NS Kheswa, ZP Monase,
C Manyungwana, MJ Mafatsa, L McMillan,
TB Phisoane, WS Steenkamp

Company Secretary:
L. Zide

T.S.



Acting Group CEO, the Honorable Minister responded that the appointment would be three (3) to six (6) months. It is against that background and noting the Honorable Minister's pronouncements at the said meeting, that the Board resolved that a letter be written by the Chairman (as I hereby do) to the Honorable Minister, advising that the Acting Group CEO's appointment and secondment contract expires on the 31st December 2016. Furthermore the Board noted the provisions of the PRASA's Human Capital Management Acting Policy, that any person appointed in an acting position and/or capacity, the duration of such appointment is six (6) months.

I had been away in the period between 5 and 15 December 2016, and I had intermittent access to my e-mails. I acknowledge receipt of the Honorable Minister's letter dated 01 December 2016, regarding the appointment and Secondment contract of the Acting Group CEO, and the process to be followed in the appointment of the PRASA Group CEO. In this regard, I am requesting audience with the Honorable Minister at the earliest possible and convenient date, to discuss in detail the sentiments expressed by the Minister on the appointment of a permanent Group CEO for PRASA.

Yours sincerely,



DR P.S. MOLEFE

CHAIRMAN OF THE BOARD

DATE 2016/12/20



T.J.



MINISTER

TRANSPORT

REPUBLIC OF SOUTH AFRICA

Private Bag X193 Pretoria 0001 Tel: (012) 309 3880 Fax: (012) 226 3194

Private Bag X9129 Cape Town 8000 Tel: (021) 466 7260 Fax: (021) 461 8845

Mr. Nazir Alli**Chairperson: Passenger Rail Agency of South Africa (PRASA)**

Private Bag X 101

Braamfontein

2017

Dear Mr. Alli,

**REQUEST OF THE INVESTIGATION REPORT BY WERKSMANS ATTORNEYS
AND THE INVESTIGATION INTO THE SALARY MATTER REGARDING THE
FORMER GROUP CEO OF PRASA, MR LETSOALO**

I write Chairperson with reference to my letter dated 12 August 2016 to the former board Chairperson whereby I expressed my concerns about the investigation, requesting that you engage with Werksmans Attorneys to provide you with the following information.

- (a) The status report on the investigations that they are conducting as commissioned by the Agency;
- (b) An indication of what are the outstanding issues that are a subject of the investigation;
- (c) What are the financial implications so far; and
- (d) When do they envisage to complete and submit their investigation report.


Your detailed report in this regard with clear recommendations will be expected by end April 2017.

The second priority issue Chairperson, is that the Board should investigate the allegations that the former Acting Group CEO, Mr Colins Letsoalo has increased his salary by more than 350 percent as was reported by your predecessors. Kindly check as to whether there was a correct determination in the salary remuneration that was offered to the former Acting Group CEO. In the event there was improper determination of the offered salary package, the investigation outcome should indicate what was entitled to the Acting Group CEO that was seconded to the Agency from the Department and further recommend remedial actions.

CONFIDENTIAL

I trust the above is in order and wish you all the best in your new responsibilities.

Kind Regards


Ms. Dipuo Peters, MP
Minister of Transport
DATE: 30/03/2017



MINISTER
TRANSPORT
REPUBLIC OF SOUTH AFRICA

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"CONFIDENTIAL"

⑦
"EDP 5.1"

Mr C P Letsoalo

Ref: SP/21706832

OFFICE OF THE CHIEF FINANCIAL OFFICER

Dear Mr Letsoalo

SECONDMENT TO THE PASSENGER RAIL AGENCY OF SOUTH AFRICA
(PRASA)

This serves to inform you that I have formally approved your secondment to PRASA with effect from 1 July 2016 until further notice. Please note that your rank, salary and seniority date remains unchanged. Your service benefits will also remain unchanged. The salary paid by the Department will be claimed from PRASA.

As agreed and to ensure a seamless hand over, it would be necessary for you to finalize the hand-over reports in respect of both, the Department and the Driving License Card Account (DLCA) and to submit it to my office by the end of July 2016.

You are requested to sign the enclosed consent of secondment and to return it to the Sub-Directorate: Human Resource Administration, for attention Ms Lottie Eloff, Room 2052, within five working days from the date of receipt of this letter.

The National Policy on the Secondment of Employees is attached for your information.

Warm regards

MS DIPUO PETERS, MP
MINISTER OF TRANSPORT

DATE: 07/07/2016

T.O.

"(EDP 5.2)"

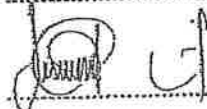
"CONFIDENTIAL"


For attention: Ms Lottie Eloff, Room 2052
National Department of Transport
Private Bag X 193
PRETORIA
0001

Fax nr: 012 309 3207

CONSENT OF EXTENSION OF PERIOD OF SECONDMENT TO PRASA

I, the undersigned, hereby confirm that I have received my letter regarding my secondment to the Passenger Rail Agency of South Africa (PRASA) together with the National Policy on Secondment of Employees and that I understand and accept the contents thereof.

NAME AND SURNAME : COLLINS LETSOMI
RANK : DEPUTY DIRECTOR GENERAL
DIVISION : FINANCE
SIGNATURE : 


T.O.

"EDP: S.B."

⑥



MINISTER
TRANSPORT
REPUBLIC OF SOUTH AFRICA

Private Bag X193, Pretoria, 0001, Tel: +27 12 309 3860, Fax: +27 12 328 3194
Private Bag X9129, Cape Town, 8000, Tel: +27 21 465 7260, Fax: +27 21 461 6845
www.dot.gov.za

"CONFIDENTIAL"

Mr P Molefe
Chairman: PRASA Board
Private Bag X101
BRAAMFONTEIN
2017

Ref: S8/2/2
Enq: Mr Mashaing Makhubedu
Tel: (012) 309 3201
Fax: (012) 309 3207

Dear Mr Molefe

SECONDMENT OF MR C P LETSOALO, CHIEF FINANCIAL OFFICER TO THE
PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA)

This serves to inform you that I have formally approved the secondment of Mr C P Letsalo, Chief Financial Officer of the Department of Transport, to PRASA with effect from 1 July 2016 until further notice. Please note that his all-inclusive human resources costs will be claimed, on a monthly basis, from PRASA.

A copy of the letter addressed to Mr Letsalo is attached for your information.

Warm regards

MS DIPUO PETERS, MP
MINISTER OF TRANSPORT
DATE: 07/07/2016

T.J.

EDP-3
"EDP 6"

**MINISTER
TRANSPORT
REPUBLIC OF SOUTH AFRICA**

Forum Building, c/o Bosman & Struben Streets, Private Bag X193, Pretoria, 0001, Tel: 012 309 3033, Fax: 012-328 3194
11th Floor, 120 Plain Street, Parliament, Cape Town, Private Bag X9128, Cape Town, 8000, Tel: 021 465 7280, Fax: 021-461 6046
www.dot.gov.za

Mr. Thembekile Kimi Makwetu
Auditor-General of South Africa
Private Bag X 101
Braamfontein
2017

Dear Mr. Makwetu,

**REQUEST FOR FORENSIC INVESTIGATION INTO REPORTED MALADMINISTRATION
RELATING TO FINANCIAL MANAGEMENT AND TENDER IRREGULARITIES AT
PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA)**

The above-mentioned refers.

I am writing to the Auditor-General requesting that you conduct an investigation into possible maladministration relating to financial management and tender irregularities at the Passenger Rail Agency of South Africa (PRASA), including whether any fraud and/or criminal offences were committed.

As your office has identified in the previous audit reports, where irregularities and challenges with regards to procurement processes and Supply Chain Management (SCM) were cited. Irregular procurement practices of the magnitude purported, threatens the very integrity of our procurement system and lessens the confidence of the millions of South Africans in the Government. This, if true, represents a failure by the Agency to fulfill its legislative mandate to administer and enforce the provisions of the Public Finance Management Act (PFMA) and the Supply Management Policy.

By way of this letter, I am requesting that the Office of the Auditor-General of South Africa (AGSA), conduct forensic investigations into PRASA's procurement processes of the Afro 4000 Diesel Locomotives including the appointment of the contractor, Swifambo and other matters connected thereto.

The investigation should also include all recent media reports and matters related to the Police Case by the former Group CEO against PRASA on SA Fence and Gate allegations of fraud, I

am also requesting that the Office of the Auditor-General investigate allegations of the practices and or tendencies at PRASA to pay service providers despite lack of contracts to qualify that, or that contracts being signed post facto.

Furthermore, the ISAMS, the Integrated Security Management Systems, which are the CCTV Cameras, the electronic boards on stations and the security gates on stations that are installed but not working.

In particular, it is important for me to ensure that procurement processes were not violated and that there were no misappropriation and/or abuse of public funds and resources. The investigation should also focus on confirming that no foul play or wrongdoing has occurred.

Our Government advocates for transparency, and as such the public deserves to know that their money is being spent in a responsible and appropriate manner, and there need to be accountability where this is not the case.

In conclusion, it is my hope that the Office of the Auditor General will vigorously investigate the aforementioned issues and that the outcome thereof will assist in restoring the integrity of the Department, its agency PRASA and our procurement processes. The Board's fiduciary responsibility and corporate governance responsibility to enhance accountability should be enhanced.

The investigation should help identify gaps in policies, systems and controls and propose remedial action to assist management in carrying out their mandate and responsibilities towards provision of a better, reliable, efficient and safe public rail passenger services in South Africa and if need be beyond.

Yours Faithfully

Ms. Dipuo Peters, MP
Minister of Transport
DATE:



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

AFFIDAVIT OF DIPUO ELIZABETH PETERS

I, the undersigned,

DIPUO ELIZABETH PETERS

Hereby make oath and say that:

1. I am the former Minister of Transport, having been so appointed by the former President Jacob Gedleyihlekisa Zuma ("the President") of the Republic of South Africa as from 9 July 2013 until I was removed from that office on 30 March 2017. Prior to that I was the Minister of Energy from 2009 until 2013.
2. My primary residence is 3 Field Street, Monument Heights, Kimberley, while my secondary is the E 113 Acacia Park, Parliamentary, Cape Town.
3. I am currently a Member of Parliament ("MP") in the 6th administration and having been so sworn in on 22 May 2019.



V.M

4. The contents of this affidavit are within my personal knowledge and are true and correct, save where the context indicates otherwise in which case, I verily believe them to be true and correct.
5. I depose to the affidavit pursuant to an email invitation from Ms Shannon Van Vuuren (Legal Advisor: Operations and Investigative Support) having received the Rule 3.3 notice 26 October 2020, which was only emailed to my lawyers much later. From the said notice, it became very apparent to me that Mr Montana makes a number of allegations against me as recorded in paragraph 4 thereof.
6. It was further indicated in paragraph 3 of the notice that Mr Montana's affidavit is quite lengthy and runs 465 pages long. I appreciate the effort by the Commission's evidence leaders to extract, for ease of reference, parts of the affidavit in which I am implicated by Mr Montana. I hasten to add that for some reason, annexure "A" was not attached to the notice and this resulted in the delay to respond timeously and in line with paragraph 8. For that, I apologize profusely.

CONDONATION

7. I accept that my response *now* is accordingly late and to the extent necessary, I request condonation for such from the Chairperson of the Commission.
8. I was also only able to access annexure "A" insofar as it relates to the relevant portions of Mr Lucky Montana's ("Montana") affidavit last Wednesday on 9 December 2020. Upon receipt thereof, I immediately made arrangements to




consult with my attorney of record and made the necessary travel arrangements from the Northern Cape, where I am temporarily based to do constituency work, resulting in me being able to consult with my attorney on Friday, 11 December 2020.

9. I reiterate for the record my willingness and preparedness to co-operate with the Commission at all material times, as I did previously.
10. It is also noteworthy that Montana seeks to implicate me both in my personal (to the extent that I am a member of the African National Congress "ANC") as well in my representative and official capacity ("the Minister of Transport"). In some parts, I battle to make out what the actual allegation is beyond what appears to be overgeneralizations and unwarranted attacks on other persons, including myself.
11. In respect of my capacity as the former Minister of Transport, I wish to state that when I left office, I did not take with me any documents which might have crossed my desk in my official capacity, or those which I might have authored myself or those prepared on my behalf. I left all documents behind and in fact used some for purposes of a hand over to my successor, in line with the usual protocols. Quite evidently, from my political and government career, it can be readily accepted that I have come to fully appreciate how organizations and governments work.
12. I will accordingly do my utmost best to respond as meaningfully and to the best of my ability, relying on memory. In some instances, I might be able to locate documents that were either published, or readily available in the public domain and all on my iPad.



13. I have also taken the liberty of proactively requesting the current Minister of Transport ("Minister Mbalula") for assistance, in terms of making some documents available to me to enable me to either but the allegations and/or contextualise some events which are being referred to. Regrettably, while I have no reason to doubt that Minister Mbalula will assist, as he did previously when I sought his intervention to have some documents declassified, to enable me to deal with Mr Popo Molefe's allegations, this time around, I know, having been in that position, that he is currently extremely busy with road safety campaigns throughout the country, ahead of the Christmas period. To this end, I also know for a fact that he is also reliant on officials in the Department, some of whom are criss-crossing the country with him. It is on that basis that I decided to rather deal with this affidavit now and to the best of my recollection, hoping that if I receive the requested information from the Minister and/or the Department of Transport later, I would be afforded an opportunity to file a supplementary affidavit.
14. I trust that such an approach would be acceptable to the Commission and accordingly proceed on that basis, mindful of the delay which has already been occasioned.
15. I will also deal with these allegations *ad seriatim*.
16. **BACKGROUND TO THIS AFFIDAVIT**
- 16.1 I depose to this affidavit willingly and voluntarily, with a view to setting the record straight with reference to assertions made by Mr Montana against me.



16.2 I do not take issue with Mr Montana's CURRICULUM VITAE, as I have always recognised his credentials, as well as his capabilities as the Group Chief Executive Officer of PRASA ("GCEO") and have in fact gone on record stating as much on numerous occasions, platforms and even to the former President, Mr Jacob Zuma in the context of seeking to ensure that he (Montana) and other CEOs in various entities of transport whose terms had come to an end, (in the case of Mr Montana, having resigned) are retained within the Department of Transport in whatever position, purely for the retention of institutional memory, as opposed to losing all that talent which had been nurtured by the Department over a considerable period of time. Notwithstanding the views held by Montana about me, I still stand by the statements which I made publicly with reference to his skills and capabilities.

16.3 We seem to have parted ways, so to speak, with Montana to the extent that I accepted his resignation and contrary to the views held by others, I was unpersuaded that his voluntary resignation should be revisited. Beyond that, I held him, on account of the work he did at PRASA in high esteem, hence my utter shock and surprise at the allegations he levelled against me. He says *he intends to tell the true story about PRASA and further that way implicate individuals it will be in pursuit of the truth not to target individuals or abuse the platform offered by the Commission*¹. I state for the record an upfront that he has not been truthful with the

¹ See paragraph 30 of his affidavit



allegations he makes against me and deny having acted in any untoward manner as suggested by him.

- 16.4 Be that as it may, I will deal with those allegations as best as I can and maintain a modicum of respect for him while I do so, notwithstanding the unflattering language he elected to employ against me and other cabinet colleagues. I hold *no* brief for my fellow Cabinet colleagues, however, I genuinely still fail to see how and on what basis he seeks to cast aspersions on Dr. Zweli Mkhize (current Minister of Health and former treasurer general of the ANC) on matters that he clearly had no involvement in.

AD SERIATIM

16.5 **AD 256-259**

I deny and reject, with the contempt that it deserves, the insinuation that as Minister of Transport, Minister Gordhan “pushed me” to cancel the award to Gibela Rail Transportation (“Gibela”) and to change the Board of PRASA. I *am* and have always been an *independent thinker* and leader, while recognising the value of consultation and collective decision-making. In this instance, no one leaned on me to do anything that I have not intended in my own right as the Minister of Transport. What became of the Gibela contract, as well as the Board of PRASA to which Mr Montana is referring, had nothing to do with any “*pushing*” by anyone. I will elaborate further when I get an opportunity to testify before



the Commission and hopefully, at that stage I will also be in possession of relevant documentation.

Werksmans

I specifically deny having been part of any irregular appointment of their Werksmans attorney ("Werksmans") to undertake any investigation at PRASA and unlawful surveillance. In fact, quite to the contrary, I had gone on record as having demanded a report from Werksmans before any further expenditure could be incurred on what appears to be a never ending investigation at the huge and unbudgeted cost. Ironically, I was criticised by Mr Popo Molefe who *inter alia*, proclaimed that I was protecting the corrupt by questioning the expenditure pertaining to the Werksmans investigation. It was even said that that I had expressly stopped the investigation presumably because I did not want Werksmans to expose those who might be fingered in the report, when in fact, my *only* displeasure was about continuous and exorbitant expenditure which was unbudgeted for and with no report and/or remedial action in sight. I dealt with that more fully in the affidavit pertaining to the allegations by Mr Molefe and filed of record with the Commission and thus will accordingly not to belabour the point here². I merely sought to expose the irony of the contention by Montana.

Parachuting board members

I expressly deny having been part of "*parachuting*" Messers Popo Molefe, Willem Steenkamp and Ms Zodwa Manase.

² See paragraph 16.10 of my supplementary affidavit to the Commission in response to the allegations made by Mr Popo Molefe.

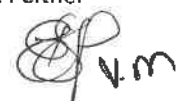


It is noteworthy that I am attacked by both Messers Molefe and Montana who seem to be, at least on the face of their respective affidavits, arch enemies, for reasons best known to themselves. There is a saying that goes along these lines, *"if one is in the middle of two contestants and both of them are unhappy with you, then all indications are you are indeed truly impartial"* I find that very apt in this case.

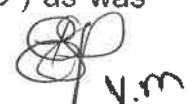
16.6 **AD 267**

I am unaware of any sinister objectives to which Montana refers here in and consequently am unable to comment meaningfully there, other than to deny that I was ever part of any sinister machinations with reference to the RSFRP project, beyond the decisions which I took and are a matter of record. As a matter of fact, I dealt with all the submissions which were sent to me by the relevant officials *appropriately* and incidentally, concurred in with the recommendations made at the time. For example, see the submission which I signed, with **approval**, on 16 April 2014 after it was processed by no less than 3 other officials in the Department. A copy thereof is attached hereto and marked "**EDP 1**", as well as the budget vote 2015/16 speech which I delivered in Parliament on 5 May 2015 and marked "**EDP2**"³. As part of usual cabinet engagements, I also consulted reasonably extensively with my counterpart, Minister Pravin Gordan, at the time, and in his capacity as the Minister of Finance for obvious reasons. It will be clear from the

³ see where reference is made to **PRASA** and in particular the project pertaining to the rolling stock, as well as the sword turning ceremony to be conducted at Nigel. This is in sharp contrast to suggestion that I either sabotaged or otherwise prevented the project from continuing as alleged by Montana.



correspondence exchanged between ourselves that we were indeed discussing serious and weighty matters pertaining to the project which came to be called ***“rolling stock renewal programme”*** for PRASA. I attach hereto a copy of a letter dated 19 March 2014 from the Minister Gordhan which was addressed to me and its contents, I believe, are self-explanatory and negate any suggestion of wrongdoing as asserted by Montana and marked **“EDP 3”**. Further, in an exercise of an over-abundance of caution, I sought a legal opinion from Webber Wentzel attorneys to advise me (and by implication the Department of Transport) on the implications of the issues raised by Minister Gordhan in his letter to me dated 19 March 2014, a copy of the relevant memorandum is attached hereto and marked **“EDP 4”**. Once again, it is very apparent, that at all material times, I applied my mind quite rationally on this very important matter. Which is a far cry from being “pushed” by anyone. Over and above that and as part of transparency and accountability, I addressed a letter to Pres Zuma, as he then was, on 16 April 2014 which I titled **“REPORT ON PROGRESS WITH THE PASSENGER RAIL AGENCY (PRASA) ROLLING STOCK PROGRAMME**, a copy of the letter is attached hereto and marked **“EDP 5”**. If anything, it is very clear that I reported to the President and also raised issues that PRASA (supported by the National Department of Transport) and Treasury (headed by Minister Gordhan) were grappling with. Accordingly, the interactions with Minister Gordhan were in *that* context, rightly so and NOT as part of some nefarious machinations as suggested by Montana. I will not shy away from the fact that as serving Minister, I was deployed by the ruling party, the African National Congress (“the ANC”) as was



Minster Gordhan, comrade Dr. Zweli Mkhize who was deployed as the Treasurer General ("TG") of the ANC. As part of our political and organizational work as deployees of the ANC, we would meet at different stages and to discuss a number of issues. When we do so, in some instances there could be a cross pollination of party and government work, which, in and of itself is quite normal. Montana himself was and maybe is still a member of the ANC in his own right and also did a lot of party work. I say this simply to demonstrate the point that there is nothing wrong if ANC cadres deployed in government call on each other for assistance, from time, as long no laws or rules are flouted. This context is very important, which is why I am still astounded by the suggestions that simply because I conferred with other Ministers, that automatically morphs into some clandestine agenda to sabotage the projects of the government I served.

16.7 **AD 268-271**

I deny that I changed the Board for the reasons suggested by Montana. Their term was coming to an end.

My position on the Gibela contract was informed by sound considerations and was not even taken by me alone. I also raised a concern about the "localization factor" as a concern to me, in that it appeared that there was no demonstrable proof that the "locals" would benefit meaningfully in this project and I insisted that Gibela must prove how they were going to achieve this. At that stage, I had reason to



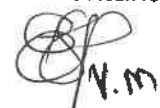
believe that a French company was geared and earmarked for what, in *my* view, should have been for the benefit of local companies. I still stand by that concern. Beyond that, I never advocated for any cancellation of the project as suggested by Montana. There were also a number of issues which had to be considered by Treasury as well, given the financial implications. To suggest that I simply, with the stroke of a pen or on threat of changing a Board, would put an end to a project, which I supported, is beyond me. I am not that powerful and that is not how things work in government or in the ANC for that matter.

Board appointments at state owned entities are approved by Cabinet, after due and careful considerations. No Minister can simply have her way and push through candidates without cabinet approval. Cabinet approval of proposed board members is NOT a given. I specifically deny that both Minister Gordhan and Dr Mkhize had any role to play in the PRASA Board appointment at all, or intimidated by Montana.

16.8 **AD 313-315 and 337**

This is a generalized and unsubstantiated allegation. Consequently, I am unable to comment meaningfully thereon, save to deny any involvement or collusion with "intelligence operatives". My position on the work done by Werksmans is known and I will not repeat it here, as I already dealt with it elsewhere in this affidavit, as well as the one in which I responded to allegations by Mr Molefe.

I also agree that PRASA was on the threshold of a major railway revolution, as part of government initiatives, and NOT as Montana's



personal project, hence the need for extensive consultations with other cabinet colleagues, due to nature and size of the project and most importantly, its fiscal implications. This rolling stock project is *not* the only project that government, through various agencies and departments, might have started and for whatever reason not proceeded with or completed. While I appreciated and went on recognize Montana's work at PRASA, I cannot accept that he was the *alpha and omega* at PRASA. He was part of a collective at PRASA and broader government. I will regrettably not accompany him on his ego trip. My respect for him (professionally) remains unchanged; however, having read his affidavit and some of his media utterances, I am disappointed. I am not wont to cast aspersions on others and will accordingly leave the issue at that.

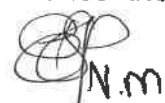
17. **OTHER ALLEGATIONS**

SA FENCE AND GATE

I specifically deny that I pressured Montana to pay SA Fence and Gate ("the service provider") and when he refused our relationship deteriorated. Firstly, I was unaware, until when I read his affidavit, that our relationship had deteriorated. We never had any close or personal relationship beyond a professional one, which I enjoyed similarly with other CEOs, as well and other ANC deployees. If that is how he feels, then I have no problem with that, however, I wish to state the context in which I called him pertaining to the service provider matter. I had received a call from SA Fence in which they were complaining about



non-payment of their invoice for services rendered. They further indicated that they were about to issue summons against PRASA for the recovery of the said amount and asked me to intervene, to the extent that I was able to do so. In an attempt to obviate unnecessary litigation, and mindful of the fact that PRASA was already in the media for wrong reasons; I called Montana and asked him to look into the issue of that particular invoice. He undertook to do so and revert to me. That discussion did not even last beyond two minutes and was accompanied by no acrimony at all, until the end. That is as far as I took the matter. I did not instruct him to make a payment in circumstances where none was due and payable. To date, I am not privy to the specifics beyond what I had stated. As a matter of fact, it was not the first time that I had called Montana about queries regarding non or delayed payments of invoices, especially those beyond 30 days in instances where they would be brought to my attention by services providers themselves. I would never do so on my own and in fact, did not do that at all. I had 12 entities under my span of control and a huge department to run. Not only did I not have the appetite to do so, but I would simply not have had time to do that. In any event, mine was oversight and not day to day management and/or "poking my nose" in admin related matters, in a manner that was oblivious of the separation of powers principle. I was very much alive to that. As a public office bearer, it is not unusual for service providers, in instances where they feel they have hit a brick wall, to contact the office of the Minister or even the President directly to ask for intervention. I have also had instances where my intervention would be sought in correspondence and on the same correspondence the

A handwritten signature in black ink, consisting of a stylized 'N' followed by a dot and a lowercase 'm'.

office of the Deputy President (as head of government business) is also copied. There is therefore nothing untoward with my asking Montana to look into that invoice pursuant to a complaint by the affected service provider, as I did with a few others with him and other state owned entities under my span of control. I also did the same in my other government capacities or ministries, including when I was the Premier. Reference to this particular service provider in the manner in which Montana does, is with respect, disingenuous. I do not even know if or how this matter was eventually resolved because neither Montana nor the service provider made any subsequent contact with me on that matter. I assumed that it was somehow resolved; however I have no personal knowledge thereof.

REQUEST NOT HOLD MEDIA BRIEFINGS

I confirm that indeed I had asked *not only* Montana, but also Molefe, to refrain from their public spats through the media, as I believed that such infantile conduct was harmful to the image of PRASA. I stand by that request, as well as its underlying reason.

Trains for ANC "January 8" celebrations January 2015

I confirm that in January 2015, I requested Montana to provide me with a quotation and assistance with regard to the utilization of the trains that were parked at the time, due to being off-peak, for purposes of ferrying passengers to the ANC's celebration. I did not ask him in his capacity as the PRASA Group CEO to make those trains available for free or without



following the usual processes that are followed when such services are enlisted. I will not shy away from the fact that, indeed I made that request to him. As an ANC deployee, just like other officials, we were all tasked to ensure that we fill up the stadium (venue for such celebrations). That conversation happened in that context.

REQUEST BY MINISTER BATHABILE DLAMINI FOR BUSES

I confirm that I had a conversation with Montana in which I relayed the request by fellow cabinet minister and president (at the time) of the ANC women's league, who had informed me that she was battling to get hold of Montana, with a view to discussing the processes to be followed, as well as the quotation for the utilization of buses which are owned and managed by Autopax, which is a subsidiary of PRASA. Again, that was the context. These buses were standing and unutilized and anyone or any other organisation could, if they agree on terms with Autopax rent them out. In fact, it was encouraged that Autopax should also actively market the use of those buses which would stand idle most of the time and not generate any income. These buses were mostly utilized during the 2010 FIFA World Cup. There was absolutely no suggestion to the effect that such buses had to be made available free of charge. I am unaware of his "refusal" as well as the accusation that he was "defying the movement" as from the excerpt, he clearly does not lay that at my door.

STEVEN SANGWENI



I expressly deny having told Mr Sangweni that Montana was working for former President Zuma "on corrupt deals". I had neither reason, nor basis to say so.

18. However, in the event that Montana continues to aver that I indeed assisted state capture in the manner he suggests in his affidavit, I apply to the Honourable Chairman for leave to cross-examine him on his testimony insofar as he seeks to implicate me, and further I may be given an opportunity, to the extent necessary, also to testify and be cross-examined by the evidence leaders, or subject me to whatever terms and conditions as the Honourable Chairman may deem appropriate in the circumstances, and to call any other witnesses in support thereof.
19. My commitment to being of service to the Country remains unchanged, hence my preparedness to appear before the Commission or otherwise comply with any of its directives. Needless to say, I remain aggrieved by these untrue and scandalous accusations and hope that my application would be duly and expeditiously considered, mindful of the Commission's programme. For every passing day with these allegations remaining untested, I continue to suffer immense reputational harm to a point of being career limiting.
20. I humbly ask for an opportunity to file a supplementary affidavit, upon receipt of the documents which I have requested from the Department of Transport in order to further substantiate the averments I make in this affidavit.



V. M.

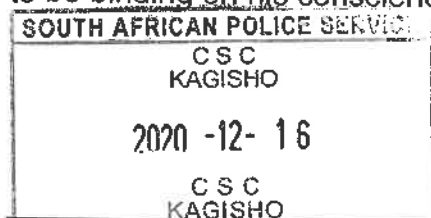
21. I also take this opportunity to thank the Commission for the indulgence given to me and apologize for any inconvenience caused as a result of this belated response. I truly tried my best under difficult circumstance.

I therefore humbly pray that the Honourable Chairman grant me the appropriate relief as sought in this application.



DEPONENT

This signed and sworn before me at ~~KAGISHO~~ ^{KAGISHO} on this 16 day of December 2020 by the Deponent, who has acknowledged that she knows and understands the contents of this affidavit and has no objection to taking the prescribed oath, and considers same to be binding on his conscience.



SUID-AFRIKAANSE POLISIEDIENST
COMMISSIONER OF OATHS

Name: VINDUA MABUZA

Address: 15758 MAPUTU STREET

Capacity: CONSTABLE



Department:
Transport
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF TRANSPORT
DIRECTOR-GENERAL
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PRETORIA 0001
DEPARTMENT OF TRANSPORT
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MINISTER OF TRANSPORT
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2014-04-16
FILE NO.
PRETORIA

SUBJECT	PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA): ROLLING STOCK FLEET RENEWAL PROGRAMME: BRIEFING TO THE PRESIDENT ON PROGRESS WITH ROLLING STOCK PROGRAMME AND DISCUSSIONS WITH NATIONAL TREASURY.
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FILE NUMBER		
COMPONENT	RAIL TRANSPORT	
BRANCH	RAIL TRANSPORT	
	MEMORANDUM PREPARED BY:	REVIEWED AND SUPPORTED
SURNAME & INITIALS	MR. T. MAEDER	MR. M.G. MALULEKE
RANK	CHIEF DIRECTOR RAIL TRANSPORT (X3482)	ADDG RAIL TRANSPORT (X3683)
DATE	15 April 2014	16-04-2014

ROUTE FORM - COMPLETE

	COMMENTS
 MR. MAWETHU VILANA ACTING DIRECTOR-GENERAL DATE 15/4/2014	RECOMMENDED / NOT RECOMMENDED / COMMENTS <i>Recommended.</i>
 MS. SINDISIWE CHIKUNGA, MP DEPUTY MINISTER DATE	NOTED / COMMENTS
 MS. DINAO PETERS, MP MINISTER DATE 16/04/2014	APPROVED / NOT APPROVED

EXECUTIVE SUMMARY

SUBJECT: PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA): ROLLING STOCK FLEET RENEWAL PROGRAMME: BRIEFING TO THE PRESIDENT ON PROGRESS WITH ROLLING STOCK PROGRAMME AND DISCUSSIONS WITH NATIONAL TREASURY

1. On 19 March 2014, the Minister of Finance sent a letter to the Minister, setting out his decisions regarding the Minister's request of 3 September 2013 for his consent and concurrence in terms of the Public Finance Management Act for the PRASA rolling stock renewal programme.
2. The Minister on 27 March 2014 wrote a letter to Mr Sifiso Buthelezi, Chairman of the Board of PRASA, directing him to implement the decisions of the Minister of Transport.
3. In the interim, the Department has had interactions with both Treasury and PRASA and PRASA submitted documentation, including a legal opinion, explaining the implications of the Minister of Finance's decisions.
4. On 28 March 2014, Mr Buthelezi wrote to the Minister, also describing the implications of the Minister of Finance's letter and requesting the Minister to meet with the Minister of Finance in order to resolve the issues.
5. The attached submission sets out the process to date and PRASA's concerns regarding the Minister of Finance's decisions and indicates that the Minister is in the process of requesting a meeting with the Minister of Finance in order to resolve the impasse.





transport

Department:
Transport
REPUBLIC OF SOUTH AFRICA

MEMORANDUM

**TO: MS DIPUO PETERS, MP
MINISTER OF TRANSPORT**

**FROM: MR MAWETHU VILANA
ACTING DIRECTOR GENERAL: TRANSPORT**

**SUBJECT: PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA):
ROLLING STOCK FLEET RENEWAL PROGRAMME: BRIEFING TO
THE PRESIDENT ON PROGRESS WITH ROLLING STOCK
PROGRAMME AND DISCUSSIONS WITH NATIONAL TREASURY**

1. PURPOSE

The purpose of this memorandum is to submit for the Minister's information a briefing document on the status quo of the rolling stock programme as well as a draft letter for the Minister's signature to the President in this regard, should the Minister concur with the contents thereof.

2. BACKGROUND

- 2.1 On 5 December 2012 Gibela Rail Transport Consortium (Gibela) was announced as the preferred bidder for the manufacture and supply of new rolling stock to PRASA.
- 2.2 The bid was based on an affordability limit of R 51 billion over 10 years for the supply of 3 600 coaches (600 train sets).

V. M.

- 2.3 Negotiations between PRASA and Gibela followed and on 14 October 2013, a contract (the Manufacture and Supply Agreement (MSA)) was signed on the above-mentioned basis.
- 2.4 In the meantime there has been continuous interaction between PRASA regarding the financial aspects of the contract in order to reach financial close with Gibela.
- 2.5 PRASA, as a Schedule 3B entity under the Public Finance Management Act (PFMA) is subject to section 66(3)(b) of the PFMA and as a result, it may through its board (as its accounting authority) borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind it to any future financial commitment, only if it has been authorised to do so by notice by the Minister of Finance in the Government Gazette.
- 2.6 To this end, Clause 2.5 read with Clause 2.5.2 of the MSA provides as follows:

"Notwithstanding the date of this Agreement and any other Project Document, the rights and obligations of the Parties under the Project Documents ... will be suspended until each of the following suspensive conditions has been fully satisfied or waived in writing by the party for whose benefit such conditions is provided:

the Company (PRASA) shall have provided to the Contractor (Gibela) ... a copy of the publication by the Minister of Finance in the Government Gazette authorising the Company, as contemplated by section 66(3)(b) of the PFMA, to enter into transactions such as those contemplated in this Agreement and the Project Document that binds or may bind the Company to a future financial commitment". (Own cursive).


V.M

2.7 On 3 September 2013 the Minister sent a letter entitled "PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA): ROLLING STOCK FLEET RENEWAL PROGRAMME: CONSENT OF MINISTER OF FINANCE IN TERMS OF SECTION 66 OF THE PUBLIC FINANCE MANAGEMENT ACT, 1999 (ACT 1 OF 1999) AND CONCURRENCE IN TERMS OF SECTION 70(1)" to the Minister of Finance, requesting his consent and concurrence as set out above for the funding of the PRASA rolling stock renewal programme.

2.8 The Minister of Finance has not yet published a notice pursuant to section 66(3)(b) of the PFMA and as a result, the obligations under the MSA are suspended in terms of Clause 2.5.2.

3. DISCUSSION

3.1 PRASAs interpretation of the discussions with Treasury was as follows:

3.1.1 PRASA has had extensive interaction with National Treasury since August 2013 on a number of commercial issues. A series of submissions were exchanged addressing the issues. National Treasury procured an independent legal and financial due diligence (Review) of the Manufacture and Supply Agreement (MSA). Upon completion, a meeting between all parties was held on 12 December 2013 to table the due diligence report and to consider next steps and outstanding issues to reach Financial Close.

3.1.2 Pursuant to the report, PRASA is of the opinion that the parties agreed to an adjustment of the affordability limit to R58 billion reflective of R51 billion as per the Request for Proposals (RFP) and foreign exchange adjustment at the time. It must be noted that Treasury disputes that such an agreement was reached.

3.2 In line with this agreement, PRASA engaged with Gibela to renegotiate the indexation formula and a revised formula was arrived at which



reduced the labour weighting by 12%. Furthermore, PRASA effected the changes in the contract in line with the recommendation of the due-diligence report (Review). A reprioritization of PRASA capital programme and cashflows reflecting the payment obligations in the MSA had been prepared as part of the submissions and exchanges alluded to above dealing with the initial affordability shortfall. This reprioritization of the budget by PRASA is informed by its business requirements as a Schedule 3B Government entity.

- 3.3 On 19 March 2014, the Minister of Finance sent a letter entitled "PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA) ROLLING STOCK PROCUREMENT CONTRACTS", in which he sets out his decisions with respect to the Minister's request. A copy of the letter is attached as Annexure A.
- 3.4 In his letter, the Minister of Finance sets out the terms for gazetting of the affordability limit as follows:
- 3.4.1 In a letter dated 26 April 2012 to the then Minister of Transport, he supported an affordability limit of R 40 billion over a ten year period. As a result of the depreciation of the Rand between the date of bidding and the anticipated financial close, he proposes to increase the affordability limit by R 13 billion to R 53 billion (In 2014 prices). This includes the original R 40 billion affordability limit, plus R 8.788 billion for foreign exchange fluctuations between the bidding date and the current date and price escalation of R 4.212 between those dates.
- 3.4.2 The nominal value of the expenditure limit will be adjusted to reflect the increase in headline Consumer Price Inflation (CPI). This differs from the escalation formula negotiated between PRASA and Gibela. The Minister of Finance wants the formula for contract price escalation to be revisited to reduce long term risk. Treasury is of the opinion that the bidder must make provision for this in any renegotiated bid submitted;

- 3.4.3 The National Treasury has advised and the Minister of Finance is in agreement that the fiscus will compensate for movements in exchange rates. The annual allocation from Treasury for the fleet renewal programme should therefore take into account exchange rate movements and foreign currency inflation, rather than rand inflation, in respect of the foreign currency denominated components of the programme;
- 3.4.4 The sections of the procurement agreements that deal with contract price escalation and foreign exchange denominated expenditure should be finalized in consultation with National Treasury;
- 3.4.5 The Manufacture and Supply Agreement (MSA) must be managed within the limit of the revised affordability limit of R 53 billion. The Minister of Finance does not set a limit for the Technical Support and Spares Supply Agreement (TSSSA), except to indicate that the commitments presently envisaged in the agreement should not be exceeded. In line with the reduced spending limit, the number of trains delivered annually will most probably be reduced and therefore adjustments to the TSSSA might also need to be made. Using CPI as the formula for price escalation instead of the formula in the agreement should also have the effect of lowering the cost of the TSSSA.
- 3.4.6 Should economic growth and fiscal circumstances improve and good progress is made with the PRASA's renewal of Metrorail services, consideration could be given to increasing the spending limit through the annual budget discussions between this Department and National Treasury;
- 3.4.7 In the light of the affordability constraints, PRASA should ensure that the purchase agreement provides appropriately for a reduction of the train sets to be procured, as this will be required in order to meet the spending limit; and

- 3.4.8 The proposal to reprioritize funds from the capital budget of PRASA to this project cannot be acceded to, as the allocations for the fleet renewal programme will in future appropriations be earmarked and ring-fenced on the Transport vote and it will not be permissible to shift funds from other purposes to cover shortfalls on this programme. Furthermore, PRASA cannot bind itself or the Government to expenditure of the additional R 1.1 billion per annum beyond the Medium Term Expenditure Framework term of three years.
- 3.5 On 27 March 2014, the Minister directed a letter to Mr Sifiso Buthelezi, Chairman of the Board of PRASA, informing him of the Minister of Finance's decisions and directing him to implement the decisions.
- 3.6 Response was obtained from PRASA and on 28 March 2014 Mr Buthelezi responded formally to the Minister.
- 3.7 PRASA is concerned that it appears from the Minister of Finance's letter that Treasury has made an about turn on the discussions which they had on 12 December 2013, at which meeting PRASA is of the opinion that certain agreements were reached regarding the affordability limit and the escalation formula.
- 3.8 According to PRASA, the consequences of the Minister of Finance's letter include the following:
- 3.8.1 The contract with Gibela was signed on 14 October 2013, based on an affordability limit of R 51 billion and the delivery of 600 trains;
- 3.6.2 The proposed spending limit of R53 billion (2014 prices, adjusted for foreign exchange movement) and the funding shortfall will require a re-negotiation of the MSA with Gibela. This will result in significant public law risks as set out in the legal note obtained by PRASA, attached as Annexure B.

- 3.8.3 If Gibela accepts the revised ring-fenced affordability limit (of R53 billion), then Gibela will, in all likelihood, have to revisit their pricing and Economic Development commitments. This will result in an increase in pricing and adjustment of commitments;
- 3.8.4 Should approval in terms of section 66 of the PFMA be granted on and made subject to the conditions contained in the Approval Letter, in the absence of the re-negotiations referred to above, it is likely that PRASA will fail to satisfy the suspensive condition contained in clause 2.5.2 of the MSA, in which event, the MSA will not become unconditional, the Effective Date (as defined in the MSA) will not be achieved and the MSA, including all other Project Documents, will be of no further force or effect;
- 3.8.5 Extending the effective date of the contract will have a serious impact on the delivery of the new trains to PRASA. Further extension of the effective date will also pose a risk on the validity period of the procurement expiring. This will have a dire effect on PRASA's procurement of the new trains; and
- 3.8.6 From a procurement law perspective, re-pricing and readjustment of commitments could result in a process that is considered unfair and irrational and may further render Gibela as no longer being the best offer for PRASA; thus tainting the award.
- 3.9 PRASA also questions the curb on reprioritizing within its budget imposed by the Minister of Finance.
- 3.10 Mr Buthelezi also proposes that National Treasury revise the affordability limit to cater for the full amount of this procurement. In this case, it is proposed that an agreement be reached between the National Treasury, the Department of Transport and PRASA to continually review the delivery of the new fleet and the associated approved expenditure levels, beginning in the agreement's third year. The outcome of this review may trigger a variation in the over-all order

of train-sets to be manufactured and supplied under the MSA or a lengthening of the contract period.

3.11 In order to resolve the impasse, a draft letter to the Minister of Finance, setting out the issues and requesting an urgent meeting with him, has been submitted for the Minister's signature, drawing his attention to PRASA's concerns and requesting an urgent meeting between him, the Minister, the Department of Transport, PRASA and Treasury.

3.12 According to the Department's information, PRASA has in the interim made a new submission to the Fiscal Liabilities Committee containing the following:

3.12.1 They accept the Minister of Finance's affordability limit of R 53 billion;

3.12.2 Gibela accepts the foreign exchange risk for the first five years, after which Treasury will manage the risk further;

3.12.3 They retain the escalation formula in the MSA, but bring down the labour component from 60% to 48%; and

3.12.4 If the escalation in terms of the formula exceeds CPI, PRASA will manage the total expenditure by reducing the number of trains ordered.

3.13 Treasury is of the opinion that they are very close to reaching agreement with PRASA on all the outstanding issues.

4. CONSULTATION

This submission has been prepared after consultation with PRASA.

5. FINANCIAL IMPLICATIONS

The financial implications will depend on the discussions between the Minister and the Minister of Finance.

6. COMMUNICATION IMPLICATIONS

None

7. RECOMMENDATION

It is recommended that the Minister:

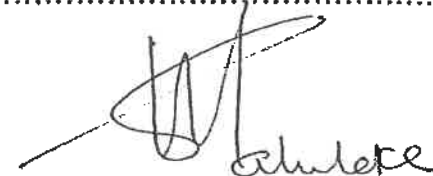
- 7.1 note the briefing document on the status quo of the rolling stock programme; and
- 7.2 sign the attached draft letter to the President in this regard, should the Minister concur with the contents thereof.



MR T MAEDER

DATE: 15 April 2014

Recommendation reviewed and supported /not supported
.....
.....



MR GM MALULEKE

ACTING DEPUTY DIRECTOR GENERAL: RAIL TRANSPORT BRANCH

DATE: 15 - 04 - 2014



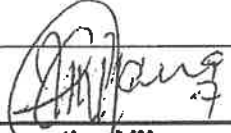
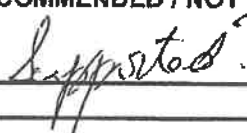

**SUBJECT: PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA):
ROLLING STOCK FLEET RENEWAL PROGRAMME: BRIEFING TO
THE PRESIDENT ON PROGRESS WITH ROLLING STOCK
PROGRAMME AND DISCUSSIONS WITH NATIONAL TREASURY**

RECOMMENDATION

It is recommended that the Minister:

note the briefing document on the status quo of the rolling stock programme;
and

sign the attached draft letter to the President in this regard, should the Minister concur with the contents thereof.

 Mr Mawethu Vilana Acting Director-General Date: 15/4/2014	RECOMMENDED / NOT RECOMMENDED / COMMENTS 
Ms Sindisiwe Chikunga, MP Deputy Minister Date:	NOTED / COMMENTS
 Ms Dipuo Peters, MP Minister Date: 16/04/2014	APPROVED / NOT APPROVED / COMMENTS


K.M

LETTER FROM MINISTER OF FINANCE

A handwritten signature in black ink, consisting of a stylized, cursive 'V' followed by a dot and an 'M'.

" EDP "

Sybil Hlongwane

From: Dipuo Peters <dipuo8@icloud.com>
Sent: Wednesday, 09 December 2020 12:32 AM
To: Sybil Hlongwane
Subject: 2015/16 Speech

Minister Dipuo Peters: Transport Dept Budget Vote 2015/16

5 May 2015

Budget Vote speech at the National Assembly, by Minister of Transport, Ms Dipuo Peters, MP, Old Assembly Chambers, Cape Town

Honourable House Chairperson
 Honourable Members of Parliament
 Cabinet Colleagues present,
 Deputy Minister of Transport, Honourable Sindisiwe Lydia Chikunga
 Members of the Portfolio Committee on Transport, led by Honourable Chairperson, Ms. Dikeledi Magadzi
 Director-General of the Department, Mr. Pule Selepe
 Officials of the Department of Transport
 Chairpersons and CEOs of the transport entities
 Invited guests
 Ladies and Gentlemen

On behalf of the entire transport fraternity, we dedicate this budget vote speech of the 2015/16 financial year to the more than three thousand delegates who gathered at Kliptown, Soweto on 25 and 26 June 1955 to adopt the Freedom Charter.

The Congress of the People constituted the most representative gathering in the history of South Africa and it adopted the Freedom Charter, a vision for a united, non-racial and democratic South Africa.

Our freedom was achieved through blood, sweat, sacrifice and tears. It is this sacrifice that the ANC-led government will always uphold, defend and guard jealously through its revolutionary and progressive policies to ensure a better life for all as enshrined in our Constitution.

In keeping the hopes and aspirations of our fore-bearers alive, the African National Congress declared the year 2015 as "the Year of the Freedom Charter and unity in action to advance economic freedom". At the heart of the Freedom Charter is the economic freedom and emancipation of those who were previously dispossessed by the system of Apartheid.

Honourable Members,

The effective operation of the transport system depends on the inter-relationship of a number of factors, which includes governance, service delivery, management, responsibility, and funding.



The commitment we make as a Department is to implement the National Development Plan's key priorities on the maintenance of road infrastructure, upgrading rail infrastructure and services, as well as building and operating our public transportation.

The Department of Transport's contribution to the NDP will be underpinned by the National Transport Master Plan (NATMAP) 2050 vision. The NATMAP is therefore aimed at delivering a dynamic, long term and sustainable transportation system framework which is demand responsive and that provides a coordinated transport agenda for the whole country.

Honourable Members,

Our people have a reason to rejoice with the introduction of the RABS Bill, which provides for the establishment of a new administrator, the Road Accident Benefit Scheme Administrator (RABSA), to replace the current Road Accident Fund (RAF).

The Bill has been published for public comment, and consultations sessions were held throughout the country with various stakeholders. The Bill proposes a comprehensive social security safety net scheme that is not fault-based.

It will allow expanded access to much needed benefits to road users. These include the public and private transport passengers; widows, orphans and many other dependants, previously and currently excluded by virtue of fault.

As we enter the second phase of the democratic transition, our efforts are directed at the battle against the triple challenges of unemployment, poverty and inequality for Radical Economic Transformation of our society.

On this question, the ANC former President, OR Tambo, reminds us that, I quote: "The fight for freedom must go on until it is won; until our country is free and happy and peaceful, as part of the community of man, we cannot rest." Unquote

Honourable Members,

The Road Accident Fund has been used as a cash-cow by unscrupulous stakeholders including lawyers and doctors just to mention a few. Our government, cannot allow the abuse and theft of funding from road users through the RAF fuel levy, meant to alleviate the financial burden that result from the carnage on our roads, to be siphoned off to benefit the middleman and a privileged few.

Our courts are clogged with RAF matters causing much consternation on our justice system. The unintended consequences of an unjust system, which for decades has seen many benefitting unfairly through abusing the system to receive millions of rands from the Fund whilst those deserving of compensation get limited compensation.

The Department of Transport and the RAF have fought many legal battles, some to the highest court of the land, to, amongst other things, provide an equitable and fair benefit whilst closing many loopholes. Some of our stakeholders are hell-bent to fight against the system till the end.

Through various engagements with communities and victims, it is disheartening to hear of stories where benefits don't address the injury, loss of life or the suffering of victims or their dependants, because of the way RAF benefits are structured. With RABS, that will be a thing of the past, as it will introduce defined benefits,

timely and appropriate care based on reasonable tariffs. RABS will alleviate the burden on our courts through the establishment of an internal appeal procedure.

RABS will provide pro-active assistance to crash victims and family members with emphasis on effective access to medical and vocational rehabilitation to improve victims' chances of re-entering the employment sphere and mainstream economy.

In the Gallery today, we are joined by Mme Nobengazi Monica Gunuza who is accompanied by her Caregiver, Leonie Esterhuizen. Mme. Nobengazi Gunuza, who was involved in a motor vehicle accident in May 2011, is a beneficiary that made a direct claim to the Road Accident Fund. This was made possible by "RAF on the road", an innovative award winning initiative, where RAF takes the office to the people.

Mme Gunuza sustained the following injuries:

- compound fracture of the left tibia and fibula with extensive degloving involving the anterior aspect of the left leg and left ankle joint;
- posterior dislocation of the right knee joint;
- midshaft fracture of the left humerus; and
- midshaft fracture of the left radius and ulna.

RAF finalized her Direct Claim in July 2012 and offered her Future Medical Treatment and a Caregiver. RAF continues to pay for the Caregiver and Specialist Services for Mme Gunuza, and these services to her are already aligned to the future RABS Bill.

May I ask Mme Nobengazi Monica Gunuza to wave where she is seated so this august house can recognize her. Thank you Mme, and thank you Leonie Esterhuizen.

This is but one of the many cases in our country where the victims of road crashes received such outstanding comfort, care and their dignity restored. Indeed as the Department of Transport through our transport entities we do have a good story to tell.

~ , terms of RABS we will be able to offer this service to more clients – at an earlier stage of recovery, thus resulting in less trauma emanating from the accident. As in the case of Mme Nobengazi Gunuza – we would assist claimants to achieve their optimal level of recovery, offer the necessary support and assistance to lower the devastation stemming from the accident. We would also offer additional rehabilitation and intervene at an earlier stage – appointing a Case Manager to facilitate medical intervention and additional home/car adjustments as and when needed.

Honourable Members

PRASA owns 2 280 Kilometers of South Africa's rail network and uses some of the 22 000 Kilometers of rail track under the control of Transnet. It has 585 train stations and a total fleet of 4 735 coaches, with an overall staff complement of 18 207.

Government is spending in the region of R51 billion on new rail rolling stock and R4 billion on new hybrid locomotives in the next 5-year period. To date PRASA has taken delivery on thirteen (13) of the 70 new locomotives.

Honourable Chairperson

Honourable members of this house will be invited to the sod turning ceremony at the rail passenger factory site in Nigel, Ekurhuleni, where new jobs will be created and skills developed by manufacturing and assembling of locomotives and trains. This factory is anticipated to create over 65 000 direct jobs and indirect jobs with skills like engineers, technicians, artisans and train drivers in the course of its contract. The target of not less than 65% local content has been set. The promise we make is the promise we keep, SIYAQHUBA, SIYASEBENZA.

In 2014/15, Government through PRASA transported 2 million passengers and covered fifty five million (55m) passenger trips. The entity refurbished 291 Metrorail and 298 Shosholozha Meyl coaches, and upgraded 27 stations nationally.

We can safely say that the PRASA and Transnet initiatives places South Africa as having the largest wholesale renewal and general overhaul rail programme in Africa. We are engaging in some of the most challenging rail engineering projects of its kind, which firmly positions South Africa as the manufacturing hub of rolling stock in the African Continent.

It is with great pleasure to announce that the Project Implementation and Management Office (PIMO) for the Moloto Rail Development Corridor Project has been established under PRASA.

We are working closely with the National Treasury, and are currently finalising the applications for project preparation funding. The treasury approval 1 application was finalised and is currently with National Treasury for consideration.

Honourable Members,

It is our resolve that sustained investment in technology and innovation can deliver a better public transport system. We want more people to choose public transport. But we are acutely aware that they will do so if public transport offers them the kind of service that fits in with their busy schedules, safety, real time travel and uses convenient ticketing system. It is through these improvements that the use of public transport will continue to grow in the long term.

The ANC Government increased transport funding to record levels – with R25 bn over the last five years alone and R5 bn in the 2014/15 financial year. This is unprecedented, and through these high levels of funding, we have amongst others achieved the following :

- The launch of the test phase of the IPTN in Tshwane, Gauteng (A Re Yeng) and George in the Western Cape.;
- The commencement of the infrastructure construction in Polokwane, Ekurhuleni, Ethekwini, Mbombela, Msunduzi, George and Rustenburg;
- The launch of the extension phase of MyCiti bus service to Mitchells Plain and Khayelitsha in Cape Town;
- We spent R4,8 bn on bus subsidy benefiting approximately 330 million passengers; and
- We have also finalised our Draft Scholar Transport Policy, which has been gazetted for public comments and is on its way to Cabinet for approval as we speak.

By 2016, we expect Gautrain and the South African National Taxi Council (SANTACO) to commence with the roll-out of the card system in their operations. We expect at least 5 million cards to be in use in the next 5 years.

The plan is that within 10 years, all subsidised modes including passenger rail and the bulk of the taxi industry will share an interoperable card.

Honourable Members,

The Taxi industry remains the most important part of our Public transport system and according to the 2013 National Household Survey conducted by Statistics South Africa; taxis are the preferred type of road transport. Taxis move 68% of the 5.4 million on a daily basis and contribute immensely to our economy.

The taxi industry is a +R40 bn per annum industry, with about 200 000 taxis, that employs approximately 300 000 direct and indirect job opportunities, which includes drivers, taxi marshals and administrative support. This is a serious industry by anyone's measure.

We commit more than ever before that we will work closely with the taxi industry to facilitate their regulation and participation in the total transport value chain, for example in the fuel retail value chain, spares, assembling and manufacturing of vehicles.

The Department will be reviewing the Taxi Recapitalisation model to improve its effectiveness and affordability. Expenditure on the review is projected at R188.5 million over the medium term.

This investment in Public Transport is a delivery record we can build on. For the first time in a generation we have a real opportunity to deal with the challenges in public transport - not simply fixing the failures of the past.

Honourable Members,

Not only has our road infrastructure helped underpin the competitiveness of our economy, it has also given ordinary citizens job opportunities. This is despite the fact that road maintenance backlog estimated at R197 billion and congestion are the most serious transport problems we face today. As we travel more, and as traffic grows, tackling these problems is increasingly demanding.

Our key priority is to improve the state of the road network, reduce congestion and improve reliability. That is why the ANC government has invested substantially on the road network. We have also doubled the capital funding available to provincial governments and Local governments through the MIG so that they can tackle the maintenance backlog on provincial and local roads.

Some of our achievements in the past year include amongst others the following:

- The reclassification of 1 700 km of Limpopo Provincial Road into SANRAL network.
 - The completion of the R37 Polokwane Smelter Interchange which is part of SIP 1 project
 - The rehabilitation of N11 from Ermelo to Hendrina which is also part of SIP 1 project.
 - The N2 Kwa-Mashu Interchange facility which is now operational.
 - We have also completed the rehabilitation of the N14 Delareyville to Sannieshof.
 - The N1 Ventersburg which was rehabilitated and two new bridges opened.
- The provincial departments of roads and transport have made real improvements - delivering high quality projects, better designed and better maintained local roads. Through the S'hamba Sonke Programme we continue to advance our course to improve our secondary provincial road network.

Through this programme,

- 1 100 lane km of surfaced road were rehabilitated
 - 3 000 km of surfaced roads sealed
 - 3 926 km of roads gravelled
 - we patched more than 1,4 million m² of potholes
 - 147 000 km of roads bladed, and
 - R30 billion to create over 23 500 fulltime equivalent jobs in the 2014/15 financial year spent.
- Honourable Members,

There are over 6 million more vehicles on our roads today than they were in 1994. The traffic looks set to continue growing - much of it on roads that are already operating at close to capacity during busy periods.

Many of our roads were built many years ago. Hardly any significant new highways have been built since 1986 except for those that were constructed as part of the toll projects.

We have an optimistic view that we need a more immediate and pragmatic focus. We will be targeting those parts of the network that are busiest, where even minor hold ups can turn into major delays, especially on urban roads and highways like the N3, which the busiest corridor in Africa.

The question is what are we doing about this in the next MTEF period? Today, we announce more funding to help SANRAL to work up their ideas to tackle these challenges. We do so mindful of the fact that the transport sector is facing significant funding needs that cannot be met from the fiscus alone. We need to develop a long term funding framework and strategy together with Private Sector Participation Framework for transport funding.

The highlights of our big road projects for 2015 include amongst others the N2, N7 and R71 improvements in Kwazulu Natal, Western Cape and Limpopo respectively.

Government is investing R1,1 billion in the upgrade of the R573 Moloto Road. The process of proclaiming this road as a national road is currently underway with the provincial governments of Limpopo and Mpumalanga having transferred the part of the road to national and discussions with the Gauteng government are at the advanced stages.

We have also set aside R12,5 billion for SANRAL's non-toll roads, which constitutes 85% of the national road network of 21 403 km across the Country.

Our overriding priority is to ensure that we should not only deliver greater road capacity – but also that we make the most of it to give greater choice and greater journey reliability for road users. We all know that there's no single answer to these challenges- no silver bullet that will solve all our problems - and we know that we must be prepared to change our travel habits to make the breakthrough that is needed. The answer is in our public transport system and the implementation of Travel Demand Management (TDM) measures together with Intelligent Transport Systems (ITS) for private vehicles.

Honourable Members,

We also believe that the integrity of an efficient transport system relies on sufficient safety systems to protect our people and freight. Central to this is the enhanced role of the Road Traffic Management Corporation (RTMC). Our 365 days road safety programme - which is our anchor project for the implementation of the UN Decade of Action for Road Safety Campaign - has played its role to oversee Road Traffic Law Enforcement and improve road user behaviour. But more has to be done in this regard to change the behaviour of the road users.

Road crashes is a national concern, costing us in excess of R300 billion per annum in direct and indirect costs. South Africa has one of the worst safety records in the world, at about 26 fatalities/ 100 000 people as compared to other Developed Countries such as Sweden at 3,2 fatalities/ 100 000 people.

88% of crashes are caused by human factors, with an average of 40 people dying and 20 left permanently disabled on our roads every day. We should all acknowledge that road safety is everyone's responsibility. As a result, we have established the National Road Safety Advisory Council that is made-up of relevant stakeholders to assist us in coming up with appropriate solutions.

Honourable Members,

The implementation of the AARTO system Country-wide is one of our short term targets. The piloting of the system has been very successful in Gauteng. Through the Road Traffic Infringement Agency (RTIA), we are now working extremely hard to realise the implementation of the system across the country. In this regard, we are already testing the readiness of Provincial and Local authorities for the rollout of the system.

The Cross-Border Road Transport Agency (CBRTA) is doing its part to balance the supply and demand for cross border road passenger transport. We are currently rolling out a Market Access Regulatory tool to determine the number of permits per route and per mode in granting cross border permits. This tool will soon be tested in most of our corridors. We believe this system will bring better regulation, management and efficiency of our cross-border activities.

Honourable Members,

The NDP enjoins us to take a long term view in our planning. The driving force is our ability to successfully integrate across modes, between service areas and with land planning. Backed with very substantial increases in funding, it is a strategy that has paid off. Our transport plans have given us the confidence to plan, invest and deliver quality improvements.

We have established the National Transport Planning Forum last year – consisting of all spheres of government, agencies and our partners. The forum will now lead the key strategic planning across the transport sector.

The provincial and local spheres of government as well as our stakeholders will continue to advice the national sphere on transport priorities. We will continue to foster strong transport planning to deliver the integrated transport strategies and to further develop our national policy framework.

We will soon publish the National Land Transport Strategic Framework which will inform our integrated transport and land use planning countrywide.

We are in the process of establishing the Single Transport Economic Regulator (STER) in order to address the regulatory shortcomings across the transport sector. This will lead to better pricing and more efficient transport infrastructure and services.

We are also reviewing the National Freight Logistics Strategy of 2005. This strategy will continue to help us to map-out corridors, determine regional integration, freight traffic and congestion. It will also assist us in the development of freight scenarios into the future.

We all recognise that it is effective transport planning that is the cornerstone of our objectives and government's wider agenda. This will require a partnership between all spheres of government, NGOs, faith-based organisations, business and the general public.

Honourable Members

Today I want to make it clear that my personal priority will be to advance the debate about a national system of infrastructure funding and pricing policy for our transport infrastructure and services. These are the ideas I want to explore further with all stakeholders as we work towards improving our national framework, which will be part of our overall transport solution.

Chairperson

Through this budget that we are tabling today, we are investing R53.7 billion in the current year, which is a 6% increase in real terms compared to the 2014/15 financial year. The ANC led government has made an unprecedented commitment to high levels of funding over the next MTEF period with the budget expected to increase to R59,3 billion or (11%) by 2017/18.

The programmes of the Department of transport are mainly implemented through the thirteen (13) Transport Public entities, Provinces and Municipalities, hence transfers and subsidies is the largest expenditure item in this budget. At R47,8 billion in 2014/15, transfers and subsidies constituted 96.7 per cent of the adjusted appropriation allocation. Therefore, the importance of the Department's capacity to provide oversight over these entities cannot be over-emphasised.

The breakdown of the budget is as follows:

- Road infrastructure at R22.7 billion;
- Rail at R18.3 billion;
- Public Transport at R11.5 billion;
- Civil Aviation at R149 million and;
- Maritime at R111 million.

Chairperson,

In conclusion, over the past couple of weeks our nation has been engulfed in a shameful wave of attacks by some amongst us against our country's immigrant population. I cannot stop pondering the sacrifices and contribution that were made by African country in our quest for liberation through the then Organisation of African Unity (OAU), currently the African Union. Resolutely as a nation we condemned in the strongest possible terms attacks on anyone on the basis of their geographic origins.

President Nelson Mandela emphasised African solidarity at the Organisation of African Unity Summit in Tunis on 13 June 1994, when he said:

“When the history of our struggle is written.... It will tell a moving story of the sacrifices that the people of our continent made, to ensure that intolerable insult to human dignity, the apartheid crime against humanity, became a thing of the past”.

Like the men and women of honour who pledged when adopting the Freedom Charter in 1955, let us all today pledge ourselves to strive together, sparing neither strength nor courage, until the democratic changes set out in the Freedom Charter have been won.

Let me take this opportunity to thank the honourable Deputy Minister and the honourable MECs for their support and hard work. The Chairpersons and CEOs of our agencies and companies. The brand new Director-General, all HODs, and the entire Team Transport for their commitment and keeping their eyes firmly focused on the long- term economic development of our people. I also want to thank the Almighty God and my family for being my pillar of strength.

The Portfolio committee of Transport led by Mme Dikeledi Magadzi has also played an important role in exercising their oversight functions in an energetic and focused manner. We thank you for your continued interest in the work of Team Transport.

And last but not least, I would like to thank The Ministry for serving side by side with me and for their continued support and hard work in ensuring the Ministry remains functional.

Honourable members let us remember that the National Development Plan says to us

“We say to one another: I cannot be without you,
without you this South African community is an incomplete community,
without one single person, without one single group,
without the region or the continent, we are not the best that we can be..”

I thank you.

Sent from my iPad


V.M.

EDP 3



MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

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Ref. M3/4/3/2/13 (651/14)

Ms E D Peters, MP
Minister of Transport
Private Bag X193
PRETORIA
0001

Dear Dipuo,

**PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA) ROLLING STOCK
PROCUREMENT CONTRACTS**

I refer to my previous letter dated 28th February 2014 and in order to provide for the financial close on this procurement, I would like to confirm that in terms of section 66 of the Public Finance Management Act, I propose that the spending limit for the PRASA rolling stock fleet renewal programme be gazetted as indicated below.

In communication with the previous Minister of Transport dated 26th April 2012, I supported an affordability limit for the first phase of the programme of R40 billion (in 2012 prices) over a ten (10) year period.

I am aware that the depreciation of Rand has direct cost implications and I have been informed that the 'Request for Proposals' allows for adjustments to be made to the bid prices to account for foreign exchange movements between date of bidding and financial close. National Treasury's estimate to date is that this will add an additional R8.788 billion to the total procurement cost. To accommodate the depreciation in the exchange rate and inflation since 2012, therefore, I propose to increase the programme spending limit by R13 billion to a total of R53 billion (in 2014 prices). This will in effect ensure that the programme will be subject to an affordability limit that is somewhat higher in real terms than that envisaged in 2012, and it will allow PRASA to meet its original service delivery objectives and achieve sufficient economies of scale to enable domestic production.

Going forward and in keeping with standard practice in our medium term expenditure system, the nominal value of the expenditure limit will be adjusted to reflect the increase in headline Consumer Price Inflation (CPI)

I am advised that the procurement as currently drafted provides for contract price escalation in terms of a formula that is likely to exceed CPI. This could result in a substantial long-term cost risk, and I would therefore urge that this should be revisited.

The National Treasury has advised that in view of the scale and long-term nature of this procurement programme, it may be necessary for the fiscus to compensate for movements in exchange rates. I am therefore in agreement that the annual allocations for the fleet renewal programme should take into account exchange rate movements and foreign currency inflation, rather than rand inflation, in respect of the foreign currency denominated components of the programme.

Furthermore, I would like to request that the sections of the procurement agreements that deal with contract price escalation and foreign exchange denominated expenditure should be finalized in consultation with National Treasury.

Please note that I am obliged to indicate that given the current fiscal constraints and the need for us to find funds to finance other important public transport initiatives, we are unable to commit to expenditure on the Manufacture and Supply Agreement (MSA) beyond this new affordability limit of R53 billion (2014 prices). I do not propose to set a limit in respect of the Technical Support and Spares Supply Agreement, except to indicate that the commitments presently envisaged in this agreement should not be exceeded. Taking into account the revised spending limit on the MSA programme, adjustments to the TSSSA might also need to be made.

In the event that economic growth and fiscal circumstances significantly improve and good progress is made in PRASA's renewal of Metrorail services, consideration could be given at a future date to increasing the fleet renewal spending limit. I would advise that this should be considered in the first instance through the annual budget discussions between the Department of Transport and the National Treasury.

I understand that the 'Request for Proposals' issued with respect to this contract exceed the affordability level set in April 2012 by R11 billion, bringing the contract price to R51 billion (in 2012 prices). Adjusting this for exchange rate depreciation since 2012 yields a revised contract price of about R60 billion (in 2014 prices). Unfortunately the fiscus is not in a position to meet this full spending commitment and PRASA should therefore ensure that the purchase agreement provides appropriately for a reduction in the number of train sets to be procured, as this will be required in order to meet the spending limit that will be set.

In addition, PRASA has proposed that the funding shortfall might be met by reprioritizing future allocations within their projected budget allocations. Please note that this cannot be done. Allocations for the fleet renewal programme will in future appropriations be earmarked and ring-fenced on the Transport vote and it will not be permissible to shift funds from other purposes to cover shortfalls on this programme.

The National Treasury will provide the Department of Transport with the terms of the spending limit to be gazetted shortly. Your officials are welcome to direct all questions and clarification that may arise in dealing with outstanding matters to Marissa Moore on 012 315 5789 or Marissa.Moore@treasury.gov.za.

Kind regards



PRAVIN J GORDHAN
MINISTER OF FINANCE

Date: 19 - 03 - 2014


V.M.

LETTER FROM WEBBER WENTZEL



V.M

"EDP4"

WEBBER WENTZEL

In alliance with > Linklaters

To:

PRASA

Your reference

Our reference

Date

S Edmundson / A Toefy
2363194

26 March, 2014

MEMORANDUM**TENDER NO: HO/EPMO/247/03/2012: THE PASSENGER RAIL AGENCY OF SOUTH AFRICA
(PRASA) ROLLING STOCK FLEET RENEWAL PROGRAMME****APPROVAL IN TERMS OF SECTION 66 OF THE PUBLIC FINANCE MANAGEMENT ACT, 1
OF 1999 (THE PFMA)**

1. We have been asked to review and comment on a letter from the Minister of Finance dated 19 March, 2014 in relation to the above tender and the approvals required in terms of Section 66 of the PFMA (the **Approval Letter**).
2. In particular, we have been asked to consider the potential contractual and public law implications created by the terms of the Approval Letter and specifically the possible funding shortfall referred to in paragraph 10 thereof. Paragraph 10 reads as follows:

"I understand that the 'Request for Proposals' issued with respect to this contract exceed the affordability level set in April 2012 by R11 billion, bringing the contract price to R51 billion (in 2012 prices). Adjusting this for exchange rate depreciation since 2012 yields a revised contract price of about R60 billion (in 2014 prices). Unfortunately the fiscus is not in a position to meet this full spending commitment and PRASA should therefore ensure that the purchase agreement provides appropriately for a reduction in the number of train sets to be procured, as this will be required in order to meet the spending limit that will be set."

3. In response to the funding shortfall noted in paragraph 10 above, the Approval Letter proposes a proportionate reduction in the number of new train sets to be manufactured and supplied to PRASA under the MSA.

4. CONTRACTUAL CONSIDERATIONS

- 4.1 The Manufacture and Supply Agreement dated 14 October, 2013 between PRASA and Gibela Rail Transportation Proprietary Limited (the **MSA**), provides for the supply of 600 new trainsets to PRASA on the terms and subject to the conditions set out in the MSA and related Project Documents.
- 4.2 The order of 600 new trainsets in terms of the MSA is a firm order, subject to adjustment only in accordance with the terms of the MSA.



- 4.3 The MSA permits an adjustment to both the overall number of new trainsets ordered and/or the timing of the delivery thereof in two express circumstances. Each of these instances is dealt with separately below.

4.3.1 **Cancellation of deliveries**

- (a) Clause 8.16 (Variation of New Train Quantities) entitles PRASA to vary (either by increasing or reducing) the number of trainsets to be manufactured and supplied under the MSA as a result of the indexation arrangements agreed in terms of Schedule 7 (Indexation Formula) of the MSA.
- (b) In certain limited circumstances and in situations where the agreed rate of indexation yields a rate of escalation above (or below) certain agreed tolerances (by references to CPI), then PRASA may adjust the quantity of trainsets ordered (either through an increase or decrease in orders depending on the indexation results). The increase or decrease (as applicable) in the number of trainsets is determined in accordance with a prescribed formula set out in the MSA and, in cases of decrease in trainset quantities, against payment by PRASA of an agreed "cancellation premium" calculated on per trainset basis in accordance with a prescribed formula.
- (c) It is important to note however that PRASA may only invoke this clause in the context of the indexation arrangements described above and not otherwise.

4.3.2 **Deferral of deliveries**

- (a) Clause 9.22 (Potential Grounds for Company Extension) of the MSA enables PRASA to defer or delay (**but not to cancel outright**) the delivery of trainsets subject to the conditions and requirements set out therein.
- (b) In circumstances where the consequences of such deferral or delay meet certain conditions (relating specifically to factory efficiency considerations, rates of production etc) then, in these limited circumstances, PRASA may insist on and contractually impose such deferral or delay on the contractor through the mandatory variation process provided for in the MSA.
- (c) In circumstances where the consequences of such deferral or delay exceed the conditions referred to in (b) above, then the consequences of such deferral or delay (including in relation to price, impact on Economic Development obligations etc) must be agreed between the parties, and in the absence of such agreement, is resolved through the dispute resolution process.

- 4.4 Any proposed reduction or cancellation of new trainsets falling outside of the circumstances contemplated above is not permissible in terms of the MSA.

- 4.5 It is important to note further that whilst the MSA was signed on 14 October, 2013, aside from certain express provisions of the MSA which are of immediate effect, the remaining provisions of the MSA and the other Project Documents do not come into effect until the Effective Date - the date on which the suspensive conditions listed in clause 2 (Commencement) of the MSA, have been satisfied. In other words the provisions and mechanisms described above become applicable or available to PRASA only once the Effective Date has occurred.

5. PUBLIC LAW CONSIDERATIONS

- 5.1 There are two primary concerns from a public law perspective arising from the Approval Letter in anticipation of the government gazette contemplated in section 66(3)(b) of the PFMA. The first relates to whether the relevant transactions will be properly authorised in terms of the PFMA and, secondly whether the proposed terms of the government gazette will necessitate actions that may raise concerns from a procurement law perspective.
- 5.2 Firstly, clause 2.5.2 of the MSA requires that PRASA must deliver to Gibela, in form and substance satisfactory to Gibela, a copy of the government gazette authorising PRASA in terms of section 66(3)(b) of the PFMA to enter into the transaction contemplated in the MSA and other relevant documentation. Since the Approval Letter from the Minister anticipates imposing a spending limit which is less than the contractual commitment made to Gibela in the MSA, PRASA would likely fail to fulfil the suspensive condition in clause 2.5.2 of the MSA. In which event, the MSA would not become unconditional, the Effective Date (as defined in the MSA) would not be achieved and the MSA including all other Project Documents would be of no further force or effect. Accordingly, PRASA would not have the requisite authorisations in place if the government gazette is published in the format anticipated in the Approval Letter.
- 5.3 Secondly, if Gibela is willing to accept approval from the Minister in the form of the Approval Letter, and in doing so is prepared to entertain negotiations for a reduction in the number of new trainsets (as the Approval Letter suggests), this may well lead to fundamental procurement law issues. While it is difficult to anticipate all the issues that will arise and the potential materiality of such issues, it seems highly probable that Gibela's response will be that:
- 5.3.1 in light of the reduced trainsets being ordered (as a result of the spend limit set by the Minister in the Approval Letter), it will need to increase its price per trainset since it will be losing the advantage of economies of scale. This might well make financial sense from Gibela's perspective and PRASA may even find such a demand by Gibela reasonable, however, it is unclear what effect this increase per trainset will have on the procurement process. In particular, it is unclear whether such an increase would result in PRASA now paying more than it would have paid if another bidder had been declared the preferred bidder. Thus, it could well render the procurement process tainted in that it is unfair and irrational.
- 5.3.2 The reduced trainsets is also likely to affect Gibela's position on its commitments relating to economic development. These important issues, that were confirmed and developed during the negotiations, may be undermined rendering other bidders' offers in this regard more attractive to PRASA. This too could potentially render Gibela as no longer being the best offer for PRASA and hence tainting the award to Gibela.
- 5.4 The negotiations were carefully and delicately managed in terms of which the overall deal offered by Gibela and guaranteed to PRASA was not less favourable than that which was offered by Gibela at bid closure and also so that it was not any less favourable than any other bid received. The agreed number of trainsets (600) and the resulting price of approximately R60 billion (in 2014 prices) is an integral part of the equation. If that important component is reduced, it will likely elicit a call to renegotiate several important and material matters. Inevitably, any renegotiation will result in a less favourable contract for PRASA. Such a consequence, in and of itself, raises



material risks from a procurement law perspective. Given the urgency required to prepare this memorandum, we have highlighted above only two potential concerns - ie price per trainset and economic development.

6. SUMMARY

6.1 In summary and in response to the terms and conditions imposed by the Minister in the Approval Letter, the Minister's attention is drawn to the following:

6.1.1 the MSA was signed on 14 October, 2013. Although, as at the date of this memorandum, the MSA remains conditional and is therefore not in full force and effect, the conditions imposed by and contemplated in the Approval Letter, specifically:

- (a) the proposed spending limit of R53 billion and the funding shortfall created thereby;
- (b) the suggested reduction in the number of trainsets to address the funding shortfall referred to above; and
- (c) the suggestion that the price escalation of the MSA and related agreements be linked to CPI and not to the method of indexation provided for in the MSA,

will, in each case, require a re-negotiation of the MSA with Gibela. A re-negotiation of these matters is likely to create the significant public law risks identified above and, given the significance and sensitive nature of these issues, is likely to cause a delay in achieving the Effective Date (as defined in the MSA).

6.1.2 should approval in terms of section 66 of the PFMA be granted on and made subject to the conditions contained in the Approval Letter, in the absence of the re-negotiations referred to above, it is likely that PRASA will fail to satisfy the suspensive condition contained in clause 2.5.2 of the MSA, in which event, the MSA will not become unconditional, the Effective Date (as defined in the MSA) will not be achieved and the MSA, including all other Project Documents, will be of no further force or effect.

6.2 With reference to the final paragraph of the Approval Letter, it is assumed that the spending limit of R53 billion and the terms of such spending limit to be gazetted in accordance with the requirements of the PFMA will make allowance for price variations incidental to the manufacture of the trainsets typical of a transaction of this nature and duration and as contemplated by the terms of the MSA. A failure to clarify that the spending limit is subject to price variations made under and in accordance with the MSA would render the MSA impractical as PRASA would, by necessity, first be required to obtain an amendment to the authority before any such variation under the MSA is effective. This would prove to be particularly problematic in circumstances where such price variation arises as a result a change in law and, in respect of which, compliance is mandatory.

We remain available and at your disposal to answer and address any further queries or concerns which may arise from the above analysis.

WEBBER WENTZEL



**LETTER TO THE PRESIDENT FOR THE
MINISTER’S SIGNATURE**

Handwritten signature and initials, possibly reading "N.M."

" EDP 5 "



**MINISTER
TRANSPORT
REPUBLIC OF SOUTH AFRICA**

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His Excellency Dr J.G.Zuma
President of the Republic of South Africa
Private Bag X 1000
PRETORIA
0001

HE President Zuma,

**REPORT ON PROGRESS WITH THE PASSENGER RAIL AGENCY (PRASA)
ROLLING STOCK RENEWAL PROGRAMME**

I am writing this letter as a response to the request from the President through Dr Lubisi, the DG in the Presidency, to inform you, Mr President of progress made with the PRASA rolling stock renewal programme and discussions with Treasury in this regard.

On 5 December 2012 Gibela Rail Transport Consortium (Gibela) was announced as the preferred bidder for the manufacture and supply of new rolling stock to PRASA. The bid was based on an affordability limit of R 51 billion over 10 years for the supply of 3 600 coaches (600 train sets). Negotiations between PRASA and Gibela followed and on 14 October 2013, a contract (the Manufacture and Supply Agreement (MSA)) was signed on the above-mentioned basis. In the meantime there has been continuous interaction between PRASA and Treasury regarding the financial aspects of the contract in order to reach financial close with Gibela.

PRASA, as a Schedule 3B entity under the Public Finance Management Act (PFMA) is subject to section 66(3)(b) of the PFMA and as a result, it may through its board (as its accounting authority) borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind it to any future financial commitment, only if it has been authorised to do so by notice by the Minister of Finance in the Government Gazette.

To this end, Clause 2.5 read with Clause 2.5.2 of the MSA provides as follows:

"Notwithstanding the date of this Agreement and any other Project Document, the rights and obligations of the Parties under the Project Documents ... will be suspended until each of the following suspensive conditions has been fully satisfied or waived in writing by the party for whose benefit such conditions is provided:

the Company (*PRASA*) shall have provided to the Contractor (*Gibela*) ... a copy of the publication by the Minister of Finance in the Government Gazette authorising the Company, as contemplated by section 66(3)(b) of the PFMA, to enter into transactions such as those contemplated in this Agreement and the Project Document that binds or may bind the Company to a future financial commitment". (Own cursive).

On 3 September 2013 I sent a letter entitled "PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA): ROLLING STOCK FLEET RENEWAL PROGRAMME: CONSENT OF MINISTER OF FINANCE IN TERMS OF SECTION 66 OF THE PUBLIC FINANCE MANAGEMENT ACT, 1999 (ACT 1 OF 1999) AND CONCURRENCE IN TERMS OF SECTION 70(1)" to the Minister of Finance, requesting his consent and concurrence as set out above for the funding of the PRASA rolling stock renewal programme.



The Minister of Finance has not yet published a notice pursuant to section 66(3)(b) of the PFMA and as a result, the obligations under the MSA are suspended in terms of Clause 2.5.2.

PRASAs interpretation of the discussions with Treasury was as follows:

1. PRASA has had extensive interaction with National Treasury since August 2013 on a number of commercial issues. A series of submissions were exchanged addressing the issues. National Treasury procured an independent legal and financial due diligence (Review) of the Manufacture and Supply Agreement (MSA). Upon completion, a meeting between all parties was held on 12 December 2013 to table the due diligence report and to consider next steps and outstanding issues to reach Financial Close.
2. Pursuant to the report, PRASA is of the opinion that the parties agreed to an adjustment of the affordability limit to R58 billion reflective of R51 billion as per the Request for Proposals (RFP) and foreign exchange adjustment at the time. It must be noted that Treasury disputes that such an agreement was reached.

In line with this agreement, PRASA engaged with Gibela to renegotiate the indexation formula and a revised formula was arrived at which reduced the labour weighting by 12%. Furthermore, PRASA effected the changes in the contract in line with the recommendation of the due-diligence report (Review). A reprioritization of PRASA capital programme and cashflows reflecting the payment obligations in the MSA had been prepared as part of the submissions and exchanges alluded to above dealing with the initial affordability shortfall. This reprioritization of the budget by PRASA is informed by its business requirements as a Schedule 3B Government entity.

On 19 March 2014, the Minister of Finance sent a letter entitled "PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA) ROLLING STOCK PROCUREMENT CONTRACTS", in which he sets out his decisions with respect to the Minister of Transport's request. A copy of the letter is attached as Annexure A.

In his letter, the Minister of Finance sets out the terms for gazetting of the affordability limit as follows:

1. In a letter dated 26 April 2012 to the then Minister of Transport, Mr Sbu Ndebele, the Minister of Finance supported an affordability limit of R 40 billion over a ten year period. As a result of the depreciation of the Rand between the date of bidding and the anticipated financial close, he proposes to increase the affordability limit by R 13 billion to R 53 billion (In 2014 prices). This includes the original R 40 billion affordability limit, plus R 8.788 billion for foreign exchange fluctuations between the bidding date and the current date and price escalation of R 4.212 between those dates.
2. The nominal value of the expenditure limit will be adjusted to reflect the increase in headline Consumer Price Inflation (CPI). This differs from the escalation formula negotiated between PRASA and Gibela. The Minister of Finance wants the formula for contract price escalation to be revisited to reduce long term risk. Treasury is of the opinion that the bidder must make provision for this in any renegotiated bid submitted;
3. The National Treasury has advised and the Minister of Finance is in agreement that the fiscus will compensate for movements in exchange rates. The annual allocation from Treasury for the fleet renewal programme should therefore take into account exchange rate movements and foreign currency inflation, rather than rand inflation, in respect of the foreign currency denominated components of the programme;
4. The sections of the procurement agreements that deal with contract price escalation and foreign exchange denominated expenditure should be finalized in consultation with National Treasury;
5. The Manufacture and Supply Agreement (MSA) must be managed within the limit of the revised affordability limit of R 53 billion. The Minister of Finance does not set a limit for the Technical Support and Spares Supply Agreement (TSSSA),



except to indicate that the commitments presently envisaged in the agreement should not be exceeded. In line with the reduced spending limit, the number of trains delivered annually will most probably be reduced and therefore adjustments to the TSSSA might also need to be made. Using CPI as the formula for price escalation instead of the formula in the agreement should also have the effect of lowering the cost of the TSSSA.

6. Should economic growth and fiscal circumstances improve and good progress is made with the PRASA's renewal of Metrorail services, consideration could be given to increasing the spending limit through the annual budget discussions between this Department and National Treasury;
7. In the light of the affordability constraints, PRASA should ensure that the purchase agreement provides appropriately for a reduction of the train sets to be procured, as this will be required in order to meet the spending limit; and
8. The proposal to reprioritize funds from the capital budget of PRASA to this project cannot be acceded to, as the allocations for the fleet renewal programme will in future appropriations be earmarked and ring-fenced on the Transport vote and it will not be permissible to shift funds from other purposes to cover shortfalls on this programme. Furthermore, PRASA cannot bind itself or the Government to expenditure of the additional R 1.1 billion per annum beyond the Medium Term Expenditure Framework term of three years.

On 27 March 2014, I directed a letter to Mr Sfiso Buthelezi, Chairman of the Board of PRASA, informing him of the Minister of Finance's decisions and directing him to implement the decisions. Response was obtained from PRASA on 28 March 2014. PRASA is concerned that it appears from the Minister of Finance's letter that Treasury has made an about turn on the discussions which they had on 12 December 2013, at which meeting PRASA is of the opinion that certain agreements were reached regarding the affordability limit and the escalation formula.

Your Excellency, according to PRASA, the consequences of the Minister of Finance's letter include the following:

1. The contract with Gibela was signed on 14 October 2013, based on an affordability limit of R 51 billion and the delivery of 600 trains;
2. The proposed spending limit of R53 billion (2014 prices, adjusted for foreign exchange movement) and the funding shortfall will require a re-negotiation of the MSA with Gibela. This will result in significant public law risks as set out in the legal note obtained by PRASA, attached as Annexure B.
3. If Gibela accepts the revised ring-fenced affordability limit (of R53 billion), then Gibela will, in all likelihood, have to revisit their pricing and Economic Development commitments. This will result in an increase in pricing and adjustment of commitments;
4. Should approval in terms of section 66 of the PFMA be granted on and made subject to the conditions contained in the Approval Letter, in the absence of the re-negotiations referred to above, it is likely that PRASA will fail to satisfy the suspensive condition contained in clause 2.5.2 of the MSA, in which event, the MSA will not become unconditional, the Effective Date (as defined in the MSA) will not be achieved and the MSA, including all other Project Documents, will be of no further force or effect;
5. Extending the effective date of the contract will have a serious impact on the delivery of the new trains to PRASA. Further extension of the effective date will also pose a risk on the validity period of the procurement expiring. This will have a dire effect on PRASA's procurement of the new trains; and
6. From a procurement law perspective, re-pricing and readjustment of commitments could result in a process that is considered unfair and irrational and may further render Gibela as no longer being the best offer for PRASA.

PRASA also questions the curb on reprioritizing within its budget imposed by the Minister of Finance. Mr Buthelezi also proposes that National Treasury revise the affordability limit to cater for the full amount of this procurement. In this case, it is proposed that an agreement be reached between the National Treasury, the Department of Transport and PRASA to continually review the delivery of the new fleet and the associated approved expenditure levels, beginning in the agreement's third year. The outcome of this review may trigger a variation in the over-all order of train-sets to be manufactured and supplied under the MSA or a lengthening of the contract period.

In order to resolve the impasse, I have sent a letter to the Minister of Finance, setting out the issues, his attention to PRASA's concerns and requesting an urgent meeting with him, PRASA and our two departments of Transport and National Treasury.

Your Excellency, according to the Department's information, PRASA has in the interim made a new submission to the Fiscal Liabilities Committee containing the following:

1. They accept the Minister of Finance's affordability limit of R 53 billion;
2. Gibela accepts the foreign exchange risk for the first five years, after which Treasury will manage the risk further;
3. They retain the escalation formula in the MSA, but bring down the labour component from 60% to 48%; and
4. If the escalation in terms of the formula exceeds CPI, PRASA will manage the total expenditure by reducing the number of trains ordered.

I am also informed that National Treasury is of the opinion that they are very close to reaching agreement with PRASA on all the outstanding issues and that the Minister of

Finance will shortly publish a notice pursuant to section 66(3)(b) of the PFMA which will allow PRASA to reach financial close.

Your Excellency, please note that I am available to come and brief the President on any other outstanding matter, and will appreciate that I be allowed to bring PRASA Chairman, the CEO and the Department of Transport Rail branch representative.

I trust that Your Excellency will find the above information in order and helpful.

Yours Faithfully,



Ms Dipuo Peters, MP
MINISTER OF TRANSPORT

Date: 16/04/2014



COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

08 FEBRUARY 2021

DAY 339



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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ADV FREUND SC: And you say during your tenure as Chairperson there were three Ministers Dipuo Peters, Joe Masangwani and Blade Nzimande. There were four boards. There were numerous Chief Executive Officers and that this instability you say hampered the Portfolio Committee's efforts to follow up on allegations in the media with the trains, with purchase – that the trains purchased were not fit for purpose. Let us just leave that last sentence for the moment other account – we will come back to that.

10 I think the point you really trying to stress here is was a period of very considerable instability at the level of Minister; at the level of Board and at the level of Chief Executive Officer and frankly also at the level of senior management at the level directly below Chief Executive Officer, am I understanding you correctly?

MS MAGADZI: That is correct.

ADV FREUND SC: Now you then say in paragraph 13 that despite the high turnover of Ministers you did not experience any pushback from the Executive Authority and
20 there was alignment you say between yourself and the different Ministers. Now I would just like to focus very briefly on that feature of Parliamentary oversight. The importance of the relationship between the Chair of the relevant Portfolio Committee and the Minister responsible for that same Portfolio. You would agree I presume that

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that is an important relationship which affects the effectiveness of Parliamentary oversight in respect of that Portfolio?

MS MAGADZI: That is correct. We – I would say all the three Ministers we really worked amicably and whenever there were issues I will raise with the Minister responsible and we will have discussions even them attending the Portfolio Committee meetings was not an issue at all.

ADV FREUND SC: Alright. And then in paragraph 14 you
10 say:

“Another factor which made it difficult for the committee to exercise to proper oversight over PRASA was the difference of approach between the committee and the PRASA board as to how challenges at PRASA should be dealt with.”

Now I – I would ask you please to elaborate bearing in mind the very point that you have made about instability. There was – there was a board that had been chaired by if
20 I am not mistaken Siphiso Buthelezi.

MS MAGADZI: That is correct.

ADV FREUND SC: It was that board that replaced that board that was chaired by Mr Popo Molefe if I remember correctly.

MS MAGADZI: Huh-uh.

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ADV FREUND SC: That board itself was removed by the Minister and replaced by an interim board. That interim board was again replaced by Mr Popo Molefe's board. That board's turn of office came to an end and another board was installed. That board in due course was itself removed and so forth. So it is important for us to – to refer to that in order to understand what it is you are trying to say in paragraph 14. When you say there was a difference of approach between the committee and the
10 PRASA board could you be a little more specific please?

MS MAGADZI: Thank you very much we indeed like we had indicated we had Mr Buthelezi who was on our arrival the board did not stay very long it had reached their term of office expired and the board that was chaired by Dr Molefe came in and then we had a board which actually was chaired by the now Judge Maluleke and Mr 00:17:27 came back again for a short stint and then there was Mr Kweyama but I need to indicate that our challenge was – what we were seeing as the Portfolio Committee and I will
20 speak particularly to the board that was chaired by Mr Molefe was that whatever we wanted information; we wanted to oversight; most of the things Mr Molefe was – would always remind us that we are like over-stepping our mark with respect to the oversight that we want to do and the – we are interfering with his fiduciary duties as the

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board. And these were some of the things which actually we were experiencing with him to an extent let me indicate that we had an oversight meeting that we – we wanted to go and see the tour trains; we wanted to have discussions with the board on the SA Phasing issue and lastly our oversight in particular it – I – was also to go and see the factory that was established in Nigel. But let me indicate that we were also accompanied by the Portfolio – the Portfolio – this – the Portfolio Committee on Appropriation.

10 We were together with that committee.

On our arrival when we wanted to – to deal with the issues of the SA Phasing in a meeting we ended up not talking to the issues because the chairperson of the board left us in that meeting indicated that he has got other issues to deal with and therefore knowing very well that the – the acting Group Chief Executive has said to us that the reinstatement of the SA Phasing was the decision of the board therefore it became a futile exercise for us to can continually talking to the issues of the SA Phasing.

20 She wanted to get issues from the board.

And I need to indicate that the other thing which was kind of challenging to us was whenever we wanted to meet with the board of PRASA it will only be the chairperson of the board who will come to the meeting.

Even when we were dealing with matters that are

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relating to Audit and Risk the chairperson of Audit and Risk will never be there. It will only be the chairperson of the board which actually was as Portfolio Committee it was a challenge for us to can be able to deal with issues because you will have different sub-committees of the board which actually you know expects that they should be able to be held accountable in this regard.

And I need to say going back to this time when we were with the Appropriation Committee we went indeed to
10 go and look at the 00:21:00 and we satisfied ourselves that we will go back to Parliament and every – we will sit down and as committee and say these are the findings that we had which indeed we were able to do and lastly the other site visit that we had to do was to go to Nigel to go and check the factory.

Whilst we were there we were told that the factory is not ready and therefore we could not go and visit that factory. But at the centre was that you will have
functionaries do not have the board which can be able to
20 explain some of the things which you see being spoken to in the documents. When you want to go and do in loco inspection you are told that the factory is not – has not been established.

I also need to indicate that this for us to do between the two Portfolio Committee we were following up

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on what the Auditor General had indicated when we were there – the PRASA audit and came to Parliament and I need to indicate that we worked for a short while with Me Maluleke who actually part of our focus was namely on the trains and the – besides the trains we were worried that PRASA does not make a follow up on – or does not even come and report back to the issues that have been raised by the Auditor General and this was a concern

Remember once we have gone through the process
10 of what the Auditor General would do you will have a budget review report that will be sent to Parliament which actually will be able to indicate that these are the findings that we had with respect to this SOE and therefore we expect that we must make follow ups as to whether what we have raised in this report of Parliament is implemented.

But to our – let me say to the dismay of the committee many a times the issues that will be raised either by the Auditor General; by the Portfolio Committee will find themselves being repeated over and over. I can
20 just simply indicate that there are 00:27:53 that the Auditor General would raise and there will be no correction of the issues that were raised by the Auditor General.

Let me just say that the last committee that came in of Ms Kweyama it was for me a very short stint. I would not talk much about that because that is when we went into

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elections and the – subsequently I cannot say as to what really – we did with the committee of Me Kweyama but for me the committee that I worked quite a long time with was the committee that was led by Dr Molefe.

ADV FREUND SC: Thank you. Now you have raised a whole host of issues which we are going to need to come back to. But one of the points you yourself had raised for discussion is the problems revealed by the Auditor General and the failure to resolve those problems.

10 I do not know whether you had an opportunity to follow the evidence of Mr Godi on Monday of last but Mr Godi referred to some information in the draft affidavit from Mr Makwetu – the late Kimi Makwetu who was then the Auditor General.

And Mr Makwetu and Chair just for your reference the witness will not have this page – for your reference this is in Bundle 4 page 871 in paragraph 61. Mr Makwetu highlights amongst other things the problem of irregular expenditure being out of control.

20 And I am just going to read to you evidence that is already on the record. He says that the irregular expenditure in the year 2013 to 2014 was 0,01 billion.

In 2014/2015 it was 0,55 billion. Half of the – more than 500 million.

CHAIRPERSON: One second – one second Mr Freund.

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One second. Thank you Mr Freund what paragraph did you refer to in Mr Makwetu's affidavit?

ADV FREUND SC: Paragraph 61 which is at page 871 in Volume 4.

CHAIRPERSON: Okay I have got it thank you.

ADV FREUND SC: Thank you. I will repeat this Chair so that you may follow and the witness may follow.

That in 2013/2014 the irregular expenditure revealed by the Auditor General's report was 0,01 billion.
10 In 2014/2015 0,55 billion. In 2015/2016 it is 15,3 billion. In 2016/2017 it is 20,3 billion and in 2017 to 2018 it is 24.2 billion.

Now my first question to you Ms Magadzi is you have no reason to dispute that those are the – those are the figures that was revealed by the Auditor General's report, you accept that?

MS MAGADZI: Yes that is correct.

ADV FREUND SC: Would you also accept that it paints a really truly disastrous collapse in financial management?

20 **MS MAGADZI:** That is correct.

ADV FREUND SC: Now what the Auditor General – the late Auditor General also said in his draft affidavit if I can refer the Chair to – let me just check this page 71? Bear with me please. He – the – Mr Makwetu said that every year the Portfolio Committee called the Auditor General's

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team for a briefing on the Auditor General's reports and he says:

"I cannot fault the Portfolio Committee for the Transport Portfolio on its diligence by calling the Executive Authority and entity to account in the sense of calling the Auditor General and calling amongst others the Minister."

I take it you would accept that praise from the Auditor
10 General?

MS MAGADZI: Thank you very much I appreciate.

ADV FREUND SC: But he says the following and I am now reading to you from page 959 paragraph 249 of his same draft affidavit. He says this:

"Although the Portfolio Committee's interrogation of the audited results was visible from the records of the PC's – the Portfolio Committees."

He says:

20 "No real recommendations or corrective action had been noted during the period under review. Furthermore there was evidence that the Portfolio Committee would request an action or initiative to be taken but the follow up thereon was lacking."

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And I must say that it is not only he who has been critical of the follow up – the actions Mr Godi for one and others have made the same point.

Now if I have heard you correctly a little earlier you yourself accept I think that this is a real problem that – that it is one thing for the Portfolio Committee to draw attention to a problem to refer to it in its report; to have its report adopted by the National Assembly and it is another thing to get those – those concerns addressed and
10 addressed timeously and appropriately. I think I see you nodding, you agree that this is a real problem?

MS MAGADZI: It is indeed a serious challenge and a real problem because many times in the Portfolio Committee we were raising lack of consequence management in – at PRASA and we were also raising the question of recurred findings by the Auditor General which actually were never being addressed by the PRASA as such and hence you see the irregular expenditure was growing and growing and growing.

20 **ADV FREUND SC:** Now as I read the Constitution the Executive is accountable to Parliament and if Parliament refers to problems and requires certain issues to be addressed and not addressed is it not possible in your argument for Parliament to have done more – but Parliament just sit back and once – once it has adopted a

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report is that the end of the matter? No more responsibility for Parliament.

MS MAGADZI: No not really that is not the end of the matter. Let me indicate like you have so eloquently said sometimes there were – the follow up particularly from the Portfolio Committee was not as efficient as you want to do – to see and let me also say that in – this to me was a challenge because you do not necessarily have systems which will be able to assist you to say there are these
10 issues which we have raised as a Portfolio Committee and therefore you need to make a follow up. In Parliament we do not necessarily have those types of systems which actually can be able to assist you as a Portfolio Committee to – can lay thorough doing of your work with respect to critical issues that we will have raised – we have spoken to that you must follow up particularly with the Executing Authority so that they do not fall by the wayside. And in this instance I so agree that indeed matters of following up on certain issues particularly holding the Executive to
20 account on certain matters was one of the things which I would say as a Portfolio Committee who were – we were found wanting.

ADV FREUND SC: Well I want to just debate...

CHAIRPERSON: Mr Freund.

ADV FREUND SC: Or discuss that very issue a little

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further – a little more detail. Sorry Chair were you trying to come in?

CHAIRPERSON: I am sorry Mr Freund ja. Ms Magadzi I – I think you need to be commended for making the statement that you accept that your Portfolio Committee and it may not be the only Portfolio Committee but you are talking about your own – the Portfolio Committee that you chaired that it was found wanting when it came to following up on what needed to be done by the Executive to address
10 the comrades.

Am I correct that that is what you have said?

MS MAGADZI: That is correct Chairperson.

CHAIRPERSON: Yes. Earlier on Mr Freund read from Mr Makwetu's affidavit where Mr Makwetu although I think in another part of his affidavit had some praise for your committee but said in another part of his affidavit that when one looks at the minutes or the documentation relating to meetings of the Portfolio Committee – your Portfolio Committee recommendations or corrective action
20 that the committee thought needed to be done to address the problems seemed to be not reflected in the minutes. That is how I understood what Mr Freund was reading from Mr Makwetu's affidavit.

I would like to know what your reaction is to that part of Mr Makwetu's affidavit. Do you also accept that

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maybe you did raise issues but fell short in terms of saying what needed to be done by the relevant functionaries to address the problems?

MS MAGADZI: Thank you very much Chairperson. Indeed, like I indicated, there were lots from the committee to dealing with some of the issues which actually were raised. And even when we would deal with these letters in the committee, we would just like deal with the matters in an official way.

10 And no further going to make sure that if at all there has this been this type of an issue which was raised, whether by the Auditor-General or by the Portfolio Committee itself.

How do we make sure that the board does its fiduciary duty but also the Executing Authority make sure that things are done according to the expectation from Parliament and also from the Auditor-General?

CHAIRPERSON: What was the reason for the committee not being able or not doing this part of this work? What
20 would you say? Was there unwillingness or was there a lack of understanding of what it was supposed to do or what was the problem? Why was it not doing this?

MS MAGADZI: Chairperson, let me indicate that doing oversight on 12 entities plus the department – the committee to a particular extent was overwhelmed by the

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work that we were doing and that is why you will find that there were things that the committee will do as a follow-up but I need to indicate that the committee was doing to the best of our ability everything that we can be able to do despite the fact that there were some deficiencies Chairperson.

CHAIRPERSON: Would the deficiencies that you acknowledge in relation to the committee's performance of these oversight functions in relation to PRASA? Also,
10 would they be found in relation to its performance of its functions in relation to the other 11 entities that it had to exercise oversight on?

Or, is the position that in regard to the other entities - when one goes to the minutes one will find that the committee – maybe not all of those entities but in a number of them it would not just end up with raising issues.

It would actually make recommendations or point the way to either the relevant boards of the Minister of
20 what should be done and would follow-up on what was done?

Or, was this a deficiency that was to be found in regard to all the entities that the committee was looking at?

MS MAGADZI: Chairperson, let me indicate that earlier

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on in my affidavit I indicated that most of the entities had stability. You will have the board waiting and finishing their time. The CEO's the same.

And therefore, it was very easy because you would have somebody who will be able to follow-up on the issues that we have raised and then they are able to come back to you.

You will have somebody who will be able, when you request a record, will be able to submit a record to you
10 as requested. But in the instance of PRASA, as has been indicated, they tell over of an executive in the main, particularly on operational matters, you will find that you can ask one thing several times and still be unable to get the thing that we have requested from PRASA, whether you request that in a meeting or you request that in writing.

It was becoming a difficulty because today there is this Group CEO. The next when you came, there is another. You still repeat the same thing again. And that is what was a challenge.

20 And let me also indicate that, in this instance you will have the board that will – they come in and say go and do. And in the end, you do not get the expected outcome. But I do not need to say that we were, as the Portfolio Committee, somewhere we also could not make it through.

So for me, I would say that it definitely was quite a

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challenge for the Portfolio Committee.

CHAIRPERSON: Did you raise the problems that you raised with the board also with the relevant Minister, Ministers at different times?

MS MAGADZI: Yes, we did.

CHAIRPERSON: And did they ...[intervenes]

MS MAGADZI: Mostly ...[intervenes]

CHAIRPERSON: Did they promise to act but did not act? Did they promise not to act? What was the position?

10 **MS MAGADZI:** Remember it... Let me just indicate that you have the board which actually – I will take the words from Dr Michael who would always be saying: It is my fiduciary duty. And failed the Portfolio Committee in executing its fiduciary duty.

CHAIRPERSON: And what about the Minister? What would the Minister say? Because let – I – let me tell you. When I saw these figures that have been of irregular expenditure in Mr Makwetu's affidavit that Mr Freund read to you. They shocked me.

20 But what particularly shocked me was that every year they were going up and up and up, as if there was nobody keeping an eye on saying actually the irregular expenditure should go down, not up.

And for me the most obvious question is: Where were the people who were supposed to tackle this – these

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irregular expenditure to not go up every year? And it gave me the impression, it is like the management at PRASA had decided, we are going to show whoever that we are going to – we do not care about what they about irregular expenditure. It is just going to go up.

I mean, 2013/2014 financial year, it was R 0,01 billion which I think would be about R 100 million. Then the... I may be wrong. Then the next year, 2014/2015, that was the first financial year that your
10 committee – you were leading the committee. It is R 0,55 billion. That would be about R 550 million. It is quite a big jump.

And then as if that was not enough. The following year – this is when your committee has been around for at least two years or something. 2015/2016, it jumps from R 550 million to R 15.3 billion. How is that possible? And you would have thought that somebody would fix the roof and say this can no longer be allowed to continue.

And that the following year it would actually go
20 down drastically. But no, it goes up. The following financial year R 20,3 billion. The next financial year, 2017/2018, R 24,2 billion. So it is like all the people who were supposed exercise oversight, it is like they do not care about this trend.

And yet, it is a trend that should shock them, that

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should make them want to do something they have never done before on the basis that this cannot happen under our watch.

During these years, was your committee aware of this irregular expenditure every year and the fact that it was going up?

MS MAGADZI: Yes, Chairperson we were very much aware of the irregular expenditure which was uncontrollable. We would engage with the chairperson and
10 the Minister and that is why most of the times with our urgent review report - part of the recommendations will always be there that this is what we would like to see as a committee but unfortunately that was never followed up either by the Executing Authority or by the Board of Governance in PRASA.

And they – what really happened was that the irregular expenditure was just ballooning every year. You can only do your bit Chairperson by making sure that what we are expected to do, you do.

20 But I have to indicate that very challenging was the fact that as much as you raise these with the Executing Authority and the Board of Governance, there was no change at all.

And this is one of the things which actually was making us to really focus onto what exactly is happening in

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PRASA. Because the other thing that was for us a concern was that the capital programmes were not being done thoroughly as our anticipation as was in the strategic plan.

You would have expected to go and see the stationary revitalisation and nothing is happening. You want to see the change that has been then been refurnished.

We do not really see that but instead, you see the irregular expenditure going up and up just like that. And
10 for us, this was – what was very frustrating to the Portfolio Committee because you – that is why I said, PRASA was our main focus in the Portfolio Committee.

And despite the fact that we were focussing on what was in PRASA. We were not getting the expected outcomes.

CHAIRPERSON: Well, I do not know what the protocols are between the Portfolio Committee and the National Assembly. But my own thinking is that at some stage your committee or you as the chairperson with this ballooning
20 irregular expenditure would talk to the leadership of Parliament and say there is something really shocking here. Something needs to be done.

And maybe the National Assembly should raise it with the President and say you are the head of the Executive. There is this shocking thing that is happening.

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The Portfolio Committee has spoken to the board, has spoken to the Minister but it just keeps on ballooning. Take steps to address this.

Is this something that was done? Is this something that your committee could not do because it has to follow certain channels or what?

But I just think that this was something that if - the relevant – if the board and the Minister were not giving proper attention to, should be – should have been raised
10 even with the President because he appoints the Minister and the Minister appoints the or – I do not know – appoints the board if they do not do their job. And the Minister appoints the CEO, I guess.

If people do not do their job and they have been given a chance to say sort this out, they should be fired. They cannot do their job. They have been given a chance to do it properly and they cannot, particularly, if we talking about taxpayers' money.

Was this something that could be done, was done,
20 could have been done but did not succeed? Do you know?

MS MAGADZI: Chairperson, we have raised this matter with The House Chair. We even submitted a report and subsequent to that, The House Chair, I think after we have submitted our report, came back to us to say we need to do our investigation into what is happening but in the matter

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which was challenging was raised.

And let me also indicate that with the Budget Review Report, the Speaker of the National Assembly, once the report has been accepted by Parliament, referred the report to the Minister for actions to be taken with the recommendations that will be included in the report.

CHAIRPERSON: But you do not know whether it went to the point of it being raised with the President? That you do not know?

10 **MS MAGADZI:** That I do not know Chairperson. The only thing that I know be that the Minister responsible will get the Review Report with the recommendations and as the Portfolio Committee you would expect the Minister to act on the Review Report.

CHAIRPERSON: Yes. I am going to raise something that maybe Mr Freund was going to raise later but it is convenient for me to raise it now.

During most of those years that Mr Makwetu refers to when the irregular expenditure was ballooning, I happen
20 to know from evidence given in this Commission by other witnesses under the PRASA work stream, that PRASA did not have a permanent Group CEO because Mr Montana left in, I think in 2015 around June.

And so some of the years – I do not know if I heard recently that finally the Group CEO for PRASA has been

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appointed or not but I do know that at least for most of last year there was an administrator, I think.

But the last Group CEO who was permanently appointed as at some time last year was Montana, who left – Mr Montana who left in 2015.

What did your committee do about the failure on the part of the Minister or the Executive to appoint a permanent Group CEO at PRASA as soon as possible after Mr Montana had left?

10 **MS MAGADZI:** Chairperson, thank you very much. Every time the board came to the Portfolio Committee, we were more interested in wanting to know because it was not only the Group CEO that was acting. You had even in other areas your CFO. There was challenges and the Portfolio Committee would also want to know from the board as to when is the appointment of the CEO.

And let me tell you that the departure of Mr Montana left the PRASA with acting, acting, acting, whether even in the subsidiaries or in the other entities of
20 PRASA. I think there were very few areas where you will be having permanent CEO.

PRASA in properties, that is where you will have your permanent CEO but the other entities, the Auto Pax you will have your person, a PRASA review have somebody who is permanent but the other areas within PRASA there

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would be somebody who is acting.

And hence, the challenge that we are seeing. We did – were raising these matters with the board, with the Minister but unfortunately the turnover, like I had indicated, in five years we got three Minister, in five years we have got like four boards, in five years you have got a plethora of acting Group CEO.

It definitely becomes a challenge for you to be able to put your fingers on the pulse.

10 **CHAIRPERSON:** What excuses you remember as having been told to the committee why these positions, particularly the one for Group CEO and maybe and CFO's, there were vacancies there, why they were not being filled? Do you remember what excuses you were told as the committee?

MS MAGADZI: Chairperson, there was not necessarily a very – I would not say that we were told that these are the reasons why there cannot be any CEO being appointed. But from our – let me say, from the assessment of the
20 Portfolio Committee, while you are advertising the post as in the board, then you leave and therefore the next board that comes will also find that the...

I remember the board that was chaired by Judge Makhubele, when they wanted to make an appointed, only to find that the post was like 18-months it had been

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advertised and therefore, meaning, that they had to re-advertise the post again.

So there was not necessarily a good reason to hold to the Portfolio Committee as to why was it so difficult to be able to appoint the Group CEO.

CHAIRPERSON: Okay. So as you sit there, you are able to say, really, you are as the committee were never given any convincing reasons why these appointments were not being met by whoever was supposed to make that?

10 **MS MAGADZI:** Seated here Chairperson, I definitely can be able to indicate that for me or the Portfolio Committee there was no good reason why an appointment cannot be made because the departure of Mr Montana, we expected that within six-months or so a group CEO should have been appointed but it was never to be.

It was just there will be this person coming in to act and then the next person coming in to act and that is how it was. Because even us in the Portfolio Committee, you would only invite PRASA to come and deal with this
20 matter or that matter. Then the next thing, you are having this person as acting Group CE.

And from the board, there is no word as to what has really happened to the previous person who was acting in this position. So that I show I would characterise what we were seeing in PRASA.

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CHAIRPERSON: H'm. Thank you, Ms Magadzi.
Mr Freund.

ADV FREUND SC: Thank you, Chair. Ms Magadzi, you have dealt with very many issues since last I asked you any question. So I would like to go back over a couple of the issues that you have just been dealing with.

The first is that if, I heard you correctly but you must correct me if I am wrong, when you first started explaining the ineffectiveness of the recommendations or
10 requirements in the reports of the committee to actually bring about change, I think I heard you say but there was no system being in place to monitor to whether what was required had been done and had been done in time.

We have used the term in this Commission “No Tracking and Monitoring System”. Am I correct that was a problem you experienced?

MS MAGADZI: That is correct.

ADV FREUND SC: And I am assuming, given that you were a senior person in Parliament, that you would have
20 interacted with your colleagues, other chairperson of other committees. I am assuming that it was not your committee alone that had the problem of “No Tracking and Monitoring System”? I am assuming that this must have been a widespread problem across committees. Would that be a fair assumption?

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MS MAGADZI: I would not talk to the other Portfolio Committees but I – let me speak to the Portfolio Committee that I was chairing, that for me that was one of the challenges that we were experiencing. And I would not – let me say that listening to Mr Frolick on Friday, that was one of the issues that he highlighted that the systems have been put in place but it still has to yield that half-routes.

ADV FREUND SC: Well, did you engage with Mr Frolic or anybody else to try to push, to achieve, effective Tracking
10 and Monitoring Systems?

MS MAGADZI: No, not clearly.

ADV FREUND SC: Now you also said another problem you experienced was that requests would be made at Portfolio Committee meetings of senior representatives of PRASA and the expectation was that at the next meeting, and often an arrangement would be made for when this is going to take place, the people who you expected to report back and the issues on which you expected them to report back simply did not happen. Am I correct?

20 **MS MAGADZI:** That is correct. To a particular extent, that is what we were experiencing.

ADV FREUND SC: Now you can fairly point fingers at those who failed to honour their undertakings. But can we not also point fingers at your committee for itself not following up on those issues?

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And in particular, is it not correct that you had all the legal powers you needed to compel witnesses to appear, compel witnesses to produce documents and that you simply failed to do that?

MS MAGADZI: I agree.

ADV FREUND SC: Now we focussed thus far quite a bit on the problem with irregular expenditure as revealed in the reports and as confirmed by the Auditor-General's report.

10 But there was another important part of the context during which your oversight took place and that is the Public Protector's report on PRASA titled Derailed and issued in September of 2015.

I am sure you would have become familiar with that report in your capacity as chair of the committee. Am I right?

MS MAGADZI: That is correct.

ADV FREUND SC: Now the Derail Report is a long report with many features but I want to put to you for your
20 comment that the complaints that were upheld included improper awarding of tenders, inadequate equation, corruption, conflict of interest, financial mismanagement, nepotism and improper treatment of whistle-blowers. Do you agree that those were all complaints upheld by the Public Protector?

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MS MAGADZI: That is correct.

ADV FREUND SC: So. And those complaints – those findings arose from complaints submitted by a trade union in 2012 which were finally upheld in 2015 but only in part because the Public Protector said:

10 I have not had time to get to grips with a number of the other complaints. So I am going to continue to investigate some of that and I also want other steps to be taken and I want the board to take responsibility for investigating and for procuring a forensic investigation of certain issues. And I want National Treasury to get involved and investigate certain things.”

Am I – is that a fair summary I am giving?

MS MAGADZI: That is correct.

20 **ADV FREUND SC:** So you not only have irregular expenditure. You have very good reason to suspect that related to this irregular expenditure is corruption, is criminal activity. And that, I would imagine, should be a matter of very great concern to your committee. Would that be correct?

MS MAGADZI: That is correct.

ADV FREUND SC: Now I want to take you to something that Mr De Freitas told us. I believe this document was

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sent to Ms Magadzi but for the Chair's reference, I am referring to Volume 4, page 485. And this is a letter that Mr De Freitas says that he sent to you. It is a letter dated the 8th of July 2016.

CHAIRPERSON: I am sorry Mr Freund. Just repeat the volume and the page?

ADV FREUND SC: I am just checking that I am giving you the right reference Chair.

CHAIRPERSON: H'm?

10 **ADV FREUND SC:** It is Volume... Sorry, I have one reference there. If you can just bear... Sorry. Volume 4. And I keep looking at Volume 3.

CHAIRPERSON: H'm?

ADV FREUND SC: Volume 4. I think page 485. Sorry, I am struggling here. Just give me a moment.

CHAIRPERSON: Bundle 4. Okay. And what is the page again?

ADV FREUND SC: Chair, I am just checking. The page I said was 485 but I think I have given you the wrong
20 reference.

CHAIRPERSON: Well, actually, maybe you can look at it. I see it is time for the tea-break. You can have a look at it and then when – after the tea-break we can continue. We will take the tea-break.

ADV FREUND SC: Yes, thank you Chair.

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CHAIRPERSON: It is quarter past. We will resume at half-past eleven. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us proceed, Mr Freund.

ADV FREUND SC: Thank you, Chair. Chair, I was referring you in error to the wrong bundle, it is bundle 3, page 485, not bundle 4, page 485.

CHAIRPERSON: Okay.

10 **ADV FREUND SC:** Bundle 3, page 485.

CHAIRPERSON: Are you going to later refer to Bundle 4 or you are not sure? I want to see whether you might [inaudible – speaking simultaneously]

ADV FREUND SC: Yes, I will in all probability also refer to bundle 4.

CHAIRPERSON: Okay, alright. I have got it, point...? Mr Freund?

ADV FREUND SC: Yes, Chair?

CHAIRPERSON: I have got it.

20 **ADV FREUND SC:** Yes, thank you. Ms Magadzi, this particular document which you have told me you are familiar with is a letter to yourself dated the 8 July 2016 from Mr Manny de Freitas, a DA MP on your portfolio committee. It is headed:

“Request to launch inquiry in to R51 billion PRASA

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tender process.”

And I will read you from the letter, it says:

“I write to you in the light of the recent news that the R51 billion tender for the purchase of 20 new locomotives by the Passenger Rail Agency of South Africa may have been unduly interfered with by the Gupta family and Duduzane Zuma. This is the latest reported case in which allegations have been made that the Gupta family have attempted to rig the tender process so that they may benefit.”

An then Mr de Freitas refers you to Section 55(2) of the constitution and he says:

“Parliament must use its power to launch an inquiry into this matter immediately.”

And he proposes that the Gupta brothers and the Duduzane Zuma should appear before parliament to account and he looks forward to a response soonest. Can you confirm that you did receive this letter from Mr de Freitas?

MS MAGADZI: Yes, I can confirm that I received the letter from Mr de Freitas.

ADV FREUND SC: Now what Mr de Freitas says is that you did not respond to it, that he again enquired about his letter and that you acknowledged receipt of the letter and said that you would address it but he said that you never did. What is your response to that?

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MS MAGADZI: Let me indicate that all correspondences which were coming to the committee were addressed by the portfolio committee and even the letter that is spoken to was dealt with in the portfolio committee and the – I would not take a decision on my own that I am calling the Gupta brothers or calling any other person to the portfolio committee, it will be the decision of the committee as to how to deal with the matter or the correspondence that has been sent to the Chairperson. That is how we were able to
10 deal with the letter from Mr de Freitas. Thanks.

ADV FREUND SC: Now is it your evidence that this letter was in fact placed before the committee and was in fact discussed by the committee?

MS MAGADZI: It was discussed by the committee.

ADV FREUND SC: And what was the decision of the committee?

MS MAGADZI: The committee felt that it was not – how can I put it, it was not an opportune time or they felt that there is no need for us to can be able to engage the Gupta
20 brothers at that particular moment. That is how I can put it and we never engaged with the Gupta brothers.

ADV FREUND SC: Well, let me just read to you the summary that Mr de Freitas gives of the newspaper article that prompted his request. I am reading, Chair, from page 381 of volume 3. He says:

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“On the 19 June 2016 the Sunday Times published a story with details of the R51 billion tender for the purchase of 20 new locomotives by PRASA which involved the Gupta Family and Duduzane Zuma. Allegations included the Gupta Family had attempted to rig the tender process so that they would benefit. Other allegations included statements made in the media by previous PRASA GCEO Lucky Montana who claimed that he was
10 introduced to the Gupta Family and associated by...”

That probably should read “and associates”

“...by previous Transport Minister Ben Martins and that the Gupta Family wanted their associates to sit on the PRASA board.”

Now if those allegations, if true, not be a very considerable concern to your committee?

MS MAGADZI: Let me indicate that once you put issues to the committee and the committee discuss and the
20 outcome is such that the committee does not believe that there can be able to take the matter forward, it is definitely the decision of the committee, not my decision. Much as it was there in the newspapers we never took up because the committee felt that it was not necessary at that particular moment for us to can be able to take the matter forward

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and call, as requested by Mr de Freitas, the people as mentioned.

ADV FREUND SC: But what I am asking you is something slightly different. I am asking you whether if those allegations were true, they would be matters that should be of very considerable concern to your committee.

MS MAGADZI: Indeed we made - from the portfolio committee, there were several issues which we raised within the committee meetings and as we were doing
10 oversight and we felt that at that particular moment we will not want to engage into what has been indicated by Mr de Freitas.

ADV FREUND SC: Ms Magadzi, I am going to ask the same question for the third time and if you again do not answer it, I will move on. The question is this, if those allegations were true, are they not allegations which ought to have been of concern to the committee?

MS MAGADZI: Mr Freund, the allegations were a concern to the committee hence we had discussions in the portfolio
20 committee and even if we were doing oversight we wanted to establish what exactly were the issues.

ADV FREUND SC: Well, did you ever ask any of the Gupta Family or Mr Zuma, Mr Duduzane Zuma or Mr Lucky Montana to come and either admit or deny what had been reported in detail in the Sunday Times on the 19 June

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2016?

MS MAGADZI: No, we did not.

ADV FREUND SC: Now I want to move on to
...[intervenes]

CHAIRPERSON: Well, hang before you move on, Mr
Freund. Why did you not? Here was an ...[intervenes]

MS MAGADZI: Chairperson, let me...

CHAIRPERSON: Ja, okay, I am sorry, I am interrupting
you, I am sorry about that. Here was an article in a
10 newspaper that was making very serious allegations
including allegations about the Gupta Family and saying Mr
Montana had said the Gupta Family had wanted their
associates to sit on the PRASA board.

Now let us just recall what the public new in 2016
about the Gupta Family. The public knew that three years
earlier in 2013 there had been a huge outcry in the country
because of the landing at Waterkloof Airbase of a Gupta
aeroplane and that had raised a lot of questions about the
Guptas having a lot of influence allegedly on the then
20 President Zuma and the government.

Also, in 2016 the public knew, and I take it that your
committee and yourself knew, that Mr Jonas had in 2015
gone public and said that he had been taken to a meeting
with the Guptas at the Gupta residence on the 20 – or he
had gone public in 2016 in March, actually, and this was

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June, he had gone public in March 2016 where he said a Gupta brother in that meeting had tried to bribe him in order to for him to accept an appointment as Minister of Finance on the basis that if he accepted the money and if he accepted the appointment, which obviously would only be done by the then President, then he would work with them. So this is part of what the public knew by June 2016 when this article came out.

A member of parliament says to your committee let
10 us act on these allegations, let us call these people to come and admit or deny or tell us what they know about these allegations, your committee does not ask them or summon them. My question is, why not?

MS MAGADZI: Chairperson, I do not necessarily have an answer as why we did not call the Gupta brothers but let me indicate that our discussion in the portfolio committee led us to a situation where we did not call the Gupta brothers and I do not want to lie and say this is what we did but my recollection was that having discussed, the
20 matter for me was closed in that and that is how I can be able to say this is how far we went.

CHAIRPERSON: Based on what you are saying, it seems to me – and I want you to comment on this – it seems to me that you would not be able to challenge a proposition that the committee had no good reasons not to take this

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matter up and try and establish whether these allegations were true. What do you say?

MS MAGADZI: Chairperson, I think you are correct, probably the committee – at hindsight I would say that the committee should have done out of what was there in the newspapers but we decided to say that this, for us, we cannot be able to do and that is why I am saying at hindsight, for sure we could have done better.

CHAIRPERSON: Well, I just want to say I like the idea
10 that you – I think you are telling me matters as you remember them and I think you are taking responsibility on behalf of the committee where it fell short. The reason I like that is because unless we are prepared to examine ourselves properly and see whether we have done our job the way it should have been done and admit where we have not done the right thing, we are not going to be able to find solution. So I like the fact that where you believe the committee fell short you are able to say I think we fell short, ja.

20 But, of course, this Commission wants to go beyond that, it wants to try and establish what is it that would make a committee that is made aware of such serious allegations not to follow them up, [indistinct – dropping voice]

Now you may not be able to say more than what you have told me but one of the issues that other

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witnesses raised last week in regard to parliamentary oversight is that the ruling party has a study group or what is referred to as a study group in parliament where members of the ruling party were serving different portfolio committees together with other I think members of parliament or maybe – I do not know whether members of the ANC or leadership who might not be part of parliament also come in, discuss matters that will be coming up at different portfolio committees and that the message would,

10 I do not know whether it is sometimes or all the time or often be to members of the different Portfolio Committees that they must be hard on the executive because the ministers are ANC ministers and sometimes those ministers are in those meetings of those study groups.

So a minister will be going to a committee but he knows that the party or the study group has instructed the ANC members of the committee not to be hard on them which seems to me to be do not do your oversight job properly because if you think you should be hard on a

20 minister, you should be able to be hard on the minister, if you think there is justification.

So in my mind as we look at this matter why your committee decided not to take up these issues I am wondering whether it might be because of such instructions from the study group or maybe not from the study group

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but maybe a general understanding that as ANC members you should not go too far – or you should not be hard on ministers and so on. Do you want to say anything about that?

MS MAGADZI: Thank you, Chairperson, let me indicate that our study groups' meetings that we were holding, whether the minister is there we will always have study group meetings in preparation for what we wanted to see happen in the committee because one thing for certain that
10 you must remember is we have to replenish and make sure that we abide by the principles, the policies, the manifesto of the African National Congress and hence when we go into the study group to discuss matters we discuss based on what we would like to see the outcomes being of the portfolio committee because what becomes interesting to us, Chairperson, is that we must make sure that we do and we execute the tasks within the mandate and confines of the ruling party and therefore, we would go into the study group, debate on issues, agree on the issues but in this
20 instance that we indicate that we never in the study group discussed the approach towards Mr de Freitas' letter because it – normally, I would not even take the correspondences that comes to the Chairperson to the study group but we will look at the programme of the portfolio committee and then be able to say how do we

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handle this issue.

The member of the study group will only get to know about the correspondences once they are in the portfolio committee and therefore, we never discussed that issue in the portfolio committee and probably those who would say that the study group will get instructions, we already have the instructions within the manifesto of the African National Congress, those are the instructions that we should be abide by.

10 We have the policies and the policies of the ANC and those are the ones that we should be able to say are we doing the right things when we do and we are doing that? And I want to say probably Mr de Freitas also in their party they have got matters that they believe their party should be able to push and I do not dispute how they would want to push their letters but it cannot be correct if at all it is his him who says we get instructions, the portfolio committee must not do this.

20 Every time the minister comes to the portfolio committee we are making sure that without fear, without favour issues that must be dealt with will be dealt with accordingly irrespective of the fact that they are ministers of the African National Congress, whatever issues needs to be dealt with, it will be dealt with in accordance to what - it is at our disposal as the portfolio committee.

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CHAIRPERSON: So are you saying that you have never had an instruction or suggestion from any ANC leader whether inside parliament or outside parliament to the effect that members of the ANC in parliament must not be hard on either the ministers, ANC ministers, or the President of the ANC when they ask questions or perform their oversight functions?

MS MAGADZI: Chairperson, I do not remember getting those kind of instructions from my party and that is why, as
10 a portfolio committee, we were always making sure that we do our work to the best of our ability and that is why I am saying going into parliament, being in the portfolio committee, we always must make sure that we uphold the manifesto of the ruling party to make sure that what the ruling party has said it is going to be doing in this particular term of office gets done.

CHAIRPERSON: Mr Freund?

ADV FREUND SC: Thank you, Chair. Ms Magadzi, then I have to go back to the question that you have already been
20 asked. There is a detailed set of allegations published in the press and drawn to the attention of your committee of what, if it is true, would probably amount to serious criminal misconduct in relation to a R51 billion tender at PRASA. If, as you say, your committee was under no pressure or instruction not to enquire into allegations

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against the Guptas, against Duduzane Zuma and allegations of state capture, I want to put to you that it is inexplicable that your committee should decide not to investigate this. Do you want to comment please?

MS MAGADZI: Thank you very much, Mr Freund, let me indicate that part of the things that the committee did was to make a recommendation that because there are serious issues in PRASA, there is a need for the state apparatus, your police, your – the Hawks, National Treasury and other
10 state apparatus to investigate the issues that were being raised in PRASA and therefore, for us, once we have done that, we felt it was opportune moment that we will see an investigation being done by the auditor general, by National Treasury, by the Hawks, by the South African Police Services so that those who have done criminal activities or if there is corruption in PRASA, they must be held accountable, they must be arrested.

ADV FREUND SC: Did you committee specifically request the Police, the Hawks or any other agency to investigate
20 this very allegation that we are now talking about that was drawn to your attention by Mr de Freitas' letter?

MS MAGADZI: If you would recall, Dr Molefe came and said – and even wrote a letter to the Speaker wherein he was indicating that he has requested the state apparatus, I think it is the Hawks, if I am not mistaken, for them to do

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certain investigations and he was indicating that he does not see anything coming to fruition and it was out of the recommendations that we made as a portfolio committee and hence when he wrote a letter to the Speaker, I also had an opportunity from the Speaker indicating that letter to the portfolio committee that this is what happened, but it was – the recommendations that we made to say we believe that the state apparatus should be able to make an investigation which the Chairperson of the board of PRASA
10 took up and subsequently was not happy about how issues were unfolding.

ADV FREUND SC: And, as I understand it, that exchange related to what action should be taken following the Public Protector's report which was issued in or about November 2015 and even in relation to that you were aware that Mr Molefe was claiming that the Hawks were not doing what they should be doing to investigate those allegations. Do you agree with what I have just put to you?

MS MAGADZI: That is correct.

20 **ADV FREUND SC:** So we go back to my earlier question, did your committee specifically takes steps to ensure that any agency would pertinently investigate the allegations to which I have just been referring which only came to light well after the Public Protector's report and which allegedly very briefly a form of State Capture attempt by the Gupta's

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in respect of the Board of PRASA. Now you either did or you did not, which is it?

MS MAGADZI: Chairperson let me indicate that in Parliament you submit regular reports and you expect that those reports once submitted should be executed. But from the committee's side, let me indicate that we did not.

ADV FREUND SC: Right, thank you. Now there is something else I would like to refer you to, it arose during the evidence of Ms Mazzone, the DA, Deputy, the DA
10 Shadow Minister for Public Enterprises. She testified last week but...[intervene]

CHAIRPERSON: Mr Freund.

ADV FREUND SC: Chair.

CHAIRPERSON: Are you moving away from these particular allegations or is it connected with them?

ADV FREUND SC: It is connected Chair, but it is in slightly different context, but it is connected.

CHAIRPERSON: Okay, let me...[intervene]

ADV FREUND SC: Perhaps you should allow me a little
20 latitude.

CHAIRPERSON: Yes. Let me ask this question. Do you concede Ms Magadzi that the conduct of your committee in doing - in not taking up these allegations to at least establish what the people consent had to say about them was a serious dereliction of duty on the part of your

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committee?

MS MAGADZI: Chairperson thank you very much, I would not say it was dereliction of duty but I would say that when you have a discussion in the Portfolio Committee and the Portfolio Committee, so agree that this is the route that we will take.

For me, I take it that we did not disengage in our duties teachers but or rather as a Portfolio Committee at that particular time we saw it fit to take the route that we were taking.

10

CHAIRPERSON: Well, I thought about your evidence was that the committee decided not to do anything about it at that time, did I understand your evidence correctly?

MS MAGADZI: Chairperson, let me indicate that – I cannot recollect properly, so as to what we said in the Portfolio Committee but there was no action that we took to that effect and I would not want to say that it was dereliction of duty but I can rather be comfortable with the fact that we did not take any action.

20 **CHAIRPERSON:** Did you not have a duty; you were the Chairperson of the committee. You were the leader of the committee and I take it that you were supposed to show leadership and give guidance. Obviously, you could not force members of the committee to your view, one way or another. They were free to make such decision as they

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made but each member of the committee and if they were to come here, they would have to decide whether they are defending their decision to do nothing, or whether they accept that they should have done something and not doing something was a dereliction of duty.

So I asked the question, were you not under a duty as a committee to do something about these allegations particularly against the background that I gave earlier on.

MS MAGADZI: Chairperson, I would agree with you that
10 they did not do anything.

CHAIRPERSON: But my question is a different one. Do you not agree that you were under a duty once you were made aware of such serious allegations, R51billion and that was said to have been irregularly obtained or in which the Gupta Family and Mr Duduzane Zuma were said to have been involved and the allegation that the Gupta's had tried to, wanted to ensure that the PRSASA Board had their associates in circumstances where we are talking about 2016.

20 Remember, that is the year in which Ms Thuli Madonsela issued her reports. A few months later, we are talking about June, a few months later she issued her State of Capture report which led to this Commission. Already there have been lots of allegations about the Gupta's in the media, and things have happened and you

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are told, you are made aware of these serious allegations. How is it possible that you - it can be said that the committee had no duty to do something about these allegations, if that is what you are saying?

MS MAGADZI: Chairperson, I – that is why at hindsight, when these issues are raised, one believes that for sure despite the fact that it was discussed in the Portfolio Committee and a particular decision was reached, one could have thought through to say, these are the issues
10 that we need to follow up but we never did anything. I have to be honest, we never did anything.

CHAIRPERSON: Yes, but remember I am going to say again. My question is a different one. Do you accept or do you not accept that the committee had a duty to do something about these allegations? You have said that you - the committee decided not to do anything or the committee did not do anything. So my question is, do you not accept that the committee had a duty to do something?

MS MAGADZI: Indeed I accept the fact that the
20 committee should have done something.

CHAIRPERSON: Okay, I guess I am never going to get an answer to this direct question that I've asked about three times Ms Magadzi. I am rather disappointed about that, I thought I would get a clear answer on what it seems to me clearly prior to the committee to do something. This was a

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committee that was aware that there was a lot of instability at PRASA you told me that, yourself. This was a committee where you were aware, there were a lot of allegations of corruption. The Public Protectors Report was out derailed.

This was a committee that was aware that there was irregular expenditure that was ballooning at PRASA and then it gets told, becomes aware that there was a tender of R51billion which involves the Gupta family and Mr
10 Duduzane Zuma and the allegations were that the Gupta family had attempted to rig the tender process so that they will benefit.

And it was alleged that Mr Montana had said that the Gupta family had tried to, had wanted to put its associates on the PRASA Board, by 2016 PRASA was in serious financial challenges. There were all kinds of allegations of corruption. On your own evidence, there was instability and your committee that you were leading refuses to do something about something so serious, and
20 you are not able to say having been Chairperson of that committee that you know that the committee had a duty to do something and it may well be Ms Magadzi that part of the problem is that a lot of people were not making the judgment call that that needed to be made in terms of their duties. Mr Freund, you may continue.

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ADV FREUND SC: Thank you, Chair. Chair, I know that on our video conference facilities, sometimes one cannot clearly hear every word. So I just want to check with Ms Magadzi that I heard her correctly because I understood her when you asked her the question previously, about whether she accepted that the committee had a duty to have acted in those circumstances.

I thought I heard her to say that she accepts that the committee should have done something, which seems
10 to me to be agreeing that there was a duty. So I just want to check with the witness whether I heard her correctly.

CHAIRPERSON: Yes.

MS MAGADZI: That is correct, sir.

ADV FREUND SC: Yes, thank you.

CHAIRPERSON: Yes, I think I did hear that as well and it may be that Mr Freund is correct. That when you say the committee should have done something, it may be that that is another way of saying it had a duty. But what I did notice is that when for some time, I continued to say, to
20 ask you the question whether there was a duty, you did not say – know when I said it should have acted I meant it did have a duty.

But I think Mr Freund is right, we should give you an opportunity to say whether when you said it should have acted, you meant it did, you accepted that I had a duty or

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the position is this different. We need to - so that we are fair to you and your committee.

MS MAGADZI: Chairperson, I think that is correct. We should – when I said at hindsight, we should have done something Chairperson.

CHAIRPERSON: If I say by saying the committee should have done something, you are accepting that it had a duty to say, to do something. Am I showing a correct understanding of your evidence?

10 **MS MAGADZI:** That is correct Chairperson.

CHAIRPERSON: Okay, alright. So that, therefore the committee's conduct in not doing something would be a dereliction of duty, is that correct?

MS MAGADZI: That is correct, Chairperson.

CHAIRPERSON: Yes, okay, alright. Now, I must thank Mr Freund to correct this because I certainly thought that you were not accepting that the committee had a duty. Of course, I think both you and I should accept responsibility for that misunderstanding because you also did not say no,
20 no when I say it should have acted I may now accept that it had a duty but I think now it has been clarified. Thank you very much. Okay, Mr Freund.

ADV FREUND SC: Thank you for that Chair. Thank you Ms Magadzi now I think it is still the same issue in a slightly different context. Ms Mazzone gave evidence, now

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a motion that was put on the floor of the National Assembly on the 8th of September 2016 and that was yet another attempt of an opposition party to persuade those with the power to make a decision, which is to say the MP representing the majority party to cause an investigation to take place into serious allegations of State Capture and of alleged corruption.

And she told the Chair about a motion that was put on the floor a draft resolution to establish an *ad hoc* Committee to investigate the alleged Capture of State resources and undue influence over the government. And she said that it had widespread support from the opposition parties but all the representatives of the majority party voted against that.

And I will refer the Chair to a document you do not have Ms Magadzi, but when I look at Bundle 2, page 361, which is an extract from Hansard I see that amongst the very many ANC MP's who voted against that proposal, that motion was yourself. Am I correct you voted against that?

20 **MS MAGADZI:** That is correct.

ADV FREUND SC: And I want to understand why you voted against that, when you voted against were you acting on an instruction on the Whip that this was the position to be adopted by all ANC MP's?

MS MAGADZI: Chairperson, first of all let me indicate

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that when we are in Parliament, are not in Parliament as myself I have been. I am representing the African National Congress and therefore will always and every time ensure that I tow the party line and that is just exactly what I did.

ADV FREUND SC: And what was the party line on requests for investigations into allegations of State Capture involving the Gupta's, the Zuma's and others?

MS MAGADZI: The motion which was put before Parliament, which was proposing the *ad hoc* Committee,
10 the ANC said we are not going to support that motion.

ADV FREUND SC: And can you tell me why not?

MS MAGADZI: I do not necessarily would be able to say I can speak my own thinking but I will not say this is the reason why the ANC said that. But when - if parties say this is the route that you are going to take, you cannot deviate from the route that the party has indicated that you must fill.

ADV FREUND SC: Alright, let us move on. I want to take you to the events...[intervene]

20 **CHAIRPERSON:** I am sorry Mr Freund before you move on. But Ms Magadzi you are not telling me are you that as a member of Parliament, if there is a motion that must be voted upon and your party says vote this way and not that way. You do not even ask, why, you are not telling me that, are you?

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MS MAGADZI: Chairperson, I am not telling you that the party would give it - would give a reason as to why but - or rather let me say I did not ask the reason why, I just believed that my party say we are not going to support the motion and I did exactly just that.

CHAIRPERSON: Are you able to tell me whether before your party told you which way to vote, whether you had come to your own view as to whether this was the motion that you would otherwise want to support or not support, or
10 you had not come to any view by the time the party told you when and once the party told you it was irrelevant what your view was.

MS MAGADZI: Chairperson like I indicated, I did not go to Parliament out of my own accord. I went to Parliament representing the African National Congress and once there has been an indication from my party, I therefore would be able to follow what has been indicated by my party and I would say in this instance, the motion put forward by Ms Mazzone the ANC said, we are not going to support and
20 definitely I did that, I did not support.

CHAIRPERSON: But at this stage, you are not able to share with me what reasons your party gave, so that I can assess whether it had valid reasons for saying this motion should not be supported or whether it had no valid reasons, you are not able to share with me what reasons

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the party gave.

MS MAGADZI: I cannot recall Chairperson as to what were the reasons why the party said we should not support; I really cannot recall.

CHAIRPERSON: But sitting here now, knowing what you know and what has happened over the years. Do you have a view whether if you knew then what you know now, whether you would have - within the party has spoken in favour of saying let us support this and obviously you
10 would, I think on your approach you would accept that if the party did not agree with you, then you would go along with whatever the party decided.

But internally, knowing what you know now, do you think that if you had known what you know now you would have said we must support this?

MS MAGADZI: Chairperson, let me say knowing what I know now, I still believe that what the party had instructed us to do for me was correct.

CHAIRPERSON: So if the same thing were to happen, if
20 we were to find ourselves in 2021 with a similar situation and a similar proposal, motion and the party said vote against this, you would still be comfortable with voting against the proposal.

MS MAGADZI: Definitely I will be following my party line.

CHAIRPERSON: Okay, alright, Mr Freund.

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ADV FREUND SC: Thank you, Chair. Ms Magadzi I want to move on with some different issues and I want to refer you in particular to a two-day meeting. I am sure it must have been a very memorable meeting that took place on the 7th and 8th of March 2017 at which your committee gave consideration to the ongoing crisis within PRASA. Chair this was dealt with in the evidence of Mr de Freitas, in volumes 3 from page 387 through to page 391. And I think we can deal with this meeting fairly briefly I hope Ms
10 Magadzi.

In the course of that meeting, it is correct is it not that your committee unanimously decided, or be it that people might have had different reasons for making the same decision. Your committee unanimously decided that it was necessary for your committee to commence an inquiry into the affairs of PRASA, is that correct?

MS MAGADZI: That is correct.

ADV FREUND SC: And what divided the committee was what would be the important issues to be investigated in an
20 inquiry. On the one hand, I was completely in your comment at least the representatives of the DA were of the view that there were allegations of corruption and the like, particularly flowing out of what was understood to be the content of the Werksmans Report, and they felt that that justifies an inquiry. So you agree with me so far?

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MS MAGADZI: That is correct.

ADV FREUND SC: And on the other hand, there were a number of members of the majority party who supported an inquiry but whose motives were a little different, the issues that more concerned them were a little different. And I want to put to you that two of those key issues that led the majority party MP's to want to support such an inquiry was firstly, this.

There was anger on the part of ANC MP's about
10 what was said to be allegations made by Mr Popo Molefe that the African National Congress had been the beneficiary of monies through a contractor with PRASA that had really come from PRASA and there was a feeling that this allegation was unjustified and unsubstantiated. That was one of the concerns, am I correct?

MS MAGADZI: Chairperson that is not correct. What the members of the African National Congress did was to - in a meeting which was scheduled amongst other things, which were, we wanted to raise was for Mr Molefe to come and
20 tell us and give us evidence of the money that was paid to the African National Congress because that money, the monies, which were indicated, were in the court papers that the African National Congress has received money.

I need to indicate that members of the Portfolio Committee, all of us we were in agreement that we need to

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investigate the malfeasance, which were had happening, the corruption which was happening, criminal activities that we felt is happening in PRASA and that we all agreed to say we need - as we were talking, we were indicating that the issues that we were raising must form part of the terms of reference for the investigation. We also need to raise the issues that have been raised by the Auditor General, particularly on irregular wasteful expenditure. We also need to factor in a number of things which actually were
10 happening in PRASA and there was no single party which was saying this is what we want to do.

All of us as the member of the Portfolio Committee, were agreeing on the issues which were raised by members to be put in that, the question of the money that went to the ANC was a separate thing altogether from what we wanted to investigate.

ADV FREUND SC: Alright now, I want to be clear because I do not want there to be any misunderstanding between us. The question that I have just asked and that you have
20 just answered relates to the events on the 17th of March 2017. That was an occasion on which you agreed with me, there was unanimity that there should be an inquiry. But I just want to remind you in perhaps you had been all confused that there was a later event, on the 20th of February 2018. So almost a year later, where there was

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also a decision by your committee to convene an inquiry and I am sure you would know that. So I just want to check when you told the Chair that all the issues you have mentioned, the allegations and so forth were amongst the reasons why all members wanted this inquiry in March 2017. You clearly had in mind March 2017 you are not getting confused with February of 2018?

MS MAGADZI: That is correct Chairperson. Those were the issues amongst other issues which were raised by the
10 members of the committee in March of 2017.

ADV FREUND SC: Alright. Now what I was putting to you was that there were two issues as I saw them that motivated ANC MP's I am just going to get this right. I put to you the one that you dealt with which is about allegations of monies finding their way PRASA ultimately into the ANC coffers. But the other issue that seemed to concern many of the ANC on this committee very considerably was the fact that the Popo Molefe board had mandated a private sector firm of attorneys Werksmans to conduct investigations and there was a strong
20 feeling on the [?] that was quite inappropriate it should not have been done. Am I right that that was another part of the sentiment?

MS MAGADZI: Mr Freund you are correct the – we had concerns on the appointment of the – the investigators in PRASA and our concerns emanated from the fact that

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1. The Werksmans company was not part of the contracted legal firms which were there in PRASA. And be that as it may we said it should have been appointed correctly. Whether they go out in a bidding or whatever was done it was irregularly appointed and those were the issues that we were raising and wanting to get the reasons why and the irregular appointment because we raised it several times in the meeting that there is a need to regularise the appointment of that month.

10 We were not speaking the fact that they are doing the job but we wanted them to be regularised.

ADV FREUND SC: Alright and that issue itself had quite a long history. I just want to mention I do not know if you recall that in March of 2016 quite some time before we talking about in March of 2017 is it had already been confirmed by the Minister in answer to a question in Parliament that Werksmans Attorneys had been appointed to lead this investigation – the forensic investigation and they had done that at the request of the board chaired by Mr Popo
20 Molefe. This had long been common knowledge, do you agree?

MS MAGADZI: Chairperson in several meetings that we held as Portfolio Committee we – we raised the issue that Werksmans has been irregularly appointed.

ADV FREUND SC: And I do not want to get engaged in a –

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in addressing whether you are right or wrong on that. You may be right; you may be wrong but let us just assume that that was an issue that was in dispute or an issue on which the committee wanted some – some clarity.

The fact of the matter is and I think you have already confirmed this that by the end of this two day marathon meeting there is complete unanimity on your committee for the reasons you have already told the Chair that there was need now for an inquiry into the affairs of PRASA.

10 I think you agree with that; am I right?

MS MAGADZI: That is correct.

ADV FREUND SC: And then something dramatic happened. What 00:04:19 at the meeting on the 8 of March the acting Director General of the Department of Transport Mr Mokonyama I believe read out a letter that had been sent to the committee from the then Minister Dipuo Peters in which she said that she had dissolved the board; the board headed by Mr Molefe. Is that correct?

MS MAGADZI: That is correct.

20 **ADV FREUND SC:** But as you have told the Chair the reasons for the need for the investigation into PRASA were widespread; they related to a lot of financial irregularities and a lot of alleged misconduct, alleged corruption and 00:05:15 you agree? I see you nod I just want to clear this up.

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MS MAGADZI: I do agree Chairperson. Agree.

ADV FREUND SC: Now what puzzles me if it is factually correct as I think it may be is that a week later on the 14 March the ANC members of this Portfolio Committee did a complete turnaround and they said there is no longer any need for any investigation into PRASA by this committee. Do you agree that that is factually correct?

MS MAGADZI: Chairperson that is not correct. What we had agreed upon in the Portfolio Committee we still believe
10 that we needed to continue with it. But I hasten to indicate that before the committee we had three very – three legislations which actually demanded the attention of the committee and hence the – the investigation was put kind of on hold because we were dealing with the National Transport – the amendment of the National Transport Act the amendment of the Adjudication of Administrative Road Traffic Offices and lastly the Road Accident Benefit Scheme Bill which were in front of the Portfolio Committee and hence there was no turnaround by the members of the African
20 National Congress instead our focus was to make sure that we deal with this legislation to finality.

ADV FREUND SC: Now I want to put to you that your memory on this which you are simply not correct and that there was a very clear and deliberate decision by your committee at that time not to proceed with the inquiry that

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you had decided the week before to commence. And I want to put to you that if one reads the report prepared by the Parliamentary Monitoring Group of that meeting and follow up meetings the – the discussion makes clear that many of the – or at least several of the members of the ANC in justifying not proceeding with the inquiry used as their reason the fact that the board had been dismissed and said having been dismissed there was now no longer any need for this inquiry. Do you dispute all of that?

10 **MS MAGADZI:** Chairperson the investigation was not about the board of PRASA but the investigation was about the happenings in PRASA and therefore it was not going to be possible that now that the board of PRASA has been dismissed it means that there are challenges and the activities which warrant that to be investigated were gone with the going out of the board and that cannot be the issue.

ADV FREUND SC: Sorry I am not clear that I understand your evidence. I – I think I understand you to be saying this. That you agree that the mere fact that the board had been
20 removed was not in itself an adequate reason not to continue with the investigation. Do you agree with that?

MS MAGADZI: That is correct Chairperson.

ADV FREUND SC: So are you saying that you stand by your evidence that the committee did not reverse its decision previously to conduct – to conduct the inquiry it proceeded

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with that decision.

MS MAGADZI: The committee did not reverse the decision to make enquiries into PRASA.

ADV FREUND SC: Did it implement the decision?

MS MAGADZI: The decision was not implemented. Chairperson like I have indicated we were under pressure to deal with the legislation which was before the committee.

ADV FREUND SC: So it did not reverse the decision but it did not implement the decision. How does it come about that
10 you do not implement a decision if you have just taken it?

MS MAGADZI: Chairperson like I indicated Mr Freund through you Chairperson we had legislations before the committee which we were supposed to deal with and see them through and that is why we put on hold the investigation.

ADV FREUND SC: Just so that we are – there is no misunderstanding between us what Mr De Freitas said in his evidence was the following and I am reading from Bundle 3 at page 390. He said:

20 “At the end of the second day of hearings the committee unanimously agreed that it had undertaken investigation into PRASA and the problems that it was currently confronting. The Terms of Reference and other details would be discussed in subsequent meetings.

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The motion to initiate an inquiry into PRASA was reconfirmed by myself at the same meeting. The Parliamentary Communication Service released a statement echoing this.”

From what I hear I do not think you dispute any of that.

MS MAGADZI: No that is why I am saying that we agreed on the investigation.

ADV FREUND SC: But of course in order to have an investigation the next step was to agree on the Terms of Reference. You never met in the next eleven months to agree on the Terms of Reference did you?

MS MAGADZI: Chairperson we did not meet to deal with the Terms of Reference we – my recollection is to the effect that we were even supposed to have some amongst us as members of the Portfolio Committee to go into that particular investigation but that never happened.

ADV FREUND SC: You see I hear what you say but I must put to you what Mr De Freitas says so that you can comment on it. He says that at this next meeting which is one week after the decision that was taken to – to have this inquiry he says that – well let me go back at – the top of page at 292 he refers ...

MS MAGADZI: Just hold it.

ADV FREUND SC: Can I proceed?

MS MAGADZI: Yes please.

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ADV FREUND SC: At the top of page 292 of Bundle 3 he says this:

“Mr Sabande said the committee had agreed on an inquiry initially however committee had not anticipated that the Minister would be so quick to respond about PRASA an inquiry was not necessary as the PRASA board had already been expelled.”

Then it continues.

10 “Mr Maswangane who later became Minister suggested that the Minister be requested to appear before the committee afterwards the committee should decide whether to pursue the inquiry or not.”

And then he says:

20 “I stated that since the 8 March meeting it appears that ANC members had been instructed to tow the line and keep quiet. I expressed concern that the PC allowed the Minister to tell us how to conduct oversight. I could not support the proposal to abandon the inquiry.”

Now what Mr De Freitas is doing here is he is lifting out of the PMG minutes of this very meeting and I want to put to you again that the sentiment (audio distorted) of this meeting

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was that because the board had been removed the feeling of the ANC members was that there was no need to continue with the meeting. I think you disagree with that am I right?

MS MAGADZI: I disagree with that if you – you would read again what Mr Maswangane said. That was part of how we wanted to proceed with the investigation because we wanted the Minister to come so that we can be able say to the Minister this is what we are going to be doing with respect to the investigation into PRASA. And the – unfortunately I
10 cannot recall whether the Minister did come to the meeting or not but it was not to say for the fact that the committee has been dismissed therefore we need to dismiss the investigation. The investigation was not about the committee but the investigations was about the happenings in PRASA.

ADV FREUND SC: Alright. And it appears from what I have just read to you that was attributed to Mr Maswangane that the suggestion was that after 00:14:58 the Minister the committee should decide whether to pursue the inquiry or
20 not. And I want to put to you that quite clearly what must have happened is that a decision was taken not to pursue the inquiry. Do you stand by that?

MS MAGADZI: There is nowhere in the minutes of the Portfolio Committee where they are saying we are discontinuing with the investigation. And let me also indicate

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that subsequent to that we – there is a report that we wrote as the Portfolio Committee and submitted that report to the Chair of Chairs. Our indication was that we wanted that report to be tabled in Parliament so that it can be within the records of Parliament but it never went to Parliament.

ADV FREUND SC: Well I am going to come back to where we are for the moment just so that we can all get our bearings about time. You are aware are you not that on the 20 February 2018 which is eleven months after the time we
10 are talking about (audio distorted 00:16:15) again to conduct an inquiry. Am I right? It is a fair decision for the committee to conduct an inquiry.

CHAIRPERSON: I am sorry Mr Freund. I am sorry Mr Freund. I could not hear.

ADV FREUND SC: Yes.

CHAIRPERSON: A number of parts of your question. It may that the transcribers could hear you but I think there were technical problems. Maybe just repeat the question and we will see whether the problems will – are still there or not.

20 **ADV FREUND SC:** Yes with pleasure Chair. I am just endeavouring to get confirmation from Ms Magadzi that eleven months after these March 2017 meetings we have been talking about there was another set of meetings that really commenced on the 20 February 2018 that another decision was taken to conduct an inquiry into the affairs of

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PRASA. I just wanted to check with the – with Ms Magadzi that you call that and can confirm it?

MS MAGADZI: I cannot hear clearly.

CHAIRPERSON: Let me check with the transcribers whether they can hear ...

ADV FREUND SC: Chair can you just enquire from the technicians.

CHAIRPERSON: One second Mr Freund. The transcribers are they able to hear Mr Freund? They cannot hear him. Do
10 they need some time to attend to the problems or is – he can try again. Okay Mr Freund the transcribers or the people recording the proceedings could not hear you. Let us try again and see whether it will be better now.

ADV FREUND SC: Chair let me – let me try again. What I am asking you Ms Magadzi is whether you can just confirm that about eleven months later from March of 2017 in February of 2018 there was another formal decision adopted by your committee to commence an inquiry of maladministration within PRASA. Is that correct?

20 **MS MAGADZI:** That is correct.

ADV FREUND SC: And I know that we are jumping the gun a bit but that too did not result in fact in an inquiry; that inquiry never in fact happened, is that correct?

MS MAGADZI: That is correct.

ADV FREUND SC: And we will come back to that later. I

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want to just finish off on where we were – it was all about March 2017. And I just want to understand more clearly from you what happened to this inquiry? Because in – on the 8 March 2017 you formally resolve to commence an inquiry. You formally resolve that you will meet to consider the Terms of Reference. But as you say it was never implemented and the Terms of Reference were never discussed or agreed.

Now is it your evidence that the sole explanation for that is that your committee got too busy with other work?

10 **MS MAGADZI:** That is correct Mr Freund. We – we were very busy with the legislations that were before the Portfolio Committee and every time at the slightest moment then we would revert – remember it is not only PRASA that we were overseeing we trying to balance the whole equation and that is why I said the most crucial thing that held us to be unable to continue with the investigation was the legislations which were before the Portfolio Committee.

ADV FREUND SC: Alright we will come back to that later. I want to move on to another letter that Mr De Freitas told the
20 Chair that he sent to you. It is a letter dated the 8 June 2017 and it is dealt with in – in his report and at page 394 and he says that on that occasion he wrote a letter to you requesting that the committee summon the directorate of Priority Crime Investigations or Hawks to provide a comprehensive and detailed report to the progress of the

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investigation into PRASA. He says he requested a response be sent to him by the 14 June 2017 and he says again no response was received. Do you recall that letter and can you confirm that you gave him no response?

MS MAGADZI: Let me indicate once more that any other correspondence that would come to the Chairperson will be dealt with in the committee and the outcomes with Mr De Freitas was part of that particular committee. Unlike external people he would be able to get the outcomes in the
10 committee. And in this instance I would not say that I never responded to that correspondence but it was dealt with within the Portfolio Committee.

ADV FREUND SC: And what was the decision of the Portfolio Committee to Mr De Freitas' request that the Hawks be asked to provide a comprehensive and detailed report into the progress of the investigation into PRASA?

MS MAGADZI: I cannot recollect as to what was the decision of the Portfolio Committee in this matter.

ADV FREUND SC: You were aware were you not that at
20 least Mr Molefe was alleging that the Hawks were not adequately investigating the many issues that he had referred to the Hawks for investigation. You knew that that was his claim am I correct?

MS MAGADZI: That is correct.

ADV FREUND SC: And fair to say that your committee never

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put pressure on the Hawks to disclose to your committee what progress if any they were making in respect of what had been referred to them by Mr Molefe and his board.

MS MAGADZI: That is correct the Hawks was never invited to the Portfolio Committee and therefore we could not get information as to progress with respect to issues as raised in PRASA – for PRASA.

ADV FREUND SC: Alright. I want to move onto a different topic. Chair if I could refer you to

10 **CHAIRPERSON:** Oh I think Mr Freund.

ADV FREUND SC: Bundle 2

CHAIRPERSON: Mr Freund.

ADV FREUND SC: Page 408.

CHAIRPERSON: Mr Freund. I think...

ADV FREUND SC: Yes Chair.

CHAIRPERSON: I think it is the convenient time to take the lunch break.

ADV FREUND SC: As you please Chair.

20 **CHAIRPERSON:** We will adjourn for lunch and resume at two. We adjourn.

ADV FREUND SC: Thank you Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV FREUND SC: Thank you, Chair. Ms Magadzi, can

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you hear me clearly

MS MAGADZI: Yes, Chair I can hear you.

ADV FREUND SC: Thank you. Ms Magadzi, I want to turn to a different issue which is the set of letters that were sent out by Mr Frolic, the Chair of Chairs to the chairs of a number of portfolio committees including your Portfolio Committee which he sent on or about the 15th of June 2017.

And in that letter – and Chair that letter is in
10 Bundle 2, page 488 and we have endeavoured over the lunch to send a copy to Ms Magadzi.

I am not sure whether she had a chance to see it. It should be in her inbox in her email. In that letter Chair at Bundle 2, page 488 - it is only a two paragraph letter. And with your leave and if you ready I propose just to read it into the record.

CHAIRPERSON: Yes, that is fine. You can read it.

ADV FREUND SC: Thank you. It is dated the 15th of June 2017. It is address to you Ms Magadzi in your
20 capacity as Portfolio Committee, as the Chairperson of the Portfolio Committee of Transport. It is headed: Allegations of State Capture in Organs of State.

And it says:

“I am sure you are aware of numerous allegations of State Capture that had appeared

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in the media in recent weeks.

Some of these allegations involve members of the board of the Passenger Rail Agency of South Africa, PRASA.

I would like to request that your committee investigate the allegations within the parameters of the rules and report any findings where applicable to the National Assembly as a matter of urgency.

10 Yours sincerely, Mr Frolic, House Chairperson of the Committee.”

Do you recall this letter?

MS MAGADZI: Yes, I do.

ADV FREUND SC: Now Mr De Freitas dealt with this in his evidence. It is at page – in Bundle 3 – in Bundle 7. And he says that we see in this letter that he was alerted ...[intervenes]

CHAIRPERSON: Hang on Mr Freund...[intervenes]

ADV FREUND SC: ...to the fact of a similar letter
20 ...[intervenes]

CHAIRPERSON: I ...[intervenes]

ADV FREUND SC: ...that had been sent ...[intervenes]

CHAIRPERSON: Sorry, Mr Freund. Did you say Bundle
3?

ADV FREUND SC: Yes?

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CHAIRPERSON: Did you say Bundle 3?

ADV FREUND SC: Bundle 3, page 397. It is where Mr De Freitas' evidence on the point appears.

CHAIRPERSON: Yes. Okay. I had sent that bundle away because I do not have much space here. So now. What is the page?

ADV FREUND SC: 397 in Bundle 3.

CHAIRPERSON: 397?

ADV FREUND SC: Black letter, 397.

10 **CHAIRPERSON:** Bundle 3, page 397 is on my bundle not ...[intervenes]

ADV FREUND SC: Under the heading ...[intervenes]

CHAIRPERSON: ...the letter but ...[intervenes]

ADV FREUND SC: Under the heading ...[intervenes]

CHAIRPERSON: Oh, where it says letter received from the House Chair regarding investigations ...[intervenes]

ADV FREUND SC: That is correct Chair.

CHAIRPERSON: Okay alright. Thank you.

ADV FREUND SC: That is correct Chair.

20 **CHAIRPERSON:** Okay alright.

ADV FREUND SC: Now Mr De Freitas testified to this orally and his version in short Ms Magadzi is the following. From his Chief Whip at the time, Mr Steenhuisen, had it been drawn to his attention that the letter similar to the letter I have just read to you, had been sent to the

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Chairperson of the Mineral Sources Portfolio Committee.

And he was led to understand by Mr Steenhuisen that a similar letter had been sent to you. But he says you never tabled that letter at the Portfolio Committee on Transport. And he says he was not officially aware that there was such a letter.

So he raised the subject and he says as diplomatically as possible and he explained to you that he had heard of the letter requesting us as the PC, initiating
10 an inquiry into PRASA.

And then he says that you as the chairperson of the committee explained to him that PRASA itself was undertaking their own inquiry and that other agencies such as the Hawks were involved. And he says that your argument was that essentially this precluded us, the committee, from lodging an inquiry.

And he says that he argued that this was not the case and that your committee was at liberty to investigate PRASA as Parliament had oversight on government. Now I
20 have a number of questions arising from his version.

My first question is. Can you confirm that you did not, as a matter of fact, tabled before your committee the letter that I have read to you of the 15th of June 2017 from Mr Frolick?

MS MAGADZI: Mr Freund, I did table the letter in front of

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the Portfolio Committee, but I will go back again to say as late in the course. In 2017, we had a number of legislations before us and we had already – we had a report which we submitted to The House Chair to say this will be the founding document towards the investigations to PRASA.

And also wanting to check with himself to say: How do we deal with the situation where we have these legislations? By then there were five bills before us. How
10 do we deal with a pack of a situation?

And we had to prioritise, dealing with the legislation but we never said we are not going to do the investigation. And subsequent to that, as we were dealing with the matter, we went into a situation where we developed terms of reference.

I think it was somewhere in 2018. We developed some terms of reference responding to this letter because at least a few of the legislations were out of the way.

We were left with the Road Accident Benefit Skill
20 Bill before us. We were left with a specific litigation services brought before us. We were left with Airports Company Bill before us but we had already been able through Parliament passed the National for amendment. We have already passed the adjudication of administrative, road and fences through Parliament.

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So that is why we were able at that particular time to say now we can be able to deal with the terms of reference wherein two members of the Portfolio Committee were assigned to deal with the terms of reference in response to this – in response to the letter but Mr Frolick was able – what was sent to us.

ADV FREUND SC: Thank you. Now could you tell me the date on which you tabled this? Because I have to tell you that a very diligent search had been performed in particular about the Parliamentary Monitoring Group who
10 attend every meeting of you.

And as far as they have seen and so far as I am aware and as far as Mr De Freitas is concerned, it was not. So are you able to give us any details as to when it was tabled?

MS MAGADZI: I cannot give you the exact date but it was somewhere in July of 2017 when we were discussing this matter.

ADV FREUND SC: July 2017. Well, Ms Magadzi if in the
20 course, after you have testified, you come across any evidence to support that, then I would suggest that your legal representative make that available to the Commission and we will investigate that further.

CHAIRPERSON: I am sorry Mr Freund ...[intervenes]

ADV FREUND SC: And ...[intervenes]

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CHAIRPERSON: I am sorry Mr Freund. I think you understood that she was saying it was July 2017 but I thought she said July 2018. Is that – which year is it Ms Magadzi when the committee discussed the letter?

MS MAGADZI: We received the letter in June of 2017 and in our committee meeting sometime in July of the very year we were able to look into how can we able to respond to the question that was put, the request that was put by The House Chair.

10 **CHAIRPERSON:** Okay so it was July 2017 when the letter was discussed? But you – the committee ...[intervenes]

MS MAGADZI: Yes.

CHAIRPERSON: ...began to look at terms of reference only in 2018. Is that correct?

MS MAGADZI: That is correct Chairperson.

CHAIRPERSON: Thank you. Yes, Mr Freund.

ADV FREUND SC: Thank you, Chair. And when your committee discussed this issue in July of 2017, approximately, what decision, if any, did your committee
20 make or what instructions, if any, did they give you on how to deal with this issue?

MS MAGADZI: We agreed with what Mr Frolic was saying to say we need to investigate. And that was the decision that we took that we need to investigate as per the instruction from The House Chairperson.

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ADV FREUND SC: And I presume it would be a matter of priority because it is alleged to relate to numerous allegations of State Capture and you have been requested to report back to The House as a matter of urgency. So I presume this must have been a matter of some priority to your committee?

MS MAGADZI: Chairperson, let me indicate that everything that we were doing in the Portfolio Committee was important and therefore we have to take everything as
10 important as it is presented before the Portfolio Committee.

CHAIRPERSON: But Ms Magadzi, various matters may all be important but the level of urgency would differ. So you may say, all of these tasks need to be done because they are important but some are more urgent than others.

It is difficult to think that they would all be enjoying exactly the same level of urgency.

I mean, there may be a task which if not done within the next three months could lead to some disaster but there could be another task which is quite important
20 but it can be done in six-months' time and there will not be much of a disaster.

Would you not accept that proposition that even though different matters may be important, the level of urgency would differ?

MS MAGADZI: Chairperson, indeed the level of urgency

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from time to time would differ but I have already indicated that before us there were legislations which needed to be dealt with before Parliament rise as we were moving towards the elections.

CHAIRPERSON: Well ...[intervenes]

ADV FREUND SC: You are talking about in the middle of 2017?

CHAIRPERSON: Ja, that was after the Local Government Elections and two years away from the General Elections
10 of 2019?

MS MAGADZI: Chairperson, between 2016 and 2018 we had several legislations which were before Parliament. And we were dealing with those legislations besides the fact that as the Portfolio Committee you were going into other things that are brought before the Committee.

And hence, when we were discussing – in the ultimate end when the bills – we were now easing out of the bills, we had to go into ways to put the terms of reference which was in 2018 so that we can be able to
20 investigate as requested by The House Chairperson.

CHAIRPERSON: I would – it would not be right that I do not mention to you that I am concerned that your – from 2016, I think about June, when mister – was it Mr De Freitas? I think it was. Made the request for an inquiry into allegations of State Capture by the Gupta family, I

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think, or when he asked that your committee should summon the Gupta's and other people in relation to the R 51 billion tender. Your committee did not see this as a matter that needed urgent attention.

It decided not to do anything at that stage. Or, also when other terms were made to get your committee to look into these allegations of corruption and State Capture involving the Gupta's, your committee thought well we have – what is more urgent is this legislation. It was 2016.

10 In 2017, a letter comes from the Chair of Chairs within Parliament. In effect, his saying this is urgent. Would your committee please investigate and report back to the National Assembly?

Your committee, once again, takes the attitude that this can wait for another – I do not know whether it is seven months or nine months or a year. We are busy with legislation.

 And yet, we are dealing here with, in terms of what Mr Frolick said in his letter to you, allegations of State
20 Capture.

I am very concerned that your committee, despite what was known in the public domain in terms of allegations involving the Gupta's and despite what Mr De Freitas proposed, despite what Mr Frolick proposes, your committee does not see this issue as requiring their urgent

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attention. I am very concerned about that.

You may be able to say something to lay my concern or – but I am quite concerned. You do not at any stage in 2016 and 2017 say as a committee: Hang on. These allegations have been made. They keep on coming up. Now they come from, we are being asked to investigate. Let us give this matter some urgent attention.

Your committee does not seem to think this matter is urgent. You might not be able to say anything but I am
10 just saying I need to be fair to you say that this is what is going on in my mind about your committee.

You might say: No, Chair you should not be concerned because of A, B, C, D. Or maybe because rightly or wrongly we took the view that the legislation was more urgent than the allegations of State Capture.

MS MAGADZI: [No audible reply]

CHAIRPERSON: You do not want to say anything or you want to say something?

MS MAGADZI: No, thank you Chairperson. You have said
20 it.

CHAIRPERSON: Yes, okay alright. Thank you. Mr Freund.

ADV FREUND SC: Thank you, Chair. Ms Magadzi and Chair, there was a follow-up letter from Mr Frolick and Chair that is to be found in Bundle 2 pages 486 and 487.

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And it reflects the fact in the first paragraph that you had met with Mr Frolic to discuss his requests and that according to him, the two of you had agreed on an approach in dealing with the matter at hand.

And the matter at hand is the letter date the 15th of June 2017 on allegations of State Capture. It is two page letter. I am not going to read it all into the record but the gist of it is that Mr Frolick was still of the view that the relevant member of the Executive should be called to
10 clarify the allegations in the public domain and that should be the point of departure before the committee determines its next course of action.

And then the letter reads as follows:

“Finally, the committee must determine the resources required and communicate the needs to my office.”

Now I take it you received such a letter at or about this time, on the 25th of August 2017?

MS MAGADZI: That is correct.

20 **ADV FREUND SC:** But you keep on going back to Mr Frolic and say: Well, the reports has been required of the following and yes we will proceed as you have requested or how did you respond?

MS MAGADZI: We did go back to Parliament, to Mr Frolic to indicate after the discussion in the Portfolio Committee

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how we would like to execute the task. And subsequent to that, I need to indicate that we had the public hearings on the bill – one of the bills that was before us.

I had indicated as to, for us to can be able to deal with what we had discussed with Mr Frolic, the Portfolio Committee will need, amongst other things that we had requested because the committee sits once a week, was to the effect that we need to be given extra days of sitting so that we can be able to deal with what was before the
10 Portfolio Committee besides looking at the other resources which actually the committee was going to need.

ADV FREUND SC: An did you ever pursue that and ever even commence this urgent inquiry?

MS MAGADZI: We did not commence with the urgent inquiry because when we finalised the terms of reference and wanted to start with the inquiry, that is when Parliament rose to go to take for the elections.

ADV FREUND SC: And am I correct that you finalised the terms of reference in February 2018?

20 **MS MAGADZI:** That is correct.

ADV FREUND SC: Now Mr Frolick has submitted an affidavit as part of the same set of affidavits that you have submitted. And he says – and Chair in Volume 1, page 54.

CHAIRPERSON: [No audible reply]

ADV FREUND SC: It says:

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“However, the Portfolio Committee on Transport (which is of course a reference to your committee) and Minerals (a different committee) sighted reasons with the administrative programme and lack of clarity on how to proceed with the implementation of the decision for not doing so.”

He says:

10 “This was raised a few times in meetings of the Chief Whip’s Forum and the National Assembly Programming Committee to discuss with the Speaker and the ANC Chief Whip. I had several meetings (says Mr Frolick) with the chairpersons to provide the necessary guidance and support to deal with the matter.”

And then he says in the final paragraph of his affidavit:

20 “The end result was that both these Portfolio Committees, Transport and Minerals, failed to implement the decision.”

Do you think what Mr Frolic there says is truthful and a fair summary on how the events unfolded?

MS MAGADZI: It is truthful because we could not implement what he had requested from us on time but we were able to have the terms of the reference and the

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people who were supposed to deal with the inquiry five months later in February of 2018.

ADV FREUND SC: Now I want to go back to something I put to you earlier. I put to you Mr De Freitas' version. You remember he said you never even tabled this letter to the committee and he says that he had a discussion with you, one on one, informally.

And that you argued to him that it was – that PRASA itself was undertaking their own inquiry and that
10 other agencies, such as the Hawks were also involved and for that reason there was no need for your committee to pursue an inquiry.

I want to give you an opportunity to comment on that because it may be that the Chair is forced to make a credibility finding as to whether he believes that Mr De Freitas said or whether he believes that you say.

So here is your chance to answer on what Mr De Freitas said.

MS MAGADZI: Chairperson, let me indicate that as
20 members of Parliament, I cannot say that because the Executive is doing this, I cannot do it as Parliament or as a Portfolio Committee.

And I want to dispute the fact that – for the fact that if PRASA was doing the investigation or the Hawks were doing investigation, it did not stop us from doing our

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own investigation as the Portfolio Committee.

And therefore, that for me, I dispute because if that was the truth, we would not have gone into a situation of having the terms of reference or even having people who will be able to deal within the Portfolio Committee deal with the request that came from Mr Frolick.

And I think that for me is not a true reflection of what I believe you need to do as the Portfolio Committee. And let me indicate that it is not correct what Mr De Freitas
10 said.

ADV FREUND SC: Well, I want to put to you that the report prepared by the Parliamentary Monitoring Group which went through your own reports on your committee and looked at the instances of engagements in your committee and anybody on the issue of PRASA.

Nowhere in that report, so far as I am aware, is there anything to corroborate what you have just said. There is no indication that letter was tabled. There is no indication that letter was discussed. There is no indication
20 that there was a decision to defer an investigation.

In fact, the impression it creates is that you colluded in withholding that letter from the committee because – and I want to put it to you for your comment, you did not want this to be done.

MS MAGADZI: Mr Freund, let me indicate that every time

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there was a correspondence that comes to my attention, I will put to it to the attention of the Portfolio Committee.

And who am I as an individual to choose to want to do certain things as and when they become before the Portfolio Committee?

I have never worked as an individual. I was working within the collective of the Portfolio Committee. And therefore, any other issues that would come before me it will always go to the Portfolio Committee.

10 And I really would not – I do not have better words to be able to say I definitely not individualistic in how I deal with issues.

ADV FREUND SC: Alright. Now Chair, if you can just give me a minute? I have misplaced a piece of paper.

CHAIRPERSON: Okay. Well, while you are looking at that, let me say something to Ms Magadzi. Ms Magadzi, you have said that, I think in 2016 and 2017, there were urgent pieces of legislation that the committee needed to deal with.

20 I would like you, if you can, after today to deposed to a supplementary affidavit where you can give me more details, one about what pieces of legislation you are referring that you were – the committee was busy with in 2016. When had the piece of legislation been brought to the committee to work with, what meetings they or the

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committee had to deal with them and when did it finalise, also in 2017. But I accept that because we are talking a few years ago, that might not be easy. If it is not easy you can indicate so but if you can, it would help just so that I can have a good picture of the reasons that you give for saying the committee could not deal with the investigation of inquiry or could not - ja, in 2016 as well as 2017. So I would like you to give me more information that will assist me to have a clear view of what you were dealing with in
10 terms of pieces of legislation and so on. Is that something that you think you could do?

MS MAGADZI: Chairperson, I think it is doable.

CHAIRPERSON: Okay, no, no, thank – how much time do you think you might need to be able to furnish such an affidavit to the Commission? What deadline would you give yourself?

MS MAGADZI: Chairperson, I can give myself two weeks going into the archives and looking for that information.

CHAIRPERSON: Yes.

20 **MS MAGADZI:** If it is fine with yourself.

CHAIRPERSON: Okay, no, that would be fine. So we would be – today is the – what is the date today? I cannot remember. But two weeks from now. Okay, that is fine, let us work on that basis. Thank you. Mr Freund?

ADV FREUND SC: Yes, thank you, Chair. I want to take

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you to another issue now, Ms Magadzi. And here a reference for you, at bundle 4, page 420. That is the actual source document. Mr de Freitas' evidence on this one is bundle 3 page 408 and I want to tell you, Ms Magadzi, that Mr de Freitas has produced a letter dated the 12 January 2018, January 2018, and it contains a letter he wrote to you and it deals in large measure, firstly, with problems of rail safety and as important as that is, I am not focusing on that for present purposes.

10 But he also deals in that letter on page 421 to 422 with the second issue. He says:

“The committee should also scrutinise the recent appointments at PRASA. Both the Acting Group CEO Cromet Molepo and the Acting CEO of Rail, Nthuthuzeli Swartz have multiple allegations of corruption and maladministration that has been lodged against these officials.”

And he goes on in some length to describe what those allegations are and then he says towards the end of his
20 letter:

“This committee has the express duty to hold the executive accountable as well as ensuring the effective management of the department, its entities and its mandate to fulfil these duties.”

And he says this in bold:

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“I here request the Transport Minister, Joe Maswanganyi and executives of PRASA be formally summoned to appear before the committee to account for the abovementioned concerns. Given the gravity of the matters raised above, I trust you will also view these matters in a serious light and proceed to address these requests with the urgency they warrant.”

Can you confirm that you received that letter?

10 **MS MAGADZI:** Chairperson, let me indicate in this instance I do not recall and appreciate – I do not recall, maybe I need to also go into my archives and check if I did receive that letter. I do not recall.

ADV FREUND SC: Chair, from our side we have no difficulty if the witness wishes to deal with this in a supplementary affidavit.

CHAIRPERSON: Yes. No, no, that is fine. So you can have a look at your archives and then in the affidavit that you talked about you could then deal with the issue of
20 whether you received this letter and, if so, what you did arising from after you had read it. Thank you. Mr Freund?

ADV FREUND SC: And while you can consider that – thank you, Chair, while you consider that, Ms Magadzi, I want to put to you clearly what Mr de Freitas alleges. Mr de Freitas alleges that your office confirmed receipt of his

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letter but he received no response to it and he says when he attempted to discuss the letter with you, with the PC Chairlady, he was fobbed off. Do you have any recollection or comment on that?

MS MAGADZI: I have indicated that I do not recall this letter. Most of the letters that you spoke to sent by Mr de Freitas I was able to say yes, I remember this letter but in this one, I do not recall and therefore even quotes that so-called I rebuffed him, it is something that I will not
10 comment on.

ADV FREUND SC: That is fine and we wish to do so in a supplementary affidavit please feel free to do so. Now what I also want to put to you is that there is a constant refrain in Mr de Freitas' evidence, not only that the committee did not do what it should do but that you personally both failed to respond to correspondence, important correspondence, and failed to put to the committee, as you say you did, these letters. The impression he creates is completely different to the
20 impression that I understand you to be conveying, he is saying on multiple occasions – and I have referred to a number of them today with you, those letters were not tabled, really suggesting you were concealing from the committee correspondence of importance. Do you wish to comment on that?

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MS MAGADZI: Chairperson, let me indicate once more that any other correspondence that was coming to me was tabled before the committee but I must also indicate that he feels I was concealing things from the committee but at no stage was Mr de Freitas arriving on time when we were dealing with correspondence in the portfolio committee and therefore that is why there is a reason to say that I was concealing some of things from the portfolio committee. And let me indicate that as far as I recollect, any other
10 correspondence to my attention would be brought before the committee.

ADV FREUND SC: Alright. Now let us move on to something we have referred to several times but we have now finally reached it which is the events of February 2018. This is what Mr de Freitas calls a third attempt into a parliamentary inquiry and he refers to a meeting of your committee that took place on the 20 February 2018 and he says the following:

20 “Mr Ramatlakane of the ANC recalled that the committee had wanted to initiate an investigation into the previous PRASA board. However, the investigation had been suspended. He suggested that due to the concerns of #UniteBehind and United Consumers Voice, outstanding issues identified by portfolio committee members of

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various meetings and investigation should be
instituted against PRASA based on Rule 227(c)."

And then he says that you then said that the portfolio
committee had wanted to investigate the previous board
under the Chairmanship of Dr Popo Molefe that you
claimed that the investigation had been stopped because
he had been suspended by the Minister of Transport and
due to the latest allegations and outstanding items from
the PRASA interim report the portfolio committee need to
10 investigate PRASA and then he goes on to say that the
committee as a whole agreed that there should be an
investigation.

Now how much of that do accept? How of that, if
any, do you dispute?

MS MAGADZI: Mr Freund, let me indicate that to my
recollection we were not investigating the PRASA board
but wanted to investigate the malfeasance which were
happening in PRASA as an organisation. Indeed some of
the things that he has mentioned there are true but I need
20 to indicate that we were not investigating PRASA board in
this instance and therefore we all agreed that there is an
need for us to be able to go into the investigation, as
requested by the house chair but also the committee saw
that there is not as much work which was before the
committee but we can able to deal with the issues.

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ADV FREUND SC: Right. And by this time, of course, the Zondo Commission had been appointed, that is correct, is it not? They were appointed – this Commission was appointed in January and we are now talking about in February so you were not concerned that the work of the Zondo Commission should in any way get in the way of your inquiry, you thought you should proceed with your own inquiry.

MS MAGADZI: Chairperson, let me indicate that we felt
10 as a committee that we have to do what we have to do as members of parliament and even if eventually, what we would have done can form the basis of the investigation through the Commission we will be able to submit that to the Commission.

ADV FREUND SC: Right. And what we also agreed according to this report and I should indicate to you that Mr de Freitas' report is drawn almost verbatim on these issues from the reports of the parliamentary monitoring group:

20 The committee agreed that the investigation should be launched in terms of Rule 227(1)(c) and they said it was important to conduct an investigation into PRASA before the 1 April 2018."

This was regarded as a matter of priority and urgency, is that correct?

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MS MAGADZI: That is correct.

ADV FREUND SC: “And it was agreed that a sub-committee comprising Mr Ramatlakane of the ANC and Mr Hassinger(?) of the DA and certain relevant officials to draw up the terms of reference by the 22 February 2018.”

I take it that is correct.

MS MAGADZI: That is correct.

ADV FREUND SC: And indeed ...[intervenes]

10 **CHAIRPERSON:** I am sorry, Mr Freund? Of course, Ms Magadzi, in 2016 and 2017 the President of your party as well as the President of the country was President Zuma. In February 2018, I cannot remember from what date, but from a certain date in February the President of the country as a new President, president Ramaphosa and of course from sometime in December 2017 your party had a new President also, President Ramaphosa, those events had happened in the meantime, is that correct?.

MS MAGADZI: I beg your pardon, Chairperson, I did not
20 hear you clearly.

CHAIRPERSON: Yes. Is it correct that in 2016 and 2017 the President of your party and the President of the country was President Zuma and that from ...[intervenes]

MS MAGADZI: That is correct.

CHAIRPERSON: And that from sometime in December

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2017 he ceased to be President of your party and Mr Ramaphosa became President of your party, is that correct?

MS MAGADZI: That is correct, Chairperson.

CHAIRPERSON: And I do not know what date your committee's meeting was in February 2018, but I think from sometime in February 2018 Mr Zuma ceased to be President of the country and Mr Ramaphosa became President of the country, is that correct? Those events
10 had happened [inaudible – speaking simultaneously]

MS MAGADZI: That is correct, Chairperson.

CHAIRPERSON: Okay, alright. Mr Freund?

MS MAGADZI: That is correct, Chairperson.

CHAIRPERSON: Thank you, Mr Freund.

ADV FREUND SC: Thank you, Chair. And is it correct that terms of reference were subsequently proposed to the committee at its meeting on the 13 March 2018 and were adopted by the committee and Chair, you will find this at bundle 3, pages 419 to 420. I want to read to you, Ms
20 Magadzi, just extracts of the official portfolio committee minutes. This is what was agreed:

“The inquiry will investigate governance, procurement and the financial sustainability of PRASA. The inquiry will look into, amongst others:

1. Appointment of permanent board members and

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executive management.

2. Alleged procurement irregularities as indicated in the Public Protector report Derailed.”

That of course went back to 2015.

As well as the allegations made of procurement irregularities with regard to the modernisation as well rolling stock projects dated back to 2012.

3. Allegations of impropriety regarding PRASA's current Acting Group CEO as well as past Group
10 CEOs dating back to 2012.”

And then a number of other issues one of which is:

“Consider Werksmans’ (indistinct – recording distorted) process and scope legality.”

Do you confirm that those were amongst the issues that your committee decided in March would be the terms of reference for the investigation it was going to carry out?

MS MAGADZI: That is correct.

CHAIRPERSON: Do you remember – I am sorry, Mr Freund, do you remember, Ms Magadzi, whether in
20 February 2018 your committee did not have any urgent legislation that needed to be attended to?

MS MAGADZI: In 2018 we had to, if I recall, bills before the portfolio committee and that is why we had to look into the other things that we can be able to handle.

CHAIRPERSON: So in February 2018 there were two bills

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that needed your attention?

MS MAGADZI: Yes, yes, Chairperson.

CHAIRPERSON: Yes but you cannot remember whether they were urgent or not?

MS MAGADZI: Let me say that in terms of parliamentary organisation, once the bill comes before you have to deal with that bill and be able to see it through and we were under duress and under pressure precisely because we knew 2018 we were going to rise for elections and
10 therefore we should not leave work – the bills which were hanging so that they do not lapse in parliament but we are able to see them through so that we would have done our work.

CHAIRPERSON: The committee – your committee still consisted of the same members who served in 2016 and 2017, is that right? There had been no substantial changes in the composition.

MS MAGADZI: There has been changes, Chairperson, in the portfolio committee. We lost one member of the
20 portfolio committee in a tragic death, we lost Honourable Masonganye who went into the executive and I think from the EFF we were – there was an introduction of a new member, the member that we started with from 2014 was taken to another portfolio. That is what I can recall.

CHAIRPERSON: I am just wondering what it is that

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convinced this committee in February 2018 to agree to these investigations and to even say by some date in April they must have completed them and yet it is the same – substantially the same people who in 2016 and 2017 seemed not really to be in on investigating these things. Are you able to enlighten me on what it is that suddenly persuaded them that this was the right thing when for two years at least they seemed not to – maybe it is one and a half years, they seemed not to be keen.

- 10 **MS MAGADZI:** Chairperson, I would say to yourself that I indicated that we had several legislations which were before the portfolio committee which actually made us to delay with respect to the investigation but also, Chairperson, besides that, I need to indicate that on an annual basis the Portfolio Committee would have and annual plan that we are supposed to execute and follow and the investigation, as it came to the fore, it was not because we are following our annual plan to the letter but it was precisely because we had legislation that we had to
- 20 see through in the main, that is what I can be able to say delayed us from going into as speedily as is possible the investigation with the terms of reference as has been indicated during February of 2018.

CHAIRPERSON: Mr Freund?

ADV FREUND SC: Thank you, Chair. Ms Magadzi, as I

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understand evidence, you say Mr Frolick's letter called for urgent action, the committee was willing to deal with it but because of the pressure of other legislation it could not manage to deal with it until finally it adopted decision on the 20 February 2018 that now we are going to commence such an inquiry, have I got that correct?

MS MAGADZI: That is correct, sir.

ADV FREUND SC: And then on the 13 March, which is a few weeks later, the committee firstly adopts the terms of reference with what he discussed but secondly, and this is
10 what I want to put to you – and Chair, this is at bundle at page 421.

CHAIRPERSON: What page in bundle 3?

ADV FREUND SC: It is minuted as follows:

“An inquiry ...[intervenes]

CHAIRPERSON: I am sorry, what page in bundle 3? I have got bundle 3, I just want the page.

ADV FREUND SC: 421.

CHAIRPERSON: Oh, okay, I am on the right page, you
20 may continue.

ADV FREUND SC: Thank you. In the middle of that page, Chair, you will see immediately before the coloured diagram there is a paragraph that reads as follows:

“An inquiry planner schedule was agreed to unanimously. The inquiry planner divided the

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inquiry for investigation into five phases starting with phase 1 on the 16 May 2018 and concluding with phase 5 on the 26 October 2018 as follows.”

And it then sets out in quite minute detail exactly how this is going to be planned and scheduled. Do you accept that?

MS MAGADZI: That is correct.

ADV FREUND SC: So as at the 13 March 2018 nobody in the committee thought that there existed any good reason why they could not get on with this inquiry and complete it
10 – they should commence it in May and complete in October of 2018. You would agree with that?

MS MAGADZI: I beg your pardon.

ADV FREUND SC: You would agree that as at the 13 March 2018, the date of this meeting, nobody on the committee was aware of any good reason at that time why they could not get on with this inquiry in May and finish it in October of the same year. They all agreed unanimously on a schedule that provided for that.

MS MAGADZI: That is correct..

20 **ADV FREUND SC:** Now in the interest of time I do not want to go through every minute detail of what happened after that. The bottom line is this, you never ever started the inquiry, did you?

MS MAGADZI: That is correct.

ADV FREUND SC: And am I correct in understanding that

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you justify that on the basis of a allegedly urgent legislation ...[intervenes]

CHAIRPERSON: I am sorry, Mr Freund. Please do not forget your question, Mr Freund. The meeting at which the committee decided to conduct the investigation did you say was the 18 March, Mr Freund?

ADV FREUND SC: Chair, I will be more clear and maybe it might help you, Chair, if you have regard actually to Mr de Freitas' evidence in bundle 3, you will see that he deal
10 with ...[intervenes]

CHAIRPERSON: At page?

ADV FREUND SC: He deals with this firstly at page 415.

CHAIRPERSON: Yes.

ADV FREUND SC: Dealing with the 20 February 2018 and then you will see, Chair, that at page 419 and following he deals with the 13 March 2018. So the dates that is the direct answer to your question is 13 March 2018.

CHAIRPERSON: Yes, okay, alright.

ADV FREUND SC: And on that occasion you will see at
20 page 421 that the unanimous agreement is that this inquiry will comprise five phases. The first phase to start on the 16 May 2018 and the fifth phase on the 26 October 2018. That was the unanimous view taken by the committee on that occasion. I think you accept all of that, Ms Magadzi?

MS MAGADZI: That is correct.

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CHAIRPERSON: I just want to ...[intervenes]

ADV FREUND SC: And then, Chair, if I move on with the question?

CHAIRPERSON: Mr Freund, I just wanted to say my registrar has checked and she tells me that the 14 February 2018 is the date when Mr Zuma resigned as President of the country. Okay, you may proceed.

ADV FREUND SC: Chair, I note that and that may or may not have a bearing on...

10 **CHAIRPERSON:** Yes.

ADV FREUND SC: As to the explanation.

CHAIRPERSON: Ja, it might not.

ADV FREUND SC: The next question that I had put, Chair, that you said I should not forget and I think you may not have heard the witness' answer was this. I asked you, Ms Magadzi, am I correct in understanding – I first asked you am I correct that this inquiry never started and you said yes, that is correct.

MS MAGADZI: That is correct.

20 **ADV FREUND SC:** And then I asked you the following, am I correct in understanding that the reason that you rely on for never having started is allegedly urgent legislation and I think you obviously said that is correct.

MS MAGADZI: That is correct.

ADV FREUND SC: So all of a sudden you could still not

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inquire into this which you had been asked in July of 2017 to inquire into as a matter of urgency and all because of urgent legislation. What was that urgent legislation?

MS MAGADZI: I indicated that we had several legislation from LLTA, amendment after amendment, a RAPS bill, ATNS bill, ACCSA amendment bill. These were the bills were before parliament and let me indicate, Chairperson, that much as we did not commence with the investigation, the committee agreed that there will be people who must
10 start with the – who must deal with the investigations, they never had an opportunity to deal with the investigation, but we have agreed that there should be people who would be able to go into the investigation.

ADV FREUND SC: So, do I understand you correctly that the pressure of the ...[indistinct - distortion] programme prevented the members of the committee themselves from proceeding but nonetheless your intention and communicated desire was that certain staff working on investigating this as it were in your absence?

20 **MS MAGADZI:** That is correct.

ADV FREUND SC: And did that ever happen?

MS MAGADZI: No Chairperson it did not happen.

ADV FREUND SC: Why did it not happen?

MS MAGADZI: If I may recall, we - the file that we had put that we will be able to investigate was when we were

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dealing with finalisation of other legislation but also dealing with the public hearings of the RABS Bill.

ADV FREUND SC: So, Mr de Freitas testified that the excuse given at the time was the need to deal with the RABS Bill and Mr de Freitas also testified that it wasn't so urgent, and in fact, that a decision has since been taken to scrap the entire bill, is that correct?

MS MAGADZI: The bill was urgent because if you would know what the challenges that ...[indistinct] is faced with
10 that bill is still urgent, even today and I am of the belief that, that bill still has to go to Parliament.

ADV FREUND SC: But it's so urgent – and it was so urgent at the time that it took you away from any investigation into an allegation of State Capture, an allegation of serious corruption, your priorities – you paid no heed to those as priorities, am I correct?

MS MAGADZI: Chairperson let me indicate that ...[indistinct] and therefore, whatever legislation comes before you, you should be able to prioritise because we are
20 in Parliament to make laws.

CHAIRPERSON: But you are also in Parliament in terms of our constitution to perform oversight over the Executive, that's a very important constitutional obligation on you as members of Parliament, isn't it?

MS MAGADZI: That is correct Chairperson but – you're

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very correct and for me, let me indicate that, for the fact that we had legislation which was very, very urgent in terms of what has been indicated to us, we had to deal with those legislation, we had to deal with other issues and – including the investigation and oversight over the Executive and therefore, that is why I said earlier on, it is important that – it was important that we should be able to balance how we're doing our work in Parliament.

CHAIRPERSON: Mr Freund.

10 **ADV FREUND SC:** Now the problems – sorry Chair.

CHAIRPERSON: Mr Freund, continue.

ADV FREUND SC: The problems of irregular expenditure mushrooming, of rampant ...[indistinct - distortion] from procurement laws continued to be pointed to by, amongst others, the Auditor General, here I will refer you to Bundle 3 at page 446 where Mr de Freitas deals with this and the Auditor General, as had become customary, had revealed serious financial irregularities, suggested that PRASA was on the verge of financial collapse and that the systems
20 were inadequate and Mr – that would have come to your attention at the time, and would, presumably, have been a matter of serious concern to you, is that correct?

MS MAGADZI: That's correct Chairperson.

ADV FREUND SC: Now, Mr de Freitas refers to yet another letter that he says he wrote to you, this is at page

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450 of Bundle 3, he says,

“On the 28th of August 2014 – 24th of August 2018, that was my error, I wrote to the Chair of the Transport Portfolio Committee, Ms Magadzi, he gives the Annexure number, it’s Annexure C39, requesting that the agreed upon inquiry into PRASA be initiated, he says he found it interesting that despite having received a letter from the House Chairperson, Cedrick Frolick, Magadzi said nothing about it to the Committee and then he says, he referred in his letter to you, to this information from the Auditor General was actually had been leaked information that had appeared in the press and he says again, as was the case, all correspondence to Magadzi, I received no response to my letter”,

Do you remember that letter, and if you do, did you respond to it?

MS MAGADZI: Chairperson I indicated earlier on that all the response were put forward in a meeting of the Committee and – for external persons I would respond for the letter as put forward by Mr de Freitas, the Committee – and when I respond to the external persons I would be taking the discussion from the Committee an email instances we would even go to an extent of calling those people who have written to the Chairperson of the

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Committee into a Committee meeting but letters that came from Mr de Freitas would be dealt with in the Portfolio Committee and then, that's how we would be able to get a response.

ADV FREUND SC: Now, you will recall that in an earlier stage in your evidence today, I indicated to you that your Committee received a certain measure of praise from the Auditor General – the former Auditor General, Mr Makwetu, he says you did call the Auditor General's team to your
10 Committee, you did call the Minister to your Committee, you did listen, but he says you were ineffective, you didn't manage to achieve what should have been achieved. I want to put it to you that that is unduly kind to you, you were not only ineffective, you were unwilling. You were unwilling, as a Committee to discharge your obligation to exercise oversight over the Executive and in particular, you were unwilling to investigate allegations of State Capture or corruption, particularly with those involved with the President and persons perceived to be close to the
20 President, would you agree, and if you disagree would you tell us why please?

MS MAGADZI: Chairperson, we may not have succeeded to do the investigations, but it did not mean that we did not want to investigate those who were closer to the President or the President himself. Let me indicate that from where

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you are starting to talk about honourable de Freitas, there's an indication as if the Committee never had any work to do but to do what de Freitas wanted the Committee to do. Remember, I indicated that, we've got an annual plan, there will be legislation that will be coming and other things that will be coming but here in this instance, Chairperson, Mr Freund, you're indicating – it is like, every time Mr de Freitas comes with something, we have to jump and do it, and that is not how the Committee should be
10 able to work and let me indicate that there were discussion and debate in the Committee on every other thing that Mr de Freitas would bring to the Committee and today here, the Committee – I, representing the Committee should say that the Committee was wrong in taking the decisions that we took, it can't be right because those decisions will be taken in the Committee and once the Committee takes a decision there is no how I can be able to, as a Chairperson divert from the decision that was taken by the Committee and let me indicate that I take serious objections to – and
20 let me also indicate that Mr de Freitas, these things were raised in the Committee, today he should be – he wants to be seen as if he was ...[indistinct] to the Committee whereas the Committee rejected most of the things that he was raising. It can't be right that, now, I should be able to say the Committee was wrong, decisions of the Committee

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were decisions of the Committee.

ADV FREUND SC: Let me make things clear to you, Ms Magadzi, firstly I accept that you as Chair speak for the Committee, but you can't be personally blamed, solely for decisions that were made by the Committee, I understand that. Secondly, I also want to make clear that my criticism that I put to you a moment ago was not based solely on what Mr de Freitas was saying. My criticism was based on problems that are far more fundamental and go back far
10 longer from the time of the publication of the derailed report, I want to put to you, your Committee showed no enthusiasm for getting to grips with the true misconduct that was started to be revealed by that report and the proof is in the pudding in the way you dealt with the Werksmans reports because the Werksmans reports uncovered a trove of relevant information and I want to put to you that your Committee never showed any interest in examining the substance of the Werksmans reports instead it resorted to the device of trying to obscure the issues by focusing on
20 the regularity of the process by which they had been appointed as attorneys. You had no desire whatsoever to get involved with the true unravelling of what was going on at PRASA, your comment please?

MS MAGADZI: Mr Freund, let me indicate that if you can go into the archives of the Portfolio Committee you will see

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that we requested, on several occasions, to meet with the Board of PRASA so that they can be able to table. There were several issues that we had raised from the ...[indistinct] to Werksmans and other issues that we felt we were discontent about but, unfortunately, we were never appraised with the information to that effect and when we, eventually, the last Committee that was there, when we requested them to assist us with the information of the investigation by Werksmans there were boxes and boxes of
10 information that came to the Portfolio Committee which actually – we even went, again, back to the Portfolio Committee to say – to the Board to say, can we get an Executive summary so that we are able to know what – how we should be able to handle this matter. Indeed, we were very keen and for sure going forward because the AG, also, had raised the irregularity of the appointment of Werksmans and we can't shy away from that, that we believe that there was – Werksmans was irregularly appointed and in view of the fact that the AG had raised
20 the irregular appointment we spoke to the Minister, we spoke to the Board to say, we want this to be regularised.

ADV FREUND SC: Ms Magadzi, again let me make my myself clear, if you had any reason to suspect or to believe the appointment of Werksmans and the manner in which was done was irregular, will not criticise you in the least

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for drawing attention to that issue and requiring that issue to be properly investigated and appropriate to be regularised, I do not criticise you for that but the evidence of Mr de Freitas, at least, and I believe that the report prepared by the PMG will, to a considerable extent bear this out is to the effect that your Committee did not show genuine interest in the thrust of what Werksmans was able to reveal on the contrary it tried to look the other way. Now, if you say that's not correct, you say you wanted –

10 you asked for – you received a mass of material and you asked for an Executive summary, could you tell me when that was?

MS MAGADZI: I cannot, vividly recall when that was but I know that we received quite a sizeable amount of information but let me also indicate that it is Mr de Freitas' view that we were more interested in the investigation and not in the outcomes of what Werksmans did, it is his view, it's not the Committee's view, I would indicate it because if it was the Committee's view we wouldn't even ask for

20 information because Mr Mulefedi did not come on several occasions when we wanted that information and want to deal with the issues, he didn't attend the Portfolio Committee's because he was the only person who would come from the Board to the Portfolio Committee. The Minister, also, when we requested this information could –

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referred us to the Board so that we can be able to get proper information from the Board and therefore, it can't be correct that we were more interested in the investigation. We would not even have started to look for what could Werksmans – what Werksmans did in PRASA.

ADV FREUND SC: Well, the proof lies in the pudding, it's your own evidence, it's not me, that you never once, actually commenced your investigation, having decided, according to you, in June of 2017 that these important and
10 serious allegations should be investigated, it's your evidence, not mine, that the Committee never started that. In the whole of 2017 and the whole of 2018. If you were genuinely interested in what Werksmans had revealed, don't you think you would have investigated?

MS MAGADZI: Chairperson, let me indicate that we want – our take was that we should be able to get information and be able to investigate based on the information, but it was correct that we never investigated but was at the centre of the Committee was that we need to get the report
20 that comes from Werksmans so that we can be able to know what we are dealing with in PRASA.

ADV FREUND SC: Right, thank you. Ms Magadzi, finally, you have deposed to a written affidavit, some of that material I have taken you through, in the course of today and the Chair will have an opportunity to read this affidavit

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but if you feel that there are parts of this affidavit that raise issues of some importance, if you feel you haven't been given a fair opportunity to deal with, then I'm now inviting you to raise whatever you feel you would want to add to your evidence.

MS MAGADZI: Thank you very much Mr Freund, let me indicate, that earlier on there was an indication from Mr de Freitas that there was a tender for R51billion, and I need to indicate to yourself that the budget of R51billion overall
10 was the budget that was gazetted by the National Treasury based on the programme of modernisation. Meaning that PRASA was supposed to get money from that R51billion to deal with signalling, to deal with station improvement with the trains, with the security, with fairways and coaches and it was – there was never a tender which was R51billion, that was the R51billion that was ring fenced by Treasury so that the modernisation programme can be able to be executed and I also need to indicate that some of the issues that actually – some of the tenders which were
20 made, like, the Braamfontein – the improvement of the Braamfontein station, that tender was cancelled, if I've gone into my archives and as far as the trains are concerned, it's a story that everybody knows that it went to Court for – it was executed by Court and that for me is history but I wanted to correct that it was not a tender of

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R51billion and the other thing that I want to indicate was the – as for the people who were involved, as indicated previously that, the Gupta and then Mr Zuma were to be given that tender ...[indistinct] is it true because if you look into the service providers who were there it was nor – it was Alsom and not the group that was reported to be belonging to the Gupta's that is one thing that I wanted to say but I also would want to say to the Commission that, having been given this opportunity, I think it is very
10 important that when you look into the Committees of Parliament there definitely is a challenge, I think I've also mentioned that in my affidavit. An indication that there is very little financial resources that gets given to the Committee in such a way that sometimes you are even unable to do your oversight, specifically because when you want to go and do oversight you will be told that there is not sufficient funding for the Portfolio Committee and therefore it makes you to look like you – it's like you – it's like the ...[indistinct] within the Portfolio Committee that
20 you are unable to do your work, whereas there are challenges that the Portfolio – the Parliament is experiencing in this regard but I also want to indicate that part of the things that one made as a observation in PRASA, which the Deputy Chief Justice had indicated is – of which, we also, as the Portfolio Committee saw as a

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predicament was the fact that people will be there at work but they will not be able to execute their tasks as is expected which became a serious challenge that, you request for information, you don't get that information and therefore it makes you, as a Portfolio Committee and as legislators to really look like you have failed in the execution of you tasks and this, for me, are the things that I also need to bring to the fore but the other thing which actually, Mr Freund, we didn't talk about is the allegation
10 of the coal trains as we wanted to go into the investigation when we called Rail Safety Regulator to the Portfolio Committee they impressed upon us that they have done the trials of the trains in most of the areas and the trains were fit to can be utilised in the Republic of South Africa and this, for us, were some of the things we felt that for the fact that the specialist in this regard had been able to say that the trains can be utilised, the Committee indicated that, while the trials – because they had been completed and the trains can be utilised and therefore for us, we feel
20 quite happy that the trains can continue but we were happy because there was, in Court, presented by Dr Molefe that they should be able to take further the matter, whether it's corruption or ...[indistinct] in Court and that is how we were able to look into this whole matter. I think, Chairperson, Mr Freund let me leave it at that, and I'd like to thank the

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opportunity, it was very hard, I must indicate, hard Deputy Chief Justice to sit in front of you and Mr Freund. I thought at some stages I was going to lose it all but thank you very much for inviting me to the Committee.

ADV FREUND SC: I have no further questions.

CHAIRPERSON: Thank you very much, Ms Magadzi for coming to assist the Commission, we appreciate it very much, there is just one or two questions that I want to ask, just for information.

10 **ADV FREUND SC:** Chair, if I can just indicate, we are not hearing you.

CHAIRPERSON: Can you hear me, Ms Magadzi.

ADV FREUND SC: Very poor, very weak.

CHAIRPERSON: Oh, how is it now.

ADV FREUND SC: Only marginally better now.

CHAIRPERSON: Oh.

ADV FREUND SC: And I don't see you.

CHAIRPERSON: Oh, and – so probably Ms Magadzi can't hear me at all. Maybe I should...[intervenes].

20 **MS MAGADZI:** Chief Justice is not audible from my side.

CHAIRPERSON: Well Mr Freund also says the same thing.

ADV FREUND SC: Very poorly, I see a note that somebody says it sounds like a loose cable.

CHAIRPERSON: I'm just looking at the technicians to see

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whether – they say it should be fine now.

ADV FREUND SC: I've just started to hear you now, Chair.

CHAIRPERSON: Okay, alright, okay, Ms Magadzi can you hear me...[intervenes].

MS MAGADZI: I can hear you too Deputy Chief Justice.

CHAIRPERSON: Okay, alright, no thank you I just have one or two questions, I think one. Section – where is this Section – the constitution makes provision for Ministers – I
10 thought I had this Section of the constitution in front of me, I can't see it now. Has a provision, Ms Magadzi which you might be aware of, to the effect that Ministers are supposed to provide Parliament with regular reports of what is happening in their departments, that is part of accountability. Did the Ministers of Transport, while you were Chair of the Portfolio Committee of Transport, provide Parliament with regular reports in accordance with that Section and if they did what was the level of irregularity, how often did they provide reports of what was happening
20 in their – under their portfolios.

ADV FREUND SC: You're on mute.

CHAIRPERSON: Ja, I ...[intervenes]

MS MAGADZI: Thank you very much, can you hear me now DCJ?

CHAIRPERSON: Yes now I can hear you yes.

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MS MAGADZI: Sorry, I had muted, let me indicate maybe I should say two-pronged approach to what – how we were receiving the reports. The first one would be that we would receive quarterly reports of the activities and operations in the department which actually will be coming from the entities plus the department on a quarterly basis which we ...[indistinct – distortion]. The other one would be when there are other issues and activities that the Minister believed, that the Minister would have done in the
10 Department the Minister would come and make a presentation to the Portfolio Committee on those activities based on how it was not like a frequent thing of activities that would be in the Portfolio Committee coming directly from the Minister. Most of the things the Minister will incorporate as part of the quarterly report that we will be receiving, but at the same we need to indicate that whenever we are meeting either with the MTT's or with the department the Minister will be part of the engagement in the Portfolio Committee and that is where – how we were
20 able to engage with the – complying with the provision of the Constitution that the Ministers will provide a ...[indistinct] to the Portfolio Committee.

CHAIRPERSON: And would you recall whether with special reference to PRASA, during the years when the irregular expenditure was going up and so on, would you

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remember whether the Ministers dealt with that issue in their written quarterly reports to say they were aware of it and what steps they were taking to address it, or is it something you cannot remember

MS MAGADZI: I cannot remember vividly what the Ministers would raise but I know that Minister Dipuo Peters and Minister Masongwane and Minister Zimande they would frequent our meetings and that is why recalling a little bit of what Minister Peters at some stages when we were
10 engaging with PRASA issues indicated that there will be a follow through particularly on the lack of consequence management, on the lack of implementation of the Auditor General's findings which actually were on an annual basis repeating themselves in that regard and that is my recollection that indeed the Ministers whenever we are sitting on any entity or the department they would always be there to make sure that whatever we are doing they are able to go into the department and be able to look into that or implement whatever decision that might have been taken
20 by the Portfolio Committee.

CHAIRPERSON: Okay thank you very much Ms Magadzi, once again thank you for coming to assist the Commission. You are now excused.

MS MAGADZI: Thank you very much DCJ, thank you very much Mr Freund, it was difficult.

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

22 FEBRUARY 2021

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Montana, I think it was the year before, towards the end of 2014, Mr Molefe informally did tell me that the Group CEO indicated to them as a board that he will be leaving and they made a request to him that they have just arrived, I do not think it will be good for him to leave them at that particular time, if he can give them extra time and all those type of things. And that is why, when the resignation, I was a bit taken aback because I knew that discussion, which was an informal discussion, I did not take it as a

10 formal official decision on my part because Mr Molefe was just briefing me that they had discussion. And incidentally, Chairperson, it is not a very good thing which I subscribe to, Mr Molefe said it will be an injustice to the development of this country to lose some of these young black executives which is something that I subscribe to and me and him were at one with regard to that issue and the meeting of the 20th, incidentally the anniversary of the UDF, it was not intended on my part and I want to correct something, Chairperson, I was appointed by President

20 Zuma, invited by him to serve in his cabinet and whether I am called by the President to a meeting, I do not say why are you calling me? Because the day he called me to appoint me I did not say why are you calling me and why are you appointing me? So I did not see anything wrong because it was not the first time I was called by the

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that it is PRASA, because I was looking at him in relation to the transport factor, because he did not start with PRASA. So and, and I still believe that as individuals we don't when we are deployed in a position, it is no – it does not become our feetstom(?). It becomes a responsibility that you need to carry out up to where it is possible based on the laws of this country, the policies and the programs that are in place. And that is why for me it is, it is, it is interesting that the President has got a performance
10 agreement and we follow that. The board had a performance agreement with Mr Montana. And they needed to follow that. And they, these would be issues that also come the supplementary affidavit that I am speaking about Chairperson.

CHAIRPERSON: Well Mr Soni was saying that he is not criticising you about not raising the question of whether it would be appropriate to return, to allow Mr Montana to return. But I do want to say this. That one of the things that I'm keen to establish is whether to the extent that I
20 might find at the end of the work of the Commission ...

MS PETERS: Pardon.

CHAIRPERSON: That Mr Zuma as President of the country may have done or engaged in certain wrongdoing which may have been, may have assisted or enable State capture or that may have enabled acts of corruption to happen and

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to flourish. I want, I will want to know if I come to that finding, but we need to talk about it before the Commission's work is finalised, because when I make that finding I won't have a chance to call you back or any of the witnesses back. So we have got to say, I have got to say, what will I say in my recommendations if I make this kind of finding? So I will, one of the questions that would arise is, was there anything that prevented Ministers to say, no but this is not right Mr President. In this context of what

10 you are talking about, if as Mr Molefe says in his evidence, Mr Zuma as President in that meeting of the 20th August 2015, did push or urge the board to revisit its decision to release Mr Montana, or to take him back, despite the fact that on your evidence he was aware that there were all kinds of allegations of corruption and wrongdoing involving Mr Montana. The question arises whether you should not have said, apart from saying you support the decision of the board which you have made it clear, you said. But President how could you ask the board to change its

20 decision when there all these kinds of allegation of corruption that have not been resolved against Mr Montana? You, you understand the context. So, so one wants to find out those who were within the cabinet, what did they do if they did see certain wrong things happening where they expected the President to do something, or did

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they just keep quiet? And if so, was there an environment that made it difficult to say something as to try and understand that the position was. But we will take the lunch break. Maybe when we come back, you might wish to say something.

ADV VAS SONI SC: Chairperson, may I before we break ...

CHAIRPERSON: Yes.

ADV VAS SONI SC: Just ask one question. It is and if you
10 just look at lunch time.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And that is, there is a distinction because I know looking at what happened recently the question is, innocent until proven guilty. The problem here is, Mr Montana was not in PRASA anymore. He was out. So it is, it is a different situation where you are taking action against somebody you say, well we did not know whether he was guilty. The question is questions have been raised and now the question is, should you take him
20 back? It is a very different question. And if, Chairperson, it fits in with ...

CHAIRPERSON: Ja.

ADV VAS SONI SC: It reinforces the point of ...[indistinct].

CHAIRPERSON: And you will remember Ms Peters that part of what you said about State Capture is that in certain

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instances those who pursued State agenda of State Capture sought to remove certain people or officials or Ministers from their positions who were not prepared to be party to any wrongdoing. And sought to have certain people appointed to those positions that they believed would work with them in advancing the agenda of State Capture. So, so when you have a situation such as the one that you have testified to, where Mr Montana had been a Group CEO of PRASA for quite some time, he left. The
10 board released him. And there were certain allegations, serious allegations against him of wrongdoing, of corruption. And here now you at a meeting which is obviously approved by the President, who comes and sits in this meeting and allows this person, against whom there are all these kinds of allegations of wrongdoing at PRASA, taking the stand at the meeting, according to Mr Molefe, that the board must rescind its decision and take this person back, while all these allegations are hanging over the head. It makes you ask the question, why would a
20 President want to do this? Why? So those are the kinds of questions that the Commission has to look at and ask. And of course it would have been better if everyone who could assist us, who would be able to come and assist us. So there, there are those questions and they might not be limited to PRASA. They might be limited; they might

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extend to other SOEs and maybe other departments. So, so that just to give you the full context. Okay, we will take the lunch adjournment. It is 13:14. We will resume at 14:15.

ADV VAS SONI SC: As it pleases.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed Mr Soni.

10 **ADV VAS SONI SC:** As you please Chairperson. Chairperson, may I just enquire? You will appreciate that when the last questions were asked ...[intervenes]

CHAIRPERSON: Just one second. The aircon, if you can lower it down. It is too noisy. Yes, Mr Soni?

ADV VAS SONI SC: I was saying Chairperson that the last few questions before lunch.

CHAIRPERSON: Ja.

ADV VAS SONI SC: I do not know if I should pursue them now or wait until the end?

20 **CHAIRPERSON:** That is fine. As long Ms Peters gets a chance to comment or say something.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: Ja. So it is fine if you deal with them later if that is convenient. Ja.

ADV VAS SONI SC: That may be because there may be

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MS PETERS: So sorry?

ADV VAS SONI SC: Sorry.

MS PETERS: Am I allowed to comment?

CHAIRPERSON: Ja. He can give you an opportunity to comment.

ADV VAS SONI SC: Yes.

MS PETERS: Thank you Chairperson. I would confirm that on the 1st of August 2014, the board appointed another chairpersonship of Popo Molefe. I confirm the resignation
10 of the Treasury representative.

When the board informed me. I wrote to the Minister of Finance to appoint their representative and it was upon them to submit which was later done.

And I confirm that under – on the 8th of March, under the chairpersonship of Tata Molefe, the board was dismissed. Yes, I agree. And the board were place – put in place an interim board that was chaired by Mr Allie, as indicated. I confirm that.

And despite the fact that I was not there, I do
20 note that on the 10th of April the board under chairpersonship of Tata Molefe was reinstated.

And I just want to indicate Chairperson that I still believe that in acting against the board of Tata Molefe on the 8th of March, I was correct.

And I was correct based on the fact that in the

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supplementary affidavit, you will note the length of time I took to engage the board under Tata Molefe with regard to these issues that are being raised by the Auditor-General.

As every quarter, ministers get reports on the performance of the entities. And all perusal and engagement would find the issues that might be found to be issues that need attention.

I wrote to the board. And in most instances, the board would not even respond. And Chairperson, quite a
10 number of times, throughout the period of 2016...

I will make an example. The first quarter of 2016, the board – the company performed at around 60%. The second quarter they performed at around 40%. The third quarter they performed at around 20% or 21%.

And those matters were of concern to the Portfolio Committee and to myself as the Minister and it was at that time Chairperson that the other matter that the evidence leader would raise would come to the fore.

The focus of the board, not on the core
20 responsibility of the company was of a concern to me and I raised it. Even in the meetings I had with them, there are – what we call notes or speeches - that I delivered in those meetings for the record.

And I want to indicate that ordinarily sitting back... There is a saying in life, generally, that says you

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their attempts despite a rigorous recruitment and interviewing process. Are you aware of a recruitment and interviewing process?

MS PETERS: I am aware of it, Chairperson. I am aware of it, Chairperson.

ADV VAS SONI SC: Were you told that the board is embarking on that process?

MS PETERS: He informed me when they had concluded the process and I did know that there is a process that
10 unfolded, even the adverts were done and I knew that they are busy with that particular process.

ADV VAS SONI SC: Now I going to come to this but in parliament it was then reported that an amount of R1,7-odd million had been spent on that process. I am going to come to that but I am just recording that. Were you aware of that?

MS PETERS: I was aware of that but not the amount, Chairperson.

ADV VAS SONI SC: Now can I ask you before we go into
20 why nobody was appointed, what role does cabinet play in the appointment of CEOs of SOEs?

MS PETERS: There is a process where once a board has gone through the processed they would recommend – I do not know whether it is three names in their order and there would be a consultation process, Chairperson, and that

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consultation process culminates in the minister presenting a memo to the cabinet requesting cabinet to concur with that particular decision.

ADV VAS SONI SC: Now ...[intervenes]

CHAIRPERSON: The consultation involves who and who?

MS PETERS: It involves quite an extensive number of role-players because you would be looking at an appointment that has a bearing on other colleagues in cabinet and you would want to make sure that those
10 colleagues can then be able to give you an indication of it they have got an issue with regard to that or, alternatively, to support your recommendation in cabinet.

CHAIRPERSON: But who gets consulted by whom? Is it cabinet ministers including the President, the Deputy President?

MS PETERS: Yes, Chairperson, it would ultimately include the President and in most instances it is courtesy to include the President. Chairperson, it is important to note that as a Minister when you go and meet the
20 President or make presentation everywhere else where you were supposed to, you are supported by a team of men and women who are necessarily from the establishment or from department and entities that you are working with. So it would be important and I always used to use even my own experience as a head of government in my previous

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responsibility as Premier of the Northern Cape where you would as a Chairperson of a cabinet when a particular motivation is made. If that motivation you are fully versed with and informed about then it makes the taking of the decision or the taking of the – or the acceptance of it even easy. Even if there would have probably been others who would probably say no, but we would have preferred to get that particular individual or somebody else would then say in the cabinet that I have interviewed that person and in
10 the next interview – it is just to cross-reference and check.

CHAIRPERSON: Does that consultation involve people who are not in government?

MS PETERS: Sorry, Chairperson?

CHAIRPERSON: Does that consultation also involve people who are not in government?

MS PETERS: Not in government?

CHAIRPERSON: Ja but for example in the ruling party, the ANC?

MS PETERS: No, no, no, in the ANC the President and
20 the Deputy President would report on those particular processes, to consult.

CHAIRPERSON: Okay. So the people that consulted are basically your cabinet colleagues and the President and Deputy President?

MS PETERS: It would be the cabinet colleagues – yes,

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MS PETERS: Just as a correction Chairperson, Mr Letswalo was not even there for a year.

CHAIRPERSON: Okay. No you, I may be wrong but I was under the impression that he came in 2016 July and left when, in 2018 somebody was appointed.

MS PETERS: 2017, February.

CHAIRPERSON: 2017, February. So he was there for less than 12 months. Okay, alright. Well, the irregular expenditure did not, there was no change in it. He had
10 about is it nine months or, he had less than a year to deal with it. One can accept that he did not have a full year, but never the less that part he might have performed well on other funds, but that part seems to have just continued as it has done before. Okay, Mr Soni.

ADV VAS SONI SC: As you please. Ms Peters, I have been asking, I have been waving the question of accountability so I am going to come back to an issue that you raised. So we know now that Mr Montana had left in July 2015. We know that cabinet is involved, rightly or
20 wrongly, but it is involved in the appointment of CEO's of SOE's. That is correct? I see you shaking your head. That is correct, is that not so?

MS PETERS: That is correct Chairperson, because the Minister submits the submission to cabinet for concurrence.

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process.

CHAIRPERSON: Maybe just to finalise, I seem to remember that, in his oral evidence, Dr Molefe said, at a certain stage, and it may be that this is the stage that he's talking about, when you said PRASA is not ready for a new CEO, he says, as the Board that even identified a candidate that they had confidence in that they wanted to be appointed and I asked him about the credentials of that candidate and he told me the credentials of that candidate,

10 I think, he may have even mentioned the name.

ADV VAS SONI SC: He did, Chairperson.

CHAIRPERSON: Of the candidate and he said that it was somebody who would not be new in the rail industry it was somebody who had been involved in the rail industry and my impression was, that it was somebody who had been involved either within PRASA or with the predecessors of PRASA or some other subsidiaries and he said, this was a good candidate, we were ready, but the Minister said we were – PRASA was not ready for a new CEO. Do you
20 remember whether they mentioned to you that they had identified a candidate through their process?

MS PETERS: Chairperson, Mr Molefe brought volumes of files of this nature.

CHAIRPERSON: Yes.

MS PETERS: And I had not applied my mind to the

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volumes of files.

CHAIRPERSON: Yes.

MS PETERS: That he had brought from the beginning so it would have meant that I processed those so that I then can prepare the submission of Cabinet and ultimately when we get to Cabinet, it's not a foregone conclusion that, you come with a file and say there's it and then it's a yay because Cabinet works in cycles of every two weeks and Chairperson, I don't just remember the time that he brought
10 the file to me.

CHAIRPERSON: Okay but my question was whether – and you can tell me if you don't remember, that's fine. Whether you remember that at a certain stage his Board had identified somebody that they were happy with, to be appointed.

MS PETERS: Earlier on in my input, Chairperson, I did give an indication that Mr Molefe had said that they've got a line-up because when we go to Cabinet we have to go with three names.

20 **CHAIRPERSON:** Yes.

MS PETERS: A line-up of three names and in their order of priority and that file I left at the Department.

CHAIRPERSON: Okay, but you'd remember that he said they had names?

MS PETERS: He said so.

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CHAIRPERSON: Okay, alright, Mr Soni?

ADV VAS SONI SC: Did you take those names to Cabinet?

MS PETERS: No, I had not, by the time I left, I had not.

ADV VAS SONI SC: But this is in 2016 as I understand it, so another 9 months before you left office you hadn't taken it.

MS PETERS: I don't think it's another 9 months, Chairperson, I'm not so sure of the timeframe but I don't
10 think it's another 9 months but it's some few months.

ADV VAS SONI SC: Let me ask you a slightly different question now. You say that your view in August 2016 was that PRASA was not ready for the appointment of a permanent CEO, that was your view. When Mr Molefe gave you those names that remained your view, is that correct?

MS PETERS: Chairperson, I indicated that, he gave me a list with files and as a member of Cabinet if I have to go to Cabinet with those files, it would not have been fair. So, I needed, also to process those files and summarise them
20 for the benefit of Cabinet. So, that was the work that we were still going to be doing and then I would give an indication – at that same time I think it was around August I went to China for a State visit.

CHAIRPERSON: I'm not sure whether that answered the – your question, Mr Soni?

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those factors.

MS PETERS: One of the factors was the fact that I had not processed the submission yet.

CHAIRPERSON: The submissions from the Board.

MS PETERS: From the Board yes Chairperson.

CHAIRPERSON: Yes?

MS PETERS: And remember I indicated that it still had to go to cabinet.

CHAIRPERSON: Yes.

- 10 **MS PETERS:** And the agenda of cabinet is set by the Secretary of cabinet and if you make a submission to the Secretary of Cabinet there would be indications from the Secretary of Cabinet that in terms of these slots for this particular week, because Cabinet was sitting every second week, for this particular week we have this particular challenge, so you – part of the process that I had worked out was that once I had processed this submission I need to consult with my principal, my boss, which is the person, but just out of courtesy inform him about what this outcome
- 20 has produced, so that was a – where we were, and at that time Chairperson there's these investigations that are happening which is your forensic investigation which we ultimately agreed that it must reconciled with the one of the Public Protector and that it must be referred to National Treasury which then got to their office of their

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Letsatsi-Duba's evidence.

CHAIRPERSON: Yes. And what is your estimate of how long her evidence might take?

ADV FREUND SC: Two hours?

CHAIRPERSON: Ja, okay. No, that is fine. So on Wednesday, five o'clock or as soon as possible thereafter depending on the day session we will – I will hear her evidence. Thank you very much to everybody who has stayed until this time. We appreciate it.

10 We are just trying the best we can to cover as much work as possible. But thank you very much. We will adjourn for the day and tomorrow during the day session we will continue with the PRASA evidence. This is just for the benefit of the public and the media.

We adjourn.

INQUIRY ADJOURNS TO 23 FEBRUARY 2021

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

23 FEBRUARY 2021

DAY 348



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COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

22 FEBRUARY 2021

TRANSCRIBERS:

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you. By the time you left as Minister of Transport the issue of the appointment of the CEO had not been taken forward.

And I understood to be suggesting that the consultation had started and that is why I wanted clarification because my understanding is that. In your mind you may have been planning to start the consultation but it actually had not started. Is that correct?

MS PETERS: Yes, Chair.

CHAIRPERSON: Okay. Thank you Mr Soni.

10 **ADV VAS SONI SC:** Thank you, Chairperson. So after Mr Khena was appointed you informed the President about his appointment or that the board had appointed Mr Khena.

MS PETERS: I reported that as part of my reporting process that there is this particular situation that is prevailing at PRASA and the process, like I indicated to you Chair, was now we would be starting with the process of going towards appointing the full CEO.

And for me Chairperson, it would – it was a principle that I believed in is correct to have a head of
20 state that all these entities, all these departments actually report to him.

And it is important that he then know what is happening. And I believed Chairperson, like I indicated yesterday, maybe my history and my experience in the previous positions that I had held informed me on this

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that particular time, you would have agreed with me at that particular time that...

Yes, we when we agreed that Mr Molefe and the board can release Mr Khena from the acting position, there was no way that the next morning we can appoint the – another – I mean, the Group CEO because the process had not started in terms of the concluding part of that particular process Chairperson.

CHAIRPERSON: Mr Soni.

10 **ADV VAS SONI SC:** Yes. We are – I must say to you Ms Peters, we are going in circles. You have already conceded, as the Chairperson pointed out to you yesterday, that what – when you said there were good reasons not to appoint. You conceded that you were wrong. You said 2020 – I remember your words, 2020 is a perfect hindsight. I mean, is a perfect science.

MS PETERS: Chairperson, I said I conceded that it was wrong not to appoint in that period but without going into the details on why it was not done. Yes, I still say. 2020,
20 you realise that the two years that it took to appoint the CEO was a long period Chairperson.

But I am saying, if you were in my shoes at that particular time you would have arrived at another conclusion. And I am saying I accept Chairperson and I cannot run from that fact that there was a period of two

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years where there was a vacancy of the Group CEO in PRASA.

And I accept Chairperson that that period coincided with my presence in the Ministry of Transport. That one I accept. Without going to the rationale and the reasons why we ended up in a situation where the appointment was not taken, was not made.

CHAIRPERSON: Well, out of your evidence it may well be that telling me about those things that prevented the
10 appointment of a Group CEO, that might be the most important evidence you give.

MS PETERS: Pardon Chair?

CHAIRPERSON: I am saying that, telling me about the rationale for not appointing the Group CEO for that two year period of two years or two and a half, I am not sure, before you left the ministry, might turn out to be the most important evidence coming out of you because I want to try – I want to understand but I cannot understand even now why PRASA stayed for – I do not know if it is five years
20 without a Group CEO.

And of course, you can only talk for the time that you were Minister of Transport but maybe if you tell us exactly the rationale that might help us to understand why for five years or whatever the period such an important entity was allowed to have no permanent Group CEO.

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It is just difficult to understand. So I am saying to you, you might not have intended to tell me maybe because you say because of time but I am saying to you it is very important because when I write the report and still I have not been told anything that makes me understand, I may come hard on certain people and even on you.

And you had the opportunity to explain to me to say: Chairperson, this is why I did what I did. This is why I did not do what I did not do. Okay?

10 So I am saying it is quite something important because on the face of it, it appears as a dereliction of duty but it may that one suspect that there may be something sinister behind it.

Why this entity that it was known by all concerned to being carrying a lot of irregular expenditure year in and year out and about which there was so many allegations of corruption in the public domain?

Why was it allowed to have a situation where there was no permanent Group CEO? Did it – was it
20 convenient for certain people that it should just be acting people? What was going on?

So those are the questions in my mind and if you can help me understand that that would be very helpful. And it is your own opportunity to say: Well, I may have been Minister but here with constraints that I was working

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MS PETERS: And we were busy with it at that particular time.

CHAIRPERSON: Yes but ...[intervenes]

MS PETERS: And Chairperson I did indicate that after receiving the bundle from Mr Molefe we were busy with the process to say this matter must then be processed into a cabinet process. Whilst it is being processed, at the same time I am busy also engaging consultatively with the relevant stakeholders. And in this instance the most
10 important relevant stakeholder for me was the head of state because he was the chair of cabinet and I needed to inform him that we have now arrived at the board having taken a decision to appoint and that particular slot we have not yet arrived at.

CHAIRPERSON: But why should it take seven months or so, that is now from August 2016 to March when you left, 2017, for you to consult the head of state or your colleagues? Why should it take so long?

MS PETERS: Chairperson, from around the 1 July up until
20 sometime into 2016 you would remember in this country it was local government election time and most politicians are involved in those particular processes and if that is so, my opportunity to sit down with the President would then have to be slotted into that particular process.

CHAIRPERSON: No, my recollection is that the local

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And we can't stop the investigation. That is, that's what he is effectively saying. But would that be correct? That's how you understood it? Now I want you then to look at page 161.

In the middle – oh sorry. Right at the top he says, Werksmans had advised the board that as a result of their investigations, the board is obliged to report the matter to the police or to the, the crime – the DPCI in terms of the prevention and combating of corrupt activities Act. That is
10 what he says there. Right.

Then he says that PRASA is funding their forensic investigation. But we will deal with that at a different time in these proceedings. But I want to look at the last sentence of that. He then says to you – sorry before the last sentence, he says, they've asked the DPCI for assistance.

They are not aware of any instance where DPCI have begun taking statements or any other investigative action of significance. Do you recall reading this in Mr
20 Molefe's letter?

MS PETERS: Yes Chair.

CHAIRPERSON: Then he says to you:

"I therefore implore the Honourable Minister to intercede on PRASA's behalf with the Minister of Safety and Security to expedite these matters which

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are of national importance.”

You saw that?

MS PETERS: Yes Chair.

ADV VAS SONI SC: Who was the National Minister? Who was the Minister of Safety and Security at the time?

MS PETERS: I am sure, I am not sure whether it was still Minister Nhleko. I would, I would have to recollect.

ADV VAS SONI SC: Okay.

MS PETERS: But it was either Minister Nathi Nhleko, but
10 it was not Minister Nqakula.

ADV VAS SONI SC: Did you approach the Minister?

MS PETERS: I did approach the Minister. And you see Chairperson, here it indicates that we should engage the Minister to and expedite this matters which were under now the DPCI. The Minister at that time in fact to his credit, we were discussing it as we were seated in the house.

So it was not a formal meeting. I indicated to him that there is this particular request from, from PRASA and at that time it was not only PRASA. There were matters of
20 the STMC and many others. And I said to him, if, if need be we could have a meeting so that we have full presentation.

And he even said, you know with regards to matters that have been referred to the police, they sometimes the an impression created that we politically influence some of

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these things.

So we, we – at the end we have not had a meeting formally with the Minister with regard to this particular matter.

ADV VAS SONI SC: But I am trying to understand your answer and tell me if I am wrong. Mr Molefe asks you to intercede because there is no progress in these important investigations that involves perhaps billions of rands.

You talk informally to the Minister whoever it was,
10 but you don't formally raise with him the concern that Mr Molefe raised with you.

MS PETERS: We had not as yet arrived at the point where we – here we are in cabinet. I have this particular letter and I say to the Minister, there is a meeting I request that we have with regards to matters that pertains to the matters referred to the police and all that.

And he then said, no we will make the arrangement for a formal meeting, but I just want to indicate to you at times I am as a Minister, in fact I'm worried to involve in
20 matters that are already under investigation because then it may be misconstrued as political interference.

Then he started the process to request for a meeting with, with the Minister. I just want to, to respond to one aspect Chairperson. I'm sorry not to look at you and address you with regard to that particular matter.

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CHAIRPERSON: Yes, okay no that is fine. Okay, we are going to adjourn for the day then otherwise tomorrow we will proceed with PRASA related evidence as Mr Soni indicated.

ADV VAS SONI SC: As you please, Chairperson.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS TO 24 FEBRUARY 2021