



CYRIL RAMAPHOSA

EXHIBIT BBB 3

PRESIDENT OF
THE REPUBLIC OF SOUTH AFRICA

MATAMELA CYRIL
RAMAPHOSA

**AS PRESIDENT OF THE
REPUBLIC OF SOUTH AFRICA**



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

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214 to
0651

Email: inquiries@sastatecapture.org.za

Website: www.sastatecapture.org.za

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

STATEMENT BY THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA, MATAMELA CYRIL
RAMAPHOSA

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I, the undersigned,

Matamela Cyril Ramaphosa

do hereby state under oath that:

I – INTRODUCTION

1. I am the President of the Republic of South Africa. I am the Head of State and Head of the National Executive in terms of section 83(a) of the Constitution of the Republic of South Africa, 1996 (*“the Constitution”*).
2. I depose to this affidavit at the request of the Chairperson of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, established in terms of Proclamation 3 of 2018, published in Government Gazette 41403 of 25 January 2018 (*“the Commission”*), and in fulfilment of the commitment I made to the Chairperson to do so.
3. The facts deposed to in this affidavit are within my own personal knowledge and belief and are true and correct.
4. Where I make legal submissions, I do so both based on my knowledge of the Constitution and of the constitutional obligations applicable to members of the Executive, and on the advice of my legal advisers.



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5. I ask the Commission to read this statement together with my first affidavit to the Commission, signed on 2 July 2019 and tabled before the Commission on 26 July 2019.
6. In addition, where facts relevant to my testimony have been dealt with by other witnesses before the Commission, I will repeat them here to the extent that is necessary for the purposes of this statement, in order not to burden what is an already lengthy statement.
7. While I appreciate that the Commission asked me to cover the full period under review, from 2008 to date, I have limited my statement to the facts and events of which I have personal knowledge.
8. With a view of assisting the Commission, I have asked persons whose personal knowledge is directly relevant to the contents of my statement to assist with further or confirmatory affidavits and will refer to these where apposite.
9. Where I refer to or annex classified documents, these have been declassified on my office's request, as is apparent from stamps on the face of the documents and the letters from the Acting Director-General ("DG") in the Presidency, Ms Lusanda Mxenge (annexed marked "MCR 1"), the recently appointed Director-General in the Presidency, Ms Phindile Baleni (annexed marked "MCR 2") and the DG of the Department of Public Enterprises, Mr Kgathatso Tlhakudi (annexed marked "MCR 3").

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II – PURPOSE OF THE STATEMENT

10. As Head of State and of the National Executive in South Africa, the subject matter of this Commission is at the heart of my and my Cabinet's work.

11. I am here at the invitation of the Commission to testify about various things that went wrong in government and other government institutions. It is the Commission's task to make this known to ensure this never happens again.

12. I will be speaking in a number of capacities. These include my roles as –

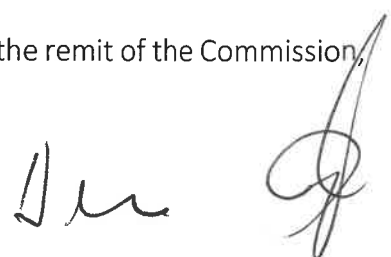
12.1. President of South Africa from 15 February 2018 to date; and

12.2. Deputy President of South Africa from 26 May 2014 to 15 February 2018.

13. The issues I wish to speak to in my capacity as President of the African National Congress ("ANC") and former Deputy President of the ANC are dealt with in a separate statement. Where there are overlaps these are indicated in the text.

14. This statement is structured as follows:

14.1. At the outset I will outline what I understand to be the remit of the Commission,

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as a basis for the inputs I make in this statement.



14.2. Thereafter I will summarise the constitutional and other relevant principles that frame the work of this Commission, but also which inform the powers and functions of the various bodies in which I played a role, and to which this statement will refer. I do so aware that the Commission and its team need no explanation of the constitutional and legal framework that applies to my work, and therefore only focus on the specific and practical implications of my role in all these bodies, their functioning and their powers.

14.3. I will then detail what I knew of the subject matter of this Commission, when I knew it and what if anything was my role in the relevant events.

14.4. In the next section of the statement I will answer specific pointed questions asked of me by the Commission in the letter of 12 March 2021. I refer here to questions asked that are distinct from the issues covered in the previous section.

14.5. Thereafter, I will speak to the measures taken by the current administration to correct certain of the matters that are before this Commission in accordance with our constitutional responsibilities.

14.6. I will then answer those specific allegations that warrant a response from me, and in relation to which rule 3.3 notices were served on my office.



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14.7. Finally, I will make short concluding remarks.

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III – STATE CAPTURE DEFINED

My understanding of state capture

15. The Commission has not asked me to outline my understanding of state capture. I however believe it is essential for me to do so, in order to properly contextualise the response I give to the Commission in this statement. The central question posed of me by the Commission can be summarised as “what I knew, when I knew, what I did in response”. This question cannot be answered without my outlining my understanding of what matters I believe fall within the remit of ‘state capture’.

16. The term “state capture” was reportedly first used by the World Bank.¹ It was applied in research conducted on former communist countries in relation to their transitions to market-based economies, where small corrupt groups used their influence over government officials to appropriate government decision-making in order to strengthen their own economic positions. The members of these groups would later become known as ‘oligarchs’. The Britannica defines state capture as “*the domination of policy making by private, often corporate, power*”.² The Collins dictionary defines it

¹ Joel S. Hellman; Geraint Jones and Daniel Kaufmann *Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition* published in the “Policy Research Working Papers” of the World Bank Group: September 2000

² Britannica, available online at <https://www.britannica.com/topic/state-capture> on 8 February 2021

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as “the efforts of a small number of firms (or such actors as the military, ethnic groups, and kleptocratic politicians) to use the state to their advantage through illicit, non-transparent provision of private gains to public officials”.³

17. The impact of state capture, according to the World Bank,⁴ is to “undermine the state’s provision of necessary public goods and weaken economic growth.”⁵

18. The existence of a multiplicity of interest groups within any given political environment is neither original nor in itself problematic. State capture occurs when one of these interests dominates public power for their own ends. This results in the undermining of the democratic process and the national interest. As stated by Tom Lodge, it allows economic interests to distort the legal framework and policy-making process.⁶

19. In a study on Madagascar, Rakotomalala says that state capture centred around a single sector: the rosewood trade.⁷ Rosewood is a precious wood with very high value. The

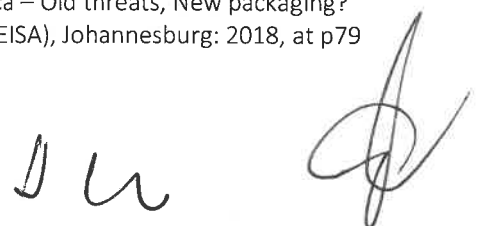
³ Collins Dictionary, available online at <https://www.collinsdictionary.com/submission/19489/state+capture> on 8 February 2021

⁴ Hellman, Jones and Kaufmann above n 1

⁵ Hellman, Jones and Kaufmann *ibid* at p 5

⁶ T. Lodge *State Capture: Conceptual Considerations*, in M. Meirotti and G. Masterson eds “State Capture in Africa – Old threats, New packaging?” published by the Electoral Institute for Sustainable Democracy in Africa (EISA), Johannesburg: 2018, at p 15, quoting Chetwynd, Chetwynd and Spector. *Corruption and Poverty: A Review of the Recent Literature*. Washington, DC: Management Systems International, 2003.

⁷ R. Rakotomalala *State Capture and the Exploitation of Natural Resources: the ‘rosewood scandal’ in Madagascar*, in M. Meirotti and G. Masterson eds “State Capture in Africa – Old threats, New packaging?” published by the Electoral Institute for Sustainable Democracy in Africa (EISA), Johannesburg: 2018, at p79



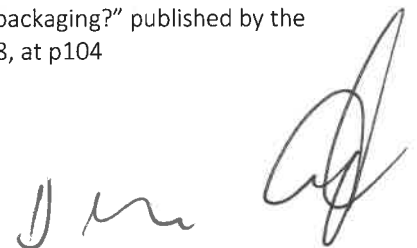
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traders of rosewood engaged in state capture as private parties, for their benefit and profits, then entered government itself by standing for elections, and winning seats in the legislature. As a result, says Rakotomalala, the legislature and the executive in Madagascar were captured. In addition, corruption within the judiciary has helped perpetrators of illicit rosewood trade evade punishment. State capture in Madagascar extended to the electoral system according to Rakotomalala. *“Direct access to the proceeds of the illegal rosewood trade and their use by candidates involved in the collusive networks, coupled with the lack of regulation of campaign funding, has contributed to the uneven playing field for candidates and has restricted political competition to the detriment of small parties and candidates with fewer resources.”*⁸

20. State capture can also affect the media. Nyabola speaks of this in relation to Kenya,⁹ where she speaks of legislative interventions to curb press freedom. She says that the Kenyan media are unique in being both victims of and perpetrators or accessories to state capture as they *“[abdicated] their hard-won role of keeping the government in check in order to protect revenues and access to politicians. They are not merely being captured, they are handing themselves over willingly, undoing their own reputation.”* It is an example of a sector being captured by the State.

⁸ *Ibid* at pp84-85

⁹ N. Nyabola *The battle for Kenya’s Fourth Estate: state capture and the Kenyan media during the 2017 election* in M. Meirotti and G. Masterson eds “State Capture in Africa – Old threats, New packaging?” published by the Electoral Institute for Sustainable Democracy in Africa (EISA), Johannesburg: 2018, at p104



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21. The two examples above make it clear that state capture can take many forms.
22. State capture is one of many forms of corruption, and ought not to be confused with other forms of corruption. Bribery for example does not on its own amount to state capture. As was outlined in the presentation made to the Commission in September 2018, one can also distinguish between administrative corruption – referring to *“private payments to public officials to distort the prescribed implementation of official rules and policies”* – and state capture – *“shaping the formation of the basic rules of the game (i.e. laws, rules, decrees and regulations) through illicit and non-transparent private payments to public officials.”*¹⁰
23. State capture does not, for example, include influence over policy decisions where no payments are made to state officials. A healthy balance of a multiplicity of interests vying for policy decisions that best serve their unique interests or constituency is a natural aspect of democratic states. Such influence can also be exerted by civil society, labour and religious organisations.
24. Hellman *et. al.* summarised it best as follows:¹¹

“Through administrative corruption, rents deriving from the discretionary

¹⁰ Hellman, Jones and Kaufmann above n 1 at p 3

¹¹ Hellman, Jones and Kaufmann above n 1 at p 7



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capacity of the state to regulate the activities of firms should accrue primarily to corrupt public officials. This is the closest equivalent to corruption associated with the “grabbing hand” state. Through state capture, rents deriving from the capacity of firms to encode private advantages in the rules of the game as a result of bribes to public officials are shared by firms and the corrupt officials. Through influence, rents deriving from the capacity of firms to encode advantages for themselves in the basic rules of the game as a result of their enhanced leverage should accrue primarily to the firm.” (underlining added)

25. Godinho and Hermanus speak of state capture as “*the progressive repurposing of governance through the quiet invasion of governance structures (eg. the political executive, the boards of state-owned companies or state security institutions) in such a way that agents of state capture are positioned to disperse government benefits to select groups.”¹² (emphasis added) In their view a better working definition of state capture is –*

“A political-economic project whereby public and private actors collude in

¹² C. Godinho and L. Hermanus *Re-conceptualising State Capture with a case of South African Power Company Eskom*, conference paper prepared for the Public Affairs Research Institute’s “State Capture and its Aftermath: Building Responsiveness through State Reform” on 22-24 October 2018 in Johannesburg, p 9

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establishing clandestine networks that cluster around state institutions in order to accumulate unchecked power, subverting the constitutional state and social contract by operating outside of the realm of public accountability.”¹³ (emphasis in original)

26. They posit that it is inappropriate to assume a clear line between private and public interests, and it is important to acknowledge the use of ideological impetus to transform society where socio-economic inequalities exist (in developing countries in particular) to question legitimate institutions and conceal state capture “*under the guise of reformation or transformation.*”¹⁴

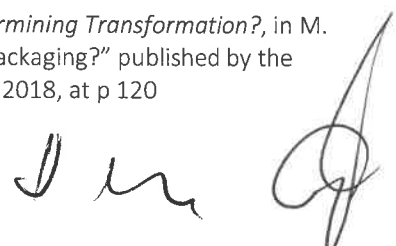
27. Mkhabela states¹⁵ that in South Africa,

“state capture is ... systemic and well organised by people with established relationships. It centers on the executive and involves repeated transactions, often on an increasing scale. The focus is not on small scale looting but on accessing rents and redirecting them away from their intended target into private hands. To succeed, the perpetrators need high level political

¹³ Godinho and Hermanus *ibid* at p 12

¹⁴ Godinho and Hermanus above n 12, p 30

¹⁵ Mpumelelo Mkhabela *South Africa and the Capture of the executive: undermining Transformation?*, in M. Meirotti and G. Masterson eds “State Capture in Africa – Old threats, New packaging?” published by the Electoral Institute for Sustainable Democracy in Africa (EISA), Johannesburg: 2018, at p 120



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protection, including from law enforcement agencies; intense loyalty and a climate of fear; and competitors need to be eliminated. The aim is not to bypass rules to get away with corrupt behavior, it is to change the formal and informal rules of the game, legitimize them and select the players."

28. While this analogy is extreme, it highlights the self-interest motivating state 'captors', to the detriment of others.

29. When state capture occurs, the citizens as a whole lose, and small vested interests benefit at their expense. As stated by Hellman *et al*,¹⁶

"If individual firms can purchase under-provided public goods directly from the state on the basis of private payments to public officials, then these officials will not have strong incentives to improve the overall position of such goods given the risk of reducing their bribe income. Consequently state capture, while strengthening the position of a small share of firms, would appear to undermine the broader provision of a key public good by the state ... State capture reduces the security of property and contract rights for non-captor firms, which ... increases the propensity of other firms to engage in state capture. Thus captor firms beget more firms seeking to capture the state at

¹⁶ Hellman, Jones and Kaufmann above n 1, p 30



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different levels of the political system.”

30. Once entrenched, state capture engenders a cycle that will only worsen with time, undermining the democratic constitutional order. We need to act vigorously against it.

My understanding of this Commission’s remit

31. My intent in this section is not to repeat the detail contained in the Terms of Reference of this Commission. It is rather to contextualise my inputs to the Commission and assist it in appreciating my understanding of its remit, in my capacity as President of the Republic.

32. The Commission’s work is meant to focus on establishing the veracity of certain specific instances of alleged state capture.

33. In addition, identifying the systemic weaknesses in State institutions that allowed state capture to occur will assist in identifying the reforms necessary to prevent state capture from recurring.

34. Since state capture is an assault on the democratic process, it is necessary that the process of extricating the State from a position of ‘capture’ is inclusive, democratic and involves the broad range of interests in society.

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35. This is addressed in part by the public nature of this Commission's work. But the hard work will begin after it has finalised its hearings and submitted its report.

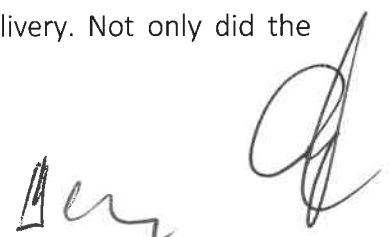
36. There will be a need for a partnership between citizens and all branches of the State to ensure faith is restored in our institutions and our democracy. Only when we all take ownership of the solutions to our problems can we be assured these will endure.

37. In addition, putting an end to state capture will enable the State to focus its efforts and resources more effectively on the provision of public services, which is critical to the transformation and development of our society.

Value and place of this Commission

38. I think it important to highlight that the idea of an investigation into allegations of corruption and state capture involving the Gupta family had been considered from mid-2016 (see my submission in my capacity as ANC Deputy President and President). The release of the Public Protector Report with the proposal for a Commission of Inquiry led to discussion on this as a more appropriate instrument to undertake the investigation. I therefore welcome the existence and work of the Commission.

39. The need to publicly disclose and address allegations of entrenched corruption was discussed by South Africans in public, in Parliament, by political parties, by the media. Such corruption was an impediment to effective service delivery. Not only did the



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majority of South Africans of all walks of life want to know what happened, how it happened, when, and by whom; they wanted open and transparent disclosure of wrongdoing.

40. The open and transparent disclosure of wrongdoings is not new to South Africa. The value of the Truth and Reconciliation Commission in enabling the country to emerge from a violent and painful past, in full recognition of past wrongdoings, has been globally recognised. Public hearings gave impetus to a broad national dialogue and provided a bridge from a divided past into a democratic constitutional order. New rules created to prevent a recurrence of these wrongdoings are embraced with greater vigour because the public knows why they exist and participated in their development.

41. I trust that the outcome of this Commission's extensive work will provide recommendations that allow the fulfilment of the intent of our Constitution, that "*South Africa belongs to all who live in it, united in our diversity*", and that it will serve to further –

“lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; improve the quality of life of all citizens and free the potential of each person; and build a united and democratic South Africa able to take its rightful place

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as a sovereign state in the family of nations.”¹⁷

¹⁷ Constitution of the Republic of South Africa, 1996: Preamble.

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IV – HOW OUR CONSTITUTIONAL DISPENSATION FUNCTIONS

42. The promise of our Constitution lies at the centre of our endeavours as a State. Its origins, and certain fundamental aspects of its contents, are the foundation of our current system of government. It is in my view therefore necessary to outline those aspects of the system contained in the Constitution that are relevant to my statement. This includes aspects of the system which may be impacted in the long term by the Commission's work to prevent a recurrence of state capture.

43. Our constitutional dispensation is grounded in the rule of law. This is made plain in the very first section of our Constitution, the supremacy of which is affirmed in both sections 1 and 2 of the Constitution. These foundational principles of our Constitution inform how I, as President, and the Executive as a whole, must approach the duties and obligations we have as a result of our positions. Most importantly it informs the way in which we exercise powers granted to us by the Constitution and legislation.

The Cabinet generally

44. As set out in section 85 of the Constitution, the Executive Authority of the Republic is vested in the President, who, together with the other members of Cabinet, exercises the Executive Authority.

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45. The Cabinet's composition and appointment is governed by section 91 of the Constitution. Cabinet consists of the President, as head of the Cabinet, a Deputy President and Ministers.
46. Importantly the Constitution specifies in section 91(2) that the President appoints the Deputy President and Ministers, assigns their powers and functions, and may dismiss them. These decisions are made at his or her discretion.
47. The Deputy President and Ministers are also members of the National Assembly and the Rules of the National Assembly govern their rights both as members of Parliament and as members of the Executive. (It should be noted that the President may select no more than two Ministers and no more than two Deputy Ministers from outside the National Assembly.)
48. The members of the Cabinet are responsible for the powers and functions of the Executive assigned to them by the President.
49. Although the Cabinet is the ultimate decision-making body of the Executive, it does not exercise legal powers directly. It is the individual members of the Cabinet, namely, the President, Deputy President and Ministers, that have the statutory authority to act. However, as set out in section 92(2) of the Constitution members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and performance of their functions.



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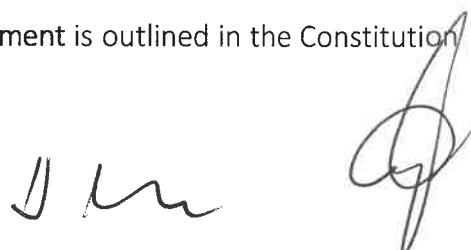
50. In addition to, and in line with, the constitutional provisions that govern the appointment, composition and accountability of the Cabinet, the Cabinet has established its own rules, procedures, principles and practices. Many of these are at the centre of the Commission's work. The detail of how the Cabinet works and the role of the Cabinet structures is set out in the statement by Dr Cassius Lubisi, who was Cabinet Secretary for a decade, ending in August 2020. His affidavit is annexed hereto marked "MCR 4".

51. I ask that the Commission take into account Dr Lubisi's reference to the principles of Cabinet collective responsibility, confidentiality and solidarity, and what these imply. It is also important to appreciate what precisely an Inter-Ministerial Committee ("IMC") is as he describes the various Cabinet structures.

52. I would like to reflect on the powers bestowed on me (in my capacity as President and Deputy President during my tenure in these positions) and on the Cabinet to clarify the decision-making of the Cabinet, the role of each element of the Executive and the checks and balances that exist on its power. These are critical elements in understanding the documentation and evidence brought before you.

The Executive and other branches of government or constitutional institutions

53. The relationship between the Executive and Parliament is outlined in the Constitution

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and elaborated on in the various rules adopted by Parliament.

53.1. The Leader of Government Business (“LOGB”), which position I held from May 2014 until February 2018, is provided for in the Constitution¹⁸ but his or her role is only outlined in the Joint Rules of Parliament.¹⁹ These provide that –

“The Leader of Government Business in Parliament is responsible for –

(a) the affairs of the national executive in Parliament;

(b) the programming of parliamentary business initiated by the national executive, within the time allocated for that purpose;

(c) arranging the attendance of Cabinet members, as appropriate, in respect of parliamentary business generally; and

(d) performing any other function provided for by the Joint Rules or a resolution of the Assembly or the Council or resolutions adopted in both Houses.”²⁰ (emphasis added)

53.2. Part of my role as LOGB was liaising between the Presiding Officers of

¹⁸ Section 91(4) of the Constitution provides that “The President must appoint a member of the Cabinet to be the leader of government business in the National Assembly.”

¹⁹ See Part 17 of the Joint Rules of Parliament, 2009

²⁰ Rule 150 of the Joint Rules of Parliament, 2009



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Parliament and the Cabinet to ensure the annual legislative programme of the Executive was submitted early to Parliament, so they may prepare their yearly programme knowing what we would be bringing to their table.²¹ The LOGB is responsible for informing Parliament of legislation the Executive wishes to have prioritised.²² There are a number of issues in the management of Parliament that require the LOGB's input. For example:

53.2.1. National Assembly Rule ("*NA Rule*") Rule 43(1) requires that the LOGB be consulted before any change of venue for the sitting of Parliament.

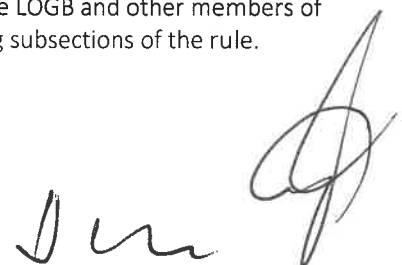
53.2.2. In terms of NA Rule 44(1), the Chief Whip requires the LOGB's concurrence "*when any government business is prioritised*".

53.2.3. NA Rule 129(2) requires that the LOGB and Chief Whip of the majority party in Parliament be consulted by the Speaker before a motion of no confidence in terms of section 102 of the Constitution is scheduled.

53.3. I and other members of the Executive answer questions in Parliament, both for oral and written reply. This is a responsibility that we all take seriously (for example, the LOGB reports to Cabinet if Ministers are absent or late in answering questions in Parliament so that they may duly be instructed to correct such lapses when they occur).

²¹ Joint Rule 91(1) provides that the Joint Programme Committee consists of the LOGB and other members of the National Assembly and National Council of Provinces listed in the remaining subsections of the rule.

²² See Joint Rule 216



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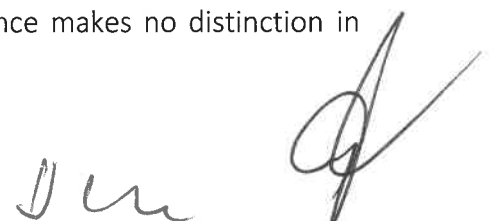
53.4. My colleagues in the ANC leadership have dealt with the specifics of the relationship between party and state and how it relates to parliamentary work but there are a few points that I would like to highlight, from my perspective as President of the Republic and former Deputy President of the Republic, which were not dealt with by the ANC leadership:

53.4.1. Members of the Executive (except for the President and up to two Ministers and up to two Deputy Ministers) are also members of Parliament. The members of the Executive who are also members of Parliament have the same obligations in the House as other members of Parliament, and the same rights to participate in Parliamentary affairs (such as in the work of portfolio or joint committees) as other members.

53.4.2. The Joint Rules of Parliament (6th edition, June 2006) and the most recently amended rules of the National Assembly (9th edition, 26 May 2016) are instructive in this regard.

53.4.2.1. NA Rule 34 allows me and the Deputy President to appoint members as our Parliamentary Counsellors. They "*facilitate communication between the National Assembly*" and our offices. Dr Gerhard Koornhof, MP, has been my Parliamentary Counsellor throughout my tenure in the Presidency. He first became an ANC member of Parliament in 2004.

53.4.2.2. NA Rule 35 on members' attendance makes no distinction in



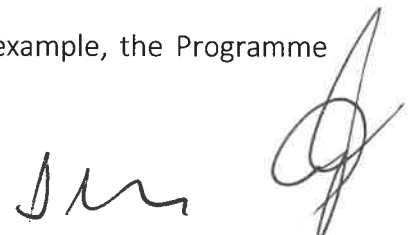
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obligations to attend the National Assembly between members and those members designated as Ministers or Deputy Ministers.

53.4.2.3. Questions, both for oral and written reply, are addressed to members of the Cabinet regularly and systematically and we answer them. We do so conscious of our obligations to transparency, with all the information available to us. The NA Rules make concessions particularly for the Deputy President and the President, appreciating their other responsibilities and limited ability to regularly attend plenaries in Parliament. The NA Rules are very specific on the frequency of questions sessions for oral reply for both the President and the Deputy President. In addition, members of Parliament can submit questions for written reply to both the President and the Deputy President. These questions cover the gamut of the Cabinet's work.

53.4.2.4. NA Rules 352 to 354 relate to Executive government generally, and to what information it is required to share with the National Assembly, such as the appointment of Cabinet members and Deputy Ministers and their assigned powers and functions, and resolutions affecting the executive government.

53.4.3. As Deputy President, I was not assigned to any portfolio committee. However, my Parliamentary Counsellor and my Parliamentary Liaison Officer, both when I was Deputy President and now, attend some meetings of portfolio committees and any other committee that may discuss matters of interest to me and my office. These include, for example, the Programme

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Committee meetings of both Houses, the Chief Whips Forum and Rules Committee meetings, to give input in arranging dates when I would be called to answer questions for oral reply, to coordinate dates for the State of the Nation Address (SONA) and for the debate which follows the SONA, and to coordinate dates when the President summons Parliament to an extraordinary sitting to conduct special business. As you can imagine they are unable to attend all such meetings.

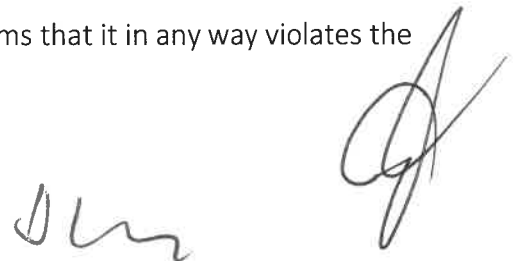
54. There are a number of checks and balances contained in our Constitution to limit abuse of certain powers and positions.

54.1. The Executive accounts to the legislature.

54.2. The Executive's decisions may be reviewed by the courts – this applies to administrative decisions and Executive decisions taken in the fulfilment of their obligations.

54.3. The legislatures' decisions are also subject to the courts. In addition, legislation passed by the legislature is subject to the courts' determination of its constitutionality.

54.4. The President is empowered to check the legislature's work – he or she can return legislation sent to him for assent if he deems that it in any way violates the

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Constitution or did not follow Parliamentary processes and procedures.²³

55. Our courts play a critical role. They uphold the Constitution and the law. They hold other branches of the State to account for the constitutionality and legality of their actions and remind us of the parameters within which we can and must act.

56. The very existence of Chapter 9 institutions and structures such as the Judicial Service Commission embed checks on the exercise of power of all branches of government in our Constitutional regime.

57. Chapter 13 on Finances ensures public finances are dealt with based on principles entrenched in the highest law of the land.

58. The principles governing public administration²⁴ also serve to ensure those working within government are bound by certain fundamental principles aimed at protecting the interests of the State and the South African people.

59. Lastly, and to the extent relevant to the work of the Commission, Parliament and the Executive exercise authority over national security.²⁵

²³ Constitution of the Republic of South Africa, 1996, section 79

²⁴ Constitution of the Republic of South Africa, 1996, Chapter 10

²⁵ Constitution of the Republic of South Africa, 1996, section 198(d)

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V – WHAT I KNEW AND WHEN; WHAT WAS DONE ABOUT IT AND WHY

60. I will now outline what I knew of state capture, and when I became aware of the nature and extent of the problem. At the outset I think it important to say that few people, even at the best of times, would be able to affirm that they had line of sight of everything taking place in the State.

61. While there may have been a decision or development that raised concerns, or rumours being circulated, without evidence and without understanding how any particular event or decision fits into the scheme of state capture, it was difficult, if not impossible, to act.

62. Many of the excesses, incidents of corruption or even state capture, became known to me as they did to the general public through the work of journalists, of civil society organisations, of Chapter 9 institutions such as the Public Protector and Auditor General (“AG”), and their tireless efforts to shine a light on misdeeds.

63. Reports of specific court cases or disciplinary proceedings, together with the commendable work of investigative journalists, gave insight into corruption in government as well as in the private sector.

64. Whistle-blowers in various sectors courageously exposed wrongdoing. We are indebted to them.

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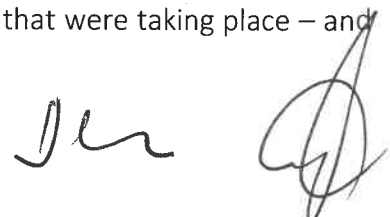
65. In this part of my statement I will detail what I did know of the issues this Commission has investigated, when, and how they came to my knowledge, and what my response to this knowledge was.

Response to state capture revelations

66. As it became increasingly clearer – through the so-called Gupta Leaks and other revelations – that a network of individuals was seemingly colluding with senior officials in government to occupy key positions and ‘capture’ key institutions, the question that arose was how best to respond. This was a question that not only I had to grapple with, but also other members of the Executive who were deeply concerned about these developments.

67. I had five options: resign, speak out, acquiesce and abet, remain and keep silent, or remain and resist.

68. **The first option available to me was to resign from the Executive.** This may have been seen by some as the most honourable course of action. If I had resigned I would have effectively removed myself from government, and that, in my view, would have significantly impaired my ability to contribute to bring about an end to state capture. Furthermore, if I and like-minded individuals had resigned from the Executive, we would have had no ability to resist some of the excesses that were taking place – and

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there was a clear danger that without some measure of resistance, there would have been even fewer impediments to the unfettered expansion of the state capture project. Significantly, if all parts of the state were captured, which clearly did not become the case, the state capture project would in all likelihood have been able to avoid subsequent accountability.

69. Another consideration was that there were several government programmes and processes that were vital to the transformation of our society and the improvement of people's lives, and these needed to be sustained. A number of examples of steps taken during my tenure as Deputy President that served to prevent state capture will be detailed later in this statement.

70. The second option was to **speak out publicly against certain decisions or actions of the government**. While there were instances where I did make public statements, there was a limit to how confrontational I could be in my position. A more confrontational approach would most likely have led to my removal from office, with the same consequences as a resignation, in that my ability to effect change would have been greatly constrained if not brought to an end.

71. The third option was to **acquiesce and thereby abet the committing of misdeeds**. This I would not, and could not, do. It would have been a violation of my principles and everything I've stood for throughout my life. It would have been a profound betrayal of my responsibility to the government, my organisation and the people of South Africa.

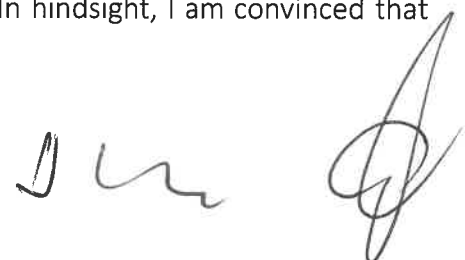


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72. The fourth option available to me was to remain in my position as Deputy President and keep silent. This may have been the easier path, but it was, in my view, not much different to acquiescing. It would have meant that there would have been no effort to check the abuses, and, perhaps more importantly, little prospect of bringing the abuses to an end.

73. The final option, which was what I chose, was to remain in my position as Deputy President, to work with others in the Executive to resist abuses and bring about change where we could and to sustain the work of social and economic transformation. This meant 'staying in the arena', with the challenges, limitations and frustrations inherent in doing so; but with the opportunity to work with others in the State and society to return the State to the role and function set out in the Constitution and ensure that public institutions carry out their responsibilities. The decision to remain in the position of Deputy President was therefore not taken lightly; and it was by no means an act of acquiescence. I believe this gave me the opportunity to resist some of the excesses that took place, which I speak to in this statement. This work in my view, limited the extent to which state capture may have unfolded.

74. For me, therefore, the over-riding consideration was to pursue the course of action that had the greatest likelihood of bringing state capture to an end, restoring the institutions of State and defending our democracy. In hindsight, I am convinced that this was the correct approach.

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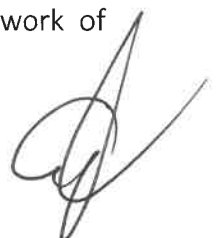
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75. My approach to this matter was informed by the need to defend our democracy and Constitution, and to ensure that government continued to meet the needs and serve the interests of the South African people. It meant, among other things, that the course of action I chose should be the one which stood the greatest chance of bringing to an end any corrupt practices in government.

76. It needs to be remembered that governance is not merely a technical function. It is an inherently political function, which is influenced by the dynamics and the exercise of political power. My ability and the ability of others to resist and ultimately to bring about changes that would end state capture relied to a large measure on the political balance of forces within the Executive, within the governing party and within society more broadly. That was among the reasons why I chose to remain in the position of Deputy President, why I worked with others through the democratic process to shift the balance of forces, and why, ultimately, I agreed to make myself available for the position of President of the African National Congress at its 54th National Conference in December 2017.

77. It is worth highlighting that many of our critical institutions continued to work as they needed to and as provided for in the Constitution throughout this period.

78. Despite the damage done by state capture to public institutions during this time, and the resulting impact on the provision of services, the reality is that the work of



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government did continue, and progress was achieved in several areas. This was due in large part to the efforts of committed, capable and ethical public servants and public representatives.

Cabinet appointments and other decisions

79. The Commission has specifically asked that I speak about Cabinet appointments and removals during the period under review to the extent that I can shed light on how they unfolded, why, and what transpired in relation to these. It has also asked that I outline my knowledge of other decisions taken in or by Cabinet during this period. I detail my knowledge of these matters in this section of my statement.

80. In terms of section 91 of the Constitution, the President appoints the Deputy President, Ministers and Deputy Ministers, assigns their powers and functions and may dismiss them.

81. The only legislated parameters in which Cabinet appointments must be made are the Constitutional provisions that the President must select the Deputy President from among the members of the National Assembly; may select any number of Ministers from among the members of the Assembly; and may select no more than two Ministers and two Deputy Ministers from outside the Assembly. There are no legislated provisions which speak to the dismissal of the Deputy President, Ministers or Deputy Ministers.

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82. I deal now with the Cabinet appointments and removals that the Commission has asked me to speak to, in chronological order and within the context that these took place. I will therefore speak first of the removal of Mr Nene as Minister of Finance in 2015, then the appointment of Mr Des van Rooyen in that same position, his removal, the appointment of Minister Gordhan to the Ministry of Finance, and then his and his Deputy Mr Jonas' removal in 2017.

The removal of Mr Nene

83. I am aware of the allegations made by both Mr Mcebisi Jonas and Mr Nhlanhla Nene before this Commission regarding their interactions with the Gupta brothers and their removal by former President Zuma from their respective positions. I refer to my first statement to the Commission and detail below my knowledge in relation to these events. My knowledge and involvement in the nuclear build programme which is integral to Mr Nene's testimony is outlined below. I also speak to the nuclear build programme as the Commission expressly asked that I do so, and I include it in this part of my statement for the sake of convenience.

84. My knowledge regarding the nuclear build programme requires context.

84.1. The nuclear build programme has a long history, as is apparent from Dr Lubisi's affidavit. My involvement only began once I became Deputy President of the country. In principle I have always supported the development of clean energy in South Africa,



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but only in a manner that is affordable and financially sound.

84.2. During the Cabinet meeting held on 10 June 2015 the then Minister of Energy, Ms Tina Joemat-Pettersson, briefed the Cabinet on the Nuclear New Build Programme Procurement Process.

84.3. In that meeting (the minutes of which are annexed marked "MCR 5") it was decided that Ms Joemat-Pettersson must, in consultation with the Minister of Finance (Mr Nhlanhla Nene at the time) and the National Nuclear Energy Executive Coordination Committee ("NNEECC", which Dr Lubisi refers to in his affidavit), as a matter of urgency submit a plan dealing with the financial implications, the proposed funding model, and the risks and mitigation strategies applicable to the nuclear build programme. Furthermore, it was agreed that the Minister of Energy would commence the actual procurement process in the Second Quarter of 2015, in consultation with the NNEECC.

84.4. During the Cabinet meeting held on 9 December 2015, a 'walk-in' matter – i.e. a matter which was not on the initial agenda or in the Chairperson's notes which are distributed by the Secretariat to the President and Deputy President – was raised by Ms Joemat-Pettersson. The presentation made by the Minister of Energy included recommendations on the Nuclear New Build Programme's financial implications, its proposed funding model, the risks identified, and mitigation strategies. I understood that National Treasury disagreed with the Department of Energy on whether or not to



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proceed with the nuclear programme proposal primarily on the grounds that we could not afford it. At this meeting (the minutes of which are attached marked "MCR 6"), the Cabinet decided that the Department of Energy should issue a Request for Proposals ("RFP") for a Nuclear New Build Programme of 9600 MW of nuclear power, with the final funding model to be informed by the response of the market to the RFP and thereafter submitted to the Cabinet for final consideration.

84.5. In essence, the decision made by Cabinet at the time was that the project would not go ahead until and unless we were sure of its affordability.

84.6. Following the Cabinet meeting, at approximately 20:00 that evening, the former President announced the removal of Mr Nene and his replacement by Mr Des Van Rooyen. As with other Cabinet changes (which I detail below), I was not consulted nor was I involved in any discussion regarding the change to the Cabinet. I was, as a matter of courtesy and in my capacity as an ANC official, informed prior to the public announcement by the former President.

84.7. The Commission specifically asked me to speak about the nuclear deal. Significantly the Commission will take note of the fact that the nuclear deal as was proposed at the time was not approved nor implemented. I believe Mr Nene's efforts and the inputs made during discussions in Cabinet meetings at the time, specifically in relation to the cost of the project, contributed to the project not proceeding. The consistent insistence by National Treasury, including Mr Nene, that the financial



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viability of the project be factored into decisions going forward delayed what could well have been a fait accompli.

84.8. The reason for Minister Nene's removal was never shared with me. Cabinet changes are made by the President at his or her discretion. At the time, I surmised from the circumstances of Mr Nene's departure that National Treasury's insistence that no nuclear build programme should proceed without government being certain it could afford it may have informed the then President's decision. This was however never overtly stated.

84.9. I understand that Mr Nene testified before this Commission that former President Zuma informed him he would be redeployed to the BRICS (Brazil, Russia, India, China and South Africa) Bank. I did not become aware of this proposed deployment until after Mr Nene was removed, when the then-President Zuma made a public statement about Mr Nene's removal.²⁶

84.10. I am informed that there have been suggestions made in the Commission that the decision to remove Mr Nene and deploy him to the Bank was made by the ANC officials (or 'top 6'), but this was not the case. We were merely informed of this decision – it was not a decision taken by the top 6.

²⁶ The statement can be found online at <https://www.gov.za/speeches/president-jacob-zuma-south-africa-maintain-prudent-fiscal-position-11-dec-2015-0000>



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The Appointment of Mr Des van Rooyen as Minister of Finance

85. At no time was I present during a consultation with former President Zuma or anyone else in which the appointment of Mr van Rooyen as Minister of Finance was discussed. I was notified as a matter of courtesy as a senior official in the governing party on 9 December 2015.

The reassignment of Mr van Rooyen and appointment of Minister Pravin Gordhan

86. Mr van Rooyen's appointment as Minister of Finance, had an immediate impact on the financial markets.

86.1. Shortly after Mr van Rooyen was sworn in as Minister of Finance, then DG of National Treasury, Mr Lungisa Fuzile, asked to meet me urgently. We met at the official residence of the Deputy President, Tambo House, in Pretoria. He told me about his interactions with the newly appointed Minister of Finance and the advisers he arrived with. Mr Fuzile expressed grave concern about the future of National Treasury, with regard to the impact this development would have on the future ability of National Treasury to properly exercise its functions. Mr Fuzile files a confirmatory affidavit in this regard, which I annex marked "MCR 7".

86.2. I took his concerns very seriously. Combined with the negative impact the appointment of Mr van Rooyen was visibly having on our markets, his concerns prompted me to act.



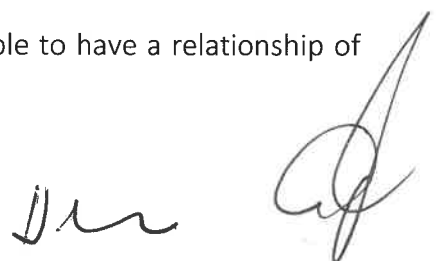
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86.3. I met with the Deputy Secretary General of the ANC, Ms Yasmin Duarte (also known as “Jessie” Duarte) and informed her that, as a result of the decision to appoint Mr van Rooyen as Minister of Finance, I would resign my position as Deputy President of the Republic as I believed that the process of state capture had now succeeded to an extent that the most strategic organ of the state, Treasury had now been captured. I believe that Ms Duarte conveyed my message to the then-President of the Republic.

86.4. There was a flurry of consultations that involved some of the officials of the ANC expressing disquiet about the appointment of Mr Des van Rooyen. The then Secretary General of the ANC, Mr Gwede Mantashe, Ms Duarte and I informed the President that, in our view, he ought to appoint Mr Gordhan as Minister of Finance instead. I argued that Mr Gordhan’s appointment would be in the best interests of the country and would help to calm the financial markets.

86.5. In a letter dated 16 April 2021, the Commission asked me a specific question: when it was decided that Mr van Rooyen ought not to remain Minister of Finance, why was Mr Nene not simply recalled to that position, instead of having Minister Gordhan moved to this portfolio? My answer to this question is as follows:

86.5.1. A President needs to be able to trust and work with the members of his or her Cabinet. It was apparent to me, in the flurry of consultations I mention above, that the President would no longer be able to have a relationship of

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trust with Mr Nene.

86.5.2. Any proposals for an alternative to Mr van Rooyen, as Minister of Finance, needed to take into account the ability of the President to work with whoever would be appointed Minister of Finance.

86.5.3. The proposal was made that Minister Gordhan be appointed Minister of Finance as he was someone with the requisite skills, and who the then-President could work with at the time – he was an existing member of Cabinet, the Minister of Cooperative Governance and Traditional Affairs, and he had ably served in that position before.

86.6. Once the former President had made his decision to replace Mr van Rooyen with Minister Gordhan, I contacted Minister Gordhan in the late afternoon or early evening on 13 December 2015 and informed him that he would be called to a meeting with the former President that evening. I informed him that he should listen carefully and make the right decision interests of the country. I was convinced that his appointment as Minister of Finance would redress the negative impact of the appointment of former Minister van Rooyen in the prior week.

The removal of Minister Gordhan and Deputy Minister Jonas

87. The Commission asked me to outline the circumstances that led to the removal of Minister Gordhan and then-Deputy Minister Jonas from their positions in the Ministry of Finance. The Commission also asked me about allegations that Minister Gordhan was targeted by law enforcement agencies.

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88. As regards the latter question, I knew no more about the alleged targeting of Minister Gordhan by law enforcement agencies than anyone else. It was not for me, or within my power, to do anything about decisions of those agencies.

89. As with both changes in Cabinet positions set out above, I was not consulted about, but merely informed of, the Cabinet reshuffle announced by former President Zuma on 30 March 2017. However, with regards to the specific case of Minister Gordhan's removal, the following unfolded:

89.1. Before effecting the Cabinet reshuffle, the former President met with the ANC officials, including myself. He merely informed us of his decision.

89.2. By the time we were informed of the decision, and as detailed in the affidavit of Dr Lubisi, Minister Gordhan and then DG Fuzile had just landed in London in the United Kingdom on the morning of Monday, 27 March 2017. They were then informed by Dr Lubisi that the President had given an instruction that they should return forthwith. They took the first flight home that evening.

89.3. They had travelled to the United Kingdom, and were planning on going to the United States of America, as part of an investment roadshow. This was an opportunity to meet investors and rating agencies to discuss the economic situation in South Africa and outline policy and economic decisions the South



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African government had made with the aim of securing current investment, attracting further investment, and building and retaining relationships that are critical to South Africa's economy.

89.4. In the meantime, the officials of the ANC discussed the President's decision, as he had conveyed it to us.

89.5. The President referred to what he described as an intelligence report, in which it was asserted that Minister Gordhan and Mr Jonas were plotting to undermine the very government they served. Their removal was purportedly as a result of the allegations contained in this report. When the former President showed it to us I realised that it was not a formal document. It consisted of 3 pages in very large font and was very badly drafted. It was shown to us at the time, but I was not provided with a copy to retain.

89.6. I raised my concerns directly with the former President during this meeting. My objection was that the Minister and the Deputy Minister were being removed based on an unsubstantiated and spurious intelligence report.

89.7. I not only told the former President that I disagreed with him on his reasoning to remove the Minister and Deputy Minister of Finance, but I told him that when asked, particularly by the media, I would articulate my objection publicly – which I did when two journalists asked me in a 'doorstop' interview with the media

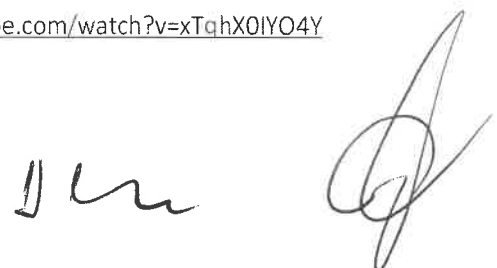


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outside the Pelonomi Hospital, in Bloemfontein, (following the removal of Minister Gordhan and Deputy Minister Jonas) on 31 March 2017 whether I would resign. I said *"No, I will not. I am staying to serve our people in government. I've made my views known and there are quite a number of other colleagues and comrades who are unhappy about this situation."*²⁷ I also said then, as I have reiterated in this statement, that the President has the constitutional prerogative to appoint and dismiss members of the Cabinet.

89.8. This was one instance where I felt it necessary to speak out, especially because of the serious consequences this decision had on our economy and our country. The country was facing the possibility of being downgraded to what is colloquially known as 'junk status' in our international investment ratings. Our ability to service our debt would be severely hampered by any further downgrading by international ratings agencies. Worse yet, more money would be used to service this debt rather than attend to the concrete problems faced within our communities, including poor service delivery, unemployment and the impact of the challenges at Eskom. In a matter of very few days the negative impact of this decision was already being felt. I was certain things would only get worse with time.

²⁷ See video footage from minute 3:00 available at: <https://www.youtube.com/watch?v=xTqhX0IYO4Y>



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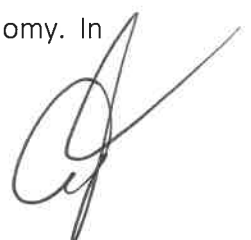

89.9. You will have seen that I was not alone in publicly expressing myself on this matter. Other officials of the ANC that made similar public statements were then Treasurer General Mr Zweli Mkhize and Mr Mantashe.

90. It was during the 30 March 2017 reshuffle that Mr Malusi Gigaba became Minister of Finance, and Ms Mmamoloko Kubayi-Ngubane replaced Ms Joemat-Pettersson at the Ministry of Energy. In addition, Minister of Transport, Ms Dipuo Peters, Minister of Tourism, Mr Derek Hanekom, and Minister of Public Service and Administration, Mr Ngoako Ramatlhodi were removed from Cabinet. Mr Joe Maswanganyi became the Minister of Transport in Ms Peters' stead. Mr Nathi Nhleko became Minister of Public Works (Mr Thembelani Nxesi was made Minister of Sports and Recreation), Ms Faith Muthambi became Minister of Public Service and Administration, Mr Sifiso Buthelezi took Mr Jonas' place as Deputy Minister of Finance, and Mr Ben Martins became Deputy Minister of Public Enterprises. The full list of changes made can be gleaned from the statement issued at the time.

The possible appointment of Mr Molefe as Minister of Finance

91. The Commission has asked that I speak of my knowledge of the possible appointment of Mr Brian Molefe as Minister of Finance.

92. I recall that this was discussed at a meeting of the ANC officials. Most of those present expressed concern that Mr Molefe did not have the kind of profile that would ease the concerns of international and local investors regarding South Africa's economy. In



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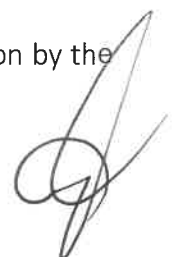
addition, there was also a concern that Mr Molefe had left Eskom under a cloud.

The closure of Oakbay Investments bank account

93. During 2016 the imminent closure of bank accounts belonging to Gupta-linked companies (including Oakbay Investments) held at South African banks and international banks with licences to operate in South Africa, and the withdrawal of auditing services by auditing firms from the same companies was brought to Cabinet's attention.

94. The issue was raised during a discussion on Current Affairs at the 13 April 2016 Cabinet meeting by the then Ministers of Mineral Resources and COGTA, Mr Mosebenzi Zwane and Mr van Rooyen respectively. I recall the Ministers conveying their dismay in relation to what they considered to be the unequal treatment by banks and auditing firms of clients, and advocating for the urgent reform of the banking system as the unequal treatment would, in their opinion, impact on investment.

95. Following a request by the two Ministers referred to above for Cabinet intervention, the Cabinet decided that the Minister of Mineral Resources, the Minister of Labour – Ms Mildred Oliphant – and the Minister of Finance – Mr Gordhan – would prepare a briefing memorandum on the implications of the decision of certain banks and auditing firms to close or withdraw services to Oakbay Investments. In my experience as a Cabinet member, matters related to private companies are not normally dealt with at such a high level. It was unusual for such a matter to be raised and decided on by the



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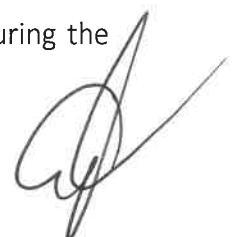
Cabinet.

96. In practice the purpose of the standing item 'Current Affairs' on the Cabinet agenda is meant to address matters of public interest and immediate national importance, including matters on which a public statement by the Cabinet is warranted. This could include upcoming events hosted by government departments, national sports organisations and where the country is involved in international events, and messages of a congratulatory nature or for condolence for eminent individuals. The minutes of the Cabinet meeting of 13 April 2016 are annexed marked "MCR 8".

97. I described the meeting held between the ANC officials and the Gupta brothers after this Cabinet meeting, in April 2016, in my first statement to the Commission (see its paragraph 4.4).

98. On 22 June 2016 I was requested to chair the Cabinet meeting, despite the President being in attendance. This happens on occasion, for example when the chairperson has an urgent matter that may require him to step out of the meeting at short notice. One of the agenda items to be tabled by the Minister of Mineral Resources was entitled 'Briefing on the implication of the decision of certain banks and audit firms to close the accounts of and withdrawing auditing services from Oakbay Investments'. The minutes of this meeting are annexed and marked "MCR 9".

99. The Minister of Mineral Resources submitted a memorandum to Cabinet during the



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meeting entitled *"The Inter-Ministerial Committee ("IMC") established by Cabinet to hold discussions with various banks and other institutions to discuss the decisions taken by the banks to close certain bank accounts of its clients"*. In this memorandum, it was suggested that a Commission of Inquiry be established in order to inquire into the conduct by the banks. I objected to this proposal. It would be wholly inappropriate for a Commission of Inquiry to be established for the purpose of addressing unique challenges faced by one private company in the banking sector. The memorandum was withdrawn by the Minister before it could be discussed. The reasons given were that the memorandum required further refinement and consultation. The Cabinet agreed that the memorandum should focus on the conduct of the banking/financial sector companies in relation to the closure of the accounts, especially as it related to client confidentiality. The Cabinet also approved that the relevant Ministers brief the President and the Deputy President prior to the memorandum being brought back to Cabinet for discussion. This briefing however never took place.

100. At the following Cabinet meeting on 6 July 2016, the same agenda item was tabled, and a reformulated memorandum submitted. The Minister of Mineral Resources briefed the Cabinet on the memorandum.

101. The Minister referred to the group of Ministers identified to work on this matter, referred to above at paragraph 95, as an IMC. I do not recall whether this was corrected in the meeting, but the Cabinet minutes correctly refer to the structure as a 'task team'. These are attached marked "MCR 10".



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102. In addition to the reformulated memorandum, the Cabinet was also given an annexure listing the stakeholders consulted by the Ministers of the task team. Mr Zwane indicated that the Minister of Finance had not attended the meetings with the stakeholders.

103. The Cabinet noted the progress made and that the memorandum required more work to be done. It was also agreed that several further memoranda be prepared by the Minister of Finance relating to the banking and finance sector.

104. I chaired the Cabinet meeting on 31 August 2016 in my capacity as Acting President. The Cabinet noted that the memorandum tabled at the previous meeting had been leaked and published in the media that morning. It was agreed that the Secretary to Cabinet would, in collaboration with the State Security Agency, investigate the security breach and report back to the Cabinet in due course. Dr Lubisi indicates in his statement that he met with the DG of State Security at the time and requested the matter be investigated, but no report was ever forthcoming despite multiple reminders sent to the DG.

105. On 2 September 2016 then Minister Zwane issued a statement with several



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inaccuracies, which Dr Lubisi details in his statement.²⁸ Later that day the Presidency issued a statement clarifying that Minister Zwane's statement did not reflect government's position and that the statement was issued in his personal capacity and not on behalf of the task team or Cabinet.²⁹ The facts that led to its issue are detailed by Dr Lubisi as he has personal knowledge of these.

106. I have been informed that Minister Gordhan detailed in his evidence the steps he took, including the court application he made in October 2016 to seek a declarator that he cannot interfere with banks' decisions on account facilities.³⁰ I am also informed that this is detailed even further by Mr Momoniat in his affidavit to the Commission. Before taking this step, Minister Gordhan had sought my advice on whether or not to pursue this proactive step to inhibit what can only be described as an attempt to abuse state power in favour of a private company and in furtherance of its interests. I agreed with his chosen course of action and gave him my full support.

Other appointments

107. As regards appointments of the NDPP or any other appointments at the NPA, I

²⁸ Statement available at: <https://www.news24.com/fin24/economy/full-statement-call-to-probe-banks-20160920>

²⁹ Statement available at: <https://www.gov.za/speeches/presidency-statement-issued-minister-mineral-resources-mosebenzi-zwane-2-sep-2016-0000>

³⁰ Transcript of Commission day 27 (21 November 2018) at pp 11 and 12; Gordhan statement, para 144, p 53



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played no role while I was Deputy President. This includes the events that led to the departure of Mr Mxolisi Nxasana and the appointment of Mr Shaun Abrahams.

108. As regards the appointments of Board members and governance of State Owned Enterprises, detailed background is outlined in paragraphs 178 to 197.

Parliament's oversight functions

109. As Deputy President I was a member of the National Assembly and the LOGB.
110. With respect to allegations of state capture, Parliament in my view was not as effective in the exercise of its oversight functions as I think it should have been. This is partly due to factors I listed above that limited our knowledge of the extent and true nature of what was taking place.
111. I deal with the role of political parties, and specifically the ANC, in my statement as President (and former Deputy President) of the ANC.
112. I believe that notwithstanding many failures, there were steps taken to address acts and processes of wrongdoing that Parliament became aware of. Some examples of these efforts are detailed in the affidavit submitted to this Commission by the late Minister Jackson Mthembu, who was Chief Whip from 2016 until the national and provincial elections held in 2019. I will not repeat these here. I am informed Mr



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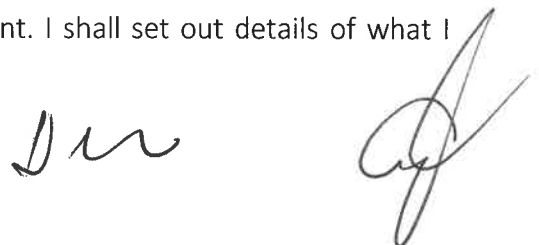
Momoniati also speaks to another such example in his affidavit.

113. The various inquiries instituted in Parliament gave impetus to the establishment of this Commission during 2017 and 2018 especially. Members of Parliament actively sought to publicly address allegations of state capture in specific institutions, such as Eskom for example.

114. It is important to acknowledge the challenges of Parliamentary oversight in dealing with allegations of state capture. Parliament by its nature is a forum for public debate. It does not have general remedial powers. Parliament cannot direct that a person be arrested or prosecuted. It cannot instruct administrative bodies to take particular steps. Its oversight role ought not to be misconstrued – it could not, constitutionally or otherwise, remedy gaps in the criminal justice system or other institutions compromised by state capture. Having said that, as a debating chamber it was able to raise issues pertaining to state capture at a very high and public level enabling other agencies to be properly galvanised to take action.

The task to oversee the turnaround of Eskom, SAA and SAPO

115. The purpose of this section is to speak about Cabinet's involvement with Eskom and SAA. While the South African Post Office was integral to this assignment, as will appear below, I do not understand there to be any issues in relation to it that the Commission expects me to include in my statement. I shall set out details of what I



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knew about specific key events, and how I reacted.

116. I have been alerted to the fact that the Commission's Evidence Leaders took cognisance of a number of investigation reports into Eskom and undertook a GAP analysis to determine scope of evidence. In what follows, I shall attempt to give some colour to what fell within the realm of my knowledge and sphere of influence.

On Eskom specifically:

117. My mandate in respect of Eskom had its origins in two Cabinet decisions taken during December 2014. At that stage, several SOEs were in dire straits and required urgent remedial intervention. President Zuma assigned me to oversee those interventions.

118. The first intervention concerned the turnaround strategies of three major State-Owned Companies ("SOCs"³¹), namely: Eskom, SAA and SAPO. On 10 December 2014, President Zuma assigned me (as Deputy President) to oversee turnaround strategies of those companies.

³¹ On the use of the acronyms "SOE" and "SOC": an 'SOE' is either a State Owned Entity or a State Owned Enterprise. State Owned Enterprises are also referred to as State Owned Companies (SOCs). State Owned Entities refer to the over 750 entities at national, provincial and local government levels, including SOCs. SOCs, on the other hand, are state companies – they are trading business organisations, such as ESKOM, Telkom, SAA, Transnet, etc. State owned enterprises include water boards, regulators, economic growth agencies, conservation bodies, municipal housing agencies, etc.



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118.1. My role in this respect was to ensure that these entities had credible, implementable, and costed turnaround strategies in place. If the SOC had devised such a strategy, my role was to oversee its fulfilment. Where such a strategy did not exist, my role was to put into place a process which will result in a turnaround strategy.

118.2. At the time, existence of Eskom's five-year Corporate Business Plan for the period 2009 to 2014 had come to an end. Eskom was in the process of finalising a new Corporate Business Plan for the period 2015 to 2020. The then Minister of Public Enterprises, Ms Lynne Brown, had granted Eskom an extension for finalising the 2015-2020 Corporate Business Plan. According to the Department of Public Enterprises, this plan was to be available before the end of April 2015.

119. It is important to note that in no way did this assignment have me involved in operational decisions at Eskom, let alone usurping Board responsibilities. It was a political supervisory role (from the perspective of the Shareholder) within the context of the relevant IMC. I elaborate more on this below.

120. The second intervention was the approval by Cabinet, on 10 December 2014, of a Five-Point Action Plan to address the strain on South Africa's electricity system. The Plan covered five areas that required urgent attention.

120.1. The first were the immediate interventions that Eskom would undertake within



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the following thirty days. This intervention related to immediate efficiencies that Eskom would introduce, including a focus to improve strategic maintenance and operational efficiency. In addition, Eskom was required to provide a detailed finance plan to manage its cash flow. In turn, government would consider Eskom's funding model.

120.2. The second was co-generation. The Cabinet envisaged that Eskom would harness the cogeneration opportunities by extending the existing Power Purchase Agreements with the private sector. This would secure an additional 800 MW of co-generation capacity for the grid.

120.3. Third, the Cabinet envisaged that Eskom would accelerate the programme to use gas for electricity generation. This involved (i) using gas to fire up diesel power plants, and (ii) considering opportunities to import liquefied natural gas.

120.4. The fourth was launching a coal independent power producer programme. This would add 2400 MW of generation capacity.

120.5. The final aspect concerned demand-side management. This would be achieved through specific interventions within residential dwellings, public and commercial buildings and municipalities through retrofitting energy efficient technologies. The focus was on energy intensive industries in addition to a range of existing demand-side interventions for improvement such as the introduction of



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mandatory regulations for the use of low-energy light bulbs, energy efficient street lighting and the retrofitting of government buildings with low energy systems.

120.6. In addition, and as part of the five-point plan, there was a proposal that a 'Technical Implementation War-room on the Electricity Crisis' be established to implement the Five-Point Plan, which would be comprised of the Department of Energy, Department of Cooperative Governance, Department of Public Enterprises, National Treasury, Department of Trade and Industry, Economic Development Department, Department of Water and Sanitation and Eskom.

120.7. I attach extracts of the Cabinet Resolution bearing this out as "MCR 11".

121. On 10 December 2014 Cabinet adopted the Five-Point Plan (attached as "MCR 12") to address the energy challenge in its entirety, including the establishment of a technical structure to implement it: the Technical Implementation War-room on the Electricity Crisis (known as the War Room). The War Room was set up to support the implementation of the Five-Point Action Plan. My Chief of Staff at the time, Mr Busani Ngcaweni, coordinated the work necessary to do so and speaks to it in his affidavit, which I refer to below.

122. I attach the terms of reference for the Technical War Room crafted in early 2015 by officials in the Presidency and the Department of Public Enterprises and approved



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by the IMC at a meeting convened on 28 January 2015. The terms of reference for the Technical War Room are attached as “MCR 13”. These further demonstrate that the Technical War Room’s focus would be on implementing the Five-Point Action Plan. I highlight the following specific extracts:

122.1. At paragraph 3.1, the Terms of Reference articulate the roles and responsibilities of the Technical War Room. Each item listed centres on the five-point plan and how its achievement would be facilitated.

122.2. The Technical War Room was to focus on challenges Eskom was experiencing at that time; it was meant to have a “*short-medium term focus*”. The Technical War Room would rely upon information obtained from Eskom, unless there were doubts about the credibility of such information.³²

122.3. The Technical War Room would not duplicate Eskom’s work, or that of other departments or entities. It was required to focus on issues that required collaboration between departments and entities concerned, and to resolve blockages where they occurred.³³

122.4. The Technical War Room, as appears from paragraph 4.1 of its Terms of

³² War room Terms of reference para 3.3

³³ *Ibid* paras 3.4 and 4.2



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Reference, consisted of full-time employees seconded to work at the Union Buildings. This is further apparent from the contents of paragraph 4.2 of the Terms of Reference which provide that matters would only reach me if they could not be resolved by DGs, heads of entities concerned, the Deputy Minister of Energy at the time (Ms Thembisile Majola), or other Ministers.

122.5. The Technical War Room was under the day-to-day direction of the then Deputy Minister of Energy, Ms Majola, the then Deputy Minister of Public Enterprises, Mr Bulelani Magwanishe, and the then Deputy Minister of Cooperative Governance, Mr Andries Nel. My role was to provide political leadership.³⁴

122.6. I was not a member of the Technical War Room, let alone its Chair.

123. I provided overall leadership for the strategic structure, the IMC on Energy, and there were regular engagements with me in this capacity.

124. Dr Lubisi describes the nature of IMCs generally. The IMC was not part of the War Room but rather functioned above it, to coordinate the relevant work at cabinet and ministerial level and within the remit of this level of government as shareholder. It was already in existence when I became Deputy President.

³⁴ *Ibid* paras 4.5 and 4.6



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125. This IMC's mandate was broader than just the three SOCs I was assigned to oversee. It was meant to address the energy challenges of the country in general, and the future of SOEs.

126. The IMC, in its role of overseeing the implementation of the five-point plan and the work of the Technical War Room, held its inaugural meeting in late January 2015, as you can see from that meeting's unsigned minutes, attached marked "MCR 14".

127. I have been made aware that witnesses before the Commission have seemingly conflated the separate structures. The IMC on Energy, when it met to deal specifically with the future of Eskom and the work of the Technical War Room, was referred to as the War Room IMC in numerous public and official statements as far as I can recall. The confusion is therefore entirely understandable. I hope it is apparent from the terms of reference that this is, however, incorrect. The IMC itself was also on occasion referred to as the IMC on Electricity or even just the Eskom IMC. The lack of streamlining IMCs generally, and their duplication, are an aspect of how Cabinet functioned at the time. Government has tried to address this anomaly since 2018.

128. I have asked my Chief of Staff at the time, Mr Busani Ngcaweni (who currently heads the National School of Government) to file a confirmatory affidavit, since part of his work was keeping me abreast of all developments in the War Room that related to my work as head of the IMC. His affidavit is annexed marked "MCR 15". He also attaches



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copies of minutes of War Room meetings.

129. With a view to getting more balanced and independent advice, I appointed a panel of independent advisors made up of Anton Eberhard, the late Dolly Mokgatle, Sy Gouragh, Smunda Mokoena, Derick Elbrecht and Bobby Godsell (the Advisory Committee). This panel served to advise me separately from government structures on the work related to Eskom, its progress and challenges.³⁵

130. I have noted the allegations about the Technical War Room and its alleged exclusion of Eskom Board members and executives. Eskom was represented in the Technical War Room through its employees. I refer the Commission to the affidavit by Mr Ngcaweni mentioned above, as well as to facts set out above about the nature of the Technical War Room.

131. During April 2015, it became apparent to me that the Technical War Room had to be phased out. My view was primarily based upon the following considerations:

131.1. There were too many offices or structures through which inputs were being made and by whom or through which decisions were being taken on the future of

³⁵ You can find the formal announcement of the Panel in the statement made on 19 March 2015 by the Presidency, available at <https://www.gov.za/speeches/deputy-president-ramaphosa-announces-appointment-eskom-advisory-council-19-mar-2015-0000>



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Eskom. There was the President, the IMC, the Technical War Room, the Minister of Public Enterprises, the Chair of Eskom's Board, and Eskom's CEO. This left the utility vulnerable to conflicting decisions. I suggested to the President that matters pertaining to Eskom should be dealt with through the Board. I articulated this view publicly during an oral question session at the National Assembly on 19 October 2017 during which I said that –

“When it comes to the Eskom War Room, the Eskom War Room was given a task. The task was: Deal with the problem of load shedding that we were experiencing; deal with it as quickly as possible! That is what a war room is all about: Deal with the current challenge. The Eskom War Room was able to make headway in dealing with that challenge. Clearly, there were quite a number of other processes at management level, at Board level, at the Eskom War Room level and also the Ministries level. It was in this regard that I actually went to the President, and I said: Let's close this Eskom War Room and let us allow those people who are given the absolute right through various fields – either the law or corporate governance – to be the ones who are going to run with the challenges that we face and resolve it. It was to this end on the Eskom War Room that some of us really recommended that you should now put in place a CEO who will be able to turn Eskom around. Clearly, because there were too many entry points, we were seeking to end this whole confusion that was going on.” (the full copy of the relevant Hansard extract is



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annexed marked "MCR 16")

131.2. Second, I was of the view that Eskom required strong leadership. At the time, I was aware that Eskom's CEO, Mr Tshediso Matona, had been placed on precautionary suspension. I discussed this matter with President Zuma and suggested that Mr Molefe should be appointed as the CEO of Eskom. Mr Molefe had reputedly been one of the best performers in his role in various state entities and I supported him being appointed to lead Eskom. I believed then that this would have assured strong leadership at an institutional level.

132. President Zuma agreed to this suggestion and the Technical War Room was finally disbanded in September 2015. I do not know why there was an apparent delay in implementing this decision.

On SAA specifically

133. South African Airways ("SAA"), like other SOEs, is a strategic asset and its financial position affects the country broadly.

134. My knowledge of what took place in SAA flows from my membership of Cabinet as Deputy President between 2014 and 2018, including when I was tasked with the turnaround of Eskom, SAA and SAPO (which I speak to earlier in this statement) and as President since 2018.



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135. Cabinet was often asked to approve high-level decisions in so far as SAA was concerned in those years. Those high-level decisions related to the following topics:

135.1. Board appointments;

135.2. The recapitalisation of SAA; and,

135.3. Business rescue.

136. I did not have knowledge of the internal decisions made at SAA, such as the detailed contractual negotiations I am informed numerous witnesses attested to before you.

137. I will deal with the information garnered by me through my participation in the Cabinet and the steps taken by the Cabinet since my election as President to remedy some of the issues that relate to the questions before the Commission.

138. As regards the **Board of SAA**, and as I detailed above, practice requires that Ministers obtain the Cabinet's approval for the appointment of heads of public entities, agencies and government institutions and members of boards of statutory bodies.



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139. This is also entrenched in Clause 13.1 of SAA's Memorandum of Incorporation,³⁶ which provides that the SAA Board shall consist of a minimum of five directors and a maximum of fifteen directors who are appointed by the Minister in consultation with the Cabinet. It further provides that the Board shall also consist of at least two executive directors, being the CEO and CFO.

140. On 7 August 2013, the Department of Public Enterprises presented a Long-Term Turnaround Strategy, to address the overall sustainability of both SAA and SA Express, to Cabinet. This strategy was also presented to Parliament in February 2014. SAA's Long-Term Turnaround Strategy was intended to, among other things, achieve and maintain SAA's commercial sustainability. This is confirmed by Dr Lubisi in his statement.

141. As at 22 October 2014, and after my appointment as Deputy President, the Board was mandated to focus primarily on strengthening the financial and operational activities within SAA.

142. On 31 August 2016, as I understand has been attested to before this Commission, the Cabinet agreed to a new Board being appointed for SAA. I am informed that Minister Gordhan has provided evidence to the Commission in this regard. Since President Zuma was overseas at the time and I was Acting President, I discussed the matter with him over

³⁶ This document is not attached as I am informed the Commission already has a copy of it



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the phone during the course of the day, and the resulting decision was made with his concurrence. Ms Dudu Myeni was retained on the Board and as chairperson, on the understanding that her final term on the Board would end in 2018. A number of new members were appointed to the Board.

143. The new Board was tasked with implementing measures that would place SAA in a stronger governance position and improve the likelihood of financial recovery. The Board was required to accelerate the turnaround of the airline and ensure its viability in the context of increasing competition and volatile movements in fuel prices and exchange rates. This required more aggressive cost containment, the refinement of the network and fleet plan based on a sound business case that demonstrated the profitability of the proposed changes, and ensuring alignment with the other state-owned airlines.

144. Government had repeatedly provided assistance to improve the situation at SAA. It had provided government guarantees, paid outstanding and immediately due debts and passed a special appropriation bill in an effort to improve SAA's finances. These did not have the intended result. SAA continued to have liquidity issues and was unable to meet its own financial obligations. It became clear that business rescue was the only approach available that would enable SAA to become a sustainable, competitive and efficient airline.

145. On 5 December 2019 the SAA Board resolved to place SAA under business rescue in terms of section 129(1) of the Companies Act. This was done after the Board had been



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in consultations with the DPE to find a solution to its financial challenges. The Business Rescue Plan is available online for members of the public to access and engage with.³⁷ The business rescue process continues.

146. In response to statements made during testimony before the Commission I wish to address one issue, however minor it is.

146.1. On 6 November 2020 (day 300 of the Commission's hearings), Ms Dudu Myeni testified that I, as Deputy President at the time, was *"responsible for government business"*. She continued: *"SOEs that were seen by Cabinet to be problematic were all assigned under President Cyril Ramaphosa."*³⁸

146.2. I think it appropriate to clarify that while I was the Leader of Government Business, this role, discussed earlier in this statement, relates to Parliament, and not to the business of state-owned enterprises. My role as Leader of Government Business had nothing to do with SAA.

³⁷ The business rescue plan and related documents are available here: <https://matusonassociates.co.za/saa/>.

³⁸ Ms Myeni Transcript, 6 November 2020, day 300, p107 lines 14 to 19.



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VI – SPECIFIC ISSUES RAISED BY THE COMMISSION

147. I now turn to various specific questions that the Commission asked me to deal with in my statement in its letter of 12 March 2021.

“A competing trade union”

148. Regarding what is termed by the Commission the “SSA’s project to set up a trade union to compete with AMCU”, I have no knowledge of this so-called project at all. This matter only became known to my team once I became President, in the form of the court application filed by Mr Maswabi in 2017 against the President, the Minister of ‘Safety Security and Agency’ (as cited in the court file), the Minister of Police, National Commissioner of Police and the Minister of Defence, in which he sought damages (an amount of R120 million) for what he alleged was a breach of contract. He claimed this contract was entered into to give him the resources necessary to create the trade union in question. This matter is pending before the courts and is being defended by my office. Mr Maswabi claims in his court papers that this amount was promised to him in an agreement between himself, the Presidency and the Minister of State Security. He argues that failure to pay him the claimed amount is a breach firstly of the alleged agreement and secondly of a settlement agreement he claimed was later reached between him and the same parties.



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“Patterns of corruption in SOEs”

149. The Commission has asked me to speak to “*patterns of corruption in SOEs*” including Denel, PRASA, Transnet, SABC, Eskom and SAA.

150. Broadly it is important to note that as Deputy President I was entrusted only with what the President assigned me to do. I did not have the power to go beyond the boundaries of my assignments. Furthermore, I would not have had knowledge of the detailed events unfolding at SOEs. This was in part due to a lack of transparency in governance, and a failure to ensure coordination and exchange of information in governance generally at the time. As I will deal with below this is one of the issues I feel needs to be changed, in order to ensure that work is not done in silos, and to make the most of sharing information, experience and expertise among government departments.

151. In addition, because corruption and state capture are criminal activities, efforts were made to conceal incidents of state capture and corruption. The perpetrators of these crimes would have deliberately sought to hide themselves and their actions.

152. I did not know therefore of the machinations taking place in these entities. Information was only shared if and when something had gone wrong, and sometimes through the work of investigative journalists or whistle-blowers and not through my



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position or my work in Cabinet.

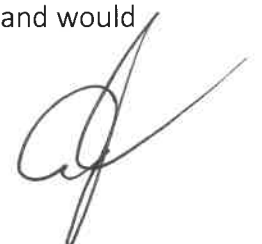
153. I deal below with measures taken to address wrongdoing in SOEs generally. These measures are informed by an understanding of the general challenges in the management and oversight of SOES.

The delay in enacting the Financial Intelligence Centre Amendment Act

154. The Commission specifically asked that I explain, to the extent that I can, why there was a delay in the enactment of the Financial Intelligence Centre Amendment Act.

155. The issue of the delay in the enactment of the Financial Intelligence Centre ("FIC") Amendment Act is, I am informed, detailed by Mr Ismail Momoniat, DDG at National Treasury, in an affidavit he attested to and which was shared with my team.

156. My recollection is that numerous discussions took place at Cabinet level regarding the Bill and the implications of the definition of politically exposed persons, or PEPs. The inclusion of the clauses relevant to PEPs and the greater scrutiny of their banking facilities and conduct was aimed at curbing money laundering. This is as much a goal of our own country as one meant to fulfil our international obligations. As for the return of the Bill to Parliament by the then-President, neither I nor my office were involved. The assent to legislation is a specific power given to the President and would



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not in the ordinary course involve the participation or input of the Deputy President unless the President specifically assigned him or her such a responsibility.

Mr Jonas and the Guptas

157. I became aware of the offer made to then Deputy Minister Jonas by one of the Gupta brothers regarding the position of Minister of Finance on 16 March 2016, when a statement setting out the allegations was released by the then Deputy Minister.

Mr Fraser and Mr Mahlobo

158. The Commission asked that I speak to what it calls the "*further appointments*" of Mr David Mahlobo as Deputy Minister (and therefore not to the Cabinet as the Commission's letter states), and Mr Arthur Fraser as National Commissioner of Correctional Services.

159. I assume the Commission is asking me why Mr Mahlobo was appointed as a Deputy Minister in 2019 despite allegations having been against him of certain wrongdoings. As regards Mr Fraser I am not sure if the Commission is asking me why he remains Commissioner of Correctional Services currently, or why he was moved to this position in 2018.

160. In answering the Commission, I am enjoined to state that I have taken the



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decision to await the outcome of its work and of related investigations (such as the one I deal with below being conducted within the SSA for example) before making determinations on the blameworthiness or otherwise of current members of the Executive, or of the senior leadership of government departments.

“Attempt to move the budget process”

161. Finally, the Commission asks at paragraph 14.6.a of its letter of 12 March 2021 that I speak about the alleged *“attempt to move the budget process from National Treasury to the Presidency.”* I am not aware of any attempt to *“move the budget process from National Treasury to the Presidency”* save for what was speculated on in the press.



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VII – MEASURES TO RIGHT THE WRONGS AND PREVENT STATE CAPTURE

162. Since assuming the office of President in February 2018, the government that I lead has undertaken several measures to end state capture, to rebuild damaged institutions and to foster a culture of ethical public service and accountability.

163. In the main the measures were aimed at changing the way in which the Cabinet works, to diminish if not extinguish working in silos, strengthening institutions that had been crippled or 'captured', starting with changes in leadership of these institutions, pursuing a long standing project of changing the way in which SOEs were managed and overseen by government as shareholder, and making relevant necessary policy decisions, including enactment of legislation, to address shortcomings or reinforce oversight where needed.

164. I will summarise some of the key measures below, some of which are still in the process of being developed.

Cabinet related changes

165. I have highlighted earlier in my statement that the work of the Executive was conducted in silos, in an unintegrated manner as well as in a fractured manner, making it difficult if not impossible for anyone to have line of sight of how government was functioning as a whole. I am committed to addressing this problem. It will never be



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possible for one person, even a President, to know everything happening in each government department, at national, provincial and local level, and each SOE, but at the very least mechanisms can be put in place to ensure the best possible view is available.

166. I have streamlined the number of IMCs in order to avoid duplication and to ensure greater focus on the government's priorities. An example of the need for this work can be found in the confusion created by the different names given to the IMC that oversaw the work of the Eskom War Room, which I refer to earlier in this statement.

167. I have also signed performance agreements with every member of Cabinet, which agreements have been published on the government website.³⁹ These agreements make clear what is expected of each Minister and on what basis I will judge their performance. To my knowledge, while such agreements have been entered into previously they were never made public. Their publication allows the public to form their own opinions and feel free to give input on the performance of Ministers with all information relevant to that Minister's work. The performance agreements that I signed with members of Cabinet are available at <https://www.gov.za/ministers-performance-agreement>. For the sake of convenience, I have asked that they be

³⁹ <https://www.gov.za/ministers-performance-agreement>



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printed and provided to the Commission. They appear as a bundle marked "MCR 17". I have been informed that the Commission requested copies of performance agreements entered into during the period 2009 to 2014 and that these were provided by the Department of Planning, Monitoring and Evaluation late last year.

Changes to institutions

168. There is a critical need to **strengthen the capacity of the state**, at all its levels. This requires changes to institutions and organs of state, ensuring they can fulfil their mandates effectively and efficiently. A number of steps have already been taken to this end:

168.1. Ensuring greater transparency and coordination not only between ministries and government departments, in all spheres of government, is essential. It allows for work done by the various structures of government to avoid duplication, complement each other, use resources more effectively and make use of each other's resources, knowledge and expertise. As a result, I am certain that integrated governance will in general terms become more effective over time.

168.2. The conclusion of performance agreements with Ministers, referred to above, is part of this process. Every Minister knows what is expected of them, and every Minister knows what his or her colleague is working on. No-one works in isolation. The more transparency and coordination, the better the governance of our state.



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168.3. One of the critical projects currently underway and aimed at strengthening the capacity of the state involves the **professionalisation of the public service**. This exercise is aimed at ensuring that the public service is shorn of political partisanship and that the most qualified individuals enter its ranks. As stated in my second State of the Nation Address of 2019,⁴⁰

“We are committed to building an ethical State in which there is no place for corruption, patronage, rent-seeking and plundering of public money.

We want a corps of skilled and professional public servants of the highest moral standards – and dedicated to the public service.”

168.4. The National Development Plan (“*the Plan*”) deals specifically with the need to build a capable and developmental state. Considerable work is being done to ensure better performance of government structures. The Plan emphasises the need for “*well-run and effectively coordinated state institutions with skilled public servants who are committed to the public good and capable of delivering consistently high-quality services, while prioritising the nation’s developmental*

⁴⁰ SONA, June 2019, available at <https://www.gov.za/speeches/2SONA2019>



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objectives."⁴¹ The Plan outlines what needs to be done to achieve this, which is in summary:

- 168.4.1. Stabilising the political-administrative interface by building "*a professional public service that serves government, but is sufficiently autonomous to be insulated from political patronage. This requires a clearer separation between the roles of the political principal and the administrative head.*"
- 168.4.2. Making the public service and local government administration careers of choice.
- 168.4.3. Developing technical and specialist professional skills.
- 168.4.4. Strengthening delegation, accountability and oversight – this includes promoting "*greater and more consistent delegation supported by systems of support and oversight*", making "*it easier for citizens to hold public servants and politicians accountable, particularly for the quality of service delivery*", and ensuring "*effective oversight of government through parliamentary processes.*"
- 168.4.5. Improving interdepartmental coordination.
- 168.4.6. Taking a proactive approach to improving relations between national,

⁴¹ National Development Plan – Vision 2030, published in 2012, available online at https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf at p 409



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provincial and local government.

168.4.7. Strengthening local government.

168.4.8. Clarifying the governance of SOEs – *“the major SOEs need clear public-interest mandates and straightforward governance structures that enable them to balance and reconcile their economic and social objectives.”*⁴²

168.5. The Plan goes on to detail how to achieve each of these steps. Work is underway to implement the plan in relation to improving the capacity of the state.

168.6. Late in 2020 the draft national implementation framework towards the professionalisation of the public service was approved by Cabinet for public consultation⁴³ and the public hearings in this regard have begun.

168.7. The professionalisation of the public service will serve to inhibit appointment of persons who are not qualified for the jobs they are given. This should help, for example, to reduce incompetence in government department units or municipalities. It will also limit possible patronage to the benefit of a limited few. Last but not least it will ensure people employed by the state are not indebted to certain interests for their jobs, thereby making them less likely participants in

⁴² National Development Plan – Vision 2030, published in 2012, available online at https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf at p 410

⁴³ See the full draft framework at https://www.thensg.gov.za/wp-content/uploads/2021/01/Nat_Gov_Gazette_24_December_2020.pdf



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state capture.

168.8. In addition, the Policy and Research Services branch has been re-established in the Presidency. It will advise on policy development and implementation of those policies, and its services will be available not only to the Presidency but to other government departments as well. A similar unit (the Policy Co-ordination and Advisory Services, or PCAS) had existed in the Presidency previously but was dissolved in 2009. I anticipate that the level of research, analysis and streamlined input from this unit will help to support policy formulation generally and assist government to ensure it makes the best choices possible to achieve its goals.

169. Law enforcement agencies were at the vital to the success of state capture. Their weakened state crippled them in their obligation to root out and punish those guilty of corruption and state capture. Evidence that has previously been provided to this Commission makes this plain. The weakening of law enforcement agencies allowed corruption to go unpunished, perpetrators to be protected and the public purse to be looted without consequence. It also led to experienced personnel leaving the ranks of these agencies, thus denuding them of the experience needed to investigate and successfully prosecute the sometimes complex schemes of those involved in state capture.



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170. By the beginning of 2019, and as reflected in my State of the Nation Address,⁴⁴ changes to governance of boards and to critical institutions such as the **National Prosecuting Authority (“NPA”)** and **South African Revenue Service (“SARS”)** had already been made.

171. As you are aware, the **NPA** has seen many changes in its leadership in the last two years.

171.1. Once the Constitutional Court determined that Mr Shaun Abrahams had not been lawfully appointed,⁴⁵ a public and transparent process was undertaken to identify a new National Director of Public Prosecutions (“**NDPP**”). I was aware that South Africans had lost confidence in the NPA. I decided on having a public and transparent process because it would help South Africans regain confidence in the institution – they would have seen who the candidates were, followed the interviews of each candidate, and seen how the final choice was made. The appointment of Ms Shamila Batohi as NDPP was, as a result, embraced and welcomed by all, and faith that she would right the NPA ship started growing from that moment.

⁴⁴ SONA, February 2019, available at https://www.gov.za/speeches/president-cyril-ramaphosa-2019-state-nation-address-7-feb-2019-0000?clid=CjOKCQIAyJOBbDCARIsAJG2h5dZTiUqmaYLPPNasvVepUgee3y8cvb5CjNQYvHYnHBdUcM_XBiGrfMaAvhdEALw_wcB#

⁴⁵ In the case of *Corruption Watch and others v President of the Republic of South Africa and others* [2018] ZACC 23, judgment was handed down on 13 August 2018



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171.2. Under the leadership of Ms Batohi, we have established the Investigating Directorate, which needs further capacitating. This institution is specifically mandated to work on high profile complex cases of corruption and fraud. Its members have unique expertise in this field and it has shown the capacity to speed relevant investigations up and see prosecutions take place. Discussions are underway on whether or not it ought to become a permanent body. The Directorate concentrates on the worst cases of corruption and fraud. Its establishment, and the work it does, are a significant element of the fight against corruption and state capture.

171.3. We have also made changes to leadership at the level of the Deputy NDPPs. The process of enquiring into the fitness of Ms Nomgcobo Jiba (then Deputy NDPP) and Mr Lawrence Mrwebi (a Special Director of Public Prosecutions or "SDPP") was initiated in September 2018 and has since been finalised. The panel chaired by retired Justice Yvonne Mokgoro found that both Ms Jiba and Mr Mrwebi were not fit for office and Parliament accepted my decision to remove them. New Deputy NDPPs and SDPPs have been appointed.

171.4. I am informed that the Commission has heard evidence in relation to Director of Public Prosecutions Ms Moipone Noko. I had accepted a recommendation by NDPP Batohi to institute an inquiry into her fitness to hold office early this year. A letter was then sent to Ms Noko asking her for representations on why she ought



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not to be suspended pending the inquiry. She handed in her resignation, which I accepted as effective from 1 March 2021.

171.5. The NPA has started to make significant strides in combatting corruption and I am confident that it will continue to do so.

172. As regards the SARS, and in summary (as I presume the detail of these facts are known to the Commission):

172.1. The critical role SARS plays in our democratic dispensation renders it central to securing the public purse. Without revenue collection we are unable to render any services whatsoever to our citizenry. Revenue collection that is handicapped or diminished due to inefficiencies in the system have the effect of limiting our ability to provide these services. SARS also plays a critical role in keeping track of private and juristic persons' obligations to the state and their legal status. Ensuring SARS works well and as it should is therefore central to protecting public funds. This was foremost in my mind, when I became President, in making decisions in relation to its future.

172.2. Mr Edward Kieswetter was appointed Commissioner of SARS with effect from 1 May 2019, for five (5) years.

172.3. In May 2018, I had established a Commission of Inquiry chaired by retired



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Justice Nugent to investigate failures of governance at SARS. It was mandated to make recommendations on the best way to address these failures and restore tax payer confidence in SARS. The final Nugent Commission report was submitted to me in December 2018. Its recommendations have and continue to be implemented. These are aimed not only at redressing wrongs of the past but at ensuring SARS never again falls prey to the improper motives of a privileged few.

173. Both Ms Batohi and Mr Kieswetter are much better placed than I to inform the Commission of the impact recent changes have had on the institutions they lead.

174. In an analysis published in August 2020 (and annexed hereto marked "MCR 18"), JP Landman usefully detailed further changes to these institutions worth highlighting. These include work that the Asset Forfeiture Unit of the NPA has done recovering the proceeds of economic crimes, recapacitating the NPA with more qualified personnel, and changes in leadership of entities such the Public Investment Corporation.

175. This was supplemented by the work of the **Fusion Centre**, which is quite simply a means of having all relevant law enforcement entities (including the NPA, the Hawks, the SIU, the SARS, the SSA and the FIC) share information and support each other in investigating these kinds of corruption. Discussions of how to institutionalise this useful form of cooperation are under way.



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176. Furthermore, the **SIU Tribunal** started its work in October 2019 and since it started its work has shown its value in recouping monies wrongfully taken from state coffers.

177. As has been made plain in this Commission, our **Intelligence Services** are in dire need of attention. Intelligence services include the State Security Agency (“*SSA*”), the Crime Intelligence unit of the South African Police Service (“*SAPS*”) and the Defence Intelligence division of the South African National Defence Force (“*SANDF*”).

177.1. To this end the implementation of the recommendations of the High Level Review Panel (“*the Panel*”), chaired by Dr Sydney Mufamadi, is at an advanced stage. The details would be set out in the evidence the Commission obtained from the SSA itself.

177.2. The Commission asked that I expand on why the Panel was appointed to begin with. Firstly, the centrality of law enforcement agencies to the state capture project required that care be taken in identifying the faults, fissures and vulnerabilities that allowed for our intelligence services to be used to further state capture before any decision could validly be made on how to fix these. I thought it best to have experts in the field independently and objectively point me to the problems and provide considered solutions to address these. The Panel did so by taking into account allegations made to it, analysing the status of the SSA, and making informed and considered recommendations to me in its Report.



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177.3. Investigations are under way into the allegations made to the Panel, as has been testified to here.

177.4. In addition, a Ministerial Implementation Task Team (“MITT”) has been established in accordance with the recommendations of the Panel’s Report.

177.4.1. The MITT was established on 28 July 2020. Its mandate is to unpack the recommendations of the Panel into a concrete plan of action and coordinate the implementation of the recommendations.

177.4.2. The MITT will also ensure the review of the White Paper on Intelligence, and finalise the General Intelligence Laws Amendment Bill (“GILAB”) legislation.

177.4.3. The MITT is chaired by the Deputy Minister for State Security, Mr Ncediso Kodwa.

177.4.4. The MITT is also comprised of external and internal professionals and experts. The external experts comprise former members of the intelligence community, academics and other experts in the field of security, intelligence, policy, legal and legislative formulation. The internal experts hail from various branches within the SSA. Amongst them the intelligence experts have a range of strategic and analytical expertise in intelligence, policy, legal and human resources amongst others.

177.4.5. Since its establishment the MITT has met on numerous occasions.

177.4.6. A draft Business Case and draft GILAB have been developed.



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Furthermore, regulations and policies are being reviewed in this regard.

177.4.7. The MITT is mandated to advise and provide options on future of the civilian intelligence services.

177.4.8. Their work continues.

177.5. I am assured by the leadership of the relevant agencies that illegal operations identified both in the Panel Report and the investigations conducted by the SSA leadership are being identified and terminated, and investigations continue on these and other wrongs within the SSA and in collaboration with law enforcement agencies. The remit of the AG has been expanded so that covert activities are now subject to scrutiny by the AG.

177.6. Deliberations continue on the Panel's recommendation to split up the SSA into distinct domestic and foreign intelligence services.

177.7. There is a need to stem the risks coming from illegal instructions, executive overreach and compliance assurance. The SSA itself will be best placed to elaborate on this as it includes legislative and operational changes to how the SSA works. One proposal is that all instructions should be in writing or reduced to writing if made in an emergency situation.

177.8. As regards oversight by the Parliamentary Joint Standing Committee on Intelligence, I cannot speak for it as it is, appropriately, independent of the



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Executive.

Changes to management and oversight of SOEs

178. SOEs contribute significantly to the South African economy. In many instances, SOEs are the vehicles through which Government should be able to deliver key public services such as electricity; an efficient road, rail, port and aviation logistics infrastructure; affordable and reliable commuter transportation; clean and accessible water; and fast, competitively priced telecommunication services.

179. When properly managed, SOEs can make South Africa a better place for its citizens and those who live in it. Moreover, SOEs are designed to make South Africa a more attractive destination for private sector investment and foreign direct investment. SOEs are crucial to our country's economic growth and, more recently, economic recovery plans.

180. Unhappily, SOEs have not always achieved their desired objectives. This Commission's work has assisted in uncovering state capture as part of the reason for this. Government has learned many lessons from this Commission's work thus far. One key lesson has been the importance of strong ethical leadership from the Executive as the shareholder.

181. In this part of my statement, I set out the evolution of Cabinet's overall



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approach to SOEs throughout the period relevant to this Commission's mandate to the extent I have personal knowledge of these facts. As will appear from Dr Lubisi's statement, dealing with the facts as they occurred prior to my appointment as Deputy President, the challenges facing SOEs have been the subject of Cabinet scrutiny under President Zuma's and my respective administrations. Great strides have already been taken towards addressing these challenges.

182. I would ask the Commission to refer to the outline by Dr Lubisi of the evolution of government's approach to SOEs in recent years. He provides this Commission with the historical context that gave rise to SOEs in their current form. Government's policy position on the role played by SOEs has influenced its conduct as a shareholder. This outline for the former DG in the Presidency will assist the Commission to better understand how the Executive approached SOEs in the past, and how it will do so in future.

183. Dr Lubisi and I narrate the Executive's efforts in (i) understanding the challenges facing SOEs broadly, and (ii) administering the appropriate measures to remedy those challenges. I do this to demonstrate Cabinet's broader exercise of its oversight function over SOEs. Government has worked to create a proper governance structure for SOEs that would see them perform their functions with proper oversight from the Executive. The remedies are inherently long-term and the work in this regard continues.

184. The evolution of South Africa's approach to SOE ownership was dictated by



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considerations of economic circumstances, policy outlook and fiscal management. This evolution was summarised by Ms Matsietsi Mokholo and Ms Lynne Brown in a presentation they gave at a Special Cabinet meeting during November 2016. I attach a copy of that presentation as "MCR 19". At the time, Ms Mokholo was the Acting Director-General and Ms Brown was the Minister for Public Enterprises. I will not repeat the detail of that presentation here. In summary, the presentation outlined the following:

184.1. Government's policy on SOEs in the years since 1994 has not been linear. While privatisation of non-core entities or assets was envisaged for a number of years, this position changed to further reflect on the role SOEs could play in the economy and development in South Africa broadly. After 2010 however it was deemed necessary to reform SOEs, because they were not serving the developmental purpose it was hoped they would.

184.2. The need for reform led to the establishment of the Presidential Review Committee on State-Owned Entities ("*the PRC*") (which is dealt with in detail in Dr Lubisi's affidavit and below).

184.3. The findings and the recommendations of the PRC were listed in the presentation.

184.4. Proposals on the implementation of the PRC recommendations were then



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detailed. This included the need for overarching legislation to govern SOEs, the need for SOEs to have clear performance targets, for an ownership, governance and oversight policy to be developed and for SOEs to be rationalised.

185. To the extent that what is outlined below is not within my or Dr Lubisi's direct knowledge, I draw from readily available public information.

186. The period between 2010 and 2014 is particularly important. I was not in government during this period. I have no personal knowledge of the events that occurred during this period in time. I refer the Commission to the statement by Dr Lubisi. Significantly, the work of the Presidential Review Committee on State-Owned Entities ("*the PRC*"), established by former President Zuma, had been finalised and approved by the Cabinet. Its recommendations are detailed in Dr Lubisi's affidavit. Suffice to say they covered a broad range of issues from governance and oversight of SOES, their operational performance, policy proposals and institutional arrangements for the future of government oversight over SOEs.

187. As mentioned earlier, on 10 December 2014, President Zuma assigned to me (as Deputy President) the task of overseeing the turnaround of SAA, SAPO and Eskom. SAA was also transferred from the portfolio of the Minister of Public Enterprises to National Treasury. The Presidency committed to closely monitor the turnaround of the critical SOEs. This was communicated in the Cabinet Statement issued for 10 December 2014, which I attach as "MCR 20".



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188. On 3 and 4 February 2015 at a Cabinet Lekgotla, the DPE made a presentation that identified external and internal challenges to strengthening SOEs and proposed various solutions. The Cabinet approved twelve reforms drawn from the PRC Report and aimed at addressing the challenges faced by some of the SOEs. These included the need to determine an appropriate shareholder model for State ownership in SOEs and an overarching Shareholder Policy defining criteria for State ownership in SOEs. It also included a decision to establish an IMC to coordinate its activities across focus SOEs and to build on the work done in respect of SAA, SAPO and Eskom ("SOE IMC"). The relevant extracts of the minutes of the Cabinet Lekgotla held in February 2015 are annexed marked "MCR 21".

189. President Zuma assigned me (as Deputy President) to lead the SOE IMC. Its other members were the Ministers of Public Enterprises, of Finance, of Energy, of Transport, of Telecommunications and Postal Services and of Water and Sanitation.

189.1. This IMC would be supported by an Inter-departmental Forum. The SOE IMC was to report back to Cabinet by June 2015.

189.2. The Minister for Public Service and Administration (at the time it was the now late Collins Chabane) was tasked with developing and implementing a standardised approach to the appointment of SOE Boards. That work was already underway and had to be submitted by the end of March 2015.



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189.3. National Treasury was to lead the development of a Private Sector Participation Framework and provide feedback by June 2015.

190. There was a delay in getting this work done, partly due to the passing of Mr Chabane in a car accident in March 2015. Mr Nathi Mthethwa acted in his stead until Mr Ngoako Ramatlhodi was appointed to that portfolio in September 2015.

191. During the Cabinet Lekgotla — held from 16 August 2016 to 19 August 2016 — the SOE IMC, through the Minister of Public Enterprises, Ms Lynne Brown at the time, briefed the Cabinet on the progress made in implementing the 2015 Cabinet Lekgotla resolutions and Stabilisation Programme. I attach the briefing document prepared by the SOE IMC as “MCR 22”. The material aspects of that briefing included that a draft shareholder policy had been prepared and was ready for discussion, a draft Handbook on appointments to SOE Boards was ready, and that a draft policy to address the empowerment of SOE Boards was being worked on.

191.1. The Committee of Directors-General and a Technical Committee to support the IMC had been established and was operational.

191.2. National Treasury had prepared a draft framework for private sector participation in new infrastructure projects to accelerate investments.



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191.3. The Cabinet also approved the establishment of a Council on State Owned Companies (*"the Council"*), comprising the Ministers responsible for the respective SOEs in their portfolios and to be chaired by the President. During the first year of its existence, the Council was meant to meet quarterly. These meetings however never materialised.

191.4. The Cabinet further approved that an updated Handbook on the Appointment of Persons to Boards and State Controlled Institutions be drafted by the Department of Public Service and Administration (*"DPSA"*) with a view to presenting to the IMC. I annex as *"MCR 23"* extracts of the Cabinet Lekgotla reflecting these resolutions.

192. On 28 September 2016, Cabinet approved the terms of reference of the SOE IMC in order to properly define its work going forward. The mandate of the IMC was, broadly, to oversee the process of implementing the SOE reform in line with the PRC recommendations. I attach the terms of reference as *"MCR 24"*.

193. In November 2016, based on recommendations from the SOE IMC, the Cabinet endorsed a guideline for the remuneration and incentive standards, a process for the appointment of Boards and Executives at SOEs, and a framework for collaboration between SOEs and the private sector on infrastructure projects. The Cabinet also noted a proposal to determine and cost the developmental mandates of SOEs and recommended further consultation on the draft shareholder policy.



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194. By the time I became President, the Council had not met or started its work, nor had there been any progress in the implementation of the proposals of the SOE IMC. On 23 May 2018 Cabinet approved the establishment of the Presidential State-Owned Enterprises Council (“PSEC”). Cabinet approved the PSEC’s terms of reference. The underlying philosophy was to reposition SOEs as effective instruments of economic development through stronger oversight and strategic management. I attach the PSEC’s terms of reference as “MCR 25”.

195. On 29 to 31 January 2020 at the Cabinet Lekgotla, Mr Pravin Gordhan, Minister of Public Enterprises, briefed the Cabinet on how to optimise the SOE portfolio. He presented a document entitled ‘Repurposing the State-Owned Enterprises as Instruments for Economic Growth’. The document proposed the rationalisation of certain SOEs, which the Cabinet supported.

196. The Cabinet also suggested that the repurposing of SOEs becomes a programme with clear timelines, especially considering the financial impact on the economy. Cabinet also agreed to review the viability of centralising the management and co-ordination of SOEs into the DPE and it endorsed the need for increased focus on eradicating corruption and ensuring consequence management (i.e. effective disciplinary and criminal cases) at SOEs.

197. The PSEC has started its work. Its members have identified priorities and set up



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internal workstreams to ensure all aspects of SOE reform and oversight are dealt with systematically.

198. Government envisages a fundamental overhaul of the SOE model that addresses not only the deficiencies that permitted widespread corruption, but that also enables these companies to effectively fulfil their social and economic mandates in a sustainable manner. This overhaul is guided by the recommendations of the PRC, the decisions of Cabinet and the expert advice of the PSEC.

199. Key features of the envisaged SOE model include:

199.1. An ownership model that clearly separates the responsibilities of ownership, policy development and regulation. Effective ownership will become more centralised to counter dispersal of SOEs across the state and to ensure more coherence. Such a model will enable greater transparency, accountability and oversight, and subject all strategic SOEs to more rigorous requirements for financial and operational performance.

199.2. A clear distinction between commercial and non-commercial SOEs (and between commercial and non-commercial functions within entities), and the



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development of funding models that are appropriate to the function.⁴⁶

199.3. A new framework for private sector participation that mobilises additional funding for economically viable infrastructure, balances risk sharing and does not result in increases in the prices of goods and services.

199.4. Implementation of the approved standard guidelines on the appointment and remuneration of SOE boards and executives that prioritises the recruitment and retention of appropriate skills, experience and competencies. This would include key delineation of authority and responsibility between elected public officials, non-executive directors and executive leadership.

200. The Commission asked that I speak to specific events at PRASA, Transnet, Denel, and the SABC, as well as Eskom and SAA. I have no knowledge of the issues raised by the Commission in this regard, such as the use of consultants at Transnet for example.

201. As regards instability in the PRASA Board during the last 3 years, I presided over numerous Cabinet meetings in the last two years at which the Minister of Transport, Mr Fikile Mbalula, reported to us. Ensuring an SOE such as PRASA has the right team overseeing it, at executive and Board level, is not a simple linear task. It is indeed

⁴⁶ 'Non-commercial' SOEs are entities that are mainly funded from the fiscus, not expected to declare a dividend and not competing in the market. This includes for example Brand SA and SITA.



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detrimental to good governance to have multiple changes at Board level and this was a concern discussed at Cabinet. Choices had to be made to make changes where for example an appointed Board was not achieving the results we had hoped for and PRASA now has a new Board after a period of being under administration. Many SOEs will likely go through similar growing pains before we get the management and Board teams right and have addressed errors and the results of improper or ineffective governance that occurred in the past.

202. I earlier spoke of work being done in silos, contributing to lack of transparency in governance, and a failure to ensure coordination and exchange of information in governance generally at the time. In order to ensure better oversight over SOEs, it is critical to ensure greater transparency, and systematic exchanges of information among the various government departments. When information is shared between these departments, and their Ministers, Cabinet will be empowered to have line of sight of challenges as they arise. In this way, instead of simply having knowledge of issues arising at SOEs when something drastic occurs, Cabinet will have more consistent information, allowing for more effective oversight.

203. In addition, one of the negative consequences of working in silos is that some Ministers do not have sight of how failures at one SOE may affect other SOEs, specifically those over which they have oversight responsibilities. All members of the Cabinet need to consider themselves collectively responsible for SOEs, as the failure of large national SOEs has an impact beyond the relevant overseeing Minister's own



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portfolios. As a recent example, the challenges faced by Denel concern not just the Minister of Defence and Military Veterans but also the Ministers of Labour, Social Development, International Relations and Cooperation, Finance, Trade, Industry and Competition, to name a few.

204. The fate of SOEs is also not merely dependent on government's actions. There are a number of stakeholders who have a significant role to play, including business entities, sometimes within the relevant sector of the SOE or (in relation to Eskom for example) more broadly, and trade unions and other employee organisations.

Policy decisions

205. The Commission expressly requested that I speak about public procurement and lapses in public procurement processes that contributed to state capture.

206. Public procurement and how public funds are used are at the centre of state capture.

207. The Constitution requires that, when contracting for goods and services, all spheres of government must use a fair, equitable, transparent, competitive and cost-effective system. The Constitution also explicitly allows for the provision of "*categories of preference in the allocation of contracts; and ... the protection or advancement of*



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persons, or categories of persons, disadvantaged by unfair discrimination."⁴⁷ These laudable principles that are part and parcel of the transformative goals of our Constitution have been abused in order to divert state resources to a select few.

208. The primary means through which corruption can be prevented, on my analysis, is through appointment of persons 'fit for purpose' at Board and management levels, respect for and strengthening of procurement systems, and systematic implementation of the provisions of legislation aimed at controlling use of public funds, such as the Public Finance Management Act 1 of 1999 ("PFMA") and the Local Government: Municipal Finance Management Act 56 of 2003 ("MFMA"). Ensuring implementation of controls over the use of public money is the best way to protect the abuse of those funds.

209. We need to ensure that Accounting Officers implement the Treasury procurement regulations and cooperate with the Auditor General on adhering to the procurement rules that are meant to ensure that procurement is properly regulated.

210. We also need to make use of developing technologies to manage the procurement process, with regard to the use of public funds, and monitor how service providers or those paid from public funds perform the tasks they are paid for. This

⁴⁷ Constitution section 217(1) and (2)



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would limit the opportunities for abuse of procurement processes and reduce mistakes made due to human error.

211. The National Anti-Corruption Strategy was approved by Cabinet at its meeting of 18 November 2020 (Cabinet statement of that date attached marked "MCR 26"). It was developed together with representatives from business, trade unions, academia and civil society. The strategy has six (6) pillars:

211.1. Promote and encourage active citizenry, whistleblowing, integrity and transparency in all spheres of society;

211.2. Advance the professionalisation of employees to optimise their contribution to create corruption-free workplaces;

211.3. Enhance governance, oversight and consequence management in organisations;

211.4. Improve the integrity and credibility of the public procurement system;

211.5. Strengthen the resourcing, coordination, transnational cooperation, performance, accountability and independence of dedicated anti-corruption agencies; and



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211.6. Protect vulnerable sectors that are most prone to corruption and unethical practices with effective risk management.

212. The Health Sector Anti-Corruption Forum was launched in September 2019. It is the result of a commitment by all stakeholders in the health sector to work together to prevent, detect and prosecute fraud and corruption in the health sector. It is a critical element of our fight against corruption because the health sector is uniquely vulnerable to corruption – due to the number and variety of goods and services provided. The inability of the health sector to use its resources effectively affects the most poor and vulnerable members of society. In this forum civil society joins government and professional bodies to coordinate a response to corruption. My statement at the launch of the Forum is annexed marked “MCR 27”. The Forum is convened under the chairpersonship of the SIU and has been hard at work since it was launched. The SIU regularly reports on its investigations and their outcomes.

213. Late in December 2019, I also reconstituted the **National Security Council**, chaired by me, in order to ensure better coordination of the intelligence and security-related functions of the State. Cabinet approved of this decision at its last meeting of the year. The Council’s members are the Deputy President, Mr David Mabuza, the Minister of State Security, Ms Ayanda Dlodlo, the Minister of Defence and Military Veterans, Ms Nosiviwe Mapisa-Nqakula, the Minister of Home Affairs, Mr Aaron Motsoaledi, the Minister of Police, Mr Bhekokwakhe Cele, the Minister of Finance, Mr Tito Mboweni, and the Minister of Cooperative Governance and Traditional Affairs, Ms



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Nkosazana Dlamini-Zuma.

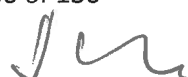
214. I am aware that the Commission seeks my input on why previous strategies to coordinate anti-corruption efforts failed. Besides personal and subjective assumptions on the very environment of state capture that was unfolding then, I have no personal knowledge of the reasons for the delays or failures of the Anti-Corruption Task Team and National Anti-Corruption Forum.

215. **Legislative changes** have been made, and others are underway, to reduce the likelihood of a recurrence of state capture and fight corruption:

215.1. The amendment to the Public Audit Act has granted the AG significant powers to secure consequence management where public funds are misused. This is a significant step in the fight against state capture as it targets the perpetrators of fraud and theft of public money, the persons who violate the laws meant to ensure effective, efficient and fair use of public funds.

215.1.1. The amendment introduced a new idea in public finance, namely 'material irregularity'. A 'material irregularity' is defined as –

“any non-compliance with, or contravention of, legislation, fraud, theft or a breach of a fiduciary duty identified during an audit performed under this Act that resulted in or is likely to result in a material financial loss, the misuse or



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*loss of a material public resource or substantial harm to a public sector institution or the general public”.*⁴⁸

215.1.2. As a result of the passing of the Public Audit Amendment Act 5 of 2018, consequence management for irregular, wasteful and unlawful expenditure is now in place. The AG can take “*remedial action*” where her or his recommendations relating to any material irregularity are not implemented.⁴⁹ Failure to implement such remedial action can lead to the AG issuing a ‘certificate of debt’ to the relevant accounting officer or accounting authority requiring them to repay the amount specified in the certificate to the State.⁵⁰

215.2. Another set of powerful measures to prevent corruption and state capture include changes to the way in which the public service is managed. They are expressly aimed at stopping some of the causes of abuses of public funds that were identified years ago. Among these are the sections of the Public Administration Management Act 11 of 2014 that had not yet commenced.

215.2.1. The date of commencement of the Public Administration Management Act was proclaimed as 1 April 2019.

⁴⁸ Public Audit Act 25 of 2004 as amended, section 1

⁴⁹ *Ibid*, section 5A(2)

⁵⁰ *Ibid*, section 5B(1)



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215.2.2. It contains critical sections, including the prohibition on conducting business with the state that applies to all employees in the public service and the need to develop norms and standards of, among others, integrity, ethics and discipline in the public service,⁵¹ and establishes the Office of Standards and Compliance.⁵²

215.2.3. Further sections will be commencing this year, such as the requirement that families of public servants declare their financial interests.⁵³

216. Legislation meant to entrench greater checks and balances in **public procurement** is in the pipeline and will be finalised as soon as possible.

216.1. The Public Procurement Bill was released for public comment in 2020. It aims to make public procurement efficient, equitable and ethical and to streamline the multiplicity of existing prescripts applicable to public procurement.

216.2. The decision we made to make public the details of all Covid-19 related contracts, at every level of government, was an acknowledgement that transparency limits the opportunities for corruption and abuse of the procurement system.

⁵¹ Public Administration Management Act 11 of 2014 as amended, section 16

⁵² Public Administration Management Act 11 of 2014 as amended, section 17

⁵³ Public Administration Management Act 11 of 2014 as amended, section 9



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VIII – ALLEGATIONS RAISED IN RULE 3.3 NOTICES SENT BY THE COMMISSION

217. In light of the correspondence sent to my office with regard to the testimony of Mr Lloyd Mhlanga, Mr Brian Molefe and Mr Matshela Koko, and the Inspector General of Intelligence, Mr Setlhomamaru Dintwe (*"the IGI"*), I wish to state the following:

Mr Mhlanga

218. As regards **Mr Mhlanga**, I refer to the rule 3.3 notice sent to me dated 9 January 2021.

219. I am as yet uncertain what aspect of Mr Mhlanga's testimony implicates me in any wrongdoing. This notwithstanding I outline the relevant facts as I recall them and as they pertain to me.

220. You are no doubt aware that applicable legislation⁵⁴ required the then Minister of State Security, Ms Dipuo Letsatsi-Duba, to consult me on his appointment as head of the Domestic Branch of the SSA. This she did by way of a submission made to my office in early March 2019, as is the normal process. It is attached to this statement

⁵⁴ Intelligences Services Act 65 of 2002, section 8(1)




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marked "MCR 28", with the exception of Mr Mhlanga's curriculum vitae, attached to the original submission, which has been excluded due to the personal information it contains. As you can see from the submission, the Minister requested his appointment for a short contractual period of three (3) months. I was made aware that he had been acting in the capacity of head of the Branch for a few months.⁵⁵ I was not surprised at the limited period for which this appointment would be made. In light of the upcoming elections and possible changes to the Executive (Ministers, as they work at the pleasure of the President, do not assume they will retain their positions when such elections take place), I would have expected the Minister to limit the appointment to allow for anyone who may replace her in that portfolio to have the liberty to make his or her own decisions on the leadership of the SSA going forward.

221. I am not and, in this case, was not, consulted after the relevant Presidential minute in terms of section 101 of the Constitution was signed on how the decision was conveyed to the affected person, what contractual arrangements are made, and in what specific terms and format. I accepted that the necessary steps were taken to effect the decision as it had been submitted to me for approval. I am not privy to what information would have been shared with Mr Mhlanga, or what negotiations may have taken place or not on contractual terms relating to his employment with SSA.

⁵⁵ Letter from Minister supporting submission, para 2



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222. I received the letter from Mr Mhlanga dated 15 May 2019 and delivered to the Presidency on 16 May 2019. I did indeed not respond to it.

222.1. It would not have been for me, as President, to interfere with an investigation into allegations made against Mr Mhlanga regarding his salary payments.

222.2. The new Minister, Ms Ayanda Dlodlo, would have been seized with the matters raised by Mr Mhlanga. I am informed these were and may still be the subject of a court challenge. To my knowledge Mr Mhlanga's employment with the SSA ended at the end of June 2019.

Mr Molefe and Mr Koko

223. I now turn to address allegations made against me by Mr Molefe and Mr Koko during their evidence. As I understand it, Mr Molefe and Mr Koko made three broad accusations against me:

223.1. The first, is that my involvement in "Optimum" was designed to leverage my political influence to favour Glencore in its dealings with Eskom.

223.2. The second, is that my involvement in the "War Room" presented a conflict of interest that went unaddressed.



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223.3. The third, is that my involvement in Mr Koko's removal in 2018 was motivated by state capture.

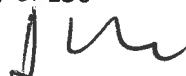
224. I shall address these allegations in turn. My response to the respective allegations is structured as follows: I first set out the relevant facts that provide context to my response; I then provide my answers to the respective allegations.

Allegations regarding involvement in 'Optimum'

225. I begin by addressing the allegations pertaining to "Optimum". The material facts are as follows.

225.1. Two companies fall under the umbrella of what Mr Molefe and Mr Koko referred to as "Optimum". These are Optimum Coal Holdings Limited ("Optimum Holdings"), and Optimum Coal Mine (Pty) Ltd ("Optimum Mine").

225.2. As at 2008, BHP Billiton Energy Coal South Africa ("Billiton") owned Optimum Mine. Optimum Mine was South Africa's 6th largest coal producer and held two major assets, namely (i) its colliery, which supplied coal to Eskom under the Coal Supply Agreement ("CSA"); and (ii) an export allocation at the Richards Bay Coal Terminal.



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225.3. In 2008, Billiton sold Optimum Mine to Optimum Holdings.⁵⁶ At the time, Optimum Holdings was a private company. In 2010, Optimum Holdings listed on the JSE and thus became a public company.⁵⁷

225.4. Before I entered government, I conducted most of my business dealings through the Shanduka Group ("*Shanduka*"). Shanduka and Glencore had a long-standing relationship. Shanduka's relationship with Glencore commenced in 2005, when the two entities formed Shanduka Coal (Pty) Ltd. Glencore held a majority stake of 70%, while Shanduka Resources (Pty) Ltd held 30%. In December 2011, Shanduka Resources announced an agreement to acquire a further 20.01% in Shanduka Coal from Glencore. As a result, Shanduka Resources held 50.01% of the shares in Shanduka Coal, with Glencore holding the remainder.

225.5. During 2011, Glencore approached me with a view to acquiring **Optimum Holdings**. In view of our long-standing relationship through Shanduka, I saw nothing untoward about Glencore's invitation. Moreover, the acquisition presented a viable business opportunity.

225.6. I participated in the acquisition through a shelf company called Lexshell 849 (Pty) Ltd ("*Lexshell*"), in which I was the sole shareholder. Glencore participated in

⁵⁶ https://cisp.cachefly.net/assets/articles/attachments/13369_bhp.pdf

⁵⁷ Ephron Main Affidavit, Annexure BM18, p126,



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the transaction through its subsidiary, Purito BV. I shall refer to Purito and Lexshell collectively as "*the Lexshell/Purito Consortium*".

The Lexshell/Purito Consortium acquired Optimum Holdings in two stages. In the first stage, we purchased Optimum Holdings shares that were publicly available on the JSE. In the second stage, the Lexshell/Purito Consortium approached Optimum Holdings' Board of Directors with an offer to purchase the remaining shares. The board was required to present this offer to the remaining shareholders. I would not characterise it as a hostile takeover because the takeover becomes hostile when either management or a portion of management and or a portion of the board as opposed to the takeover as well as some shareholders. This was not the case with this target company. What actually was the case is that it was a takeover of shares, rather than buying of the assets which would have been subject to a due diligence process. This happens all the time whenever companies take over the share portfolio of certain companies. They largely rely on publicly available information about the performance of the assets.

225.7. The Lexshell/Purito Consortium decided to undertake this acquisition on the strength of publicly available information. As Mr Clinton Ephron explains in his second affidavit's paragraphs 6 and 7, requesting a formal due diligence would have resulted in Optimum Holdings' Board being required to alert the public (including competing suitors) of the Consortium's intentions.



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225.8. Objective evidence of this series of transactions is available from the cautionary announcements published by Optimum Holdings' board on the JSE's Securities Exchange News Service ("SENS"). As an example, I attach the SENS announcement published on 1 September 2011 as annexure "MCR 29". It reads:

*"Further to the cautionary announcement published on Friday, 26 August 2011 by Optimum, shareholders of Optimum are advised that a consortium ("Consortium") comprising Purito B.V. ("Glencore"), a wholly owned subsidiary of Glencore International AG, and Lexshell 849 Investments (Proprietary) Limited, a company wholly-owned by Mr Cyril Ramaphosa ("Lexshell"), has submitted a letter to the Board of Directors of Optimum ("Board") advising of its interest to acquire, directly and indirectly, the entire issued ordinary share capital of Optimum ("Proposed Transaction"), other than the shares of certain shareholders that are restricted from selling. The Proposed Transaction would include a general offer to the shareholders of Optimum for a cash consideration of R34 per share ("Proposed Offer")."*⁵⁸

225.9. Ultimately, during June 2012, the Consortium finalised its acquisition of Optimum Holdings. As a result, I acquired an effective 9.64% shareholding in Optimum Holdings through Lexshell. I became non-executive chairperson of

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https://www.sharenet.co.za/free/sens disp_news.phtml?tdate=20110901104521&seq=1765&scheme=default



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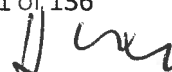
Optimum Holdings. I had no operational involvement in Optimum Holdings or Optimum Mine. I certainly had no insight, nor input into its detailed operational decisions.

225.10. On 18 December 2012, I was elected as Deputy President of the ANC.

The following day, I released a media statement indicating my intention to review my business interests to avoid potential conflicts. I attach this media statement as annexure "MCR 30". Simply put, I decided to dispose of the businesses that operated in sectors that were regulated by law (such as mining assets) and to retain non-regulated assets. I detail this further below. This was logical. The former had the potential to present conflicts of interest; in my position in government I could potentially have influenced regulatory choices made at the national level of government that could directly benefit these companies, in the mining sector for example (where permission to be able to engage in the activity or industry in question is sought from and granted by a national government department). The latter did not present this risk.

225.11. On 26 May 2014, I was appointed as Deputy President of the Republic.

In terms of the Executive Ethics Code, I was required within two months of assuming office to dispose of financial interests that give rise to conflicts of interests or to place the administration of the interest under the control of an independent and professional person or agency.



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225.12. On that same day, 26 May 2016, Shanduka announced a proposed transaction with Phembani Group to "... combine their interests and create a new black-controlled natural resources and industrial holdings group." I annex a copy of this announcement as "MCR 31". The proposed transaction was to be a merger that would see me disposing of my interest in Shanduka.

225.13. On 24 July 2014, I submitted a declaration of my interests to the Cabinet Secretary, and asked the President to extend the deadline for the disposal of my assets. I attach a copy of this request as "MCR 32".

225.14. On 15 August 2014, President Zuma extended the period for me to dispose of my business interests by four months. This was pursuant to my request. I annex the Presidential Minute, which confirms that my request was granted, as "MCR 33".

225.15. On 26 November 2014, Shanduka announced a restructuring of the group that saw my divestment from the group (the announcement is attached marked "MCR 34"). The Shanduka Group would retain the bulk of its businesses that operated in regulated sectors (sectors that usually required national government permits to operate their assets and businesses) and dispose of certain assets in 'non-regulated' sectors, such as property and restaurants, to me. The effect was that, subject to regulatory approval, I no longer held any interests in regulated assets. It should be noted that the transactions that effected my



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divestment involved only the existing Shanduka shareholders as the proposed transaction with Phembani had not been finalised by that time. I wrote a letter to President Zuma the previous day, 25 November 2014, advising him of this development as follows:

“Please be advised that I have today informed the Secretary of Cabinet that I have consequently disposed of my shareholding in Shanduka Group, an investment holding company with assets in a number of ‘regulated’ industries. Certain elements of the disposal are dependent on regulatory approval. I have taken all the steps required for this to materialise and have every faith the relevant transactions will be approved.

Although not a requirement of the Executive Ethics Code, I have decided to place my remaining business interests in a trust managed by independent and professional persons. Guided by the Executive Ethics Code, I will not give any instructions with respect to the management of these interests for the duration of my term in office, save for the purposes of complying with a legal requirement or to give instructions or sell such interest.”

225.16. I attach a copy of this letter as “MCR 35”.

225.17. The transaction between Phembani and Shanduka was concluded several months after my divestment from the Shanduka Group and was



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announced on 1 June 2015. I was not a party to that transaction. I attach a copy of the announcement detailing the conclusion of the Phembani/Shanduka merger as "MCR 36".

225.18. As part of this divestment process, on 6 June 2013, I resigned as a director of Optimum Holdings. I remained a shareholder in Optimum Holdings, through Lexshell. On 22 May 2014, I disposed of my shareholding in Lexshell, as confirmed by Mr Ephron in paragraph 13 of his first statement to this Commission. I had no further involvement or interest in Optimum Holdings or Optimum Mine after that point.

226. Against this backdrop, I now turn to answer Mr Molefe's and Mr Koko's allegations in respect of Optimum. The core allegation is that Glencore sold 9.64% of shares in Optimum to me as a gratuity. In doing so, Glencore sought to use my political influence to compel Eskom to (i) waive R1.4 billion in penalties owed to it by "Optimum", and (ii) increase the price at which Eskom purchased coal from "Optimum". In support of this, they infer from the absence of a formal due diligence exercise, that the acquisition was not undertaken on a commercial basis. I deny these allegations for the following reasons.

226.1. First, the underlying allegation that Glencore somehow sold me the shares in Optimum Holdings as a gratuity is wrong. My acquisition of shares in Optimum Holdings was a straightforward commercial transaction, done in accordance with



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regulations of the JSE. I understand that Mr Molefe has ultimately conceded that this was merely his speculation.

226.2. Second, Mr Molefe's and Mr Koko's chronology is wrong. Glencore did not first acquire Optimum Holdings and then sell 9.64% to me. The Consortium jointly acquired Optimum Holdings as I described above. That resulted in my effective 9.64% interest through Lexshell.

226.3. Third, Mr Molefe and Mr Koko misconceive the reason for the Consortium's decision not to undertake a due diligence on Optimum Mine. The target company was Optimum Holdings, not Optimum Mine. It was a listed company. The Consortium was not entitled to demand information about Optimum Mine from Optimum Holdings without triggering the Board's obligations to disclose the potential acquisition to the public. As such, no "due diligence" exercise in the legal sense was conducted. This is often the case in transactions of this nature, when an acquiring company relies on publicly available information to decide whether or not to acquire a target company. The underlying assets are often not subjected to due diligence because one acquires the listed shares of the target company that is being bought. Any demand for information outside of that process would have afforded the Consortium information to which the rest of the share-trading public is not privy.

226.4. Fourth, I was never the chairperson of Optimum Mine; I was chairperson of



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Optimum Holdings. My role as chairperson did not require my involvement in operational matters of subsidiary companies, this includes contractual matters such as penalties on contracts between Eskom and Optimum Mine, nor did it involve interaction with members of the management team. In the period referred to in the allegations, I had disposed of my interests in these entities. I did not attempt in any way to influence Eskom's decision-making process in matters pertaining to Optimum Mine or Optimum Holdings.

226.5. Fifth, the penalties allegedly owed by Optimum Mine were not in issue when the Consortium acquired Optimum Holdings. This is made clear in the supplementary affidavit by Mr Clinton Ephron which was kindly shared with me by the Commission.

226.6. I would appreciate the Commission taking note of the fact that the allegations made by Mr Molefe and Mr Koko were made previously some years ago and publicly challenged at the time. I refer the Commission in this regard to the statement by my then Spokesperson, the late Mr Ronnie Mamoepa, on 20 May 2015, attached marked "MCR 37", and a further statement issued on 24 June 2015 attached marked "MCR 38".

Allegations about my role in the War Room

227. Mr Molefe and Mr Koko further allege that my appointment as 'Chair of the War Room' (a misconception I clarified above) put me in a position to influence Eskom's



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business decisions in Glencore's favour. They also contend that I, in fact, did so. These are the material facts:

228. I have already mentioned my efforts in disposing of my commercial interests and my rationale for doing so. That process started in 2012, when I was elected as Deputy President of the ANC, and was finalised in 2014 as detailed above.

229. I have scrupulously sought to avoid any conflict between my business interests and my role in government. I believe that it is necessary to avoid conflicts of interests at all costs. I also believe that it is necessary to avoid any doubt or perception of a possible conflict, and I have acted in line with these beliefs throughout my life. These principles are not just applicable to members of the Executive but to board members in the private sector as well. The chronology I have narrated above demonstrates my commitment to these principles, both in form and substance.

230. As I mentioned above, President Zuma assigned certain Eskom-related matters to me in December 2014. By that stage, I had disposed of my interests in regulated assets. Insofar as my interests in Optimum Holdings goes —

230.1. I resigned my directorship in in June 2013, some 18 months before I was assigned to deal with Eskom; and

230.2. I disposed of my shareholding during May 2014, some seven months before my



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assignment.

231. I also deny that I influenced any decisions in Glencore's favour when dealing with my Eskom obligations.

232. I believe the above demonstrates first and foremost that the allegations were baseless. More importantly, I have and will continue to appreciate the importance of avoiding conflicts of interests, which I believe I have shown by my actions. It was always for me a matter of personal integrity, but also a means to protect the integrity of the affected institutions, that conflicts of interests be avoided at all costs. The requirements for disclosure of financial interests are not an end in themselves – they correctly aim to ensure the integrity of decisions made by members of the Executive in particular.

Allegations about Mr Koko's removal

233. Finally, I turn to Mr Koko's allegation that I improperly interfered to procure his dismissal and that this is an instance of state capture. A short overview of how Mr Molefe came to Eskom and what transpired in relation to the position of Mr Koko from my perspective is apposite:

233.1. During March 2015, Mr Matona and three other Eskom executives were suspended. I am told that the Commission has heard evidence on this matter. I was not involved in the decisions or processes which led to the suspension of these executives.



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233.2. Mr Molefe and Mr Anoj Singh were seconded from Transnet to Eskom as acting CEO and CFO respectively. I was happy with this decision as I believed then that Mr Molefe was an excellent candidate for the CEO position at Eskom, given his past performances at the Public Investment Corporation and at Transnet. In late 2015, Mr Molefe was permanently appointed as Eskom's CEO.

233.3. On 11 November 2016, in the wake of the Public Protector's State of Capture Report, Mr Molefe announced his intention to resign from Eskom with effect from January 2017.

233.4. During January 2017, Mr Koko was appointed as Eskom's Interim Chief Executive. In May 2017, Mr Koko was placed on special leave pending an investigation into allegations of misconduct. I am told that these allegations included Mr Koko's alleged failure to disclose a potential conflict of interest with his step-daughter's company which was in business with Eskom. Mr Koko was charged with misconduct as a result of these allegations.

233.5. In the interim, Eskom's governance problems were becoming an immediate existential concern for the utility. In June 2017, Eskom received a qualified audit, citing approximately R3 billion in irregular expenditure. According to reports, Eskom's domestic and international lenders, such as the DBSA and Citibank, were considering recalling their loans as a consequence.



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233.6. Eskom's governance concerns also threatened South Africa's sovereign debt.

On 18 October 2017, Cabinet received a presentation on the IMF/World Bank annual meetings, which reiterated the importance of appointing a credible Board for Eskom. Furthermore, in early January 2018, National Treasury informed me that the auditors were refusing to sign off on Eskom being a going concern. This would have triggered loan recalls, loans which were subject to government guarantees. This potential default was particularly concerning. Since Eskom accounted for the biggest share of South Africa's contingent liabilities, a default would have been disastrous. Demonstrably, this risk had been brought on by Eskom's poor financial and operational performance which, in large part, was the result of poor governance.

233.7. Meanwhile, I was aware Mr Koko was subjected to a disciplinary enquiry. In late December 2017, the chairperson of that enquiry acquitted Mr Koko of the misconduct allegations. As a result, on 8 January 2018, Mr Koko returned to Eskom.

233.8. The decision to reinstate Mr Koko was criticised as a lapse of governance and was not well received. Several complaints arose from labour and business. These were well publicised. These included the following.

233.8.1. The National Union of Metalworkers of South Africa and Business Leadership South Africa both released statements criticising Mr Koko's



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reinstatement.

233.8.2. On 19 January 2018, 200 members of Eskom's Senior Management addressed a memorandum to me in which they cited concerns over the governance, ethical, leadership and financial issues facing Eskom. I annex a copy of the memorandum as "MCR 39". I believe this is the same document referred to in the Commission's letter of 9 April 2021, at paragraph 5.1.

233.9. In January 2018, at a meeting of South African investors attending the upcoming World Economic Forum meeting, Eskom's governance issues were identified as being of particular concern. These concerns were being echoed by global institutions such as the World Bank (the consequences on our economy would have been devastating if it had decided to recall its loan to Eskom). Furthermore, there was an imminent threat of the JSE suspending Eskom's bonds

233.10. On the whole, the situation was urgent and desperate. It required urgent intervention at the highest levels of government. After all, Eskom could not be seen in isolation. Its failure at that level, would have undoubtedly affected the country's sovereign debt.

234. In light of these concerns, on 19 January 2018, I attended an urgent meeting at Mahlamba Ndlopfu, the President's official residence, with President Zuma, Minister Brown and Minister Gigaba (who was then Minister of Finance). Minister Gigaba and I raised these governance concerns with President Zuma. The meeting resolved that



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urgent action was necessary to avert a national disaster, restore Eskom's credibility, and instil confidence in Eskom. Invariably, this would require changes to Eskom's Board and its leadership.

235. Shortly thereafter, Minister Brown and I met to deliberate further on how the Board would be strengthened. In this respect, we took three decisions:

235.1. First, Minister Brown and I considered the composition of the new Board. We explored several names of people with strong expertise in Governance. We agreed upon the following: Dr Jabulani Mabuza (new Chairperson), Ms Nelisiwe Magubane, Dr Roderick de Brissac Crompton, Ms Sindi Mabaso-Koyana, Ms Jacqueline Maboahlale Molisane, Mr Johannes George Sebulela, Mr Sifiso Dabengwa, Mr Mark Lamberti and Ms Busisiwe Mavuso.

235.2. Second, insofar as Executive Management was concerned, we recommended that the newly constituted Board immediately appoint Mr Phakamani Radebe as Eskom's Acting Group Chief Executive for a period of three months. We also directed the Board to appoint a permanent Group Chief Executive and Group Chief Financial Officer within this three-month period.

235.3. Third, the Board was directed to remove all Eskom Executives facing allegations of corruption and other acts of impropriety, including Mr Koko.



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236. On 20 January 2018, my office released a media statement announcing these interventions, which I attach as “MCR 40”. These were dealt with in the very next Cabinet meeting on 31 January 2018, during which the new leadership of Eskom was discussed and agreed upon (annexed as “MCR 41”).

237. Mr Koko contends that his removal was an instance of unlawful interference in Eskom’s affairs, executive overreach and state capture. I deny this allegation, for the following reasons:

237.1. First, the allegation is acontextual. At that stage, Eskom was in dire straits.

Eskom’s domestic and international lenders were threatening to call on their loans, in part because of concerns about Eskom’s leadership and its reaction to allegations of corruption. Eskom’s predicament threatened its very existence as a going concern, the country’s sovereign rating and the country’s ability to access much needed lines of credit (both domestically and internationally). It behoved us, as government, to take control of the impending crisis. We could not adopt a ‘business as usual’ approach.

237.2. Second, the suggestion that government cannot lawfully intervene in Eskom’s affairs — even to avert a crisis — is incorrect. Government is Eskom’s sole shareholder. Eskom’s Memorandum of Incorporation (“MOI”) sets out the remit of Government’s powers as Eskom’s shareholder. Clause 3.8.1 of Eskom’s MOI reads: *“The Shareholder may direct the Company to take any action specified by*



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the Shareholder if the Company is (1) is in financial difficulty or is being mismanaged..." The directive contemplated in clause 3.8 must be written and must state: (i) the reasons for the directive, (ii) the remedial steps that government requires Eskom to take, and (iii) the time period within which Eskom must take those steps.⁵⁹ If Eskom disregards the directive government may, after giving Eskom a hearing, (i) initiate an investigation, and/or (ii) place Eskom under administration.⁶⁰ Eskom's MOI permits shareholder intervention. I attach Eskom's MOI as annexure "MCR 42".

237.3. Third, the remedial measures fell substantively within the executive's powers as contemplated in Eskom's MOI. Eskom was in financial trouble. There was a very high risk of a default on Eskom's loans, which would in turn trigger the government guarantee. The details of these risks were made clear to me by officials at National Treasury, including the DG, Mr Dondo Mogajane and DDG Mr Momoniat (Mr Momoniat kindly provides a confirmatory affidavit, annexed marked "MCR 43"). The risk had arisen as a result of problems with Eskom's financials; lack of action to deal with allegations of corruption at Eskom (which lenders viewed as failures that put in question any chances of Eskom's financial position improving); and, I was told, as a result of the auditors, I was told, refusing to sign Eskom off as a going concern. Government's only option was to restore

⁵⁹ Eskom MOI, clause 3.9

⁶⁰ Eskom MOI, clause 3.10



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confidence in, and credibility to, Eskom. To achieve this, government had to show that it was serious about tackling Eskom's corporate governance issues. This inherently required a wholesale change in its leadership, which was achieved by the appointment of a new Board. Restoring credibility required the removal of persons who were alleged to have been involved in corruption, including Mr Koko and Mr Singh. There were indeed several allegations against Mr Koko. Although some of these allegations were tested in the disciplinary enquiry, there were doubts about those findings. These doubts were expressed by Eskom's stakeholders, organised labour and Eskom employees.

237.4. Fourth, there is no link between the directive to remove Mr Koko and state capture. The mere fact that Mr Koko was removed does not mean that his removal was intended to achieve corrupt ends or to somehow capture Eskom. As I have shown, the opposite was in fact the case. Mr Koko's removal was part of a package of reforms to avert a crisis.

The Inspector General of Intelligence ("IGI")

238. In a rule 3.3 notice dated 29 March 2021, I was informed of allegations made by the Inspector General of Intelligence, Mr Dintwe, that I may want to respond to.

239. The issue relates to the consultation that is legally required to take place before an IGI discloses intelligence, as he does before this Commission, the manner in which



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this consultation unfolded, and how it came to pass that during this process complaints were made about the IGI's conduct.

240. I agree with the IGI on one issue: the consultation that the Intelligence Services Oversight Act 40 of 1994 (*"the Oversight Act"*) provides must take place before the IGI discloses intelligence was indeed not without difficulty. The manner in which it unfolded was most unfortunate. It is uniquely unfortunate that the IGI chose in his statement to this Commission to insinuate improper conduct on my part.

241. I categorically deny that any of the steps I took in terms of the Oversight Act were, in the IGI's words, taken *"in order to intimidate [him] and prevent [him] from testifying at the Commission."* Quite the opposite. My intention was and always has been to fulfil my constitutional obligation to protect national security.

242. The extracts of the IGI's testimony shared with me give no indication of whether or not the IGI detailed the events that he claims were aimed at intimidating him. I beg the Commission's leave to outline the relevant factual background, which I believe will show that the IGI's allegations are baseless and, in fact, disingenuous.

242.1. In early to mid-August 2020, my office became aware of correspondence from the IGI dated 22 July 2020, which letter, he stated, *"served to discharge the onus of consultation with relevant persons as provided for in section 7(8)(b)(i) [of the Oversight Act]."* The letter gave no indication what information the IGI intended



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to disclose, nor did it invite further engagement. I annex it marked "MCR 44". It is apparent on the face of this letter that it was not aimed at initiating the legally mandated consultation but merely intended to inform me of his intentions.

242.2. Minister Dlodlo shared her response of 3 August 2020 to this letter with my office. Her letter is annexed marked "MCR 45". I sent a letter to the IGI dated 14 August 2020 indicating that the legally mandatory consultation needed to take place and asking him to provide me with the information or intelligence he intended to disclose so an informed decision may be made on the matter. I annex my letter to this effect as annexure "MCR 46".

242.3. The intention of the Oversight Act, in requiring that this consultation takes place, is not aimed at muzzling the IGI or stopping that important office from doing its work. It is aimed at ensuring that all persons responsible for national security and for intelligence services, within their constitutional mandates, engage constructively when determining what information ought to be made public and when publishing intelligence may put national security at risk. The Commission will note that the Oversight Act accepts, in the work of the Intelligence Services, of the IGI and of the JSCI which it establishes, that much will need to be kept secret. As President, together with the Ministers under whom the various intelligence services operate (this includes the SSA, SAPS Crime Intelligence unit and the Defence Intelligence section), we have a responsibility to make sure that while information that reveals criminality ought not to be kept secret, information



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the publication of which will jeopardise agents of the services, projects currently under way, relations with foreign states and much more is protected and properly dealt with.

242.4. I was astounded at the IGI's conduct. He had seemingly knowingly and deliberately sought to circumvent a provision of the Oversight Act.

242.5. I called the IGI to a meeting, held on 3 September 2020, and at which Minister Dlodlo and the Minister of Defence and Military Veterans, Mrs Nosiviwe Mapisa-Nqakula, were present. The Minister of Police, Mr Cele, had been invited but was unable to attend. It was then agreed with the IGI that a consultation – not mere notification – was required by law, and that to facilitate the consultation he would provide us with the intelligence he sought to disclose to the Commission. I made it clear to him at this meeting that I had been made aware by a press inquiry (I cannot now recall which journalist it was) that he had already disclosed the information to the Commission by delivering lever arch files of documents to their offices and that this step was taken by him in blatant disregard of legal prescripts. He did not deny this had happened and promised to rectify this promptly by retrieving the information already disclosed and shared with the Commission's legal team or investigators.

242.6. Minister Dlodlo and I sent letters to the IGI on 14 and 16 September 2020 respectively following up on the meeting of 3 September 2020. These are annexed



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as "MCR 47" and "MCR 48". Under cover of a letter incorrectly dated 19 August 2020 (annexed marked "MCR 49"), on 17 September 2020 or shortly after that date, the IGI sent my office 3 lever arch files of documents, most of which were classified in some form or another.

242.7. Naturally it took some time for my office to go through this documentation, engage with the relevant Ministers and their teams, and be able to put together a view on which documents ought to be disclosed, which documents ought not to be, and which documents ought to be redacted to make sure names of agents for example were not disclosed.

242.8. On 23 October 2020, Ministers Dlodlo, Cele and Mapisa-Nqakula met with the IGI at Waterkloof Airforce Base. They informed me of the outcomes of the meeting on 3 November 2020 at a meeting we held at my official residence in Pretoria. They indicated that the 23 October meeting had not been very constructive. They informed me that during the course of that meeting they asked the IGI why he had chosen to disclose considerably more information than had originally been requested by the Commission. I understood they sought to understand what motivated the disclosure of information which in some respects the Ministers felt was unrelated to matters before the Commission and the disclosure of which posed a potential threat to national security.

242.9. The IGI joined us later on in this meeting of 3 November 2020. He was provided



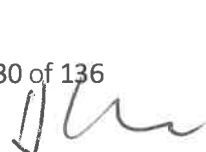
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with a document in the form of a table that had been compiled by our offices (the Ministers' and mine), listing every document he had indicated he wanted to disclose and outlining the Ministers' position on each of these, and why that position was taken (for example, where it was felt a document ought not to be disclosed, or ought to be redacted, and why). I do not share this table as it is the crux of the consultation that was then still under way between the IGI, the Ministers and I.

242.10. The IGI, as requested, reverted within a week with his inputs on the various documents, his views on their disclosure, where he agreed with the listed views and where he did not, and why.

242.11. During this period the Commission is aware that much correspondence was exchanged with me and my office about when the consultation would be finalised and the IGI would be able to testify, comfortable in the knowledge that the legal requirements for his disclosing intelligence were met. One of these letters bears mentioning. While the IGI insists he was improperly accused of sharing information with the Commission before the mandated consultation began, the letter from the Commission dated 13 November 2020 and annexed marked "MCR 50" confirms that he had indeed done so and, as promised in our meeting of 3 September 2020, the relevant files were retrieved by the IGI's office.

242.12. The last I heard of the matter was when my office alerted me to a letter



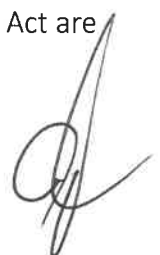

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from the Commission dated 3 December 2020 (annexed marked "MCR 51") in which the Commission indicated that the IGI had not as yet decided what he would, in the end and after consultation, disclose.

242.13. I do not think it appropriate to reopen the debate that was had during the course of the consultation about which documents should or should not be disclosed. I set out the factual background above to show that there was robust engagement on the question of matters to be disclosed to this Commission, that the IGI is disingenuous in insisting he did absolutely nothing wrong, and that the Ministers and I were entirely justified in our concerns relating to the failure by the IGI, at the very outset, to follow the relevant prescripts of the Oversight Act.

243. It is during the course of these engagements with the IGI that I became concerned about his conduct. His disclosure of classified intelligence prior to any conversation with me or the three relevant Ministers, his attempts at denying he had done so (which he seemingly does again in his affidavit to this Commission), and his apparent ignorance of or deliberate choice not to abide by the prescripts contained in the Oversight Act were, on their own, cause for grave concern. In addition, and in the course of our discussions within the context of the consultation with the IGI, the three Ministers expressed to me their frustrations with the conduct of the IGI in relation to other matters. I asked that they reduce these concerns to writing, which they duly did.

244. The Commission will note that the relevant provisions of the Oversight Act are



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not paragons of procedural clarity on the matter of complaints about the IGI's conduct and how they ought to be handled. I decided the best course of action would be to write to the JSCI, attaching the letters I had received from the three Ministers, and asking it to investigate these serious allegations. I annex my letter dated 13 October 2020 marked "MCR 52". I am unable to annex the letters from the Ministers in the main as they were bulky, contain classified information and were sent to my office in hard copy for the most part, but the letter I wrote to the JSCI summarises their contents. I sent a letter to the IGI on the same day (annexed marked "MCR 53") informing him of the complaints by the Ministers and my request to the JSCI to investigate the matter.

245. The JSCI was and still is in my view the best body to investigate serious allegations of improper conduct and failure to abide by provisions of the Oversight Act by the IGI.

246. The JSCI responded to my letter in their letter of 28 October 2020, annexed marked "MCR 54". In essence they said that –

246.1. They needed to test the veracity of the allegations made against the IGI before they conducted an investigation in terms of the Oversight Act;

246.2. The removal and suspension of the IGI had to be done in terms of regulations under the Oversight act, which regulations have not yet been adopted;



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246.3. There were no parliamentary rules to process investigations into an IGI, therefore no investigation could be conducted until such rules were adopted; and therefore

246.4. No investigation could be conducted into what they agreed were serious allegations made against the IGI.

247. I heard nothing further from the JSCI on the matter.

248. I am informed that Minister Dlodlo is working to finalise the relevant regulations. I am not in a position to speak to the parliamentary rules on how investigations into allegations made against the IGI ought to be conducted, or why the JSCI does not have such rules in place.

249. I have no knowledge of the JSCI having any meeting or conducting any inquiry into the allegations, let alone determining, as stated by the IGI, that the serious allegations were unsubstantiated. No communication has certainly been given to me in this regard.

250. The seriousness of the allegations that had been made by the three Ministers were such that I could not wait until a more appropriate or convenient time to refer these to the body responsible for overseeing the work of his office. My actions were informed by the seriousness of the conduct that I had witnessed, the seriousness of the



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allegations made, the constitutional obligation to ensure national security, and the need to ensure that this is done promptly.

251. I trust this answers questions raised by the Commission on the above three matters.

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XI – CONCLUSION

252. Our past informed our endeavours to draft a Constitution that would ensure the crime against humanity that was apartheid was forever consigned to our past. Our ability to overcome such a huge challenge as Apartheid is a credit to us as a nation. Our strength and commitment to the betterment of our people, our ability to make the changes we need to overcome the wrongs of our past, serves us in good stead.

253. Many people sacrificed their lives in the fight to end apartheid and bring us to the new Constitutional dispensation. When we dishonour the Constitution, its principles and values, we dishonour them too.

254. The road from the period of state capture will be long yet. Every measure we have instituted has taken time and consideration and every measure yet to be taken will require the same. We will not relent, however. We cannot.

255. I face my obligations with my oath in mind at all times. I have sworn to be *“faithful to the Republic of South Africa”*, and to *“obey, observe, uphold and maintain the Constitution and all other law of the Republic”*, and to –

“always promote all that will advance the Republic, and oppose all that may harm it; protect and promote the rights of all South Africans; discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; do justice to all; and devote myself



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to the well-being of the Republic and all its people.”⁶¹

256. I will always remain true to my oath.



MATAMELA CYRIL RAMAPHOSA

I hereby certify that the deponent declares that he knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at _____ on this _____ day of _____ 2021 and the Regulations of the Oaths Act, No. 11 of 1972, as amended, have been complied with.

I certify that the above statement was taken by me and that the deponent has acknowledged that he / she knows and understands the contents of this statement. This statement was sworn to / affirmed before me and the deponent's signature / mark was placed thereon in my presence.

at 31 05 2021

(SIGNATURE) COMMISSIONER OF OATHS

FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS

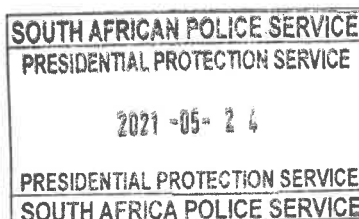
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BUSINESS ADDRESS

SA POLICE SERVICE

RANK

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⁶¹ Extracts from Schedule 2, section 1 of the Constitution



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

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Annexure "MCR1"



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

Mr Kgathatso Tihakudi
Director-General: Department of Public Enterprises
Private Bag X15
HATFIELD
0028

By email: Martin.Malapane@dpe.gov.za / DGOffice@dpe.gov.za

Dear Mr Tihakudi,

REQUEST TO DECLASSIFY CERTAIN CABINETS DOCUMENTS FOR THE PURPOSES OF THE STATE CAPTURE COMMISSION

1. We advise that our office received a request from the team that is assisting the President to compile his submission to the State Capture Commission to declassify certain cabinet information for the sole use of the Commission purposes.
2. The requested information is as follows and the Cabinet Secretariat will provide you with copies of these documents from the Cabinet Record for ease of reference and to save time:
 - a) Presentation to the Special Cabinet Lekgotla by Ms Moloko who was the Acting Director General in November 2016. Ms Brown was the Minister of Public Enterprises;
 - b) DPE presentation at Cabinet Lekgotla of 3 February 2015;
 - c) Briefing document prepared by the IMC on SOE and presented during cabinet Lekgotla between 16 August 2016 to 19 August 2016;
 - d) Terms of reference of the IMC on SOE Reform on 28 September 2016;
 - e) The Cabinet memorandum containing the Cabinet approved the PSEC's terms of reference on 23 May 2018;
3. As you are aware, the procedure to be followed when declassifying documents is set out in the Minimum Information Security Standards (MISS).
4. Chapter 4 and clause 1.2 of the MISS provides that "*The responsibility for the gradings and regradings of document classifications rests with the institution where the documents have their origin. This function rests with the author or head of the institution or his delegate(s)*".
5. Further clause 1.3 of MISS provides that "*the classifications assigned to documents shall be strictly observed and may not be changed without the consent of the head of the institution or his delegate*".

6. In the light of the above, I request your Department to urgently consider the request for declassification. The team has requested the information on an urgent basis so that it can be made available to their Senior Counsel by Friday, 5 March 2021.
7. Once declassified, our office will collate all the requested information and make them available to the team.
8. Your assistance is greatly appreciated

Yours faithfully,



Ms Lusanda Mxenge
Acting Director-General and Secretary to the Cabinet
Date: 04/03/2021



Annexure "MCR2"



The Presidency: Republic of South Africa

Mr Geoffrey Mphaphuli
Acting Head: Legal and Executive Services
The Presidency
Private Bag X1000
PRETORIA
0001

By Hand

Dear Mr Mphaphuli

REQUEST FOR DECLASSIFICATION OF CABINET DOCUMENTS

1. Reference is made to your request to declassify certain cabinet minutes to be used at The Judicial Commission of Inquiry into Allegations of State Capture ("the Commission").
2. Please find enclosed herewith the following cabinet minutes currently in the possession of the Secretary of the Cabinet:
 - Minutes of Cabinet Meeting of 31 January 2018: Appointment of the Eskom Board
3. Kindly take note that I have declassified the cabinet minutes for the sole use by the President's legal team for the purpose of the Commission.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Phindile Baleni".

Phindile Baleni (Ms)
Director-General and Secretary of the Cabinet
Date: 07/04/2021

Handwritten initials or a signature in the bottom right corner of the page, consisting of a vertical line and a large, stylized loop.

Annexure "MCR3"



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

80 Hamilton Street Arcadia, 0083 Private Bag X15 Hatfield 0028
Tel: (012) 431 1000 Fax: 086 501 2624 / 086 501 0629

Ms. Lusanda Mxenge

Acting Director-General and Secretary to the Cabinet
The Presidency
P O Box 1000
Pretoria
0001

Email: nokukhanya@presidency.gov.za

Dear Ms Mxenge

Request to Declassify Certain Cabinets Documents for the Purpose of the State Capture Commission

Your letter dated 04/03/2021, regarding the above, has reference.

Find herewith the following declassified documents as per your request:

- a) Presentation to the Special Cabinet Lekgotla by Ms Moloko who the Acting-Director General in November 2016. Ms. Brown was the Minister of Public Enterprises;
- b) DPE presentation to Cabinet Lekgotla of 03 February 2015;
- c) Briefing document prepared by the IMC on SOE and presented during cabinet Lekgotla between 16 August 2016 to 19 August 2016;
- d) Term of reference of the IMC on SOC Reform on 28 September 2016;
- e) The Cabinet memorandum containing the Cabinet approved the PSEC's terms of reference on 23 May 2018;

I declassified the documents for the sole purpose of assisting the Commission to perform its mandate. The said Cabinet documents remain classified for any other purpose.

Yours Sincerely


pp
Mr. Kgathatso Tihakudi
Director – General

Date:04 March 2021

Annexure "MCR4"

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

STATEMENT BY THE RETIRED DIRECTOR-GENERAL IN THE PRESIDENCY AND CABINET
SECRETARY, DR REGINALD CASSIUS LUBISI

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I.S.P
//

I, the undersigned,

Dr Reginald Cassius Lubisi

do hereby state under oath that:

INTRODUCTION

1. I was the Director-General in the Presidency and Cabinet Secretary from November 2010 until August 2020, when I retired from the public service. I am currently a Senior Fellow of the National School of Government.
2. I depose to this affidavit to assist and supplement the affidavit of H.E. Matamela Cyril Ramaphosa, the President of the Republic of South Africa ("*the President*").
3. I do so to speak to facts that arose prior to the President's arrival at Union Buildings, as Deputy President, on 26 May 2014, to the extent that they are relevant to the events that followed and which he attests to. I will also outline facts relating to my administrative duties, as of 26 May 2014 until my retirement, to the extent that I have personal direct knowledge of these and they are relevant to the President's statement.
4. The facts deposed to in this affidavit are within my own personal knowledge and belief and are true and correct.

V8

5. Where I make legal submissions, I do so both based on my knowledge of the Constitution, the workings of government, and on the advice of the President's legal advisers.

IN GENERAL

6. I confirm the following portions of the President's statement, for which no elaboration is needed:

- 6.1. The fact that I met the Director-General of the State Security Agency, and asked for an investigation to be conducted into the leaking of the Cabinet memorandum related to the closure of the Oakbay accounts; and that no report was ever forthcoming, notwithstanding my sending multiple reminders to the DG.

- 6.2. The presentation to Cabinet of the Long Term Turnaround Strategy on SAA, in August 2013.

- 6.3. The submission by the Deputy President of his declaration of interests throughout the period I was responsible for collating and recording these declarations.

CABINET

7. At the outset I would want to detail the way in which Cabinet works, to clarify the role and position of the various Cabinet structures that are relevant to the President's statement.

- 7.1. The principle of **collective responsibility**, entrenched in the Constitution, means that all Cabinet Members are bound by the decisions of the Cabinet and are responsible for

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implementing Cabinet's decisions and policies. While Ministers can and do vociferously debate issues in Cabinet meetings (and may privately disagree with a Cabinet decision) they are bound by Cabinet decisions and must support and defend their implementation regardless of their personal views.

7.2. These debates remain confidential and are not recorded in Cabinet minutes (for which I was responsible as Cabinet Secretary). The minutes do not record what was said by individual Ministers but instead reflect only the broad discussion and final decisions of the Cabinet, in line with the principle of Cabinet confidentiality – which I address below. You will have seen this in those Cabinet minutes that have been declassified for your purposes. Ministers are also bound by Cabinet decisions taken in their absence.

7.3. A second Cabinet principle is that of **Cabinet solidarity**. If members of Cabinet, through their statements and actions, are perceived to contradict a decision of the Cabinet, it undermines public confidence in the government. This principle extends to Deputy Ministers.

7.4. Lastly, **Cabinet confidentiality** – included in the oath taken by members of the Executive on assuming office¹ – is necessary for the effective functioning of the Cabinet, and in order to allow for formulation of policy and decisions to be taken on its implementation to be fully canvassed before making them public, thereby avoiding confusing the public. In order to give members of Cabinet the freedom to discuss and

¹ Section 3 of Schedule 2 of the Constitution

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debate issues openly, without fear of compromise, the Cabinet Office only captures the decisions and recommendations of the Cabinet and Cabinet Committees in the minutes of the meetings.

Classified information

7.5. The handling of classified information is governed by the National Archives and Records Service of South Africa Act 43 of 1996; the Protection of Information Act 84 of 1982; and the 'Minimum Information Security Standards' ("MISS"). MISS is a policy document regulating information security in government and was approved by the Cabinet on 4 December 1996. It sets out the security standards for all sensitive and classified information held by government institutions. I am informed that the Commission has a copy of the MISS.

7.6. The MISS identifies four categories of classification procedures for handling such information: restricted; confidential; secret; and top secret. It also provides guidelines for the de-classification of information. Cabinet documents are classified "Top Secret" and are excluded from the purview of the Promotion of Access to Information Act 2 of 2000.

7.7. Cabinet confidentiality protects national security and is also essential for international relations. Breaches of confidentiality can erode other governments' confidence in South Africa. The contents of discussions of Cabinet or Cabinet Committee meetings, and the views expressed by individuals in these meetings, are deemed classified in the same sense as Cabinet documents.

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7.8. However, the Cabinet, via the Government Communication and Information System (“GCIS”), issues a Statement on each Cabinet meeting, usually the day following the Cabinet meeting. The statement provides a summary of key decisions made by the Cabinet as well as the appointment of board members and senior government officials. In addition to the written statement, the Cabinet Spokesperson holds a media briefing to inform the media and respond to questions, sometimes with the assistance of Ministers. Ministers are responsible for communicating the relevant decisions of the Cabinet to their Deputy Ministers, senior officials in their departments and entities within their portfolio.

Submissions to Cabinet

7.9. In practice, Ministers are expected to only submit to the Cabinet those matters that require a Cabinet decision or which a Minister believes may be controversial; this does not include matters concerning the day-to-day operational functions of their departments. There is no exhaustive list of matters that should be brought to the Cabinet for a decision but in practice the following matters are submitted (via the appropriate Cabinet Committee):

7.9.1. Green Papers, White Papers and other significant policy issues;

7.9.2. Reports of a substantive nature pertaining to an individual department, sector or whole of government. Examples include investigations into a specific issue, commissions of inquiry, and comprehensive reviews of government’s performance;

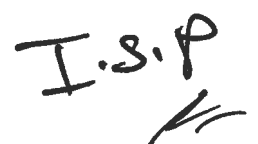
7.9.3. Policy documents for public consultation and discussion prior to their release;

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- 7.9.4. Implementation of large-scale projects;
- 7.9.5. Proposals involving new legislation, or amendments to existing legislation;
- 7.9.6. Appointment of Directors-General and Deputy Directors-General via the Minister for Public Service and Administration. I note here that although the appointment of Directors-General is the President's prerogative, and there is no legal requirement for Cabinet to consider the appointment of Deputy Directors-General, in practice these appointments are made after consulting directly with both the relevant Minister and the Minister for Public Service and Administration;
- 7.9.7. Appointment of heads of public entities, agencies and government components; and members of Boards of statutory bodies. Although individual Ministers may have the legal authority to make such appointments, these are discussed at the Cabinet;
- 7.9.8. International treaties and agreements;
- 7.9.9. Hosting of international conferences and other international events in consultation with the Ministers of International Relations and Cooperation, of Tourism, and of Police; and
- 7.9.10. Matters pertaining to national security.

Cabinet committees

- 7.10. The Cabinet is supported by a system of Cabinet Committees, Ministerial Clusters, the Secretary of the Cabinet, the Cabinet Office, and the Forum of South African Directors-General ("*FOSAD*"). As Director-General in the Presidency, I chaired FOSAD.



7.11. **Cabinet Committees** are the forum where detailed discussions and deliberations take place on issues prior to the matters being considered at the Cabinet. Cabinet Committees make recommendations to the Cabinet, which may accept, amend or reject such recommendations. The minutes of Cabinet Committees therefore have no legal standing. As a rule, all matters must first be discussed in the Cabinet Committees. Cabinet Committees can refer matters back to departments for further work and should also assist in achieving coherence and better integration across ministries. The Cabinet Committees are established around sectoral areas of priority for the Executive. Ministers and Deputy Ministers who are not members of a particular Cabinet Committee may attend any Committee meeting, either on an *ad hoc* or permanent basis.

7.12. The current Cabinet Committees are (although the titles of these committees changed over time due to an expansion of specific functions as the need arises):

7.12.1. Cabinet Committee for the Economic Sectors, Investment, Employment and Infrastructure Development ("*ESIED*");

7.12.2. Cabinet Committee for Social Protection, Community and Human Development ("*SPCHD*");

7.12.3. Cabinet Committee on Governance, State Capacity and Institutional Development ("*GSCID*");

7.12.4. Cabinet Committee for Justice, Crime Prevention and Security ("*JCPS*"); and

7.12.5. Cabinet Committee on International Cooperation, Trade and Security ("*ICTS*").

7.13. The Committees listed above are chaired by either the President or the Deputy President and this changed on occasion, especially when administrations changed.

7.14. On occasion, there are cross-cutting issues pertinent to two or more Cabinet Committees, and in such instances, a joint meeting of committees may be convened.

Ministerial Clusters

7.15. **Ministerial Clusters** foster an integrated approach to Government's work and aid in improving the quality of planning, decision-making and service delivery. The cluster system seeks to ensure alignment of sectors with national strategic priorities and facilitate the implementation of priority programmes. Ministerial Clusters coordinate the work between Cabinet Committees and the Technical Clusters of Directors-General. There are currently five (5) Ministerial Clusters:

7.15.1. Economic Sectors, Investment, Employment and Infrastructure Development Cluster;

7.15.2. Governance, State Capacity and Institutional Development Cluster;

7.15.3. Social Protection, Community and Human Development Cluster;

7.15.4. International Cooperation, Trade and Security Cluster; and

7.15.5. Justice, Crime Prevention and Security Cluster.

7.16. The Cabinet or the President may establish an **Inter-Ministerial Committee** ("*IMC*") to deal with a specific issue and report back to the Cabinet. An IMC is essentially an ad-hoc committee and is dissolved as soon as it has dealt with its task. When an IMC reports on the issue or task assigned to it, the reporting is done through

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the relevant Ministerial Cluster and the Cabinet Committee by the lead Minister. Ordinarily, an IMC does not report directly to the Cabinet, unless it is chaired by the President or the Deputy President themselves. During his tenure, the President, initiated a rationalisation of the existing IMCs and dissolved those which no longer serve a purpose.

8. I now turn to detail the history of the issues the President speaks to as they unfolded during my tenure.

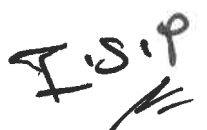
MEASURES RELATING TO THE MANAGEMENT AND OVERSIGHT SOEs

9. The President summarises the shifting policy on SOEs in government from 1994 until the beginning of my tenure, and after that from the beginning of his own. I deal here with the detail of what happened in the period between 2010 and 2014 that is relevant to the management and oversight of SOEs.

10. What follows is gleaned from several sources, including (i) Cabinet Memoranda, (ii) Reports to Cabinet, and (iii) my personal recollection of relevant events.

11. In 2010, it became clear that SOEs faced numerous challenges. Without derogating from the significance of other challenges, the following three were particularly important:

- 11.1. First, there were significant governance and leadership challenges. SOEs such as SAA, Eskom, and SAPO were unable to retain their executives because of tensions between the Boards and executive management.



11.2. Second, SOEs performed poorly from a financial perspective. This led to serious financial constraints. Consequently SOEs increasingly depended on Government support for their survival as going concerns.

11.3. Third, SOEs also fared poorly from an operational perspective. SOEs were bedevilled by industrial unrest and cost-overruns in key infrastructure projects. This compromised the respective SOEs' ability to deliver on their mandates. A prime example of this was the 2007/2008 power shortage.

The Presidential Review Committee on State-Owned Entities

12. These challenges prompted Government to adopt a fresh reform process to strengthen SOEs. The first step of this was President Zuma's establishment of a Presidential Review Committee on State-Owned Entities ("*the PRC*"). On 12 May 2010, during his address on the Presidency's budget vote, President Zuma announced that he would establish the PRC. The PRC formally came into being on 19 May 2010. President Zuma appointed Ms Mangwashi Victoria Phiyega to chair the PRC.

13. The PRC's primary mandate was to review SOEs across all three spheres of government. Its terms of reference set out 21 objectives, which would assist Government in understanding the scale of the challenges and the potential remedies.

14. President Zuma's establishment of the PRC was an acknowledgement that SOEs had to be strengthened to ensure that they respond to a clearly defined public mandate that would

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support Government's developmental aspirations. The PRC was the first major step in responding to this need. It was also important to first get a grasp of the extent of the challenges facing SOEs by comprehensively reviewing them. This review would provide Government with a benchmark to remedy the problems facing SOEs.

15. During August 2012, the PRC presented its findings and recommendations to President Zuma in a report titled "*Report of the Presidential Review Committee on State-Owned Entities*" ("*the PRC Report*"). I attach the executive summary of the PRC Report as "**RCL 1**". The full document is available on the government website.²

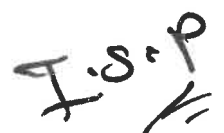
16. The PRC made a number of observations and findings regarding strategic, legislative, regulatory, commercial, environmental, and operational considerations. In the executive summary, the PRC set out 31 findings it made in response to the terms of reference. These findings can be distilled into four broad categories.

17. The first category concerned Governance and Oversight over SOEs.

17.1. The PRC recommended that Government creates an overarching strategy for SOEs and enact a single law to govern them.³ The resulting policy and legislation should properly delineate the State's role as shareholder, policy-maker, and regulator.

² At <https://www.gov.za/documents/report-presidential-review-committee-prc-state-owned-entities-soes>.

³ Recommendations 1 and 2



17.2. The PRC further recommended that Government develops frameworks for the appointment of SOE Boards. These frameworks would clarify the criteria for appointments to boards and the Executive Authority's role in this process.⁴ The PRC recommended that CEOs should be appointed by Ministers in concurrence with Cabinet, at the respective SOE Boards' recommendations. This would be accompanied by strict performance criteria,⁵ and performance-based remuneration governed by a Central Remuneration Authority.⁶

18. The second category concerned the operational performance of SOEs. In this regard, the PRC made the following recommendations.

18.1. Each Executive Authority should develop clearly defined statements of strategic intent for the respective SOEs within their ambit. This would be accompanied by the training of the respective role-players and strict sanctions for non-compliance.⁷

18.2. SOEs would be required to undertake periodic and critical reviews of their mandates, with a strong emphasis on measurability. These would be subject to oversight by the SOE Council of Ministers and by Parliament.⁸ Importantly, the PRC

⁴ PRC Recommendation 3(a)

⁵ PRC Recommendation 3(b)

⁶ PRC Recommendation 5

⁷ PRC Recommendation 9

⁸ PRC Recommendation 8

recognised the necessity for improved consequence-management and sanctions for corruption.⁹

18.3. Government should develop an alternative funding policy for SOEs, which would take better account of the funding sources with a greater mix between debt and equity.¹⁰ Future infrastructure funding models would also distinguish between economic infrastructure (which would be funded on a user-pays basis) and social infrastructure (which would be funded from the national fiscus).¹¹

18.4. Mining as a strategic sector and a significant economic user of infrastructure, should contribute fairly to the development of infrastructure for economic use. In addition to tariffs on a user-pay basis for the use of economic infrastructure, this would entail further examination of policy tools to achieve fair contribution. These policy tools could include mandatory local beneficiation and ring-fencing a portion of the proposed resources' tax to develop infrastructure.¹²

18.5. Capacity-building, skills development, and transformation would be integral in assessing the performance of individual SOEs.¹³ The PRC emphasised the importance of substantive compliance, instead of formal "tick-box" compliance.¹⁴

⁹ PRC Recommendation 15

¹⁰ PRC Recommendations 18 and 19

¹¹ PRC Recommendation 21

¹² PRC Recommendation 22

¹³ PRC Recommendation 14

¹⁴ PRC Recommendation 16

19. The third category of recommendations were policy-related. The PRC made the following recommendations:

19.1. While the overarching aim was to improve every SOE, Government was to identify specific national SOEs and turn them into world-class flagships through effective regulation and proper capitalisation.¹⁵

19.2. Government should encourage private sector involvement and partnering.¹⁶

The PRC further recommended that Government actively promotes a common national understanding and commitment to a Developmental State Vision.¹⁷

19.3. Government should develop a consolidated funding model for commercial SOEs and DFIs. National Treasury would exclusively manage SOE liabilities.¹⁸

19.4. Government should identify policy inconsistencies and develop a uniform framework clarifying the role played by regulators.¹⁹

¹⁵ PRC Recommendation 23

¹⁶ PRC Recommendation 20

¹⁷ PRC Recommendation 25

¹⁸ PRC Recommendation 18

¹⁹ PRC Recommendation 6(a) and 6(b)

- 19.5. Finally, Government should develop an appropriate institutional model for SOEs and rationalise them. There would be a strong focus on strategic SOEs.²⁰
20. The fourth category concerned institutional arrangements. The PRC recommended that Government creates structures to implement the recommendations. These included structures such as: a Central Remuneration Authority; a Transitional SOE Reform Committee supported by a Monitoring Task Team; A Council of Ministers; and a Central SOE Authority.
21. The PRC Report articulated South Africa's aspiration towards a Developmental State. It envisioned a framework for SOEs to participate in, and contribute towards South Africa's growth, development, and transformation.
22. The PRC Report recognised that the reforms could not all be achieved at once. As such, the PRC recommended a three-phased approach to implementation, which would be overseen by a Reforms Committee. The recommendations were divided into those that could realistically be achieved in the short, medium, and long term.
23. The PRC Report was initially discussed at the Extended Cabinet meeting ("*Lekgotla*") of September 2012. Cabinet accepted the PRC Report on 30 April 2013, and approved the establishment of a transitional SOE Reforms Committee to consider the PRC Report and its

²⁰ PRC Recommendation 17

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recommendations. An extract from the Cabinet's resolution in this regard, is annexed as "RCL 2".

24. Between 30 April 2013 and 10 December 2014 many concerns were raised in relation to SOEs and were assigned to the IMC on Energy. The IMC on Energy collaborated with the Economic Sectors, Employment and Infrastructure Development Cluster (*"the ESEID Cluster"*). Much of Cabinet's attention in this regard was focused on Eskom's poor performance and the resulting energy crisis facing the Republic.

25. The President picks up the narrative from the moment he was appointed as Deputy President, when the work to implement the recommendations of the PRC was underway. The stops and starts that followed are detailed by him and I can confirm these.

THE NUCLEAR PROGRAMME

26. The history of the nuclear programme is, I understand, relevant to the work of this Commission. It is also relevant to the testimony of former Minister Nhlanhla Nene. For this reason, I provide a little detail of what happened in this regard before the President came to be Deputy President.

27. In March 2011, Cabinet approved the Integrated Resource Plan 2010 (IRP2010) which envisaged that nuclear power would contribute an additional 9.6GW to South Africa's energy mix by 2030, with the first plant coming online as early as 2023.



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28. On 9 November 2011, Cabinet further approved that a phased decision approach would be adopted in order to minimise risks associated with the programme. The National Nuclear Energy Executive Coordination Committee (“NNEECC”) was established by Cabinet decision with the mandate to oversee this phased decision making and report back to Cabinet. It was originally chaired by then Deputy President Kgalema Motlanthe. The NNEECC was subsequently replaced by the Energy Security Sub-Committee, chaired by then President Zuma, in 2014.

29. The revision of the structure of the NNEECC was discussed at the 30 April 2013 Cabinet Meeting, particularly the appointment of the members of revised NNEECC in line with the Committee’s purpose of oversight and decision making on the nuclear policy and new build programme. The new structure of the NNEECC was chaired by the then President and included the Ministers of Energy; Public Enterprises; Finance; State Security; Defence and Military Veterans; and, International Relations and Cooperation.

30. The NNEECC was at the centre of recommendations that followed, regarding the Nuclear New Build Programme Procurement Process. I can confirm the discussions that took place at Cabinet, outlined by the President in his affidavit, during 2015.

CLOSURE OF OAKBAY ACCOUNTS

31. I was travelling with former President Zuma on 2 September 2016, when we were alerted to a statement made by then Minister Mr Mosebenzi Zwane in which he incorrectly stated that Cabinet had established an Inter-Ministerial Committee to consider allegations that certain banks and other financial institutions acted unilaterally and allegedly in collusion,



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when they closed bank accounts and terminated contractual relationships with Oakbay Investments. Mr Zwane's statement went on to state that Cabinet had resolved that the President considered establishing a judicial inquiry; that Cabinet considered the current mandates of the Banking Tribunal and Banking Ombudsman as well as certain pieces of legislation and whether the Reserve Bank and National Treasury had complied with the legislation; that the provisions to allow for the issuing of new banking licenses be reconsidered; and the establishment of a State Bank of South Africa (possibly incorporating the Post Bank) be considered.

32. On being informed of this statement, President Zuma instructed me to formulate a statement, which was later issued by the Presidency, stating that Mr Zwane's statement was not a correct reflection of government's position. The Presidency statement reiterated its assurance to the public, the banking sector as well as domestic and international investors of government's unwavering commitment to the letter and spirit of the country's constitution as well as in the sound fiscal and economic fundamentals that underpin our economy.

33. In addition, it transpired that the Cabinet memo that had been presented to the Cabinet meeting preceding this statement had been leaked to the media. I had a meeting with then-DG of State Security, Mr Arthur Fraser, and asked him that this leak be investigated and a report be provided to my office once the investigation was complete. No such report was ever forthcoming.

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REMOVAL OF MINISTER GORDHAN

34. On the evening of Sunday, 26 March 2017, just after midnight, I was called by then President Zuma. He instructed me to contact the Minister of Finance, Mr Pravin Gordhan, and his Deputy, Mr Mcebisi Jonas urgently. He said he was aware they, together with the DG of National Treasury, Mr Lungisa Fuzile, were meant to go on an investment roadshow, and I should tell them not to go, as he needed to see Minister Gordhan urgently. I tried to call all three of them but their phones went to voicemail. I then sent them an sms stating that the President had asked me to call them back home immediately. I called the President back to inform him that all three of their phones went straight to voicemail and I suspected they were already in a plane on their way to the first destination of the roadshow.
35. Minister Gordhan and DG Fuzile were indeed at the time on a flight from Johannesburg to London, where they would start a roadshow to meet with investors – as the National Treasury team does regularly – with meetings first scheduled to be held in London, and then further engagements in the United States. Deputy Minister Jonas was not travelling with them and had not left South Africa yet – he was meant to join Minister Gordhan and Mr Fuzile in New York after they had finalised their work in London.
36. All members of the Executive require permission from the President to travel overseas. Their requests are channelled through the Private Office of the President and the Office of the DG in the Presidency before being presented to the President for approval so I can confirm that both Minister Gordhan and then-Deputy Minister Jonas had permission to travel prior to their departure that Sunday evening. The exact date and time of their departure was a detail likely not known at the time permission was granted for the trip.

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37. When they landed in London, Minister Gordhan contacted me – he had likely received my message that the President had directed they return to South Africa on the first available flight. They did precisely that.

38. On their return I was informed that they headed straight from the airport to Luthuli House where they, together with Mr Jonas, were to meet with the then Secretary General of the ANC, Mr Gwede Mantashe. To my knowledge they did meet with the then President later the following day or days thereafter and were informed of his decision, but I cannot confirm this as I was not part of the meeting or of arranging it.

CLAIMS THAT THE BUDGETARY PROCESS WOULD BE MOVED TO THE PRESIDENCY

39. I was informed that the Commission made a request to the President to deal specifically with the allegation that there was at some point an attempt to move the National Treasury's budget function to the Presidency. I can assert that no such plan ever existed. My recollection of events may assist the Commission in understanding how this impression came about.

40. In 2017, in preparation for the upcoming budget, National Treasury was engaging with all departments about the need to make significant cuts. In the face of a considerable amount of resistance, the Minister of Finance and the Director-General of the National Treasury sought help from the Presidency to push government departments to effect these cuts, through the weight of our office. This request was made at the annual Extended Cabinet Meeting in September/October which includes the President, the Deputy President,

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Ministers, Premiers, Deputy Ministers and MECs for Finance to consider the Medium-Term Budget Policy Statement (MTBPS). It was to this end that a temporary body named the Presidential Fiscal Committee, chaired by then-President Zuma, was established. It included the President and then Deputy-President, Mr Cyril Ramaphosa, as well as a small number of other Ministers and was meant to work on reprioritising the budget. The DG of National Treasury Mr Dondo Mogajane and I, in my capacity of Director-General in the Presidency, were also members of this committee. In my recollection it only met three (3) times. A technical team was set up to assist its work, which was chaired by the then-DG in the Department of Planning, Monitoring and Evaluation, Ms Mpumi Mpofu. Ms Mpofu was given a mandate to impartially and firmly recommend budget cuts where departments seemed to want to defend non-essential expenditure. She was very robust in her engagements with the various relevant government departments. As a result, I was made aware that the impression was created among some officials, especially due to Ms Mpofu's team's cost cutting efforts, that the Presidency intended to take over the budgetary functions of National Treasury. That was not the case nor the intention. It was merely aimed at facilitating the resolution of a particular impasse at that time, and perhaps use a similar process should such impasses recur in future.

CONCLUSION

41. I trust the above will assist the Commission in general, as well as in providing detail and history to the statement made by the President.

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 DR REGINALD CASSIUS LUBISI

I hereby certify that the deponent declares that the he knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this 25TH day of MAY 2021 and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.


 COMMISSIONER OF OATHS

FULL NAMES: IAN SAKILE PHADU
 ADDRESS: 296 PRETORIUS STREET, PRETORIA, RSA
 DESIGNATION: PRACTISING ATTORNEY
 AREA: 296 PRETORIUS STREET, PRETORIA, RSA

IAN SAKILE PHADU
 COMMISSIONER OF OATHS
 Practising Attorney R.S.A
296 PRETORIUS ST. PTA

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"RCL1"



Growing the Economy - Bridging the Gap

Presidential Review Committee on State-Owned Entities

Volume 1

Executive summary of the final report

Submitted to:
H.E. Mr J.G. Zuma
President of the Republic of South Africa



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TERMS OF REFERENCE

The following are the twenty-one (21) terms of reference (ToR) upon which the PRC made recommendations:

1. A common understanding and definition of SOEs;
2. The place of SOEs in a Developmental State;
3. The strategic importance and value creation of SOEs;
4. The viability and funding of SOEs;
5. The existing portfolio of investments by the State in strategic businesses;
6. The efficiency and effectiveness of SOEs with respect to service delivery;
7. Current policy and regulatory framework and the impact thereof on the management of SOEs;
8. The balance of social, political and economic imperatives in delivering objectives for SOEs;
9. Harmonisation of performance measurements among SOEs;
10. Standardisation of accounting and reporting processes for SOEs;
11. Owner/Shareholder oversight and governance of SOEs;
12. Recruitment, selection and appointment of boards and executive management of SOEs;
13. Remuneration policies of SOEs taking into account wage differential aspects;
14. Current restructuring initiatives (privatisation, retrenchments, Public-Private Partnerships, etc.) of SOEs, and implications thereof;
15. SOEs as a platform for sustainable human capital development and a catalyst for scarce skills;
16. Establishment of a comprehensive database of SOEs across all spheres of Government;

EXECUTIVE SUMMARY

The review of SOEs provides an opportunity for post-1994 South Africa to redefine the configuration and the role of its SOEs to address economic, social and service delivery challenges facing the country. These challenges include access to quality service delivery, globalisation, unemployment, skewed distribution of income, access to land and housing, access to finance and poor infrastructure – the burden of which is disproportionately borne by the majority of the population.

South Africa aspires to be Developmental State. This review provides an opportunity to align the SOEs to this agenda. Chapter two of this report explores the common understanding of the concept of a Developmental State as well as the associated plans and programmes. In particular, SOEs are expected to assist the State in addressing issues of social and economic transformation and in bridging the gap between rich and poor: black and white; rural and urban and other divisions in our society. If the country is to attain improved quality of life underpinned by a robust democracy and a just society, along with other initiatives, the State must preside over viable, efficient, effective and competitive SOEs.

The Presidential Review Committee (PRC) of SOEs was established to address the question of whether SOEs are responding appropriately to the Developmental State agenda. This implies that the review should ascertain the extent to which the State must be an active, effective and decisive owner/shareholder, playing a leadership role in providing strategic direction, creating an enabling environment, and being at the forefront of ensuring that SOEs are vibrant and execute their mandate effectively.

In its comprehensive review, the PRC has ascertained that while SOEs have an indispensable role to play in service delivery and have crucial performance and transformation potential, they are nevertheless faced with significant weaknesses and threats that might become grave impediments to their optimum contribution. This

report accordingly recommends major reforms to strengthen SOEs. These reforms address matters of oversight for SOEs, establishment/disestablishment of SOEs; strategic planning, funding, legal and regulatory policy, institutional structures, systems, capacity, as well as critical performance evaluation measures.

CONTEXT FOR THE REVIEW

The review of South Africa's SOEs needs to be understood as a sequel and was framed by numerous existing strategic and policy imperatives. Among these are the outcomes of the 52nd Conference of the ANC in Polokwane in December 2007 (Polokwane Conference); the Medium-Term Strategic Framework (2009–2014) and the stipulations of the Constitution of the Republic of South Africa, Act No. 108 of 1996 (in particular chapters 2, 3, and 10).

- The Polokwane Conference of the ANC (the ruling political party) called for a review of the performance of SOEs and for policy options regarding the role of SOEs in the Developmental State. The aim is to ensure that SOEs remain viable, whilst they deliver on their Developmental State mandate.
- At the State level, the review was framed by strategic policy documents emanating from the Medium-Term Strategy Framework such as the New Growth Path, National Industrial Policy Framework, National Delivery Outcomes, and the draft National Development Plan.
- Chapter 10 of section 195 of the Constitution requires all organs of the State, including SOEs, to deliver services to the people in a particular manner. Thus the President's brief for this review calls not only for a review of their financial performance but also for consideration of whether these entities are meeting their Constitutional responsibilities.
- The review was guided by broad principles, which included macro examination of all types of entities in all spheres of Government (commercial and non-commercial); taking into account previous reviews and international experience.

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EXECUTIVE SUMMARY continued

- The PRC was required to respond to terms of reference comprising twenty-one (21) elements categorised into four themes, namely, development and transformation; governance and ownership; business case and viability; and strategic management and operational effectiveness.

The observations and recommendations contained in this report draw on extensive secondary and primary research, stakeholder engagement as well as policy dialogues, seminars, and focus groups conducted by the PRC.

CHALLENGES IDENTIFIED

The PRC found that **there has been a proliferation of SOEs**, including commercial and non-commercial entities and their subsidiaries, across all spheres of Government. At the start of its investigation, the PRC received a list of recognised SOEs from National Treasury comprising approximately 300 entities. This list did not include municipal entities and other forms of SOEs such as trusts and section 21 companies. For the sake of completeness, the PRC compiled a consolidated national database of SOEs that includes subsidiaries, trusts and section 21 companies. The PRC's consolidated database established that as at end May 2012 there were approximately 715 SOEs (including chapter nine institutions). This figure may increase as further investigations are conducted. With such a large portfolio of SOEs, the PRC had to pay particular attention to the capacity and capability of the State to effectively oversee these SOEs and identify the best options to manage SOEs without compromising their service delivery and financial performance.

The main problem under investigation was whether SOEs were responding to the State's developmental agenda. This requires that the State be an active and decisive shareholder, that it plays a leadership role in creating an enabling environment to drive the performance of SOEs in delivering their mandate.

The PRC made a number of observations and findings regarding strategic, environmental, and

operational considerations. These can be found in the following four parts of the report (Volume 2) dealing with Strategy for SOEs, Creating an enabling environment; SOE performance; and State capacity enhancement.

Notable observations and findings are that **South Africa has no common agenda for and understanding of SOEs**. This diversity ranges from varying terminology used to denote SOEs to the perceived absence of a universal and obligatory long-term vision and plan for SOEs that clarifies their role in the country at large. **There are no commonly agreed strategic sectors and priorities**. In addition to the **absence of a consolidated national repository for all SOEs**, there is confusion regarding SOEs categorisation. There are also **challenges with regard to balancing the trade-offs between commercial and non-commercial objectives of SOEs**.

The legislative framework for SOEs was found to be inadequate, displaying evidence of conflict and duplication. **The governance, ownership policy, and oversight systems were found to be inadequate**. **The quality of the board and executives' recruitment was found to be inadequate**. There is **no clarity on the role of the executive authority, boards; and the Chief Executive in the governance and operational management of SOEs**.

The remuneration frameworks and practices are inconsistent. They require urgent reconsideration because they impact directly on the performance of SOEs and influence the supply and demand for skilled personnel in the market.

Many SOEs currently require a massive injection of capital and finance policies require close re-examination. **Funding models for social and economic development mandates of SOEs are blurred and confusing, leading in some instances to undercapitalisation**, which impedes the SOE's ability to contribute to meeting national challenges.

The service delivery performance of SOEs was found to be mixed, some exhibiting excellence

and providing high quality services, while in other areas there are deficiencies characterised by low levels of customer satisfaction, complaints and service delivery civil protests.

Finally, the performance of SOEs is subject to a number of variables, including the performance contracts between the executive authority and the board of SOEs. **Despite the importance of these shareholder compacts, they are often not signed on time and make insufficient provision for objectives beyond the narrow goal of profitability**. Generally, **SOEs tend to lack robust leadership and initiative on crucial transformation imperatives such as broad-based black economic empowerment, the creation of meaningful employment opportunities and comprehensive skills development**. **Collaboration and coordination among SOEs and their oversight is poor**. This reduces the impact made by SOEs in service delivery and it increases their costs.

KEY INTERNATIONAL LESSONS FROM SOE GOVERNANCE REFORMS

As the world becomes more interconnected and faces similar challenges, governments are learning from each other, while at the same time striving to deal with their unique conditions through innovative approaches. International experience shows that governments worldwide are increasingly making use of SOEs as catalysts of growth, development, employment generation and transformation of economies and societies. Similarly, in South Africa, SOEs are seen as important agents of change that are able to contribute positively to economic and social transformation, the creation of decent work, growth and development of society.

Many of the countries evaluated have embarked on review processes to investigate and reformulate the specific goals, rationale and mission of SOEs, individually and collectively, in terms of accelerating wider economic growth, expanding industrialisation, providing infrastructure, and ensuring quality and timely public service delivery. These countries have formulated a clear

national policy on the role of SOEs in driving the objectives of a national development plan. Some countries have standing processes in place to regularly review the rationale, goals, mission and performance of SOEs.

- In countries such as Canada, New Zealand and Sweden, SOE reforms have proved reasonably successful. They were amongst the first to focus on formulating a clear overarching legislative framework for SOEs and setting out objectives for the management of SOEs.

- Many successful reformers have focused on clarifying the multiplicity of roles of the State, whether as shareholder, policymaker, regulator, operator etc. Some countries have consolidated the ownership and monitoring of SOEs in a single central agency. In this way, one government agency acts as the 'owner' on behalf of the State and exercises the shareholder rights'. Related to this is the reality that many governments have formulated an explicit 'ownership policy' that defines the overall objectives of State ownership; the State's specific role in the corporate governance of SOEs; and how the State will implement such ownership policy efficiently.

- China, for example, established the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) to oversee the ownership, supervision and monitoring of SOEs. Singapore, on the other hand, formed a separate company, Temasek Holdings, to serve as the central ownership and monitoring agency for SOEs. Similarly, France established the Agence des Participations de l'Etat to oversee SOEs.

The PRC found that where the formation of a single entity was not politically feasible, a separate State agency was set up to monitor the performance of SOEs. This is the case in New Zealand, where ensuring the accountability of SOEs was split between line-function ministers and a semi-independent Crown Company Monitoring Advisory Unit, which not only monitors the

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performance of SOEs but also provides strategic advice to line ministers on how to maximise the resources of SOEs.

Reforms have also focused on clarifying interactive roles between governments as shareholders; entity boards; executive management; and regulators. Some governments have attempted to set clearer objectives and performance targets for SOEs, including financial targets; developmental impact and employment creation. In the case of multiple objectives – which are often the case, the State should rank them in order of importance.

A strong focus has been on developing less opaque mandates and creating vigorous monitoring and evaluation policies and systems. The idea has generally been to set clearer objectives and targets, which can be monitored and reported on over time.

Furthermore, reforms have focused on improving overall State capacity in the SOE as well as in the SOE oversight institutions such as Parliament and the executive authority, including State independent governance and oversight agencies. These governments and their parliamentary oversight organs have tried to bring more transparency into the operations of SOEs (i.e., transparency similar to that of listed companies). As an example, Sweden has a requirement for SOEs to provide quarterly reports, which must include financial statements. In addition the State has to make a public disclosure of the goals, assessments, and guidelines for oversight of SOEs.

Various countries have also made robust efforts to improve performance and initiated groundbreaking policies to attract and retain those with the requisite talent, expertise and innovative ideas to serve on SOE executive management and boards.

MOVING FORWARD

With South Africa aspiring to be a Developmental State, the PRC envisioned a framework for SOE reforms and optimal contribution to equitable growth, development, transformation, and

service delivery in South Africa. The framework takes into account international experience and encapsulates the following principles that enhance the SOE environment. The PRC suggests that these principles should be endorsed by Government to guide SOE reforms:

- The Government must have a vision and strategy for the Developmental State.** The Government must develop a shared understanding of the objectives of the Developmental State and must stipulate how it should inform the strategies of key stakeholders in the country, including SOEs
- The Government must identify strategic sectors.** The Government should identify strategic sectors that will support the vision and strategy of a Developmental State and within which SOEs will play a role.

- There must be recognition that SOEs are critical in attaining the objectives of the Developmental State.** SOEs are instruments of the State and all have the primary imperative of assisting the State in achieving its developmental objectives. The different types of SOEs – commercial, non-commercial, constitutional, regulators, agencies and other – each have a defined contribution to make. Clarity should be provided on the role of each entity in achieving developmental objectives as well as how resourcing, governance and performance management will be conducted.

- Profit and non-profit objectives of SOEs must be clearly defined.** This principle embodies the unique nature of SOEs, embracing their need to service social-objectives. These objectives should be clearly defined articulating trade-offs between profit and non-profit objectives. The primary and core mandate of entities and their viability should be prioritised.

- The Government must maintain a consolidated SOEs database.** There should also be comprehensive strategic categorisation and standardised terminology and definitions.

- The Government must strive to create legislative clarity.** There must be an enabling environment for SOEs.

- The Government must delineate the separate roles of Government as owner, policy-maker, regulator and implementer.** In the legislative environment that should be created for SOEs, the role and function of the owner/executive authority should be clearly defined. Separation of policy, regulation, operations and performance monitoring should be implemented and a proper framework established to balance governance and financial oversight of the SOEs. This principle should facilitate competitive neutrality and also allow for sound decisions on what should be centralised and what should be/remain decentralised.

- The Government should adopt a policy for mandatory periodic reviews of SOEs.** International best practice dictates that the mandates of the SOEs are rigorously reviewed by Parliament and the shareholder/owners periodically.

- The owner or executive authority must play a stronger role in setting the strategic direction and framework for SOEs.** Owner/executive authority must be active (shareholder activism) in performance monitoring of SOEs. If the Government oversees service delivery that falls short of the realistic expectations of the people it serves it will incur significant reputational damage.

- The Government should adopt appropriate funding principles and models.** There must be clarity on the use of funding instruments to fund SOEs and public infrastructure to achieve viable and sustainable development and service delivery.

- The Government should ensure consolidation of the SOEs.** Clustering and centralising should be in the following groupings:

- Commercial:** The rationale for the commercial SOEs is their ability to command market-related revenues, having a bankable balance sheet, the ability to post profits, and the ability to maintain and replenish market capitalisation autonomously from the State. In cases where the State requires these entities to undertake non-commercial mandates, then the State should contract and fund them for these mandates.

- Development finance institutions:** The rationale for development finance institutions is their ability to command market-related revenues, having a bankable balance sheet capability, the ability to post surplus, and the ability to maintain and replenish market capitalisation autonomously from the State. In cases where the State requires these entities to undertake non-commercial mandates, then the State should contract and fund them for these mandates.

- Statutory corporations:** The rationale for statutory corporations rests in their ability to provide basic and essential services. Statutory corporations manifest a hybrid of commercial and non-commercial characteristics. The entities lend themselves to a cross-subsidisation mandate. These entities should remain wholly State-owned. From an ownership perspective, statutory corporations should remain in the line function.

- Non-commercial SOE.** These entities are predominantly dependent on State funding through budget vote transfers as well as State subsidies and grants. In certain instances, special tax arrangements are made to support the income of entities. Additional resources can be attained through donor funding and in kind support by multilateral institutions as well as fundraising or sponsorships. Some of

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these entities may have a limited income stream. A significant number of these entities are established in response to constitutional or State policy mandates. These entities should remain under the full control and ownership of the State and should remain in the line function.

12. Performance should be assessed on the basis of efficiency and effectiveness as well as service delivery. The balance of socioeconomic imperatives should inform articulation of performance indicators as well as pre-determined objectives.

13. Financial information should be improved. A good accounting system should be established. Furthermore, the flow of information to the supervisory agencies must be improved by requiring regular and detailed reporting from the SOEs.

14. SOEs must play a leadership and catalytic role in transformation and development. This should be achieved through transparent and development-focused procurement processes; gender parity and progression; targeted skills development in collaboration with other stakeholders (State, business and the community); as well as focused and coordinated social development.

15. Financial viability. The principles should measure how well a SOE delivers on its core mandates as well as meeting its determined developmental objectives. The principles should take into account the fact that in some SOEs, viability will have a bottom line or commercial orientation, while in some SOE's entities other attributes will have equal or even more importance in determining viability. Adequate funding is necessary to ensure viability.

16. SOE remuneration principles. These should ensure competitiveness and optimum retention by improving remuneration policies and practices to ensure alignment

and harmonisation across SOEs as well as improving governance and oversight of SOE remuneration by the executive authority.

17. Invest in human resources. Good enterprises require capable people to run them. Investment should be made in training at all levels, from managers and research scientists down to the level of ordinary workers to improve skills. Incentive systems should be related to performance.

18. SOE collaboration and coordination principles. These should focus on breaking down silos and ensuring collective responsibility. They should enable different SOEs to be measured and held accountable collectively for their contribution to achievement of a national objective where they need to co-operate to achieve optimal outputs/results.

19. SOEs should champion relevant skills and human resources development. To drive success of entities in skills development, collaboration with the State and industry is vital.

20. Reduce the number of SOEs and streamline where appropriate. This will mean better synergy and efficiency and it will reduce the demand on monitoring resources.

21. The Government should enhance its capacity. The Government should be sufficiently capacitated with appropriate and specialised skills and expertise to successfully manage the State's SOE portfolio. Likewise, the entire SOE including boards and executives must be appropriately skilled in understanding the unique role they play in society. Specialised capacity-building interventions for SOEs such as SOE board training, and executives training programmes should be developed to position them to fulfil their strategies.

CONCLUSION

The SOEs reform principles supported in this report are designed to guide South Africa towards comprehensive reforms in the SOE environment to deal with current and future challenges facing the nation. SOEs are not regarded as a panacea for solving all challenges of South Africa but are an added strategic and catalytic State instrument for transformation, growth, development, service delivery and employment creation. They can make a significant contribution towards attainment of the Developmental State. However, without strong vision and committed leadership; an enabling legal environment; effective performance evaluation; and appropriate competencies and capacities, effective and sustainable change will not occur in the SOE environment and, accordingly, the objectives of the Developmental State will not be realised.

For South Africa to have optimally performing SOEs that contribute to transformation, growth, development, and service delivery, the proposed reform principles and recommendations in this report must be implemented from the highest office in the land throughout all Government structures and in all spheres in partnership with all formations of the society.

The principles include, among others, the separation of roles by Government; the formulation of a strategy for SOEs; creation of an enabling environment; and ensuring adequate performance evaluation and monitoring of SOEs. The State must have the requisite capacities to implement these reforms including visioning and strategy-setting, appropriate human capital and structures, as well as efficient and electronic oversight systems to enabling monitoring and evaluation of SOEs. We propose that Government should establish a transitional SOEs Reforms Committee to drive implementation of the recommendations of the PRC. It should also form an SOE Council of Ministers to capacitate effective oversight of SOEs. Commercial SOEs and DFIs should be overseen by a Central SOE Authorities

and a Central Remuneration Authority for SOEs is recommended to ensure consistency and accountability of remuneration frameworks and practices in SOEs.

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RECOMMENDATIONS

RECOMMENDATION 1:

The Government should develop an overarching, long-term strategy for SOEs.

- The strategy must:
- be aligned to the objectives of the Developmental State that South Africa aspires to become;
 - find articulation in a White Paper on SOEs based on further recommendations herein contained, which White Paper should aim to inform a comprehensive SOE Act that we propose (see recommendation 2);
 - be periodically reviewed and evaluated, at least every five years to ensure long-term alignment with the objectives and circumstances of South Africa's Developmental State.

The SOE strategy and a White Paper will contain the following elements:

- (a) A categorisation framework for SOEs which must be applicable to all three spheres of Government.
- A naming and terminology standard for SOEs must be developed and adopted, in accordance with the recommended categorisation.
 - All current and future legislation should conform to the single naming and definition standard.

- (b) A thorough examination and identification of strategic sectors for South Africa's Developmental State, and the role of SOEs therein.
- The identified strategic sectors should be either legislated or policy-led.
 - The sectors should be subjected to a periodic review process by some designated authority (e.g. the Executive Authority and Parliament).

- (c) A framework should be developed for identifying priority and strategic SOEs with a potential for increased impact on economic growth, development and employment creation.

growth, development and employment creation.

- (d) A comprehensive SOE approach on regional and international trade and development strategy be incorporated into the overarching strategy for SOEs.
- (e) SOEs should be consolidated and rationalised as and where needed.
- Consolidate SOEs that operate in similar sectors and industries, e.g. SETAs, Water Boards and DFIs;
 - Rationalise the number of SOEs so that focus can be placed on the most strategic sectors and industries.
 - Re-incorporate those functions that can be optimally performed by Government Departments.

- (f) Adopt a portfolio management approach to SOEs, particularly in commercial entities and DFIs.

- (g) Develop a structured framework for balancing commercial and socio-economic priorities.
- Periodically review and balance the social, political and economic priorities of SOEs.
 - Ensure commensurate resourcing and funding for additional socio-economic priorities.

RECOMMENDATION 2

The Government should enact a single overarching law ('State Owned Entities Act') governing all State Owned Entities.

The State Owned Entities Act must:

- supersede all current legislation governing SOEs;
- reduce the current burden of compliance with multiple laws and regulations; and
- include all subsidiaries of SOEs.

The proposed legislation will aim to address the duplication, conflicting provisions, different founding legislation, and in some cases, the serious omissions. The legislation should provide for

- (a) The mandatory requirement to undertake a critical review of the overarching strategy and mandates of SOEs every five years;

- (b) An SOE Council of Ministers (comprising DPE, Treasury, DTI, EDD, the National Planning Ministry and other relevant Government stakeholders) whose functions shall entail oversight over the implementation of the Act in relation to strategic joint planning as well as collaboration between SOEs and Government Departments at all spheres of Government;

- (c) The establishment of a Central Remuneration Authority which will set guidelines and standards for remuneration of boards and executives in SOEs;

- (d) The extent and nature of ownership, corporate type as well as categorisation;

- (e) The mandatory registration of all State-owned Entities and subsidiaries in every sphere of Government;

- (f) The protocols and processes for establishment and disestablishment of SOEs in all spheres of Government;

- (g) The establishment of two Central SOE Authorities, one for Commercial Entities, and the other for Development Finance Institutions;

- (h) A determination of the role and responsibility of the owner/Executive Authority;

- (i) Prohibition of the creation and proliferation of non-compliant structures e.g. Section 21 companies and other prohibited forms:
- The Municipal Finance Management Act (MFMA), Municipal Systems Act and any other overlapping legislation should be aligned with this principle.
 - Sanctions should be introduced in the proposed new SOE Act in order to address issues of non-compliance. (See Recommendation 16.)

- (j) Outline principles of an SOE performance framework to measure and evaluate the performance of an SOE;

- (k) Develop a Corporate Governance Framework for all SOEs, which should:
- embrace the Developmental State agenda and the unique positioning of State-owned Entities;
 - encompass principles of ethical leadership, transformative corporate citizenship, service delivery, viability and sustainability; and
 - outline principles of collaboration among SOEs.

- (l) Development of an SOE Ownership Framework;

- (m) A centralised ownership model for commercial entities and Development Finance Institutions (DFIs) and a decentralised ownership/shareholder model for statutory and non-commercial entities. The ownership model should:
- apply to all spheres of Government, taking into account constitutional requirements;
 - be included in the SOE Act; and
 - clearly delineate the separate roles of Government as owner, policy-maker, regulator and implementer.

- (n) The establishment of a consolidated SOE Database for all SOEs and their subsidiaries (as defined in the PFMA) of all three spheres of Government, controlled by the central authority responsible for commercial entities: The HSRC is recommended by the PRC to host the pilot database as well as to handle the transition for permanent hosting of the database.

- (o) An SOE Oversight Framework should be developed by the central authority responsible for commercial entities; and

- (p) Mandatory collaboration among SOEs.

RECOMMENDATIONS continued

RECOMMENDATION 3(a):

Board Appointments

The Government should develop a framework for the appointment of SOE Boards.

The framework should be set out in a Handbook on Board Appointments, which should define the rules for the selection of candidates. The rules should cover the following:

- Clarification of roles for the Executive Authority, the entity board and the CEO.
- The role of the Minister in relation to Cabinet and to Parliament should be clarified.
- Clarification of the Board appointment process. The PRC recommends the guidelines for Board appointments outlined by the DPE. See Table 13 below.
- The appointment of an independent Board should be made in writing by the Executive Authority, and should be duly gazetted.
- Provisions for Board appointment should take into account the following:
 - o ensuring a transparent and merit-based recruitment and appointment process;
 - o transparent determination of board fees/remuneration in accordance with recommendations of the Central Remuneration Authority as recommended by the PRC;
 - o Board composition and representativity, taking into account race, disability and gender. The targets endorsed by the B-BBEE and the Department of Women, Children and People with Disabilities should be duly considered
 - o Confirmation of the term of office for Board members;
 - o Stipulation of the number of Boards on which a member should serve;
 - o Clear articulation of performance indicators in writing, for which there should be mandatory annual evaluations;
 - o Board training and development programmes (both induction and further ongoing development), and

- o Building succession planning for new directors and preparing next generation directors.
- Recruitment, selection and appointment processes should be subjected to auditing as part of the pre-determined objectives of entities.

RECOMMENDATION 3(b):

CEO Appointments

The appointment of the CEO shall be done by the Minister in concurrence with cabinet, at the recommendation of the Board.

The following is the recommended process:

- The Board is responsible for the process of recruitment and assessment of the nominated candidates.
- The Board recommends to the Executive Authority two or three 'appointable' candidates for approval.
- The Executive Authority confirms the appointment in writing.

To manage sustainable development and retention of skills, the PRC recommends longer-term employment contracts.

The Board should adopt a structured and intensive performance management system for SOE executive management.

Incentives should be strictly aligned to performance.

RECOMMENDATION 4

The Government should develop a mandatory framework for effective collaboration among SOEs, and between SOEs and national, provincial as well as municipal authorities.

The collaboration framework should:

- be in line with the constitutional requirements for collaboration;
- consist of a common plan, derived from the overarching Developmental State strategy;
- strengthen partnerships between SOEs to drive Government priorities; and

- establish and strengthen partnership between Government and the private sector to drive the Developmental State agenda and priority projects.

RECOMMENDATION 5

The Government should establish a Central Remuneration Authority (CRA).

The CRA should:

- be allocated a strong degree of independence as well as the necessary authority to develop an overarching framework for remuneration in SOEs;

- provide guidelines and parameters within which the Board may apply its discretion on remuneration;
- provide direction on remuneration of SOEs' Boards and Executives;
- advise Government on the appropriateness of the remuneration policies, practices and both short and long-term incentive approaches developed by the SOEs;
- periodically review the relevance and appropriateness of executive perks or benefits paid outside the executive's total package.
- conduct benchmarking and set standards for annual remuneration; and
- produce an annual SOE remuneration update for Government to encourage transparent processes.

RECOMMENDATION 6(a)

Government should develop a uniform framework for economic regulation.

- An Executive Authority should be appointed to establish a framework for economic regulation and to oversee the implementation of core regulatory principles. This framework for Economic Regulation should immediately tackle the following:
 - o develop a regulatory strategy that will create credibility, bring stability and attract investors to the utility sectors;

- o as an intermediate phase, develop a blueprint that will act as a guide to all the sectors on how to improve the existing regulatory designs;

- o start a process of overhauling the current array of sector-specific statutory provision for economic regulation in order to create an economic regulator that will immediately regulate all of South Africa's network industries; and
- o develop action plans that will reinforce regulators' independence, accountability, and transparency by building the professional and technical capabilities of regulators.

- A uniform regulatory framework must:
 - o promote the independence of regulators – to have independent autonomy
 - o be competent – have the means to acquire the resources necessary to do the job properly;
 - o adopt principles to guide their independence taking into account the Developmental State objectives. The principles should be based on the following:
 - autonomy to make regulatory decisions;
 - powers to appoint and dismiss the regulatory staff to reside with Parliament;
 - funding must be independent of the relevant line or shareholding Ministry and raised either through industry levies (or licensing fees) or an independent budget vote;
 - reporting line and performance oversight should reside with Parliament;
 - the regulator should be granted organisational autonomy in terms of its legal identity, physical location, and staffing pool;
 - the decision-making process of the regulator should be transparent to demonstrate that there is no manipulation by any external forces; and
 - a focus on competitive neutrality.

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RECOMMENDATION 6(b)

Government should undertake a process of identifying policy inconsistencies and policy conflicts; clarify the role of economic regulators; and develop a blueprint to guide regulatory designs.

RECOMMENDATION 7

The Government should develop a common performance management system.

The common performance management system should:

- be based on an SOE performance scorecard which should be developed by the central authority responsible for commercial entities;
- be aligned to the Developmental State principles;
- be linked to the performance reporting systems of the oversight authority;
- standardised reporting guidelines for SOEs taking into account SOE categorisation;
- be based on the mandates and strategic objectives of SOEs;
- include monitoring and evaluation of collaboration amongst SOEs;
- include customer (user) satisfaction indices customised for each SOE, measured regularly (annually) through independent surveys conducted by independent auditing or research entities; and
- assess SOEs on the basis of outputs of the value chain that the particular SOE contributes to through its activities (total impact assessment).

RECOMMENDATION 8

The mandates of SOEs should be subject to critical strategic review every five years, and the requirement thereof should be factored into the SOE Act.

Changes to mandates should be:

- aligned with the SOEs' overarching strategy;
- approved in concurrence with the SOE Council of Ministers;

RECOMMENDATION 11

SOEs should lead the South African economy in prioritising skills development.

This must be done by:

- each SOE contributing to adequate sectoral skilling;
- the development of skills needs - assessment by every SOE to contribute to a national register of skills needs;
- collaborating with tertiary and further education institutions as well as private industry;
- the setting aside of dedicated funds as a percentage of total revenue to target staff/professional development from top to bottom;
- championing and driving development of the technical, artisanal and managerial skills they require;
- focusing on the development of scarce intermediate and high-level knowledge-based skills;
- continuing support for work-based training programmes;
- implementing structured and effective internships in collaboration with educational institutions;
- establishing specialised and dedicated SOE sector academies;
- implementing structured and effective learnerships that should be extended to at least two years;
- being proactively involved in career guidance support services;
- developing and implementing monitoring and evaluation guidelines for skills development; and

- reviewing and augmenting the skills development funding model for SOEs to accommodate the extended training requirements. This must be done considering the following sources:

- o National Treasury;
- o SETA discretionary grants; and
- o the National Skills Fund.

RECOMMENDATION 12

SOEs should ensure that the procurement process is transformational.

This should be done by:

- taking into account local and historical factors; monitoring the suppliers' commitment to B-BBEE elements to ensure compliance by suppliers (this information should be shared among SOEs);
- tracking and monitoring spend on black rural, disabled and women-owned businesses;
- identifying opportunities within the value chain of SOEs that could be relevant to young people and companies owned by the targeted beneficiaries of B-BBEE;
- creating an SOE network that would aggregate purchasing opportunities arising for SOEs;
- creating an agenda for transformation in the sectors of the economy in which they operate and use these as leverage to drive transformation;
- enhancing other elements of the B-BBEE Scorecard by emulating the State Owned Entities Procurement Forum (SOEPP), which is a group of SOEs that voluntarily collaborate in procurement;

- encouraging Government to recognise and leverage SOE procurement networks like SOEPP; and
- playing a greater role in enterprise development through the establishment of dedicated enterprise development units.

RECOMMENDATION 13

SOEs should play a leading role in socio-economic development.

This should be done by:

- identify the pool of beneficiaries that could participate in a suite of Socio-Economic Development (SED) initiatives within the SOE;

- subjected to Parliamentary oversight; and
- formulated to include a strong element of measurability.

RECOMMENDATION 9

The agreement and sign-off of statements of strategic intent and corporate performance plans should be:

- made mandatory for every executive oversight authority; and
- developed within a specified time-line.

There should be a focus on a dedicated, deliberate training and development programme for oversight functionaries.

In addition, strong sanctions and accountability measures should be in place to deal with non-compliance and ensure accountability and productivity.

RECOMMENDATION 10

All Government entities and SOEs should be required to develop transformation plans.

The transformation plans for SOEs should:

- have implementation time frames;
- be included in the performance contracts of executives and management;
- require boards to establish transformation sub-committees or add the transformation function in a dedicated fashion to an existing sub-committee; and
- include Broad-Based Black Economic Empowerment performance indicators as part of the pre-determined objectives to be assessed by the Auditor General.
- Include the review of the current BBBEE initiatives including Charters. Preferential Procurement to determine their successes or failures.

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- directing those beneficiaries seeking to be employed towards skills development initiatives such as learnerships, internships or mentorship programmes;
- directing beneficiaries who might be school-leavers to a further education and training track;
- directing beneficiaries interested in self-employment on how to benefit from the Enterprise Development (ED) initiatives; and
- creating a consolidated SOEs Corporate Social Investment Fund to drive the macro-impact and scale of social investments.

RECOMMENDATION 14

Transformation should be an integral part of the contractual agreement between the Executive Authority and SOEs.

This should be done by:

- formalising contracting on transformation plans, including targets and delivery;
- ensuring that at a governance level the boards are structured to give primary attention to transformation delivery;
- ensuring continual monitoring of transformation in SOEs; and
- ensuring compliance monitoring of SOEs by the B-BBEE Commission and the Auditor General.

RECOMMENDATION 15

Sanctions for corrupt activities as well as fronting should be supplemented by a register of delinquent individuals and companies that are involved in corruption practices. The common register should be made available to SOEs.

RECOMMENDATION 16

The empowerment framework and legislation should be streamlined to facilitate substantial contribution towards transformation as opposed to box-ticking compliance.

This should be done by:

- harmonising the Preferential Procurement Policy Framework Act (PPPFA) and the B-BBEE Act;
- implementing changes proposed by the B-BBEE Advisory Council in the B-BBEE Amendment Bill, emphasising compliance with the B-BBEE Act by organs of the state;
- regulating verification agencies;
- implementing sanctions and penalties for non-compliance;
- making BEE compliance certificates compulsory for all SOEs;
- implementing the appointment of the B-BBEE Commission as proposed by the Amendment Bill;
- revising the thresholds applicable from the 80/20 and 90/10 preference point systems to a uniformed 70/30 system;
- extending the current SOE exemption from PPPFA indefinitely until the legislative conflicts in the PPPFA and the B-BBEE Act are resolved;
- enacting provisions that enable targeted set-asides for marginalised groups such as cooperatives, SMEs, women, the disabled, youth, and rural participants; and
- the Department of Trade and Industry developing capacity to enforce and monitor implementation of B-BBEE of SOEs on an ongoing basis.

RECOMMENDATION 17

Government should rationalise its holdings by focusing on those SOEs that provide public goods and those deemed to be strategic, namely serving national interests, national security and priority sectors.

This must be done either by:

- exiting from those sectors where market failure no longer exists and/or that can be adequately provided for by the private sector; or the mandate is no longer justifiable; or
- divesting either fully or partially from those SOEs observed to be under-performing that

are competing unsuccessfully against private operators; or

- absorbing those entities whose functions can be cost-effectively carried out by Government departments by incorporating them into line function department programmes.

RECOMMENDATION 18

The Government should develop a consolidated funding model for commercial SOEs and DFIs.

- This should be done collectively by the Central Authorities for commercial entities and DFIs as well as National Treasury, with the concurrence of the SOE Council of Ministers.
- National Treasury, in terms of its mandate, must exclusively marshal and manage all liabilities of SOEs, both commercial and non-commercial, because they are in the end the State's contingent liabilities.

RECOMMENDATION 19

The Government should develop and adopt a policy shift towards a greater mix of debt finance and equity finance.

This must be done by

- where relevant, and after consideration by the SOE Council of Ministers and approval by Cabinet, considering possibilities of listing select SOEs on the JSE whilst astutely preserving Government control and maximising investor participation in SOEs; and
- instituting a flexible policy that discourages the raising of private funds to provide capital to those SOEs where private sector involvement is not desirable (e.g. natural monopolies).

RECOMMENDATION 20

Private sector participation in partnering with SOEs to deliver on the provision of both economic and social infrastructure should be encouraged and expanded.

This involvement must be through direct partnerships between the private sector and the SOEs or the Government, such as Public Private Partnerships, joint ventures, or other forms of public-private collaboration.

RECOMMENDATION 21

A funding model for the funding of public infrastructure based on a distinction between economic and social infrastructure must be developed.

The following principles must apply:

- Economic infrastructure, where relevant, must be funded on a user pays basis. Such a funding approach should be complemented by, for example, a portion of the proposed resources tax.
- Funding of social infrastructure, including roads, should have less reliance on the 'user pays' principle, and more on taxes.
- The emphasis on taxes and the 'user pays' funding model as the only sources of generating capital for infrastructure must be reviewed, moderated and blended with other diverse policy options. Such funding should be considered and approved by the SOE Council of Ministers guided by National Treasury.

- To adopt a relatively expansionary gearing policy, the Government must signal unambiguously to financial markets its implicit backing of this form of SOE debt because SOEs are strategic.
- The future pricing of services and retention of earnings must take into account ongoing maintenance requirements and the eventual need to replace obsolete infrastructure to avoid future scrambles for capital to address deterioration.

I.S.P

RECOMMENDATIONS continued

RECOMMENDATION 22

Mining as a strategic sector and a significant economic user of infrastructure in line with practices from other mining communities around the world should contribute fairly to the development of infrastructure for economic use. This entails that in addition to tariffs that are based on user pay principle for economic use of infrastructure, consideration of the use of various policy tools to achieve fair contribution by the mining sector should be examined; these could include mandatory local beneficiation and ring-fencing of a portion of the proposed resources tax to develop infrastructure.

RECOMMENDATION 23

The Government should turn selected SOEs into national world-class state commercial (Industrial and economic) flagships.

This must be done:

- on the basis of overall performance with respect to service delivery and financial returns;
- by adequately capitalising them; and
- by structurally and managerially consolidating them;
- by focusing their operations on core strategic objectives in the context of the Developmental State; and
- by setting their targets for financial and operational performance comparatively with their domestic and global peers.

RECOMMENDATION 24

Government should address the issue of non-financially viable commercial SOEs.

This must be done by considering some of the following options:

- rationalisation of SOEs based on certain criteria
- limit State involvement where technology disrupts Natural Monopolies
- retaining and adequately funding them as non-commercial entities; or

- injecting private sector practices and therefore gradually phasing them into commercial entities with a mix of public and private equity ownership; or
- completely disposing of them as state entities; or

- absorbing them into the line function department where there is a case for running them at less costly as a Government line function.

The final determination should be done in concurrence with the SOE Council of Ministers.

RECOMMENDATION 25

The Government should actively promote a common national understanding and commitment to a Developmental State vision.

This should be done by:

- a strong communication and popularisation drive;
- reaching a clear determination and understanding of the role of SOEs in the Developmental State agenda; and
- monitoring and evaluating the implementation of the vision by Government departments and SOEs.

To undertake the above successfully, the State needs comprehensive enablement and capacity.

RECOMMENDATION 26

The Government should build its capacity to develop and implement an overarching strategy for SOEs.

This must be done by:

- structurally empowering the Central SOEs Authorities to formulate, monitor and facilitate implementation of the SOE overarching strategy;
- capacitating the Central SOE Authorities (as recommended in this report) with sufficient funding and highly qualified and competent individuals with specialised experience in the SOE sector;

- ensuring collaboration of the Central SOE Authorities with international institutions such as the OECD, African Development Bank (ADB), and the UN, and with countries that have successfully managed visioning and strategy-setting for SOEs;

- providing for the representation of the Central SOEs Authorities in the National Planning Commission and any other agency whose responsibility it is to drive the planning and implementation of the Developmental State vision and plan; and
- targeting capacity development at all three spheres of Government.

RECOMMENDATION 27

A transitional SOEs Reforms Committee (Execution Management and Monitoring Task Team) must be established to drive the implementation of the PRC's recommendations.

Appointment to this committee must:

- be effected as soon as the PRC recommendations are adopted and continue until the SOE reforms are fully implemented and/or handed over to the responsible Executive Authority;
- be experts nominated by the President and the central authorities, namely DPE, Treasury, DTI, EDD, the National Planning Ministry and other relevant Government stakeholders.

The committee must:

- be provided with the commensurate powers and funding to effect its mandate; and
- report progress to the President.

RECOMMENDATION 28

The proposed SOE Council of Ministers and the Central SOEs Authorities should develop customised human capacity building programmes.

This must target the following areas:

- the State as an owner;
- the State Ownership representative (Executive Authority);

- the Board (appointed by the Executive Authority to give externalised oversight); and
- operations (Executive and Operational Management).

RECOMMENDATION 29

The Government should ensure that the Executive Authorities' SOE strategic management and relationships are professional by aiming at the following:

- maintaining strategic relations and exchange within and between the Executive Authorities and the management of the entities;
- improving the governance of the SOEs;
- enhancing the capacity of the State to act as an effective owner;
- being an effective State advisor on the affairs of the SOEs;

- ensuring transparency in dealing with Parliament, and other Ministries and stakeholders;

- ensuring quality delivery of services in line with the Developmental State agenda; and
- ensuring accountability and safeguarding of the Government's assets.

Such processes should take into account balance of merit and transformation.

RECOMMENDATION 30

The Government should improve financial decision-making capacity in all departments dealing with SOEs.

This must be done in the following areas, among others:

- facilitate optimisation of overall financial and social benefits and returns from the SOEs assets;
- capacity to make decisions in budget allocation that is always congruent with any evolutions in the mandates of the SOEs;
- exploration of alternative funding sources; and
- capacity to leverage funding from equity finance, PPPs and multi-lateral institutional funding sources.

RECOMMENDATIONS continued

RECOMMENDATION 31

The Government should develop an integrated reporting, monitoring and evaluation capacity for SOEs across all spheres of Government.

This should be done by:

- introducing a compulsory electronic reporting and performance management system with access to verifiable source documents for monitors and evaluators;
- providing commensurate skills and funding to undertake these tasks;
- ensuring optimum information access and transparency; and
- including essential information such as mandates; shareholder compacts/statements of intent; corporate plans; key performance indicators; asset base; equity and liabilities; income; the total Return on Capital (RoC); Return on Equity (RoE); Operating Margin; Net Debt/EBIDTA or Net Debt/Equity; profits if any; dividends paid to the Government; and the total number of employees by gender, race and disability employed by each SOE.

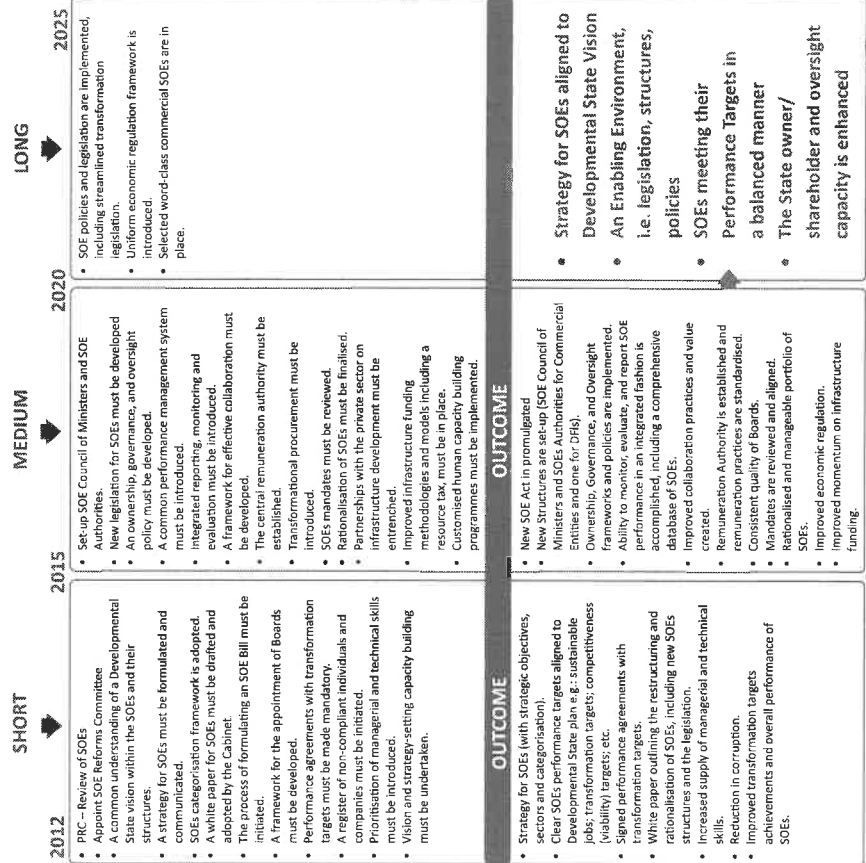
IMPLEMENTATION

The implementation of the PRC recommendations should be viewed as a reform process or programme, not as a once-off event. Hence, the PRC proposes phased implementation processes of SOE reforms as detailed below. There are three phases proposed:

- Phase one – implementation of short-term recommendations
- Phase two – implementation of medium-term recommendations
- Phase three – implementation of long-term recommendations

Appropriate institutional arrangements would have to be put in place to ensure effective implementation across all spheres of Government and departments. The PRC recommends that the President of the Republic of South Africa appoints a SOE Reforms Committee (or Execution Management and Monitoring Task Team) after the PRC Report is approved or adopted.

The entire proposed SOE reforms process is illustrated in the table below:



I.S.P

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Cabinet

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30 April 2013

(b) approved that the matter be retained on the Annexure of Work in Progress.

3.3.9 **Item 6.1: Dissolution of the Supreme Council for Sport in Africa (SCSA) and integration of its function to the African Union (AU)**
(Cabinet memorandum 2 of 2013, dated 21 February 2013, file number 2/3/3/1, Ministry of Sport and Recreation)

Minister FA Mbalula

The Cabinet noted that the matter was held in abeyance.

3.4 **JOINT MEETING OF ALL CABINET COMMITTEES: MEETING OF 24 APRIL 2013**
(Deputy President KP Motlanthe)

The Cabinet approved the minutes and accepted the recommendations as set out below:

3.4.1 **Item 1.1: Final Report of the Presidential Review Committee on State Owned Entities**
(Cabinet memorandum 1 of 2013, dated 2 April 2013, file number Presidency PME/PRC Report 01 of 2013, Ministry in the Presidency: Performance Monitoring and Evaluation as well as Administration. Refer to item 3.4.2 of the minutes dated 5 December 2012)

Minister OC Chabane

The Cabinet

(a) accepted the Report of the Presidential Review Committee on State Owned Entities;

(b) approved the appointment of a transitional State Owned Entities Reforms Committee by the President to, amongst others, consider the Report and its recommendations, including that a clear distinction be made between State Owned Enterprises (Commercial) and State Owned Entities (Non-Commercial) and whether the proposed, overarching legislation would be required.

All Members

3.5 **CABINET COMMITTEE FOR THE ECONOMIC SECTORS, EMPLOYMENT AND INFRASTRUCTURE DEVELOPMENT: MEETING OF 24 APRIL 2013**
(President JG Zuma)

The Cabinet approved the minutes and accepted the recommendations as set out below:

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

2021-03-04
DECLASSIFIED

SIGNATURE: *M. Maseko*

SECRETARY OF THE CABINET

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

2013 APR 30

SIGNATURE: _____

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Annexure "MCR5"

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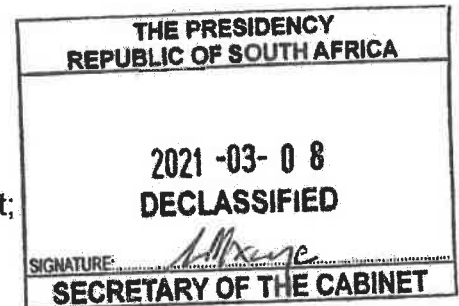
10 June 2015

6 MINISTER OF ENERGY**6.1 NUCLEAR NEW BUILD PROGRAMME PROCUREMENT PROCESS**

(Cabinet memorandum 5 of 2015, dated 9 June 2015, file number E2/5/9/3, Ministry of Energy. Presentation entitled "NNEECC - Energy Security Committee of Cabinet - 10 June 2015". Refer to item 3.4.8 of the minutes dated 7 November 2012)

- 6.1.1 The presentation and discussion was attended by Messrs Z Mbambo: Deputy Director-General: Nuclear and S Thobejane: Advisor from the Department of Energy.
- 6.1.2 Messrs Mbambo and Thobejane briefed Cabinet on the Nuclear Build Programme by means of a presentation entitled "NNEECC - Energy Security Committee of Cabinet - 10 June 2015" (*copy for record purposes only*). The presentation referred to the following:

- (a) Opening remarks and objectives;
- (b) The pre-procurement phase;
- (c) Inter-Governmental agreements;
- (d) The state of readiness for nuclear procurement;
- (e) The procurement strategy and plan;
- (f) A Communication Strategy and Plan;
- (g) Matters for future consideration by the National Nuclear and Energy Executive Coordination Committee (NNEECC); and
- (h) Closing remarks.



- 6.1.3 The **Cabinet** discussed the memorandum which was distributed and returned at the meeting and -

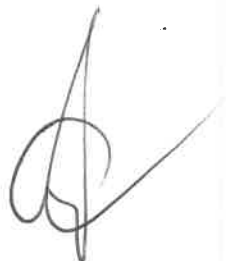
- (a) **noted** the progress made in developing the Procurement Strategy and Plan by broad-based South African experts and professionals;
- (b) **endorsed** the Strategic Hybrid Procurement Plan and the Department of Energy (DoE) as the Procuring Agency;
- (c) **endorsed** the decision of the NNEECC for the Department of Energy to implement the approved Strategic Hybrid Procurement Process in keeping with the Procurement Plan; and

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10 June 2015

- (d) **approved** that the Minister of Energy, in consultation with the NNEECC, starts the procurement process in the Second Quarter of 2015 to select a Strategic Partner or Partners by the end of 2015; and
- (e) **approved** that any financial implications be concluded in keeping with paragraph 6.2.3(e) of these minutes.

6.2 STATE OF READINESS TO IMPLEMENT THE NUCLEAR NEW BUILD PROGRAMME

(Cabinet memorandum 6 of 2015, dated 8 June 2015, file number E2/6/9/3, Ministry of Energy. Refer to item 3.4.8 of the minutes dated 7 November 2012)

- 6.2.1 The presentation and discussion was attended by Messrs Z Mbambo: Deputy Director-General: Nuclear and S Thobejane: Advisor from the Department of Energy.
- 6.2.2 The **Cabinet also noted** the presentation referred to in paragraph 6.1.2 of these minutes.
- 6.2.3 The **Cabinet** discussed the memorandum which was distributed and returned at the meeting and -
 - (a) **noted** the Eskom Board decision to terminate its role as Owner Operator for the Nuclear New Build Programme;
 - (b) **approved** the South African Nuclear Energy Corporation (NECSA) as the implementing agent for the Nuclear New Build Programme;
 - (c) **approved** that a review of the current existing nuclear portfolio and or assets be undertaken with the intention to designate them to NECSA; and
 - (d) **approved** that the relevant Departments implement the necessary changes and or amendments to legislation for NECSA to become a South African nuclear organisation; and
 - (e) **approved** that the Minister of Energy must, in consultation with the Minister of Finance and the National Nuclear Energy Executive Committee (NNEECC), as a matter of urgency submit a memorandum dealing with -
 - (i) the financial implications;
 - (ii) the proposed funding model;

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THE PRESIDENCY REPUBLIC OF SOUTH AFRICA
2021-03-08 DECLASSIFIED
SIGNATURE: <i>[Signature]</i> SECRETARY OF THE CABINET

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10 June 2015

- (iii) the risks and mitigation strategies; and
- (iv) the contributions by countries as contained in the Inter-Governmental Agreements.

6.3 INTER-GOVERNMENTAL AGREEMENTS (IGA) ON THE NUCLEAR NEW BUILD PROGRAMME

(Cabinet memorandum 7 of 2015, dated 8 June 2015, file number E2/7/9/3, Ministry of Energy. Refer to item 3.4.8 of the minutes dated 7 November 2012)

- 6.3.1 The presentation and discussion was attended by Messrs Z Mbambo: Deputy Director-General: Nuclear and S Thobejane: Advisor from the Department of Energy.
- 6.3.2 The **Cabinet also noted** the presentation referred to in paragraph 6.1.2 of these minutes.
- 6.3.3 The **Cabinet discussed** the memorandum which was distributed and returned at the meeting and -
- (a) **noted** the Inter-Governmental Agreements that have been concluded in preparation for the Nuclear Procurement Programme;
 - (b) **approved** that the concluded Agreements be submitted to Parliament for ratification;
 - (c) **noted** the outstanding Agreements with Canada and Japan as well as future potential negotiations with Brazil, Namibia and Indonesia; and
 - (d) **noted** that the Department of Energy (DoE) would develop and implement a Government Communication Campaign to promote Nuclear use for peaceful purposes. This would also include briefing notes for Ministers and Deputy Ministers; and
 - (e) **approved** that any financial implications be concluded in keeping with paragraph 6.2.3(e) of these minutes.

6.4 REPORT ON PRE-PROCUREMENT PHASE NUCLEAR NEW BUILD PROGRAMME

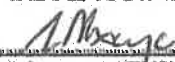
(Cabinet memorandum 8 of 2015, dated 8 June 2015, file number E2/8/9/3, Ministry of Energy. Refer to item 3.4.8 of the minutes dated 7 November 2012)

- 6.4.1 The presentation and discussion was attended by Messrs Z Mbambo: Deputy Director-General: Nuclear and S Thobejane: Advisor from the Department of Energy.

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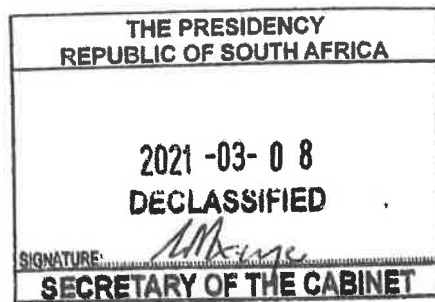
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Cabinet

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10 June 2015

- 6.4.2 The **Cabinet also noted** the presentation referred to in paragraph 6.1.2 of these minutes.
- 6.4.3 The **Cabinet** discussed the memorandum which was distributed and returned at the meeting and -
- (a) **noted** the progress made in the development and completion of the Pre-procurement phase of the Nuclear Build Programme;
 - (b) **approved** that the Minister of Energy commences the actual procurement process in the Second Quarter of 2015, in consultation with the National Nuclear and Energy Executive Coordination Committee (NNEECC); and
 - (c) **approved** that any financial implications be concluded in keeping with paragraph 6.2.3(e) of these minutes.



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Annexure "MCR6"

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Cabinet

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9 December 2015

7 MINISTER OF ENERGY**7.1 RECOMMENDATIONS ON THE NUCLEAR NEW BUILD PROGRAMME (NNBP) FINANCIAL IMPLICATIONS: PROPOSED FUNDING MODEL, RISKS IDENTIFICATION AND MITIGATION STRATEGIES**

(Cabinet memorandum 13 of 2015 dated 8 December 2015, file number E/2/5/9/3, Ministry of Energy. Refer to item 6.1 of the minutes dated 10 June 2015)

7.1.1 The discussion was attended by Messrs T Zulu, Director-General, Z Mbambo, Deputy Director-General from the Department of Energy and L Fuzile, Director-General of the National Treasury.

7.1.2 The Cabinet –

- (a) **requested** that the last sentence of the first paragraph under paragraph 9 be deleted;
- (b) **approved** that the Department of Energy issue the Request for Proposal (RPF) for a Nuclear New Build Programme (NNBP) of 9600 MW of nuclear power;
- (c) **approved** that the final funding model be informed by the response of the market to the RFP and thereafter be submitted to Cabinet for final consideration; and
- (d) **requested** that, where relevant, the exchange rates referred to in the memorandum, be adjusted to current values.

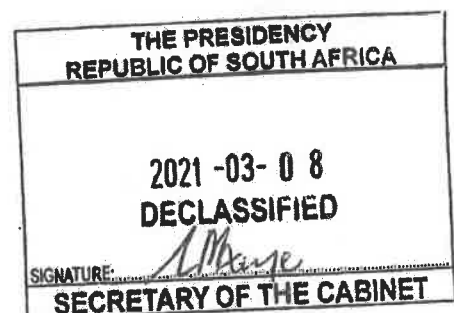
7.2 APPOINTMENT OF CANDIDATES TO SERVE AS MEMBERS OF THE CENTRAL ENERGY FUND ('CEF')

(Cabinet memorandum 12A of 2015 dated 7 December 2015, file number CEF/ba/2015, Ministry of Energy. Refer to item 3.4.4 of the minutes dated 4 November 2015 as well as item 3.3.6 of the minutes dated 19 February 2014)

The **Cabinet approved** the appointment of the following Members to the Central Energy Fund (CEF) Board for a period of 3 years with effect from 10 December 2015 to 9 December 2018, subject to the verification of qualifications and the relevant security clearance:

- (a) Dr X Mkwazi (Chairperson);
- (b) Ms M Molope;
- (c) Ms L Mtunzi; and
- (d) Mr M Moagi.

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Annexure "MCR7"

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


STATEMENT BY THE FORMER DIRECTOR-GENERAL OF THE NATIONAL TREASURY

I, the undersigned,

Lungisa Fuzile

do hereby state under oath that:

1. I was the Director-General of the National Treasury between May 2011 and May 2017 and until 2017 had been serving in the public service for a period of twenty years. I currently serve as the Chief Executive Officer of Standard Bank South Africa.
2. I depose to this affidavit to confirm the affidavit of H.E. Matamela Cyril Ramaphosa, the President of the Republic of South Africa ("*the President*") in so far as it relates to me.
3. The facts deposed to in this affidavit are within my own personal knowledge and belief and are true and correct.
4. I hereby confirm the contents of Mr Ramaphosa's statement to the limited extent that such contents relate to me.


LUNGISA FUZILE

I hereby certify that the deponent declares that he knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at HYDE PARK on this 25TH day of MAY 2021 and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.


COMMISSIONER OF OATHS

FULL NAMES: FAYE HELEN BOZALEK
ADDRESS: 11 ALICE LANE, SANDTON
DESIGNATION: ATTORNEY
AREA:
Stamp:

**FAYE HELEN BOZALEK
EX OFFICIO
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA
11 ALICE LANE
SANDTON**

Annexure "MCR8"

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Cabinet

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13 April 2016

8 MINISTER IN THE PRESIDENCY FOR PLANNING, MONITORING AND EVALUATION

8.1 DISCUSSION ON CURRENT AFFAIRS

(Document entitled "Discussion on Current Affairs: 13 April 2016")

8.1.1 The **Cabinet** noted the contents of the above-mentioned document (Annexure B), dealing with the following:

(a) Key issues in the Communication environment:

- (i) 2016 Local Government Elections;
- (ii) Constitutional Court Judgment;
- (iii) South African Revenue Service (SARS);
- (iv) Congratulatory Notes; and
- (v) Condolences;

(b) Progress on the implementation of programmes:

- (i) Operation Phakisa - Progress;
- (ii) e-Channel Project;
- (iii) Imbizo Focus Week; and
- (iv) Human Settlements; and

(c) Upcoming communication campaigns and events:

- (i) International Agenda; and
- (ii) Freedom Month.

8.1.2 The **Cabinet** approved -

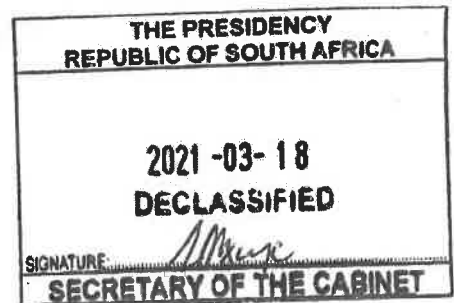
(a) the general thrust of the document, subject to the revision of the following items under the key issues in the communication environment:

- (i) Item 2 – Constitutional Court Judgment: The judgment would be studied;

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Cabinet

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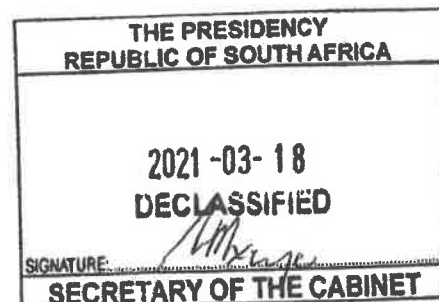
13 April 2016

- (ii) Item 5 – Condolences: Add condolence on the passing of the Acting Director-General of Economic Development, Mr Kumaran Naidoo; and
- (iii) Paragraph 1.3 – The Minister of Cooperative Governance and Traditional Affairs (COGTA) would be communicating an appropriate date when the voters' roll closes. Minister DDD van Rooyen
- (b) that the Ministers of Labour, of Finance and of Mineral Resources prepares a briefing for Cabinet on the implications of the decision of certain banks and auditing firms to close the accounts of and withdraw auditing services from Oakbay Investments; and Ministers MN Oliphant, PJ Gordhan and MJ Zwane
- (c) the Ministers would also investigate the conduct of the banking/financial sector companies in relation to the closure of the accounts, especially as it relates to client confidentiality.

Minutes approved on 26 April 2016

SECRETARY
Date:

PRESIDENT



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Annexure "MCR9"

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Cabinet

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22 June 2016

8 MINISTER OF MINERAL RESOURCES**8.1 BRIEFING ON THE IMPLICATION OF THE DECISION OF CERTAIN BANKS AND AUDIT FIRMS TO CLOSE THE ACCOUNTS OF AND WITHDRAWING AUDITING SERVICES FROM OAKBAY INVESTMENTS**

(No document. Refer to paragraph 8.1.2(b) and (c) of the minutes dated 13 April 2016)

The Cabinet -

- (a) **noted** a request that the memorandum be withdrawn for further refinement and consultation;
- (b) **agreed** that the focus of the memorandum deal with the conduct of the banking/financial sector companies in relation to the closure of the accounts, especially as it relates to client confidentiality, amongst others; and
- (c) **approved** that the Ministers of Mineral Resources, of Finance and of Labour brief the President and the Deputy President prior to submitting the revised memorandum to Cabinet.

Ministers
PJ Gordhan
and MN
Oliphant



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Annexure "MCR10"

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Cabinet

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6 July 2016

5 MINISTER OF MINERAL RESOURCES**5.1 BRIEFING ON THE IMPLICATION OF THE DECISION OF CERTAIN BANKS AND AUDIT FIRMS TO CLOSE THE ACCOUNTS OF AND WITHDRAWING AUDITING SERVICES FROM OAKBAY INVESTMENTS**

(Cabinet memorandum 1 of 2016, dated 29 June 2016, file number IMC/01, Department of Mineral Resources. Refer to item 8.1 of the minutes dated 22 June 2016)

The Cabinet -

- (a) **noted** the progress made in relation to the report on the implications of the decision of certain banks and audit firms to close the accounts of and withdrawing auditing services from Oakbay Investments and that the memorandum required more work to be done;
- (b) **approved** that the task team, including the Minister of Communications, intervene, where possible, to further assist the 16 000 workers affected by the action of the banks as referred to in the memorandum;
- (c) **approved** that the Minister of Finance, in collaboration with relevant Members, further develops measures ensuring the effective transformation of the financial and banking sectors (refer to paragraph 3.5.7(c)(ii) of the minutes dated 4 March 2015 as well as item 3.3.2 of the minutes dated 6 December 2006).
- (d) **approved** that in view of (c) above, and the memorandum discussed by Cabinet (on 6 July 2016), that the Minister of Finance reviews the recommendations and submits memoranda including, amongst others, the following:
- (i) The possible establishment of an independent Banking Tribunal to assist aggrieved customers or alternatively to expand the mandate of the Banking Ombudsman with a view to addressing actions referred to in the memorandum;
- (ii) Consider reviewing the Financial Intelligence Centre Act (FICA) with a view to strengthening reporting and addressing the concerns raised in the memorandum as well as possible unreasonable practices against "Politically Exposed Persons" (PEPs);
- (iii) Consider the existing provisions for clearing banks with a view to allowing more banks to participate; and

Ministers
PJ Gordhan
and MN
Oliphant

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THE PRESIDENCY REPUBLIC OF SOUTH AFRICA
2016-03-08 DECLASSIFIED
SIGNATURE: <i>A. Mase</i>
SECRETARY OF THE CABINET

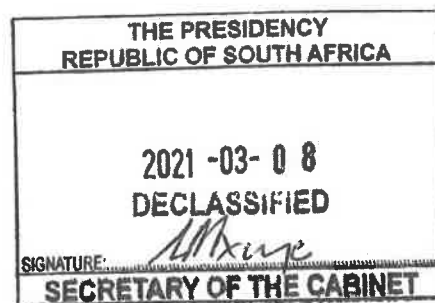
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Cabinet

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6 July 2016

- (iv) Further investigation into the generic nature of the existence of similar decisions the banks and auditing firms undertook, adversely affecting companies or individuals as well as possible collusion in the banking and financial sector; and
- (e) **reiterated** an earlier Cabinet decision for the Post Bank to be transformed into a State Bank and **requested** that the Minister of Telecommunications and Postal Services fast track the process (refer to paragraph 5.1.2(h) of the minutes dated 3 and 4 February 2015);

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Annexure "MCR11"

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Cabinet

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10 December 2014

9 MINISTER OF RURAL DEVELOPMENT AND LAND REFORM AS CO-ORDINATING MINISTER OF THE ESEID CLUSTER

(Document entitled "Draft Five-Point Plan to Address the Electricity Crisis". Refer to Item 2.1.3 of the minutes dated 11 September 2014)

9.1 BRIEFING ON A PLAN TO ADDRESS THE ENERGY CHALLENGE

9.1.1 The discussion was attended by Mr O Aphane (Director-General) and Dr W Barnard from the Department of Energy as well as Mrs MA Mokholo (Acting Director-General) and Messrs GL Hlabisa and S Makhathini from the Department of Public Enterprises and S Hanival from the Department of Trade and Industry.

9.1.2 The Minister of Rural Development and Land Affairs briefed the Cabinet on behalf of the Economic Sectors, Employment and Infrastructure Development (ESEID) Cluster on a proposed "Five-point Plan" (Annexure B) to address the existing energy challenges which included interventions related to the following:

- (i) Measures to be implemented by Eskom during the next 30 days;
- (ii) Co-generation;
- (iii) Importation of gas;
- (iv) Coal Independent Power Producers (IPPs); and
- (v) Demand-side Management.

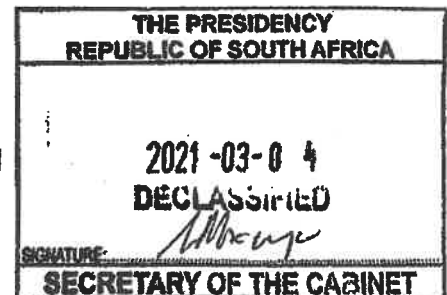
9.1.3 The Cabinet

(a) **noted and discussed** the briefing document on the proposed Five-point Plan;

approved that the Plan be adopted subject to the document be strengthened and refined with a view to:

- (i) instilling a measure of public confidence and credibility as Government is dealing with the challenge;
- (ii) that public meetings with the business sector continues and that clear outcomes are obtained;
- (iii) re-instating an energy safer campaign similar to the 49M Campaign with a view to creating awareness and understanding by the public and business; and

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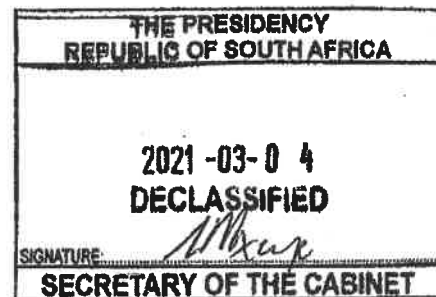
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10 December 2014

- (iv) replacing the term energy "crisis" with energy "challenge"; and
 - (v) refraining from requesting energy intensive users to "mothball" or "temporarily closing production"; and
- (c) noted that the Plan is a short- to medium term intervention and that a comprehensive plan is required (refer to item 2.1.3 of the minutes dated 11 September 2014).



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Annexure "MCR12"

Annexure "MCR13"

WAR ROOM ON ELECTRICITY TERMS OF REFERENCE

1. INTRODUCTION AND BACKGROUND

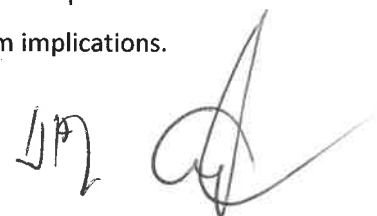
- 1.1. The lack of adequate electricity supply poses a serious risk to our economic growth and there is an urgent need for intervention in the short and medium terms, to restore the supply-demand balance.
- 1.2. On the 10 December 2014 Cabinet approved a Five Point Plan to address the electricity challenge. The Five Point Plan provides a strategy of immediate and short term interventions to manage the electricity supply and demand situation.

2. PROBLEM STATEMENT

- 2.1 Management of the electricity challenges requires the cooperation of a number of different government departments as well as Eskom. It requires rapid collaborative decision-making based on the best available information, which needs to come from various sources. It also requires timely and effective implementation of decisions. This cooperation, decision-making and implementation has not been as effective as is necessary to address the challenges.
- 2.2 As the challenges grew, it became clear that extraordinary measures would need to be taken to ensure that cooperation, decision-making and implementation improve. Cabinet therefore decided to create a war-room to address this issue.

3. ROLES AND RESPONSIBILITIES AND SCOPE OF WORK OF THE WAR-ROOM

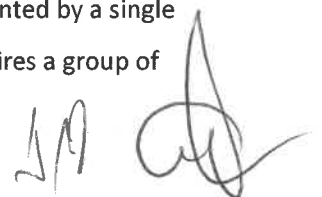
- 3.1 The roles and responsibilities of the war-room are:
 - a) To monitor the implementation of the 5 Point Plan
 - b) To report on progress with the implementation of the 5 Point Plan
 - c) To ensure that the necessary coordination, cooperation and collaboration between the relevant departments, ESKOM and other stakeholders takes place
 - d) To ensure that bottlenecks to timeous implementation are addressed, with a focus on actions which are on the critical path of successfully managing the current challenges
 - e) To ensure that more detailed plans are put in place where necessary, to give effect to the implementation of the 5 Point Plan.
- 3.2 The war-room will focus on managing the current challenges and will therefore have a short-medium term focus. It will look at longer-term issues only in so far as these have implications for the present – e.g. decisions needing to be made now that have longer-term implications.



- 3.3 The war-room will not duplicate any work of Eskom or other departments or entities. It will focus on issues which cut across departments and entities and which require collaboration and cooperation.
- 3.4 As far as possible, the war-room will draw on existing information, while still retaining its independence. Where there are doubts about existing information, the war-room may take measures to obtain more credible information.
- 3.5 The war-room will be strategic. In this regard, it will apply the 80:20 principle, i.e. it will focus on the 20% of issues which will make up 80% of the impact on managing the challenges. It will focus on issues which are resolvable in the short-medium term.

4. HOW THE WAR-ROOM WILL WORK

- 4.1 The war-room will be based in a dedicated work-space in the Union Buildings. It will have a small full-time group of people working in it. The full-time group of people will consist of secondments from government departments (DPME, DoE, DPE) and Eskom as well as contracted-in experts on project management and the electricity sector.
- 4.2 The war-room will focus on monitoring progress with implementation of the 5 point plan, collecting information and preparing reports, arranging ad-hoc meetings with the various stakeholders to address blockages with implementation, and identifying issues for escalation to heads of department, heads of entities and political principals. Its core functions will be monitoring, project management, and the facilitation of resolution of blockages to timeous implementation of all the detailed aspects of the 5 point plan. The war-room will firstly attempt to resolve blockages through engagements with the relevant stakeholders. If this is not successful, the blockages will be escalated to higher levels for intervention, including Directors-General and heads of entities, the chairperson of the war-room committee (the Deputy Minister of Energy), other Ministers, and the Deputy President, as necessary.
- 4.3 In consultation with all the relevant stakeholders, the war-room will develop an implementation plan (or set of implementation plans) for the 5 Point Plan. This will include identifying key actions or activities as well as responsibilities and time-frames for implementation. It will focus on monitoring implementation of this plan and updating the plan as circumstances change.
- 4.4 Responsibility for implementation of key actions which need to be implemented by a single organisation will be allocated to that organisation. Where a key action requires a group of

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organisations to work together, responsibility for implementation will be allocated to a lead organisation. Where necessary, the war-room will assist the lead organisation to coordinate the group of organisations to implement the action.

- 4.5 The work of the war-room will be directed by the Deputy Ministers of Energy, Public Enterprises and Cooperative Governance. The war-room committee is chaired by the Deputy Minister of Energy, and the Director General of Planning, Monitoring and Evaluation in the Presidency is the deputy chairperson. The war-room will report on its progress to the FOSAD Economic Cluster and Ministerial Economic Cluster and to Cabinet, as and when required.
- 4.6 The Deputy President provides overall political leadership for the war-room, and there will be regular engagements with the Deputy President in this regard.
- 4.7 The Deputy President and the Minister of Public Enterprises will periodically engage with the Eskom Board regarding the work of the war-room.
- 4.8 There will be weekly meetings between the war-room, the core Directors General (DPE, DoE, DCOG, NT, GCIS, dti, and EDD) together with the CEO and CFO of Eskom, to review progress and agree on the resolution of blockages.
- 4.9 The war-room will engage with other stakeholders, such as other government departments, NERSA, business and industry, and labour as and when necessary.
- 4.10 Communication from the war-room will be managed by GCIS, in terms of the agreed communication protocol and communication plan.

- END -

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Annexure "MCR14"

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THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
INTER-MINISTERIAL COMMITTEE (IMC)

WAR ROOM MEETING

Date: 28 JANUARY 2015

Venue: ROOM 159, EAST WING, UNION BUILDINGS

MINUTES OF THE MEETING HELD ON 28 JANUARY 2015**Chairperson: DEPUTY PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA****SECTION 1: PROCEDURAL MATTERS****1.1 ATTENDANCE**

Deputy President Ramaphosa	Acting Director-General Barnard
Minister Brown	Acting Director-General Moloko
Minister Pandor	Director-General Fuzile
Minister Patel	Director-General Shabane
Minister Nxesi	Director-General Mjwara
Minister Davies	
Minister Joemat-Peterson	War Room officials: Director General Phillips; Mr. Kariem
Minister Nkwinti	Mr. Aplane; Mr. Hlabisa; Mr. Dicks
Deputy Minister Majola	
Deputy Minister Nel	Office of the Deputy President officials: Dr. Simelela; Adv. Jele;
Deputy Minister Jonas	Mr. Speed; Mr. Mamoepa; Mr. Ngcaweni; Ms. Lentsoane; Mr.
Deputy Minister Magwanishe	Seale
	Eskom representatives: Mr. Maloka; Mr. Maroka; Mr. Ntsokolo;
	Mr. Koko; Ms. Hughes

1.2 OPENING AND WELCOME

- 1.2.1 The Chairperson welcomed everyone present and highlighted the significance of the implementation of the 5 Point Plan to respond to the current electricity challenges.

1.3 APOLOGIES

- 1.3.1 The following apologies were noted:

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1.3.1.1 Mr Tshediso Matona, Eskom CEO, and			
1.3.1.2 Ms Tsholofelo Molefe, Chief Financial Officer			
1.4 ADOPTION OF THE AGENDA			
1.4.1 The agenda was adopted with no amendments.			
1.5 ADOPTION OF THE MINUTES			
1.5.1 This was the first meeting of the IMC of the War Room and there was no record of previous meeting.			
SECTION 2:			
ITEM	ACTION LIST RESOLUTIONS	RESPONSIBILITY	TIMEFRAME
2.1 No actions were due as this was the inaugural meeting of the IMC			
SECTION 3:			
ITEM	DISCUSSION AND RESOLUTIONS	RESPONSIBILITY	TIMEFRAME
3.1 Systems update by Eskom	<p>3.1.1 The acting Chief Executive of Eskom briefed the IMC on the state of the System as well as the key developments that had resulted in Eskom having to implement load shedding. The following emerged from the briefing:</p> <p>3.1.1.1 On Monday (26 January 2015), there were a number of trips that resulted in a significant increase in the Unplanned Capacity Loss Factor (UCLF). This amounted to 10GW. The full units outages amounted to over 4000MW, Partial Load Losses (PLLs) amounted to 3800MW, and outage slips amounted to 700MW.</p> <p>3.1.1.2 During this time, the demand significantly exceeded supply and load shedding was necessary to balance the system and avert total system collapse.</p>	Eskom	

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	<p>3.1.1.3 This situation was further worsened by the fact that the reserves (diesel and water) were running very low.</p> <p>3.1.1.4 Since Monday more Units had been brought back and had improved supply but the probability of load shedding remained high.</p> <p>3.1.1.5 The unreliability of generation capacity means that Eskom cannot project when load shedding will occur but can give probabilities.</p> <p>3.1.1.6 The current performance of the system shows that Eskom needs to accelerate the maintenance programme to improve plant availability. Given the tight supply, some of the Units have to operate at below plate capacity as a result of fault/s. There is still no sufficient gap to execute the maintenance strategy. If these units are taken out, the severity of load shedding will intensify.</p> <p>3.1.1.7 Eskom has placed 30 of its senior managers at the power stations to ensure that the current plant performance and implementation of the maintenance strategy is improved.</p> <p>3.1.2 Discussions</p> <p>3.1.2.1 The Ministers recognised the effort that was being made by Eskom on execution of the Maintenance strategy but there are still major concerns on the maintenance practices within Eskom.</p> <p>3.1.2.2 Eskom must indicate to the Ministers of how many units are in the critical state and what needs to be done to address the situation.</p>		
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	<p>3.1.2.3 Eskom must indicate what has caused the breakdown of the Units and there must also start showing improvements in plant performance as the maintenance strategy is being implemented.</p> <p>3.1.2.4 There must be indication on who is responsible for strategic maintenance at Eskom.</p> <p>3.1.2.5 Further assessment is required on the impact of coal quality on the PLLs and what has been done b Eskom to improve the situation. The critical question is why Eskom was unable to anticipate the current problems or is it because it is technically impossible to project?</p> <p>3.1.2.6 There must be further assessment on the maintenance practices of Eskom. It may also be necessary to involve NERSA in the process.</p> <p>3.1.2.7 The lack of credibility of information that is coming from Eskom needs to be addressed e.g. the constant shifting of the Medupi Unit 6 commercialisation date.</p> <p>3.1.2.8 The delays on the recovery programmes, particularly, Duvha is a major concern.</p> <p>3.1.2.9 The engagement between the shareholder and the executives shows that there is something wrong with the performance of the company.</p> <p>3.1.3 Responses from Eskom</p> <p>3.1.3.1 The number of issues raised by the Ministers will require deep dives and this should be addressed at the War Room level and Ministers must be furnished with progress that is being made.</p>		
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	<p>3.1.3.2 Out of the 87 generating units being operated by Eskom, 18 units are running with faults and the target is to reduce this by half.</p> <p>3.1.3.3 On who is executing maintenance, the strategic maintenance is already being done by the private sector largely Original Equipment Manufacturers (OEMs). The private sector themselves have serious skills challenges. Eskom has engaged all of the OEMs CEOs and indicated that the right people must be placed and Eskom operations must not be used as a training ground.</p> <p>3.1.3.4 On the coal quality, engagements with DMR have been initiated on coal supply and quality. Further engagement on this issue at the War Room level is required but work has been done at the Eskom to address the challenges but this has not been adequate.</p> <p>3.1.3.5 On Medupi Unit 6, the commercialisation date remains the end of June 2015.</p> <p>3.1.3.6 On the Duvha Unit 3 recovery, the investigations took longer than anticipated. Furthermore, there are some disagreements on the technology solution. The boiler would need to be rebuilt from scratch.</p> <p>3.1.3.7 The explosion that occurred at Duvha Unit 3 was level 5 and this destroyed most of the evidence on what may have caused the malfunction.</p> <p>3.1.3.8 On Majuba, an interim solution is being implemented to increase the capacity.</p> <p>3.1.3.9 On the state of the generation, there are currently 6300MW at risk and the 3000MW</p>		
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	<p>space required to undertake maintenance is critical to ensure that these faults are addressed and cleared.</p> <p>3.1.4 Resolved</p> <p>3.1.4.1 The War Room must undertake a high level assessment of the Eskom's maintenance practices</p> <p>3.1.4.2 Eskom must submit the status of each unit at all their power station. The War Room must further evaluate this information.</p> <p>3.1.4.3 Eskom must provide a plan on how the challenges around coal quality will be resolved as this is a long-standing issue.</p> <p>3.1.4.4 The communication on what is being done to address the situation is important</p> <p>3.1.4.5 Eskom executives are further empowered to go and run the company effectively and this is their mandate. If there are units that are experiencing problems, these must be stopped and properly maintained.</p> <p>3.1.4.6 CSIR must undertake research on the readiness of RSA companies to provide technology solutions to Eskom.</p> <p>3.1.4.7 There will be an independent assessment of Eskom's maintenance and the Deputy President will appoint an advisory panel. This is intended to support the company.</p>		
<p>3.2 War Room Terms of reference</p>	<p>3.2.1 The Terms of Reference of the War Room were taken as read and the Ministers were give opportunity to raise their concerns</p> <p>3.2.2 The Terms of Reference were adopted in principle with the following issues being highlighted:</p>	<p>War Room</p>	

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	<p>3.2.2.1 The IMC meeting chaired by the Deputy President must be included in the terms of reference.</p> <p>3.2.2.2 If there are major issues that emerge subsequent to this adoption of the Terms of Reference, this will be incorporated to the document.</p>		
<p>3.3 Action Plan and Demand Analysis</p>	<p>3.3.1 The Deputy Chairperson of the War Room presented the Five Point Plan Action Plan and the demand analysis. This showed the following:</p> <p>3.3.2 The detailed actions that must be implemented to realize the objectives of the five point plan. This will be use to monitor progress on the implementation of the Five Point Plan</p> <p>3.3.3 The capacity outlook for the next 6 months, which shows that supply will remain constrained.</p> <p>3.3.4 The impact of the proposed actions on the balancing of the power supply system.</p> <p>3.3.5 Discussions</p> <p>3.3.5.1 The War Room must explore the possible impact of day light saving on the peak demand</p> <p>3.3.5.2 The action plan must prioritise interventions that will have an impact in the short term and improve the current situation and the cost of these options must be taken into account.</p> <p>3.3.5.3 The maximum capacity of our generation system must be directed towards the productive sectors of the economy.</p> <p>3.3.5.4 Diesel must be sourced from the SOC and the focus must be on enhancing the cooperation between state entities.</p>	<p>War Room</p>	

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	<p>3.3.5.5 The role of the Board must be clearly defined and the fiduciary duties of management must not be compromised.</p> <p>3.3.6 Resolution</p> <p>3.3.6.1 The Action Plan was adopted and will be used to report progress on the implementation of the Five Point Plan, on condition that the costs be surfaced</p> <p>3.3.6.2 The issue of diesel pricing must be addressed and the focus must be on reducing the cost of diesel. The ad hoc supplies must be stopped as it results in higher diesel cost.</p> <p>3.3.6.3 The subsequent meetings of the IMC must focus on the following:</p> <p>3.3.6.3.1 The economic impact of all the options in the Five Point Plan to reduce demand and/or increase supply</p> <p>3.3.6.3.2 Impact of day-light saving on the load</p> <p>3.3.6.3.3 The assessment of the maintenance practices at Eskom</p> <p>3.3.6.3.4 The plan on the sourcing of diesel.</p>		
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SECTION 4: CLOSURE

4.1 The Chairperson declared the meeting closed and the date of the next meeting will be communicated by the Deputy President's Office.

CHAIRPERSON
DATE:

Annexure "MCR15"

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

STATEMENT BY THE FORMER DEPUTY DIRECTOR-GENERAL IN THE PRESIDENCY

I, the undersigned,

Busani Ngcaweni

do hereby state under oath that:

1. I was the Chief of Staff (Deputy Director-General) in the Office of the Deputy President between 2008 and 2018, and acted as Chief of Staff in the Office of the President between February and July 2018. I currently serve as the Principal (Director-General) of the National School of Government.
2. I depose this affidavit to confirm the affidavit of H.E. Matamela Cyril Ramaphosa, the President of the Republic of South Africa (*"the President"*).
3. The facts deposed to in this affidavit are within my own personal knowledge and belief and are true and correct.
4. Where I make legal submissions, I do so based on my knowledge of the Constitution, the workings of government, and on the advice of the President's legal advisers.

I.S.P.
BN

5. In my role as Chief of Staff in the Office of the Deputy President I was responsible for ensuring that successive Deputy Presidents carried out their responsibilities as delegated by the Presidents of the Republic, directly or through decisions of the National Executive (Cabinet).
6. For example, Deputy President Cyril Ramaphosa served as Chair of the SA National AIDS Council (SANAC). This was through a formal delegation letter prepared when he assumed the position in 2014. This was consistent with the delegation assigned to his predecessors. He was also appointed the Leader of Government Business in the National Assembly through a formal delegation by the President of the Republic acting within the provisions of section 91(4) of the Constitution. Delegations such as the Chairing of the Inter-Ministerial Committee ("IMC") on SOE Reforms were outcomes of Cabinet decisions arising from submissions by Ministers or general reflections by the National Executive.
7. Further details of the responsibilities assigned to Deputy President Ramaphosa directly by H.E. President Jacob Zuma or arising out of Cabinet decisions are contained in his Statement.
8. More specifically to the matters concerning Eskom, Deputy President Ramaphosa was assigned the responsibility of leading efforts to address electricity challenges following the decision of the meeting of Cabinet of 10 December 2014. The details of this decision were

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communicated to the public through the regular post-Cabinet statement by the then Minister in the Presidency, Mr Jeff Radebe.

9. As the senior official in the Office of the Deputy President, I was responsible for planning and implementing the programmes of Deputy President Ramaphosa. Accordingly, I contacted colleagues at the Department of Planning, Monitoring and Evaluation ("DPME") to set up mechanisms to implement Cabinet's decision. Our responsibility was to ensure that Deputy President Ramaphosa had technical support to execute his mandate. This entailed:

- 9.1. Having a competent Secretariat anchored by the DPME;
- 9.2. Identifying a team of independent experts who could give expert opinion on possible causes and solutions to the challenges facing Eskom (i.e. the Eskom Advisory Panel);
- 9.3. Liaising with other departments and Ministries that were part of the IMC;
- 9.4. Preparing briefing notes and advisories for Deputy President Ramaphosa as and when they were required;
- 9.5. Preparing Replies to Parliamentary Questions; and / or
- 9.6. Arranging site visits to Eskom or other relevant SOEs or institutions where necessary, etc.

10. Acting with or on behalf of the Director-General in the Presidency (Dr Cassius Lubisi), I made arrangements with the Director-General of DPME, Dr Sean Phillips, to set up the Secretariat which would later evolve into a War Room. The War Room was concerned with Eskom's technical issues as per Cabinet's decision. We motivated that this technical War

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Room be located at the Union Buildings (DPME) as a sub-structure of the IMC chaired by Deputy President Ramaphosa.

11. Having DPME coordinate the technical War Room was logical given its role in coordinating and monitoring the implementation of Government's Programme of Action ("PoA"). This work was inter-departmental in nature and therefore required strong coordination from the centre of government. Among others, the War Room meetings included senior officials from the Departments of Energy, Public Enterprises, Cooperative Governance, Economic Development, Trade and Industry, National Treasury and Eskom.
12. The role of the War Room was to implement the Five Point Plan. It did so by: (a) collectively identifying all the key actions which needed to be taken by the different departments and entities in order to resolve the electricity challenge; (b) identifying milestones and timeframes for those key actions; (c) analysing progress and identifying causes of a lack of progress and possible remedies; and (d) providing the IMC with progress reports and recommendations. There was full recognition that this was not just an Eskom matter, but a national emergency affecting the economy, local government and society at large.
13. Part of my work was keeping Deputy President Ramaphosa abreast of all developments related to his work as Chair of the IMC on the electricity challenge (which would at times be referred to as the IMC on Eskom or the War Room IMC) and later the IMC on SOE Reforms. None of these structures had decision making powers. Recommendations from all the IMCs he chaired were processed through to Cabinet by the relevant Ministers.

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14. I drafted a table of meetings of the War Room as well as that of the IMC, and attach it hereto as "BN 1". I also attach a few examples of the minutes of those meetings, referred to in evidence before the Commission, I am told, as the Friday War Room meetings. These show the representative nature of attendance in these meetings including the chairing by the then Director-General of the DPME, Dr Sean Phillips and after he left in March 2015, Mr Malcolm Simpson (Former Senior Manager from National Treasury and the Department of Economic Development). They are as a group marked "BN 2".


 BUSANI NGCAWENI

I hereby certify that the deponent declares that the he knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this 25 day of MAY 2021 and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.


 COMMISSIONER OF OATHS

FULL NAMES: IAN SAKILE PHADU
 ADDRESS: 296 PRETORIUS ST, PTA
 DESIGNATION: PRACTISING ATTORNEY
 AREA: 296 PRETORIUS ST, PTA
 Stamp:

IAN SAKILE PHADU
 COMMISSIONER OF OATHS
 Practising Attorney R.S.A
296 PRETORIUS ST, PTA

"BN1"

**MEETINGS TIMELINE: IMPLEMENTATION OF THE ESKOM
TURNAROUND PLAN**

DATE	FOCUS OF MEETING	ATTENDEES
11 December 2014	Cabinet meeting: approval of a five-point intervention plan to deal with the country's energy situation.	Members of the Executive
13 January 2015	Workshop on the Eskom Turnaround Strategy	
16 January 2015	Meeting on the execution of the Cabinet mandate on overseeing the turnaround of Eskom	Deputy President, Minister Naledi Pandor, Minister Gugile Nkwinti, Minister Lynn Brown; Minister Tina Joemat Peterson; Minister Nhlanhla Nene; Minister Nomvula Mokonyane; Minister Thulas Nxesi; Minister Ebrahim Patel; Deputy Minister Bulelani Magwanishe; Deputy Minister Thembu Majola and Deputy Minister Andries Nel
19 January 2015	Appointment of War Room leadership	
20 January 2015	Deputy President's site visit and engagement with Executives of Eskom	Deputy President Minister of Public Enterprises War Room representatives Eskom leadership
Technical Meetings (Fridays)	WR Technical War Room meetings: 20 February, 27 February, 6 March, 13 March, 20 March, 27 March, 10 April, 12 April, 17 April, 8 May, 15 May, 22 May, 12 June, 26 June, 17 July, 7 August, 21 August, 4 September, 2 October.	Chaired by Director General of Department of Planning, Monitoring and Evaluation and/or seconded Program Manager Participating stakeholders: <ul style="list-style-type: none"> • Eskom • Department of public Enterprises • Department of Energy • Department of Planning, Monitoring and Evaluation • The Presidency • National Treasury • Economic Development Department • Government Communication and Information System • Department of Trade and Industry • Department of Cooperative Governance and Traditional Affairs

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Deputy Ministers Meetings	After - Technical War Room meetings: 20 February, 27 February, 6 March, 13 March, 20 March, 27 March, 10 April, 12 April, 17 April, 8 May, 15 May, 22 May, 12 June, 26 June, 17 July, 7 August, 21 August, 4 September, 2 October.	Chaired by Deputy Minister Majola with Deputy Minister of Energy, Deputy Minister of Public Enterprises, Chair of Technical War Room and Government Representatives
Fortnightly until July 2015	Engagement between the Eskom War Room, Business Unity South Africa and Business Leadership South Africa	
28 January 2015	Eskom Inter-Ministerial Committee meeting	Deputy President Ministers and Deputy Ministers War Room representatives Eskom representatives
29 January 2015	Briefing: first Communications report back by government following Cabinet's meeting on the 11 December 2014	N/A
09 February 2015	Appointment of the Deputy President's Expert Advisory Panel on Eskom's Turnaround Strategy	N/A
17 February 2015	Briefing in preparation for the Eskom Inter-Ministerial Committee meeting	Deputy President Deputy Minister Majola Deputy Minister Jonas
17 February 2015	Eskom Inter-Ministerial Committee meeting	Deputy President Ministers and Deputy Ministers War Room representatives Eskom representatives
23 February 2015	Briefing by NERSA	Deputy President War Room representatives NERSA
25 February 2015	Debriefing meeting with the Eskom Advisory Panel	Deputy President Deputy Minister Majola DG Sean Phillips Eskom Advisory Panel
03 March 2015	Eskom Inter-Ministerial Committee meeting	Deputy President Ministers and Deputy Ministers Eskom War Room representatives Eskom representatives
20 March 2015	Debriefing meeting on Eskom War Room and the Inter-Ministerial Committee	Deputy Minister Majola Deputy Minister Jonas Advisory Panel DG DPME
20 March 2015	Deputy President and Eskom Advisory Panel meeting with Business Leadership South Africa	Eskom Advisory Panel Business Leadership South Africa
23 March 2015	Appointment of a labour representative to the Eskom Advisory Panel	N/A
01 April 2015	Briefing in preparation for the Eskom Inter-Ministerial Committee meeting	Deputy President War Room representatives

02 April 2015	Eskom Inter-Ministerial Committee	Deputy President Ministers and Deputy Ministers Eskom War Room representatives Eskom representatives
02 April 2015	Engagement with Nedlac Social Partners on the Eskom Turnaround Plan	Deputy President Ministers and Deputy Ministers Eskom War Room representatives Nedlac Social Partners
06 May 2015	Briefing by the War Room to the Eskom Inter-Ministerial Committee	Deputy President Deputy Minister Majola DG Sean Phillips
12 May 2015	Briefing by Eskom CEO (Mr Molefe) to the Deputy President	Deputy President Eskom CEO Eskom representatives
12 May 2015	Eskom Inter-Ministerial Committee meeting	Deputy President Ministers and Deputy Ministers War Room representatives Eskom representatives
July 2015	Conceptualisation of a new Oversight Structure called the Electricity War Room, co-chaired by Ministers of Public Enterprises and Energy and the technical Electricity War Room co-chaired by the Directors-General of Public Enterprises and Energy	ToRs available
21 July 2015	Eskom Inter-Ministerial Committee	Deputy President Ministers and Deputy Ministers War Room representatives Eskom management
29 September 2015	Eskom Inter-Ministerial Committee	Deputy President Ministers and Deputy Ministers War Room representatives Eskom management

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WAR ROOM MEETING
7th 2015/16
27 February 2015
282 EAST WING UNION BUILDING

MINUTES OF THE MEETING HELD ON 27 February 2015

Chairperson: Dr Sean Phillips

SECTION 1: PROCEDURAL MATTERS

1.1 ATTENDANCE

DIRECTOR GENERAL

Dr Sean Phillips (Deputy Chairperson)	DPME
Ms Jennifer Schreiner	EDD
Ms Matsietsi Mokholo	DPE

ESKOM REPRESENTATIVES

Mr Tshediso Matona	Chief Executive Officer
Ms Tsholofelo Molefe	Chief Financial Officer
Mr Louis Maleka	Eskom War Room Coordinator
Ms Marion Hughes	Eskom

WAR ROOM OFFICIALS

Mr Ompi Aphane	DOE
Mr Ashraf Karrim	DPME

War Room Representatives

Ms Lerato Lentsoane	Presidency
Mr Joel Raphela	DMR
Mr Nkosiyomzi Madula	DTI
Ms Tasneem Carrim	DOC
Mr Dondo	NT
Ms Makgola	DPE

Deputy President Advisory Panel

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SECRETARIAT SUPPORT

Hlabisa Gcina, Mr

1.2 OPENING AND WELCOME

1.2.1.1 The chairperson welcome all present and indicated that the IMC meeting will be held in Cape Town on 03 March 2015.

1.3 APOLOGIES

- 1.3.1 The following apologies were noted:
 - 1.3.1.1 Mr Lionel October, DG DTI
 - 1.3.1.2 Mr Vusi Madonsela, DG COGTA
 - 1.3.1.3 Mr Lungisa Fuzile, DG NT
 - 1.3.1.4 Stephen Hanival, DTI Representative in the War-room

1.4 ADOPTION OF THE AGENDA

1.4.1 The agenda items that were to be presented to the IMC were provisionally included in the War-room agenda. Given that Eskom needed more time to prepare the submissions, these were removed from the agenda.

1.5 ADOPTION OF THE MINUTES

- 1.5.1 The minutes of the previous meeting were adopted with the following changes
 - 1.5.1.1 Paragraph 3.1.3.3 must read as follows "the options that were identified in the development of the Eskom's Support Package must be re-tabled at both the War-room and IMC for discussions.
 - 1.5.1.2 Paragraph 3.1.3.5 must be deleted, as there was no commitment for the presentation of the Eskom's corporate plan to the War-room.

SECTION 2:

ITEM	ACTION LIST RESOLUTIONS	RESPONSIBILITY	TIMEFRAME
2.1 Action list of the previous meeting were noted and presented as part of the Action Plan			

SECTION 3:

ITEM	DISCUSSION AND RESOLUTIONS	RESPONSIBILITY	TIMEFRAME
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<p>3.1 Progress update on the implementation of the Five Point Plan</p>	<p>3.1.1 Mr Malcom Simpson (Project Manager of the War-room), tabled the updated action plan that reflected progress that has been made on the implementation of actions contained in the Five Point Plan.</p> <p>3.1.2 The following was further highlighted on the action plan report.</p> <p>3.1.2.1 The completion of the evaluation of proposals for the independent studies</p> <p>3.1.2.2 The progress on the recovery of Majuba Capacity remained on track with 1 200MW being recovered since the collapse of the Silo towards the end of 2014.</p> <p>3.1.2.3 The report also highlighted that challenges around the conclusion of the funding options remained.</p> <p>3.1.3 Discussions</p> <p>3.1.3.1 The work that is being undertaken by TIPS on the levers and their potential economic impact will contribute towards the development of the merit order. At the moment there are processes that are currently underway i.e. Eskom, TIPS, NERSA/DOE and these must be integrated.</p> <p>3.1.3.2 As a result of the engagement between Home Affairs, War-room and Eskom, a dedicated person has been allocated to Eskom to support the application process for the work permits. Eskom was further encouraged to escalate the challenges if this solution is not working optimally.</p> <p>3.1.3.3 The issue on the demobilization of the construction workers has been raised with the PICC Secretariat. Some of the options</p>	<p>War-room</p>	
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	<p>includes the certification of the experience accumulated by the construction workers. This will facilitate the employability of those workers. The development of the Social Plan will play a critical role to stabilise the industrial relations and this must be lead by the government.</p> <p>3.1.3.4 On the build programme delivery date, Eskom has resolved that the full load date will be use as the key milestone for the delivery of the new generation capacity.</p> <p>3.1.4 Resolution</p> <p>3.1.4.1 A meeting to conclude the merit order must be held and the attendance of DOE is crucial in the matter.</p> <p>3.1.4.2 Eskom and EDD to meet and discuss the development of the Social Plan to stabilise the Waterberg Area. It was emphasized that government must lead this process.</p> <p>3.1.4.3</p>		
<p>3.2 War-room presentation to the IMC</p>	<p>3.2.1 The Deputy Chairperson of the War-room (Dr Sean Phillips) presented the report to the IMC.</p> <p>3.2.2 The report highlighted the following:</p> <p>3.2.2.1 Progress on the implementation of the Five Point Plan.</p> <p>3.2.2.2 The 18 Month Capacity Outlook</p> <p>3.2.2.3 The Medium Term Outlook that modeled the two scenarios on the plan performance.</p> <p>3.2.2.4 The analysis of the 3 scenarios presented to the IMC</p> <p>3.2.3 Discussions</p>	<p>War-room</p>	

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	<p>3.2.3.1 The modeling of the scenario based on the available resources does not make a measure difference in the plan performance. Furthermore, the preferred scenario is not achievable, as the interventions required to achieve it are not fully funded.</p> <p>3.2.3.2 If the space to take out plant is not provided and the Maintenance Plan and Schedule not complied to, the risk for further plant performance deterioration is always there.</p> <p>3.2.3.3 The 18 Month Outlook is a base case scenario and assumes that all the supply and demand measures that have been identified will be implemented. It also incorporates the delivery of Unit 6.</p> <p>3.2.3.4 There has been a decoupling of energy usage from economic growth. As from 1998, the electricity intensity of growth has been declining and in the current Medium Term Outlook, it is assumed that this trend will continue.</p> <p>3.2.3.5 The renewal of the co-generation contracts remains a challenge, as the cashflow challenges have not been resolved.</p> <p>3.2.3.6 The letter to liquidate the R8.1 billion equity return to partly respond to the cashflow challenge. To realize this an application must be sent to National Treasury to request a postponement as the 15 March 2015 deadline cannot be met. If this is implemented, it means that the tariff increase will be 18 percent.</p> <p>3.2.3.7 For the Eskom application for the additional increase to be approved, it must demonstrate to the regulator that every</p>		
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	<p>possible solution has been pursued and the National Treasury is of the view that more can be done by Eskom.</p> <p>3.2.3.8 The DOE IPP Office is implementing a number of projects linked to the Five Point Plan. There is a need for the engagement between the War-room and IPP Office to understand their processes.</p> <p>3.2.4 Resolution</p> <p>3.2.4.1 The Ministers of Public Enterprises and Energy must engage the regulator to expedite the process to secure funding for the co-gens, and diesel procurement.</p> <p>3.2.4.2 A meeting between the War-room and the IPP Office will be scheduled</p> <p>3.2.4.3 There must be an exploration of what needs to be done to achieve a strategic alignment with the regulator, as the current situation requires a different arrangement. The War-room supports the engagement of NERSA.</p> <p>3.2.4.4 There must be a discussion on the tariff to clarify what is needed and when. This will allow must take into account the immediate requirements.</p>		
<p>3.3 Other issues not covered in the progress report</p>	<p>3.3.1 Communication</p> <p>3.3.1.1 The War-room received a feed back from GCIS on the communication.</p> <p>3.3.1.2 The Briefing by Deputy President has been scheduled for the 9th of March 2015.</p> <p>3.3.1.3 The briefing by the Minister of Public Enterprise will focus on announcing the synchronization.</p>	<p>DOC</p>	
<p>SECTION 4: CLOSURE</p>			
<p>4.1 The Chairperson declared the meeting closed and the date for the next meeting in 27 February 2015</p>			

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<hr/> CHAIRPERSON DATE:
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WAR ROOM MEETING**2015/16****13th March 2015****282 EAST WING UNION BUILDING****MINUTES OF THE MEETING HELD ON 13th March 2015****Chairperson: Dr Sean Phillips****SECTION 1: PROCEDURAL MATTERS****1.1 ATTENDANCE****DIRECTOR GENERAL**

Dr Sean Phillips (Deputy Chairperson)

Mr Donald

DPME

GCIS

ESKOM REPRESENTATIVES

Mr Zethembe Khoza

Ms Nonkululeko Veleli

Mr Louis Maleka

Ms Marion Hughes

Acting-Chief Executive Officer

Acting-Chief Financial Officer

Eskom War Room Coordinator

Eskom

WAR ROOM OFFICIALS

Mr Ashraf Kariem

Rudi Dicks

Malcolm Simson

Fhedzi Modau

DPME-war room

DPME-war room

War room

War room

War Room Representatives

Mr Joel Raphela

Mr Nkosiyomzi Madula

Ms Tasneem Carrim

Mr Dondo

Ms A Halstead

MR B Mohlala

Ms T Van Meelis

Mr D Msiza

Mr T Audat

DMR

DTI

DOC

NT

NT

DOE

EDD

DMR

DOE

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Deputy President Advisory Panel			
Mr B Godsell			
Ms D Mokgatle			
Ms S Gourrah			
Mr S Mokoena			
SECRETARIAT SUPPORT			
Hlabisa Gcina, Mr (absent)			
1.2 OPENING AND WELCOME			
1.2.1.1 The chairperson welcomed all present.			
1.3 APOLOGIES			
1.3.1 The following apologies were noted:			
1.3.1.1 Mr Lionel October, DG DTI			
1.3.1.2 Mr Vusi Madonsela, DG COGTA			
1.3.1.3 Mr Lungisa Fuzile, DG NT			
1.3.1.4 Ms Matietsi Mokholo, DG DPE			
1.3.1.5 Dr W Barnard, DG DOE			
1.3.1.6 Mr T Ramonja, DG DMR			
1.3.1.7 Stephen Hanival, DTI Representative in the War-room			
1.3.1.8 Mr Ompi Aphane DOE			
1.3.1.9			
1.4 ADOPTION OF THE AGENDA			
1.4.1 The agenda was adopted. The chair informed the meeting that the political principals have indicated that the work of the war room must proceed notwithstanding the events of the past week. Due to Mr Aphane's absence it was agreed the item on the status of the IPP unit project portfolio be postponed to the next scheduled meeting.			
1.5 ADOPTION OF THE MINUTES			
1.5.1 The minutes of the previous meeting were adopted without changes. A request was made to send out the minutes earlier. It was agreed to do this the latest by Tuesdays of the following week.			
SECTION 2:			
ITEM	ACTION LIST RESOLUTIONS	RESPONSIBILITY	TIMEFRAME

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<p>2.1 Action list of the previous meeting were not presented. The following action items were discussed and progress provided.</p>	<p>2.1.1 Co-gen- Eskom provided progress on the cogen contracting process. NT to finalise MFMA letter for extension on tariff application and DPE to submit to parliament.</p> <p>2.1.2 It was agreed that a date must be found to finalise the deep dive on gas</p> <p>2.1.3 Agreed to set-up informal meeting between coal suppliers and Eskom to discuss coal scenario's</p> <p>2.1.4 Agreed to set-up meeting with Eskom and OEM's to discuss maintenance matters</p> <p>2.1.5 To inform the competition authorities of these proposed meetings</p>		
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SECTION 3: Five Point Action Plan Progress report

ITEM	DISCUSSION AND RESOLUTIONS	RESPONSIBILITY	TIMEFRAME
<p>3.1 Progress update on the implementation of the Five Point Plan</p>	<p>3.1.1 Mr Malcom Simpson (Project Manager of the War-room), tabled the updated action plan that reflected progress that has been made on the implementation of actions contained in the Five Point Plan.</p> <p>3.1.2 The following was further highlighted on the action plan report.</p> <p>3.1.2.1 That Eskom was unable to provide a progress report given the suspensions of executive members. That NT provided updates but that DOE and DPE failed to do so.</p> <p>3.1.2.2 A comment was made that the proposed independent studies of the war room should, if required, be coordinated with the proposed independent review of the Eskom board.</p> <p>3.1.2.3 That NT provides comment on the terms of reference of the proposed independent</p>	<p>War-room</p>	

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	<p>funding study that is in the process of being finalised.</p> <p>3.1.2.4 Eskom was requested to provide regular progress reports on executing its maintenance plan and the report must indicate any deviation from planned maintenance.</p> <p>3.1.3 Resolution</p> <p>3.1.3.1 Agreed that Eskom, NT, DPE and DOE provide written progress reports on the 5 point action plan items for which they are responsible for.</p> <p>3.1.3.2 Eskom was requested to provide regular progress reports on executing its maintenance plan and the report must indicate any deviation from planned maintenance.</p> <p>3.1.3.3 That NT provides comment on the terms of reference of the proposed independent funding study</p> <p>3.1.3.4 DOE to convene a meeting on gas and to ensure all relevant departments and institutions are included and report progress to the war room.</p>		
<p>3.2 Presentation by PetroSA on diesel</p>	<p>3.2.1 PetroSa presented to the war room on current diesel supply to Eskom. Matters highlighted included: current supply; amounts and volumes; constraints and how they are being dealt with. Petrosa also included in their presentation a proposal to convert diesel to gas for Ankerlig generation plant.</p> <p>3.2.2 Petrosa was requested to provide a project plan for the proposed gas provision for the conversion from diesel to gas.</p>		

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	<p>3.2.3 It was requested that the Petrosa presentation be supplemented with a presentation by Eskom of other diesel suppliers to Eskom</p> <p>3.2.4 It was agreed that Eskom does a deep – dive on diesel with the Deputy President’s Advisory Panel.</p>		
<p>3.3 Other issues not covered in the progress report</p>	<p>3.3.1 Communication</p> <p>3.3.1.1 GCIS informed the meeting that the proposed media briefing scheduled for 18th March has been postponed.</p> <p>3.3.1.2 That the briefing note on the work of the war room be finalised and used by the head of GCIS for media engagements.</p> <p>3.3.1.3 That the DP considers a media briefing following the 2nd April IMC meeting.</p>	<p>GCIS</p>	

SECTION 4: CLOSURE

4.1 The Chairperson declared the meeting closed and the date for the next meeting is 20th March 2015

CHAIRPERSON

DATE:

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		ENERGY WAR ROOM MEETING 2015/16: 12th JUNE 2015 282, EAST WING, UNION BUILDING
MINUTES OF THE MEETING Chairperson: MR MALCOM SIMPSON		
SECTION 1: PROCEDURAL MATTERS		
1.1 ATTENDANCE		
INVITATION Representatives from Deputy President's Advisory Panel		
ESKOM REPRESENTATIVES		
Mr L Maleka	Eskom War Room Coordinator	
Ms M Hughes	Eskom War Room Coordinator	
WAR ROOM OFFICIALS		
Mr M Simpson	War-room	
Ashraf Kariem	War -room	
Mr F Modau	War-room	
Mr G Hlabisa	War-room	
M R Dicks	War-room	
WAR ROOM REPRESENTATIVES		
Ms T Carrim	GCIS	
Mr N Prins, NT	National Treasury	
Mr V Madonsela, COGTA	Cooperative Governance	
Mr S Hanival,	Trade and Industry	
Dr W Barnard	Energy	
Ms T Van Meelis – Economic Development	Economic Development	
Mr T Audat – Department of Energy	Energy	
SECRETARIAT SUPPORT		
Mr Gcina Hlabisa (DPE)		
1.2 OPENING AND WELCOME		
The chairperson welcomed all delegates to the meeting.		
1.3 APOLOGIES		
The following apologies were noted:		
<ul style="list-style-type: none"> • Mr L October, DG DTI • Mr V Madonsela, DG COGTA • Ms M Mokholo, DG DPE • Mr T Ramonja, DG DMR • Mr S Hanival, DTI Representative in the War-room • Ms L Lentsoane, Office of the Deputy President • Mr B Molefe – Acting Chief Executive Officer • Ms N Veleli – Acting Chief Financial Officer • Dr W Barnard – Acting Director General, Department of Energy • Ms A Halstead – Chief Director, National Treasury • Ms M Mokololo – Department of Public Enterprises • Ms M Makolo – Department of Public Enterprises • Mr D. Lephoko – Acting Director General, GCIS 		
1.4 ADOPTION OF THE AGENDA		
The agenda was adopted with no changes.		

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1.5 ADOPTION OF THE MINUTES				
The minutes of meeting held of the previous meeting were adopted with no changes.				
SECTION 2:				
ITEM	ACTION LIST RESOLUTIONS		RESPONSIBILITY	TIMEFRAME
2.1 Action Items	2.1.1	Status of Eskom's Financial Position	Finance Team	On-going
	2.1.2	Completion of Merit Order	DoE	30 June 2015
	2.1.3	Continuous Update of Project Plan	War-room	Ongoing
	2.1.4	Stakeholder Matrix	War-room	30 June 2015
SECTION 3: FIVE POINT PLAN DISCUSSION				
ITEM	DISCUSSION AND RESOLUTIONS		RESPONSIBILITY	TIMEFRAME
3.1 Presentation on Energy War-room	3.1.1	<p>The War-room presented on the Energy War Room.</p> <ul style="list-style-type: none"> Transition to DPME: In progress Roles and Responsibilities: Agreed and the Terms of Reference need to be finalized. Energy War-room structure: Accepted Project Plan: Structure agreed however, details to follow in Item 7 of the Agenda. Other Key Actions: Approach agreed but individual work plans need to be incorporated in overall work plan. Performance Indicators: Table to be amended with correct figures. Other performance indicators for finance and merit order to be developed. Risk Matrix. Risks agreed however, National Treasury emphasised that Eskom's finances were still a major risk and that the Director General of the National Treasury and acting CEO would meet to discuss the financial situation (short, medium and long-term). Build program to be included in the Risk Matrix. 	War-room	Complete
	3.1.2	<p>Conclusion and resolution</p> <p>There was need for the Energy War-room and DPE to finalise the Terms of Reference and note that that Eskom's current weak financial position needs to be addressed as a matter of urgency. The Advisory Panel requested that the WR present a stakeholder's matrix for stakeholder engagement.</p>		
3.2 Presentation on 90 Day Maintenance Plan	3.2.1	<p>Eskom presented on their maintenance plan. In the next 100 days the company focus will be on:</p> <ul style="list-style-type: none"> Maintenance without load shedding Liquidity – especially short-term liquidity Generation will focus on the treatment of high priority plant maintenance risks – so called risk maintenance. Over the next 100 days 18 outages have been scheduled 15 outages (83%) address either a plant risk or statutory/technical plant limits 13 of these outages (72%) are also philosophy 	Eskom	Complete

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	<p>outages</p> <p>3.2.2 Conclusion and Resolution, It was noted that plant availability remained a concern (75-69 % during May 2015. Eskom recognised this and the above plan was designed to address the declining plant availability.</p>		
<p>3.3 Update on Cogeneration RFP and Status of Merit Order</p>	<p>3.3.1 DoE presented on the drafting of the Merit Order. Outcomes were:</p> <p><u>Demand Side Management/Reduction</u></p> <ul style="list-style-type: none"> • Communication campaign - MW Saving not guaranteed • Residential Energy Efficiency (~400 MW) - Geyser timers, Municipality ripple control • Solar Water Heater (50-100 MW), Both high pressure and low pressure, Awaiting Cabinet decision on implementation. • Industrial Energy Efficiency (~200 MW) • Replacement of inefficient industrial technology • Demand Aggregators (~800 MW), 25 potential projects, 250 MW in less than 6 months <p><u>Increase in Supply</u></p> <ul style="list-style-type: none"> • Additional preferred bidders totalling 1084 MW announced 7 June 2015. 7 Wind Projects 686.4MW, 6 PV Projects 397.9MW, Financial Close Q4 2015, COD (Q2 2017 – Q2 2019) • Expedited procurement process to procure 1800 MW, Documentation released June 2015, Bid Submission - September 2015, Announcements - end 2015, COD – end 2019 • Coal Programme (2500 MW), Bid Submission - End August 2015, Preferred Bidder Announcement – November 2015, Financial Close – May-June 2016, Full COD - 2020 <p>3.1.1 Conclusion and Recommendation.</p> <ul style="list-style-type: none"> • 2nd Draft Merit Order Spreadsheet circulated to stakeholders for final inputs. • Final draft to be presented at next War Room meeting. Funding of these options.....Need urgent discussion with NERSA and Eskom Finance (<i>responsible for Multi Year Price Determination application</i>) • NERSA will require DoE to issue Policy (esp on Demand Reduction financing) <p><u>Cogeneration</u></p> <ul style="list-style-type: none"> • Ministerial determination 2500MW • Documents issued 4 June 2015 • Offered 800MW in BW1, aimed at 'brownfields' projects and projects <50MW • Weak indications to have all MW taken up in BW1 • Tariff cap R0,90c – R1,20/kWh, type dependent • Timeframes: <ul style="list-style-type: none"> • Bid Submission - August – November 2015 (monthly windows) • Preferred Bidder Announcement – 	<p>DoE</p>	<p>Complete</p>

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		<ul style="list-style-type: none"> September 2015 – February 2016 Financial Close – November 2015 – May 2016 Full COD – 2016/17 Further determination 1000MW awaiting NERSA concurrence. 		
3.1 Review of Action Plan	3.1.1 3.1.2	<p>A revised action plan was presented.</p> <p>Conclusion and Recommendation. The WR was to consider discussion points and comments when updating the Action Plan. The Advisory Panel were to propose a set of indicators through a note via the Office of the Deputy President. This would improve accountability and give a clearer picture of status of each activity etc.</p>	War-room	Complete
SECTION 4: CLOSURE				
The Chairperson declared the meeting closed and the date for the next meeting is 27 of June 2015.				
<p>-----</p> <p>CHAIRPERSON</p> <p>DATE:</p>				

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	WAR ROOM MEETING 2015/16: 10th APRIL 2015 282, EAST WING, UNION BUILDING
MINUTES OF THE MEETING HELD ON 17th APRIL 2015 Chairperson: MR MALCOM SIMPSON	
SECTION 1: PROCEDURAL MATTERS	
1.1 ATTENDANCE	
DIRECTOR GENERAL	
Mr D. Lephoko	DOC
ESKOM REPRESENTATIVES	
Mr Z Khoza	Acting-Chief Executive Officer
Ms N Veleti	Acting-Chief Financial Officer
Mr L Maleka	Eskom War Room Coordinator
Ms M Hughes	Eskom War Room Coordinator
WAR ROOM OFFICIALS	
Mr M Simpson	War room
Mr F Modau	War room
Mr G Hlabisa	War room
WAR ROOM REPRESENTATIVES	
Ms T Carrim	DOC
Mr D Mogajane	NT
Dr W Barnard	DOE
Ms A Halstead	NT
Mr B Mohlala	DOE
Ms T Van Meelis	EDD
Mr D Msiza	DMR
Mr T Audat	DOE
Mr O Aphane	DOE
Ms Loice Mletwa	DPE
SECRETARIAT SUPPORT	
Mr Gcina Hlabisa (DPE)	

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1.2 OPENING AND WELCOME

1.2.1.1 The chairperson welcomed the World Bank Delegation to South Africa and the Deputy President's Advisory Panel and allowed a round of introduction.

1.3 APOLOGIES

1.3.1 The following apologies were noted:

1.3.1.1 Mr L October, DG DTI

1.3.1.2 Mr V Madonsela, DG COGTA

1.3.1.3 Ms M Mokholo, DG DPE

1.3.1.4 Mr T Ramonja, DG DMR

1.3.1.5 Ms J Schreiner, DG EDD

1.3.1.6 Mr L Fuzile, DG NT

1.3.1.7 Mr S Hanival, DTI Representative in the War-room

1.3.1.8 Dr S Phillips, DG War room Chairperson

1.4 ADOPTION OF THE AGENDA

1.4.1 The agenda was adopted with no changes.

1.5 ADOPTION OF THE MINUTES

1.5.1 The minutes of meeting held on 17 April 2015 were adopted with no changes.

SECTION 2:

ITEM	ACTION LIST RESOLUTIONS	RESPONSIBILITY	TIMEFRAME
2.1 Action items	2.1.1 All actions in the minutes of 17 April had addressed.	War-room	Complete

SECTION 3: FIVE POINT PLAN DISCUSSION

ITEM	DISCUSSION AND RESOLUTIONS	RESPONSIBILITY	TIMEFRAME
3.1 Update of Financial Information for Finance Task Team	<p>3.1.1 National Treasury were satisfied with the information received from Eskom thus far. National Treasury and Eskom were interrogating the information and have further meetings with Eskom.</p> <p>3.1.2 Conclusion and resolution</p> <p>3.1.2.1 The Financial Task Team to continue</p>	Financial Task Team	31 May 2015

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	working and should present options on improving the Eskom financial sustainability to Eskom Board, Shareholder and Cabinet by end of May 2015.		
3.2 Presentation on Draft Merit Order	<p>3.2.1 Ompi Aphone update the War-room on the Merit Order.</p> <p>3.2.2 Conclusion and Resolution</p> <p>3.2.2.1 The Draft Merit Order would be completed for final comment by 31 May 2015.</p>	DoE	31 May 2015
3.3	<p>3.3.1 The Action Plan was presented.</p> <p>3.3.2 Discussion focused on the future trajectory of the War-Room. The chairperson proposed the WR should now change the format to monitoring achievement of Key Performance Indicators. All parties agreed that this would be more beneficial than checking progress (% complete) of the action plan. The various components of the action plan should be rolled up into key performance indicators.</p> <p>3.3.3 Conclusion and Recommendation. The WR was to table a proposal at the next meeting. In addition there was need to conclude on the direction of the Independent Assessments. The chairperson agreed that these would be discussed at the next meeting.</p>	WR	

SECTION 4: CLOSURE

4.1 The Chairperson declared the meeting closed and the date for the next meeting is 8th of May 2015.

CHAIRPERSON

DATE:

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ENERGY WAR ROOM MEETING 2015/16: 17th JULY 2015 282, EAST WING, UNION BUILDING	
MINUTES OF THE MEETING Chairperson: MR MALCOM SIMPSON	
SECTION 1: PROCEDURAL MATTERS	
1.1 ATTENDANCE	
INVITATION Mr B Godsell Mr S Mokoena Mr D Elbrecht ESKOM REPRESENTATIVES Ms M Hughes Mr L Maleka Mr M Mflathelwa WAR ROOM OFFICIALS Mr M Simpson Mr A Kariem Mr F Modau Mr G Hlabisa M R Dicks WAR ROOM REPRESENTATIVES Ms N Prins Ms T Van Meelis Mr M Ndimande Mr T Audat Dr W Barnard Ms M Makololo	Advisory Panel Advisory Panel Advisory Panel Eskom War Room Coordinator Eskom War Room Coordinator Eskom War-room DPME: War -room War-room DPE: War-room DPME: War-room NT EDD DCOG DoE DoE DPE
SECRETARIAT SUPPORT	
Mr Gcina Hlabisa (DPE)	
1.2 OPENING AND WELCOME	
The chairperson welcomed all delegates to the meeting.	
1.3 APOLOGIES	
The following apologies were noted: Mr B Molefe: Acting Chief Executive Officer, Eskom Mr L October: DG DTI Mr V Madonsela: DG COGTA Ms M Mokholo: DG DPE Dr T Ramonja: DG DMR Ms L Lentsoane: Office of the Deputy President Ms N Velefi: Acting Chief Financial Officer, Eskom Ms A Halstead: Chief Director, National Treasury Mr D. Lephoko: Acting Director General, GCIS Mr S Zimu: Advisor Officer of the President	
1.4 ADOPTION OF THE AGENDA	
The agenda was adopted with a request that communications be dealt with first.	
1.5 ADOPTION OF THE MINUTES	
The minutes of the previous meeting were adopted with no changes.	

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SECTION 2:			
ITEM	ACTION LIST RESOLUTIONS	RESPONSIBILITY	TIMEFRAME
2.1 Action Items	2.1.1 Monitoring of Eskom's Financial Position- 2 page summary of work required for presentation at the next War-room Meeting	Finance Team	Next meeting
	2.1.2 Completion of Merit Order – Technical component complete – financing initiatives needs to be concluded.	DoE	30 July 2015
	2.1.3 Continuous Update of Project Plan	War-room	Ongoing
	2.1.4 Forward tariff trajectory model – War-room to organize a meeting with EIUG to understand their assumptions and model/ trajectory.	War-room	30 July 2015
	2.1.5 Communication. Organize a meeting with all communicators (DoE, DPE, Eskom & GCIS) to harmonize message etc – after Cabinet Lekgotla 27 July – 31 July 2015.	War-room	30 August 2015
SECTION 3: FIVE POINT PLAN DISCUSSION			
ITEM	DISCUSSION AND RESOLUTIONS	RESPONSIBILITY	TIMEFRAME
Presentation for IMC: 21 July 2015 Progress update on the implementation of the Five Point Plan Proposed way forward for the IMC and War Room • Refined War Room Terms of Reference • Work plan and KPIs for the War Room and IMC	<ol style="list-style-type: none"> The chair presented documents for the IMC on 21 July 2015. Supply Side: Completion dates for Majuba and Duvha to be checked and added to presentation. New build dates to be confirmed Demand Side: Demand reduction procurement plan and dates for release to be confirmed. Energy savings projects to be developed by DPW. Solar geyser project to accelerated (if possible). Communication: To be improved especially messages to business, households and other stakeholders. Conclusion and Recommendation <ol style="list-style-type: none"> The War-room to update presentation for circulation by COB 17 July 2015. 	War-room	Complete
Presentation for IMC: 21 July 2015 (Eskom)	<ol style="list-style-type: none"> No presentation was given as Eskom were not required to present at the IMC. Conclusion and Resolution <ol style="list-style-type: none"> Eskom to attend IMC and if required by the Chairperson to give introductory remarks on implementation of the turnaround plan. 	Eskom	21 July 2015
Review of Action Plan	An updated action plan was presented.	War-room	Update Frequently
SECTION 4: CLOSURE			
The Chairperson declared the meeting closed and the date for the next meeting is 7 August 2015 after the Cabinet Lekgotla 27 July – 31 July 2015.			
<p>-----</p> CHAIRPERSON DATE:			

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Annexure "MCR16"

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THURSDAY, 19 OCTOBER 2017

PROCEEDINGS OF THE NATIONAL ASSEMBLY

The House met at 14:01.

The Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.

QUESTIONS TO THE DEPUTY PRESIDENT

Question 37:

The DEPUTY PRESIDENT: Hon Speaker, the issue of corruption in state-owned enterprises, SOEs, is one of the most serious challenges with regard to effecting governance in our country, today. It constrains the growth of our economy and the development of our people. We are only now becoming aware of the devastating effect that such corruption has had and continues to



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have on the financial and operational performance of key stateowned enterprises. [Interjections.] With all the information that is coming out in the e-mails, this is becoming clearer.

[Interjections.]

In addition to the theft of public resources ...

The SPEAKER: Hon members, order! Please listen to the answer.

The DEPUTY PRESIDENT: ... on a massive scale

...

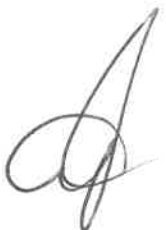
[Interjections.] Should I keep quiet, Madam Speaker?

The SPEAKER: No. Please just proceed, Deputy President.

[Interjections.]

The DEPUTY PRESIDENT: In addition to the theft of public resources on a massive scale, corrupt practices undermine the ability of public institutions to meet their important developmental and economic mandates. [Interjections.] As more

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information becomes available in the public domain on the depth and the extent of corruption in such entities, there are several lessons that government and the broader society must draw.

An HON MEMBER: Where were you?

The DEPUTY PRESIDENT: The first of these is that state-owned enterprises need to be managed by skilled and experienced professionals who are committed only to the wellbeing of the institution and the fulfilment of economic and development management. While government is responsible for determining the mandate of these entities and holding them to account, neither elected officials nor public servants should be involved in the management of these entities.

Now, the important lesson here is that there is always a temptation for people who are not the officials of state-owned enterprises to meddle and get involved in the management of these entities. Some even go further and also meddle in procurement processes. [Interjections.]



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I have found that the best way of managing enterprises is that the members of your board should just focus on oversight and strategic overview. They should never, ever get involved in management issues or, more particularly, in procurement issues. If we can, we should heed this lesson in our state-owned enterprises, where there is a clear separation of tasks; where board members, from the chairperson down to the others, should never interfere in management issues. This should also include elected public officials, like politicians. [Interjections.]

Secondly, the appointment of state-owned enterprise boards and the executive needs to be done on a more rigorous, consistent and transparent basis. In other words, when we choose board members, we should conduct our own, thorough due diligence on board members who should be appointed. To this end, Cabinet has adopted a guide for the appointment of SOE boards and executive officers. This should set a new standard across all SOEs. It is critical that this guide be applied for all appointments, going forward.

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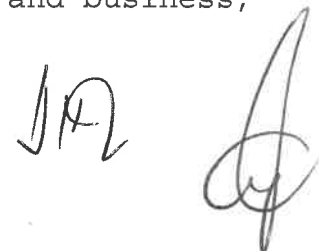
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Thirdly, the allegations of corruption that have surfaced over the last few months underline the critical importance of building credible and capable law-enforcement agencies. The criminal justice system needs to have skills, resources and effective leadership, but more importantly, the independence that is required to investigate each and every credible claim of corruption and to prosecute those who are responsible.

The fourth lesson that we should learn from this experience, with regard to the experience that we have had, is that the existing measures to ensure ethical conduct in the executive among public representatives and in the Public Service are not adequate. Government needs to consider instituting lifestyle audits of all senior political leaders and government officials as a matter of urgency. [Interjections.] [Applause.] If we were to have lifestyle audits right across the board, we should be able to minimise temptation and incidents of corruption.

Our efforts to grow the economy are heavily dependent on entities like Eskom, Transnet and Prasa to provide goods and services, efficiently and affordably, to citizens and business,

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alike. It is therefore essential that we act boldly to root out corruption in all these entities and return them to financial and operational effectiveness.

The extent and nature of this problem means that it cannot be achieved by government alone. It requires the involvement of institutions right across society. This includes the Public Protector, the Auditor-General, law-enforcement agencies, civil society groups, political parties, and Parliament. This is a challenge that we should all take up.

We are hopeful that all these efforts on various fronts will succeed in ending corruption. Let us admit that we have learnt important lessons with regard to the corruption that has been raging across our country. What we now need to do is to buckle down, learn from these lessons and pursue those who have been involved in corrupt acts. Thank you very much. [Interjections.] [Applause.]

Ms D Z RANTHO: Hon Speaker, I thank the Deputy President for the response. Yesterday, we had a witness at the enquiry who said we took too long to attend to the corruption that is

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occurring in the entities. As Chairperson of the Interministerial Committee, IMC, on SOE Reform and a member of the Cabinet of South Africa, why did you not do anything about the corruption in the SOEs?

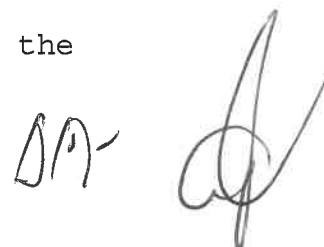
[Applause.]

The DEPUTY PRESIDENT: Madam Speaker, as I said in my initial input, these incidents of corruption are only now spewing out in a manner that all of us have become aware of them.

[Interjections.] To this end ... to this end ...

[Interjections.] ... If you will listen, to this end, the various parliamentary committees have now been set up to go through all these. The admission that will be made will be yes, as news has been coming out about what has been happening in our various state-owned enterprises, we have delayed and taken too long to act against those who have been involved in all these acts.

The IMC that has been set up and which I chair is an IMC that is looking at policy parameters on, for instance, the shareownership architecture.



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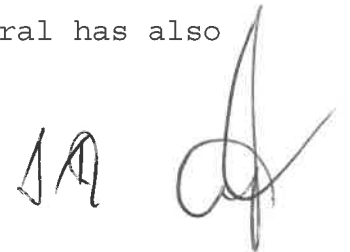
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An HON MEMBER: Do you want some cream with the waffle?

The DEPUTY PRESIDENT: It has been looking at issues such as the appointment to boards, how board members should be appointed, how remuneration to state-owned enterprise executives should be organised, and indeed, how the Presidential Review Commission's work should now be implemented. [Interjections.]

We have relied on the criminal justice agencies to get down and investigate all these, as they get information. In some cases, there have been lapses. For instance, when it comes to Prasa, it had to take the board members to take the National Prosecuting Authority, NPA, to court to ask why they were not investigating some of the issues or cases that have been presented to them. There have been lapses, and the lapses have been across the board. To be correct, however, the Public Protector has also conducted quite a number of investigations and she has made a number of recommendations, as well. The Auditor-General has also found a number of flaws in all of these.



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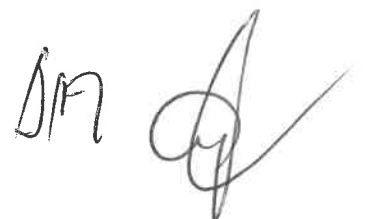
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What this calls for is that all of us must now be involved in a massive effort to root out corruption in all state institutions. [Applause.] That is why we are saying it should also even start here, at the level of elected political office bearers. They must be the ones to do these audits so that we can declare, more directly, precisely what our interests are.

That is why I have also said when it comes to state-owned enterprises, there needs to be a clear separation between what the board is entitled to do and what management can do. Where there has been failure, it has been where board members have mixed their roles with executive members; where they've meddled and got involved in operational matters; and where they have second-guessed the role of executive members. That is where we need to start and effect a clear separation of the roles that we should have in all these state-owned enterprises. Thank you, Madam Speaker.

The SPEAKER: The hon Esterhuizen?



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IsiZulu:

Mnu M HLENGWA: Somlomo, kube yiphutha eliqonde ukucindezela mina, angazi kumele ngiqhubeke yini?

USOMLOMO: Qhubeka bhuti.

Mnu M HLENGWA: Ngiyathokoza, Somlomo.

English:

Hon Deputy President, I like the admission that you are only realising this now. I would imagine that you speak for this side of the House, because we have a President, who the ANC elected, with 783 charges of corruption hanging over his head.

[Interjections.] You were silent then.

HON MEMBERS: Yes! Yes!

Mr M HLENGWA: The Scorpions were disbanded. You were silent then. [Interjections.] The law-enforcement agencies have been

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captured. You are silent - albeit the warning signs were there all along. Your silence has aided and abetted the prevalence of corruption in this country. [Interjections.] So, why should we believe you now - that there is political will - when the country is already in the gutter?

When we said these things, we were accused of politicking. You say you must start here. The opposition started here, raising these matters many years ago but you kept quiet. [Applause.] So, this is now a face-saving exercise in the face of crisis. Why should we believe you now when, all along, you have run away from the realities we presented before you? [Applause.]

The DEPUTY PRESIDENT: This is not the time for finger-pointing. [Interjections.] This is the time for action ... [Interjections.] ... and I welcome ... [Interjections.] ... no, no, no, listen. I welcome your enthusiasm.

The SPEAKER: Order! Order, hon members! [Interjections.]

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An HON MEMBER: Where were you?

The DEPUTY PRESIDENT: I welcome your robust enthusiasm with regard to this matter. We welcome it because what you are displaying and, indeed, what all of us are displaying is that we abhor corruption, we want to root it out from South Africa in our state-owned enterprises. [Interjections.] This is a message and these are voices that must raise their decibels so that it becomes very clear that we want a corruption-free South Africa. We want to rid this country of corruption. [Interjections.]

As I said in my main input, rather than sit screaming and shouting as many of you are doing on the other side of the House, let us buckle down and work together to root out this corruption. That is what we should be doing, and especially the lady who is pointing fingers. This is the time where we should act together. Thank you very much. [Interjections.]

Mr N F SHIVAMBU: Madam Speaker, Deputy President, the reality of the situation is that we are witnessing looting at a megaindustrial stage and form in South Africa. As a result, stateowned companies owe an excess of R250 billion of guaranteed

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debt. If the lenders were to withdraw that money, it would have to be the responsibility of the state and it would collapse the whole fiscus.

In the recent past, when there were allegations that were, later on, proven and cleared by the board of the PIC, Mr Gigaba commissioned a forensic audit on the PIC. However, there is a prima facie case here of Eskom, of R500 million that has been paid to Trillian Capital Partners for doing nothing, absolutely nothing. That has been confirmed by the board and everyone else concerned, including the former CEO of Trillian Capital Partners, a Gupta-linked company. They are saying they received R500 million for nothing.

Why hasn't there been a forensic audit commissioned on Eskom? You are responsible for state-owned companies. Why hasn't government done anything? Yes, as Parliament, we are doing something. Why hasn't government done anything about the R500

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million that was paid to Trillian Capital Partners? Why is there no forensic audit? Are you scared of the Guptas?

Lastly, are you going to be removed as Deputy President? Your friend said you were going to be removed as the Deputy President of South Africa very soon, possibly this week, or even tomorrow. [Interjections.] Please clarify that.

The DEPUTY PRESIDENT: Madam Speaker, let me start off with this R500 million. My information, hon Shivambu, is that there has been an investigation and the investigation is ongoing. I am on record as saying that any amounts of money that were unduly paid should be returned, should be paid back, because that money belongs to all of us, as South Africans. So, any amount that has been paid out unduly and particularly, monies that have been paid out without any invoice, without any work having been done should be returned and should be returned immediately.

[Interjections.]

I have heard responses from companies like McKinsey & Company saying that if a court of law says they should return it, they will return it. I am saying that that is going to delay this

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matter unduly. Those amounts should be returned and they should be returned immediately. If any court has to rule, the money should now be in the coffers of Eskom because it belongs to the people of South Africa. [Interjections.] By the way, those who are responsible for dispensing all this largesse and these monies should be brought to book. They should be investigated, and our law-enforcement agencies should be on the case immediately to make sure that they account for what they did. Anybody who gives out money without having received an invoice or without regard for work that has been done should actually be taken to task.

In relation to the statements that have been made about my removal, I must tell the hon Shivambu that when I was appointed Deputy President, I accepted the appointment because it is the President's prerogative to appoint or remove anybody on the executive. [Interjections.] If the decision is to remove me, I will accept that as a decision that will have been taken by the President and I will continue serving the people of South Africa in one form or another. That's all I can say on this matter.

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[Applause.]

Ms N MAZZONE: Madam Speaker, Deputy President, given what you've just said about meddling in state-owned entities, I hope you're going to use your influence to make sure that no one meddles in the Public Enterprises Committee while we execute our constitutional mandate of oversight, as we look at our public enterprises. I think, more than ever, we are going to need you to stand up, man up and make sure that that committee is left to do their business and be protected.

Given the gross financial mismanagement at these state-owned entities, specifically those that fall under Public Enterprises, would you agree that it's now time for Minister Lynn Brown to be removed as Minister, given the implications of her dealings with possible corruption, with overseeing entities that are quite clearly involved in state capture, gross financial mismanagement, such as Denel? I think the time has come for Minister Brown to be removed from her position, someone more capable to be placed in her position to take over and look after

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these entities, and start leading them in the right direction. If you don't agree with me, Deputy President, I would like to know why. [Applause.]

The DEPUTY PRESIDENT: Speaker, let me immediately say to the hon Mazzone that Minister Brown, like me, is appointed at the pleasure of the President. [Interjections.] I am appointed and so is she. If I were to be fired, it would be at the pleasure of the President. Similarly, anything that could happen to Minister Brown would also be at the pleasure of the President. So, it is not for me to say who should be appointed and who should be fired. I am also part of those who are appointed and fired. I would like to suggest to you, perhaps, that you pose that question to the President, who does all these hirings and firings himself. Thank you very much. [Laughter.] [Interjections.] [Applause.]

The SPEAKER: Thank you, Deputy President. Before I proceed to the next Question, I wish to welcome the pupils from Bloemhof



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Girls' High School, in Stellenbosch. They are in the Grade 10 and 11 Economics classes. They are here with their teachers, Ms Lizanne van Rooyen and Ms Anne-Marie Klink. Welcome! [Applause.]

Question 38:

The DEPUTY PRESIDENT: Madam Speaker, just to say to the girls from Bloemhof High School, I am sorry you come to Parliament when I am being grilled. The current global and economic downturn has seen a contraction in investment flows globally and our own country has not been immune to the contraction. The global trend in relation to foreign direct investment flows is to invest domestically and also in the traditional developed markets of the world and big emerging economies such as China and India.

South Africa's drop in the World Economic Forum Global Competitiveness Report ranking from 47 to 61 is attributed to an increase, as they said, to corruption, crime, theft and government instability. That means that we need to decisively

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tackle corruption and address the governance challenges as a matter of urgency in our country. At the same time, we need to strengthen our efforts to promote investment. The government has established the Investment Management Certificate, IMC, on investment to oversee our overall investment policy, alignment co-ordination and improve investment climate.

As part of this approach and in consultation with the private sector, we have established an intergovernmental clearing house which we call Invest South Africa as a one-stop shop approach to investment. To counter negative perceptions, Invest South Africa meets with investors on a number of platforms to discuss investment opportunities and to discuss the concerns that investors may have about investing in South Africa. In view of the slowed growth and the decline in foreign direct investment, Invest South Africa is intensifying its effort to do a number of things. One of those things is to find ways of attracting foreign and domestic investment in our country. It has also formalised the relationship with the World Bank to address South



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Africa's ranking in its annual ease of doing business survey and overall investment climate issues over the medium to long-term.

This entity we call Invest South Africa, continues to do a wonderful job with regard to marketing South Africa and to market it as a lucrative and attractive investment destination. For the first two quarters of this year, Invest South Africa has achieved a quite wonderful feed in that it has achieved an investment pipeline of a whopping R42,7 billion. More broadly, government massive infrastructure programme is improving conditions for investments as foreign investors can see that the government is prepared to invest in its own economy. Incentive programmes like that in the auto industry are continuously attracting new investments and are encouraging companies to expand their operations as we would have seen with a number of these companies investing more money to expand their operations and to raise their productivity.

Despite the challenges investors see South Africa as an attractive investment opportunity and destination as well as a



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viable long-term investment place. However, if we are to realise our economic potential, we need to meaningfully address the problem of corruption and stability in government. Once we have done that, I am certain that investor confidence will improve in South Africa and we will be able to once again move up, hon Meshoe, in the global competitiveness rankings. I have no doubt that the dip that we have had is a momentary one, we will rise again. Thank you very much.

Rev K R J MESHOE: Speaker, failure by government to effectively deal with persistent high levels of crime, corruption, state looting and government instability is one of the main reasons why the triple challenges of poverty, unemployment and inequality continue to haunt us. President Jacob Zuma's latest Cabinet reshuffle after seven months since the last one seriously undermines any effort to restore and inspire business confidence which we need to improve our prospects for economic growth.

Deputy President, there are unconfirmed media reports that you could be the next to be reshuffled by the President because you

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are being accused of being a spy for the western capitalists. This speculation creates even further uncertainty. How will our government improve our global competitiveness and inspire business confidence when government instability and political uncertainty are being exacerbated by unwise decisions such as the latest Cabinet reshuffle by the President and talks of more reshuffles that would even target you, Deputy President. Thank you.

The DEPUTY PRESIDENT: Hon Speaker, the issue of instability has been raised by those who rate us globally. When they have looked at us, they see all those issues are referred to, namely, corruption, crime as well as instability. Truth be told, as we do a number of things and as we act like, for instance, the recent Cabinet reshuffle, we must admit that it has added to the narrative of instability. Largely, it is because the changes that have been effected were effected only a few months after the last change.

Now, the one that you are positing about my removal, as I indicated earlier, it is a matter that I cannot comment anything

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about because I am not the one who decides on these matters. If I were to be removed, it will be at the pleasure of the President. Whatever its impact would be would be something that will have to be analysed by a whole number of people. I am not able to analyse what the impact is likely to be. But it is the President's decision and the President exercises his prerogative on matters like these as he takes his decisions. Clearly, he must have his own reasons why he appoints and removes people which we are not privy to. Thank you very much.

Mr M L W FILTANE: Hon Chair, good afternoon, hon Deputy President. I would hope that your body language doesn't tell us that you are tired. Thank you very much for sitting up. Deputy President, tourism is under attack. We are all well aware of the frequent attacks on people who come into the country intending to stay for two weeks and yet they go back the very following day. That definitely has a negative impact in so far as reliability of our security force is concerned. Time and time again we sit with reports indicating that departments are being

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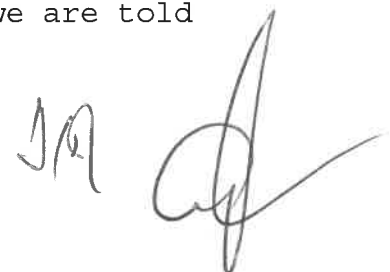
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so poorly run with irregular expenditure, fruitless expenditure and underexpenditure. This dampens enthusiasm of any potential investor especially when they are considering coming in as partners to government when the other party is not running its own businesses well.

Now, criminality is on the high resulting in social instability where investors would want more stability. Lastly, incompetent and inappropriately qualified labour force does not augur well for a country that is looking to attract investors because you end up with people who cannot do the basic things that need to be done in economic circles. What is your response to that?

Thank you.

The DEPUTY PRESIDENT: Hon Speaker and hon Filtane, as I indicated earlier, some of the key challenges that face our country indeed are corruption as well as criminality. The issue that you raised about tourism being under attack is one case in point where tourists for instance arrived from Holland in a bus and were attacked. Some of those who attacked them we are told

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happened to be police officials. That is a matter of serious concern hence we have dropped in our global competitiveness rankings. These are matters that are clear indicators to us on what needs to be done because we need to root out corruption and criminality also within the state sector where we have deployed people who are supposed to perform their tasks to the best of their ability.

Where we find that people are not performing their tasks and are not serving the people of South Africa, they should be removed from those positions. We should, following great due diligence, make sure that we appoint people who are able to perform the tasks that they are supposed to be given. We should not just appoint people for the sake of them being in positions to please whoever. We should appoint people who are ready, willing, able and capable of serving the people of South Africa. This is what is important and this is what will get us to resolve the challenges that we face. If we are to do that and we are to do that doggedly we will be able to reduce corruption in our

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country and to reduce criminality. If we can do that, then you will see that we become a very attractive nation to the world and people will continue streaming to our shores. Thank you very much.

Mr J A ESTERHUIZEN: Madam Speaker, I apologise we had a little problem with the buttons here today.

The SPEAKER: You do look like Mr Cebekhulu. [Laughter.]

Mr J A ESTERHUIZEN: He's just faster on the button. Hon Deputy President, apart from the global competitive index you also mentioned the World Bank and currently we are rated 125 out of 190 countries, 79 overall, which doesn't make a good reading at all.

Also the question about what are the additional steps for the government - the National Development Plan, NDP, Phakisa, the 14-point Plan and the 9-point Plan? They will not deliver more on target unless they are overseen by a dedicated Ministry, and this is not happening. Political decisions and matters that have



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economic consequences will literally affect investor confidence - decisions like our most recent self-serving reshuffling of Cabinet.

I know it must be very difficult for you, Sir, but how concerning for you as Leader of Business which is under your watch, that this government is cornering itself into irrelevance while at the same time setting fire to business and investor confidence in this country. So, where do we go from here? How do you propose we overcome this? Are we not more concerned about damage control than rooting out the rot? Thank you.

The DEPUTY PRESIDENT: Hon Speaker, clearly, we have our challenges and we have our work cut out for us. These challenges that we face should not tell us that we should run away or give up. What these challenges should tell us is that, we must buckle down and do the work that needs to be done. In my book there are really four determiners. The first one is how you allocate your resources in any undertaking, and that is what is important, and how you make sure that those resources are well used and well

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managed. That would address the question of utilising our resources properly and also avoiding corruption.

The second one is who do you place in certain positions to make sure that you execute your objectives. We need, as I said earlier, to appoint the right people to do the job at hand.

Thirdly, is to make sure that there is implementation.

Implementation means that there must also be accountability and consequence because if there is no consequence then we are going nowhere. On an ongoing basis we must be able to monitor what we are doing.

If we were to combine all of these, having set out what our objectives are, we should be able to have all the way we thought the instrument to address all these. Now, if we now know where we are, our ranking on a number of fronts has gone down, but the wheels have not come off. The wheels have not come off there is still the pillars - the pillars of our democracy and the pillars of what has made up this South Africa we live in now are still in place. The foundation is there. All we need to do is to realise that we are now going down and we are hitting rock

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bottom and the only way is to go up and address these challenges, root out corruption, have the right people in the right positions and implement the plans that we have.

If we can do that, hon member, this country will start rising in the world rankings and we will become the jewel that our people would like South Africa to be. That is where we are headed. We now know what the real challenges are. We can only go one way and that is up and get better and better at everything we do.

Thank you very much.

Ms H O MKHALIPHI: Deputy President, one of the mentioned reasons for decline in global competitiveness index is state looting, right? You are reported to have mentioned the issue of state capture in various platforms and you correctly identified the Gupta family as element to the whole problem of the state capture. But one of the Gupta brothers said that you are misinformed about the family and he challenged you to back up the claims that the family is using and abusing the public funds.

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Now, Deputy President, can you put it on record here and assure the public that you are not part of the state capture? Why do you say that the Gupta family is abusing public funds? Thank you.

The DEPUTY PRESIDENT: Hon Speaker, when you say that I am not part of state capture I hope you are not saying that I am also capturing because I am not capturing and I am not captured. That should be clear on the record by whoever - foreign forces or Guptas or whoever. I am not captured and I am absolutely clear about that. In my own conscience and in my own heart I have never been captured by anyone. Having said that, the evidence that is clearly coming out through what we are reading, the emails and so forth does in the end give a lot of evidence. Some of it might be circumstantial and some of it might be direct evidence that that family is in one way or another involved in all these.

Therefore, it is for this reason that we have called for a commission of inquiry and that family should welcome the

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appointment of such a commission so that they should have an opportunity of also clearing their own names. They must subject themselves to the commission and we are hoping that this commission should be appointed soon. The President, I know for a fact, has been busy at it and working out precisely how this commission should function. We should all look forward to this commission of inquiry being appointed so that it can do its work. Thank you very much.

Question 39:

The DEPUTY PRESIDENT: Madam Speaker, the reduction of poverty and inequality is the central objective of our government's economic programme. The most effective way to reduce poverty is through the creation of jobs and the development of skills. Since 1994, we have used a combination of instruments to tackle poverty. This include, the reprioritisation of the budget towards a pro-poor expenditure, social security measures, provision of services and facilities and the redistribution of assets and creation of employment.



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Budget spending continues to favour those areas that have the greatest impact on poverty. As we worked to grow the economy and overcome the legacy of apartheid inequality - a process that will take quite a number of years, our social security system is critical to improving the lives of the poor people in our country. The number of social security beneficiaries has continued to grow as does the value of the various social assistance grants.

Since 1994, the government has been firm in its resolve to improve access for the poor to other social services, such as health services, food security; nutrition; transport; housing; electricity and education.

Now, if you look at all that whole sweet, it's because the government has been very concerned about the poor in our country. It is important that our citizens receive the support. They need to chart their way out of poverty. Key in this regards are government policies on land reform, the delivery of housing;

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the reform of water rights; infrastructure development and meeting of energy requirements.

Through the implementation of the public employment programmes, particularly the Expanded Public Works Programme, many poor households are able to receive a stipend that goes a long way in alleviating poverty. We are counting hundreds of thousands of South Africans who are benefiting in this programme every year. In fact, we count up to a million a year.

Additionally, we have seen services being delivered through labour intensive methods while creating assets and effecting training to people who are less skilled and who need skills to be able to get on with their lives.

In conclusion, there are a number of strategies that the government is employing to combat poverty, some involve the provision of basic services such as health care as I have indicated and all these programmes are meant to make sure that our people do live in a situation where their dire conditions are alleviated.



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One could ask, are all these having an impact? I would like to believe that they are making an impact much as the statisticiangeneral's report indicated that poverty has increased in our country, but in the main, we have been able to reduce poverty over the many years and we need to do much more than what we have been doing in the past. Do we have plans in place to do so? Yes, the government is determine on an ongoing basis to look after poor people in our county and not only look after them but to give them the tools the way with all to be able to get out of a position of poverty. Thank you, Madam Chair. [Applause.]

Ms H H MALGAS: Hon Deputy President, having observed International Day for the Eradication of Poverty on 17 October, which acknowledges the call to action made on 17 October 1987, to break the silence of poverty and to act in solidarity to put the end to poverty and to build the path towards peaceful and inclusive societies. These requires all nations to hit the calls made by the UN and honour human dignity of people living in

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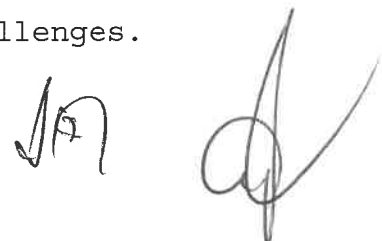
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poverty and to continue to fight to end discrimination they suffer.

My question, Deputy President: could you elaborate on the plans the government has in place in relation to create jobs, improve local economy and promote and empower Small, Medium and Micro

Enterprise Business in impoverish areas? I thank you.

The DEPUTY PRESIDENT: Hon Speaker, hon Malgas, the government continues through a number of initiatives and interventions to seek ways of addressing the situation of poverty in our country as I indicated through a variety of programmes. The policy thrust of our government is pro-poor. We are determined to make sure that we eradicate poverty in our country and nearly every programme that we embark upon is aimed at addressing the situation of poverty, inequality and unemployment. This triple challenge that our country continues to face is a clear focus of our government and the prioritisation of our budgetary process is aimed at precisely addressing these three challenges.

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Now, when it comes, for instant, to localisation - empowering people at the local levels so that there is inclusive growth, that's one area that we are focussing on to make sure that the economic interventions that we embark upon are aimed at precisely addressing this.

This past week, we were in an area in the Free State where we were looking at the public employment programmes that we have there. The pleasing thing is that even through these types of public employment programmes, we are focusing more and more on localising the participation of people we know, for instance, we were at a road building initiative or intervention where our government in the Free State is building or constructing a road of some 13 kilometres and what they have sought to do is to use local labour, is to use local materials as much as possible and have dispensed with the notion of having big construction companies. Now, this is helping the people at a local level to become economically active. They participate in this project on their own. Small and Medium Enterprises are being formed.

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Training is taking place. So, through a plethora of initiatives, we are giving life and meaning to the concept of inclusive growth through localisation.

On the Small and Medium Enterprise side, our government is committed to supporting Small and Medium Enterprises to grow them, to nurture them and to give them access to markets and through the set asides that we are putting in place, these Small and Medium Enterprises should be able to thrive and to be successful. So, these are the initiatives, hon Malgas, which we are putting in place. They are aimed at addressing precisely the challenge of poverty that our people are facing. Thank you very much.

The CHIEF WHIP OF THE OPPOSITION: Deputy President, I am delighted to have the opportunity to put a question to you today because of the briefings from within your own party are to be believed, this could be your last oral questions session as Deputy President. Sounds like the only buckling down you are going to get towards packing your office.

J M



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I am sure the Deputy President will agree with me that social grants, although insufficient, are one of the key measures to alleviate the suffering caused by poverty and unemployment.

Now, yesterday, Deputy President, the Minister of Social Development, Bathabile Dlamini and her department failed to show up at the portfolio committee were they were supposed to give a progress report on the Constitutional Court order for them to give their monthly update on the social grants crisis. Does the right hon Deputy President agree with this no-show and do you approve of it? If not, as the Leader of Government Business, what do you intend to do to compel the Minister of Social Development and her department to respect the Constitutional Court and respect this Parliament, or do you intend to continue to sit on your hands, as you have done the last two-and-a-half years, as Ministers disrespect this Parliament? Thank you.

[Applause.]

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The DEPUTY PRESIDENT: Hon Speaker, if that eventful day ever happens, that I need to pack my office and vacate, hon Speaker, I hope you will allow me to engage the services of Mr Steenhuisen to come and pack up in my office. [Laughter.] I will lay out the boxes and he will pack up my books and I hope that he will be ready and willing to carry them out and load them in a van and drive me away. So, I hope he will be willing to do that.

Now, coming to this question with regards to the hon Minister, Bathabile Dlamini, this is clearly a matter that I have to discuss with her because I have often taken time rather than stand on public platforms, speak to the gallery to discuss with colleagues that I serve within government about all of us, not only herself but all of us living up to the responsibilities that we have. If indeed, she did not appear and attend to the parliamentary committee process, I will have a discussion with her and we will do it in the quiet of my office and we will make sure that, indeed, all of us as members of the executive do live



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up to what the public and indeed to what Parliament expect us to live up to. I hope hon Steenhuisen does not find that unacceptable. He is nodding his head, meaning that he finds it immensely acceptable and very supportive. [Laughter.] I thank him for that. Thank you very much.

Mr M HLENGWA: Hon Deputy President, unfortunately I don't find it acceptable because we are on the brink of a crisis. The Constitutional Court had to intervene this year to correct the shortcomings of Minister Dlamini, who is dismally failing to manage the transition from the corrupt Cash Paymaster Services, CPS, to SA Post Office, Sapo. She was supposed to appear before the portfolio committee in the morning and at Standing Committee on Public Accounts, Scopa, in the evening. She was nowhere to be found.

So, the direct question, hon Deputy President, is in the face of this crisis which threatens the sustainable livelihoods of millions of our people, particularly the poor. Do you think that

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the Minister is competent enough to perform the duties presented to her and if you were the President would you keep her on as Minister? Thank you.

The DEPUTY PRESIDENT: Hon Hlengwa, I am not the President as you well know and allow me the opportunity to have this discussion with the Minister. There is possibly a reason or other why she did not come to the committee and to Scopa.

Now, I would like to have that discussion with her as I do with many of my colleagues as the Leader of Government Business. In the end by the way it is not really entirely my responsibility as the Leader of Government Business because it is the responsibility ... No, listen to this. It is your responsibility as Parliament to hold Ministers or members of the executive to account. It is your responsibility. [Applause.]

Now, if I were ... Listen to this. If I were not to be accountable and you were generous enough, you agreed that I should answer questions today instead of yesterday; I requested that leeway because I had to be in Lesotho for their dialogue

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process. Now, I requested. Now, if I was to bunk all together and not even appear here, it is nobody else's responsibility but yours as Members of Parliament because I am accountable to you. So, when I say that I will have a discussion with her, let it be clear that in the end I am not like a head prefect. I am not a sibonda [village headmen]. I am going to be doing so as member of the executive, as Deputy President.

Mr M HLENGWA: Hon Speaker, but I think you must be fair to us as members as the Speaker. When the Deputy President says, we must them accountable. They are never here. You, as the Speaker know that on our behalf. So, I put it to you, Speaker; tell the Deputy President that we want to do our jobs but the Ministers are never here to...

IsiXhosa:

USOMLOMO: Lungu elihloniphekileyo, Hlengwa, ndicela uhlale phantsi bhuti.

J/A


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Mr M L W FILTANE: Hon Speaker, there we go again, hon Deputy President. The Gini-coefficient still demonstrates that the gap between the haves and the have nots is forever widening in our beloved South Africa. There is no stable and sustainable employment being created even less so by the government. Instead, mines are shedding jobs by tens of thousands on a regular basis. Even the Expanded Public Works Programme, EPWP, spearheaded by Public Works is unable to offer stable and sustainable jobs. Less so, the community programmes run by the Cogta is so unstable with serious unexpenditure. Ongoing underexpenditure by government departments results in the slowing down of the socioeconomic advancement of the poor.

Now, I challenge you, hon Deputy President, here and now, to pronounce to us how you are going to effectively localise contracting. I will give you two examples to show that it is not happening. Only last month, we were in the Eastern Cape Public Works. A contract of R101 million was awarded by Public Works to a Pretoria base company to construct Mthatha High Court. A

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Pretoria company, I am not concerned about the colour of the company. An amount of R42 million worth of road works ...

IsiXhosa:

... ukukrwela ugalele nje irhexe endleleni?

English:

They couldn't find a single black company in the Eastern Cape to do the job. Your government, how do you localise it? In Fort Beaufort, a school with a contract of R54 million has been awarded to a Port Elizabeth company. How do you practice what you are preaching? Tell us and tell us now.

Mr H P CHAUKE: Deputy Speaker!

The SPEAKER: Yes, hon member.

Mr H P CHAUKE: Speaker, we have school children in the gallery please, Filtane must just try and reduce down his voice volume because it's just going to scare kids here. [Laughter.]



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The DEPUTY PRESIDENT: Hon Filtane, I will surprise you. I rather welcome the examples that you have put forward because they go to testify precisely what I was saying earlier, that our general thrust with regard to addressing the challenge of poverty and disempowerment, generally, is to make sure that there is localisation, proper empowerment of our people, shared economic participation and growth.

Now, you have given three very good examples and I want to check on that. I was telling you earlier and I went on this oversight visit with Deputy Minister, Jeremy Cronin, Inkosi Holomisa and a number of other Deputy Ministers. We were all together, Deputy Minister Madala Masuku and a number of others. We were out there in the Free State and we saw something that is really exemplary and all of us as we saw this had this great feeling that if this was to be spread throughout the county. The Free State one has its own challenges because the costs structure of constructing the roads with local participation and local materials are a little higher than what it should be. But that is a challenge that can be addressed. But the pleasing



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thing is that it is the project that the community as a whole owns. They feel that this is their project. It has created up to 80 odd jobs in the area, men and women in our country wake up every morning to go and work on this road, which they have been constructing. [Applause.]

Now, I would have wanted to see that as well in the Eastern Cape. I would have wanted to see it in the area that you were talking about. It is certainly something that should start growing on us. It doesn't just fall from the sky. It's something that we should be socialising more and more as we get our various government structures to become more *au fait* with what localisation actually means and also to address some of the challenges that we saw in the Free State and find a clever way of addressing precisely those. I mean, I tell you, we saw how women and men are putting up brick by brick to construct a main road on which busses and big trucks travel. They are constructing the road as the Romans did many centuries ago.

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These are durable roads, beautifully built roads and that's precisely what we want to see spread throughout our country.

In KwaZulu-Natal and in some parts of the Eastern Cape, we have women maintaining the roads of our country stretches of kilometres of road. So, this localisation process is growing on us. Let us encourage it to continue. Where we find incidents where outside companies from the local area are being brought in, we must ask those role-players to halt to see to what extent those companies can work with local companies to transfer skills to make sure that the wealth that is generated remains in the area rather than be exported to Pretoria, for instance. So, I will take what you have said to heart and I will want to follow it up as well. Thank you very much. [Applause.]

The SPEAKER: Before going to the next question, it is again my pleasure to welcome pupils, learners from Amamfengu Primary School, in Tsitsikama, Eastern Cape. [Applause.] They are 14 and accompanied by their three staff, welcome.

IsiXhosa:



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Mnu N L S KWANKWA: Mama uxolo torhwana, sicela amagama ootishala babo nabo kaloku besibabizile kwesiya isikolo ukuba awukhathazeki. [Kwahlekwa.]

The SPEAKER: We have Mr Ngeni, Mrs Mdoda and Miss Gugushe. [Applause.] Those are the staff members. [Applause.]

The SPEAKER: We now come to Question 40, from the Leader of the Opposition. The hon President! The Deputy President! [Interjections.]

The DEPUTY PRESIDENT: Deputy President, hon Speaker!

The SPEAKER: Deputy President, indeed!

Question 40:

The DEPUTY PRESIDENT: The Interministerial Committee on StateOwned Enterprises Reform is in the end responsible for the implementation of the key recommendations of the Presidential

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Review Committee on state-owned enterprises, SOEs. These recommendations relate in the main to the design of our SOE landscape and the policy measures required strengthening the ability of these critical entities to fulfil their developmental mandates.

The interministerial committee does not have a mandate to deliberate on the funding requirements of specific SOEs. The decision to transfer funds to SA Airways from the National Revenue Fund was therefore not placed before the interministerial committee for consideration. I thank you, Madam Speaker.

The LEADER OF THE OPPOSITION: President ... I mean, Deputy President, I am sorry: There is just too much reshuffling that takes place. What I wanted to highlight, Deputy President, is that recently I was in the Eastern Cape and I met a young woman who told me of a story of how she depends on welfare - social grants. I reflected at length about that story and realised that

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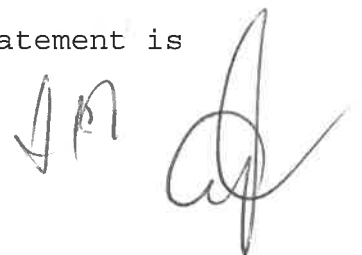
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in fact four children die every day in South Africa, thanks to malnutrition.

Now, I struggle to understand, within that context and within that women's life: Why would we take R3 billion of South Africa's taxpayer's money and help the rich fly on SA Airways? So, Deputy President, it has already been proven that the bailout that the Minister of Finance put to SA Airways was in fact was in contravention of the Public Finance Management Act. There is a Medium Term Budget Policy Statement being tabled here that will adjudicate some of these funds.

I want to know, Deputy President: Is it not time for all of us as South Africans to be real about what our needs are, especially for poor South Africans. We could sell off some strategic routes on SA Airways or sell off the airline, because quite frankly: Why are we subsidising rich people to fly at the expense of poor people. So, is it your view to support the bailout or to support poor people? [Applause.]

The DEPUTY PRESIDENT: Hon Speaker, the Leader of the Opposition knows very well that the Medium Term Budget Policy Statement is



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going to be delivered by the Minister of Finance next week. In his delivery of that statement, he is going to address precisely some of these issues that have to do with SA Airways and how this funding of SA Airways is going to be effected.

I couldn't think of a better opportunity when we finally discuss and debate the Medium Term Budget Policy Statement: When Members of Parliament will have that opportunity to dig deeper into the statement that the Minister is going to make; when they begin to dissect even the propositions and engage on all the issues that will be embedded in the statement that the Minister of Finance is going to put. So, I would like to suggest, hon Maimane, that we should look forward to this statement being put to Parliament. Once that statement has been put forward, we would engage with it.

You raised the issue of SA Airways and you have been actually saying that SA Airways should be sold. That is a policy platform on your party's side. You say: Sell it off - and sell it off right now - because you are subsidising the rich at the expense of the poor. On this side we are saying: This is a state

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resource ... [Laughter.] [Interjections.] This is a state resource and what we are committed to doing is to address the challenges in SA Airways.

Today, certain announcements were made about SA Airways, the changing of the board and looking forward to a clear strategic approach that SA Airways should have. When the Minister finally addresses us, he will tell us what the money is going to do, what conditions he is attaching to the money and how he is dealing with all these other regulatory structures that we have, like Public Finance Management Act and all these other various sections.

The Minister, in addressing that, gives us an opportunity. Clearly, it should never be in anybody's mind to doubt our commitment to the fortunes and the interests of poor people. This side of the table has been always pro-poor people, hence the policies that we have adopted. [Interjections.] We have adopted the clearest policies. And, you know what? These days we are finding that that side of the table is learning quite a lot. [Laughter.]

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They are learning from the policies that this side of the table has been instituting. [Applause.] [Interjections.] Now, we thank you and we want to encourage you to continue your learning process because we have great policies that you can pick and choose from to enhance your own policy capability. I would like to invite the Leader of the Opposition, very respectfully, and say that: Let us engage with this issue.

In fact, it might also be a useful thing for all of us to engage in a real robust debate as Members of Parliament about the positioning of our state-owned enterprises. For instance, I would want to get into a thorough-going debate with the Leader of the Opposition, not only on SA Airways, but on a whole range of state-owned enterprises so that he - if he can - sharpens my intellect, and I wholesomely sharpen his intellect. Thank you very much.

The SPEAKER: The hon Leader of the Opposition!

[Interjections.]

Oh, the hon Shivambu!

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Mr N F SHIVAMBU: Deputy President, towards the end of June, the National Treasury withdrew R2,3 billion from the National Revenue Fund and gave it to SA Airways. Then, towards the end of September, the National Treasury withdrew R3 billion and gave it to SA Airways and a portion of that was allocated as working capital. Their withdrawal of those monies was not as per normal appropriation process. They used section 16 of the Public Finance Management Act which says that you can withdraw money when there is an emergency. So, that section of the Public Finance Management Act speaks about use of funds in emergency situations.

Do you rationally believe that taking money from the National Revenue Fund to allocate to working capital of SA Airways, to bail out on things that we have cautioned you about throughout, falls within the ambit of section 16 of the Public Finance Management Act? You just go and withdraw money, and you say it is an emergency, when we have been telling you that there is a crisis: Dudu Myeni can never get SA Airways right!



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Do you rationally think as Cabinet that it is sensible and legally permissible to just take money from the National Revenue Fund that is meant for emergency to bail out SA Airways which is badly managed? Then the quick issue is that you were given justification. You said you are going to speak to the truant Ministers who do not come here, and you will engage them to come here. However, there is a Member of Parliament who was sworn in recently, called Nkosazana Dlamini-Zuma. Where is she? Do you know where she is? Maybe you will tell us because she has just been sworn in and she is not here in Parliament. Please!

[Applause.]

The DEPUTY PRESIDENT: Hon Speaker, the question that hon Shivambu has raised in relation to utilising the National Revenue Fund and/or utilising section 16: A legal opinion was obtained. Also, as I am informed, a legal opinion was also obtained by the Parliament Legal Officers. This is a matter which in the end the Minister of Finance is also going to address when he addresses us next week.

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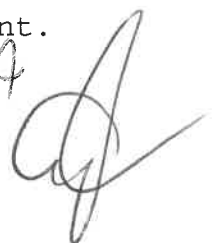
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The SA Airways, being a state-owned enterprise, was facing serious difficulties. Part of the money had to go towards servicing debt because of that had not been done, it would have called or resulted in the lenders of SA Airways all coming in a rush - in a most catastrophic way - to demand payment for the debt that is owed to them.

So, quite a lot of juggling had to be done. There was nothing in my view that was illegal. It was all done very openly because we were trying to avoid something that could have had even a bigger - a much catastrophic and bigger - impact on the country as a whole. We were trying to show up for something that could have resulted in a flood.

Clearly, utilisation of section 16 of the National Revenue Fund is a matter that will be addressed. Some view it as illegal; others view it as something that has addressed something of an exceptional nature. In the end, this matter will be properly outlined and clarified by the Minister of Finance when he does his Medium Term Budget Policy Statement.

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In the end, the issue of the attendance of hon Dr Nkosazana Dlamini can be addressed by the Chief Whip who is willing and able to address it because he is the one who is in charge of the attendance of members on this side as Members of Parliament. So, hon Speak, if you allow that, the hon Chief Whip is willing and able to address it. Thank you. [Applause.]

The SPEAKER: At the right time! The hon Kwankwa!

Mr N L S KWANKWA: Deputy President, or should I call you President: I don't know; we seem to be confused. You see, this question is broadly about the reform of SOEs and it cites SA Airways as one example of the challenges we are facing so far as SOEs are concerned. I want to take you back to the question which was asked early, especially by hon Rantho, because it links to this very well about Eskom.

For instance, there were reports in the past that Ministers who were in charge of that Public Enterprises, in particular, were

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giving inconsistent instructions to the board of Eskom - inconsistent with the rules of corporate governance. What did you do about that issue?

Recently, Professor Anton Eberhard did a presentation and testified in front of the Portfolio Committee on Public Enterprises inquiry into Eskom. One of the things he spoke about was the fact that the Minister of Public Enterprises, Lynn Brown currently, and members of the Board of SA Broadcasting Corporation undermined - they took steps to undermine the Eskom War Room which they were given a mandate to oversee. Right?

Not only did they undermine, but they made it impossible for that Eskom War Room to financial turn around Eskom. What have you done as a person who was charged with overseeing that process to make sure that those things don't happen and that Eskom isendleleni elungileyo [is on right path]?

The DEPUTY PRESIDENT: Hon Speaker, I did say that in the end, the ideal position is that the corporate governance processes

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and procedures should be adhered to: Where the executives of any entity are given the right to run the enterprise as best as they can, without any undue influence and interference from those who are not members of the executive; and they should be accountable to their board.

Their board should be a board that will have oversight and give strategic direction to the enterprises. Now clearly, there have been lapses, there have been omissions and there have been some commissions in a way where all these processes were not truly adhered to.

When it comes to the Eskom War Room, the Eskom War Room was given a task. The task was: Deal with the problem of load shedding that we were experiencing; deal with it as quickly as possible! That is what a war room is all about: Deal with the current challenge. The Eskom War Room was able to make headway in dealing with that challenge. Clearly, there were quite a number of other processes at management level, at board level, at the Eskom War Room level and also the Ministries level.

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It was in this regard that I actually went to the President, and I said: Let's close this Eskom War Room and let us allow those people who are given the absolute right through various fields - either the law or corporate governance - to be the ones who are going to run with the challenges that we face and resolve it.

It was to this end on the Eskom War Room that some of us really recommended that you should now put in place a CEO who will be able to turn Eskom around. Clearly, because there too many entry points, we were seeking to end this whole confusion that was going on. There was quite a lot of confusion because the Eskom War Room would come to a particular conclusion and thereafter management would be doing something else. The board would be instructing management to do something else.

It was so confused and some of us felt that: You shut it down, particularly at the point when load shedding was now becoming a thing of the past. We felt that we had achieved the objective that the Eskom War Room was set up for; it now required a

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focused management and a focused CEO to take the process forward. I think the Eskom War Room in the end, in part, did achieve its objective. Thank you very much.

Mr M A PLOUAMMA: Hon Deputy President, your answers are more like forcing us to drink castor oil. [Laughter.] The Minister of Finance and his deputy are busy chocking the Treasury and the Presidential Infrastructure Commission, PIC, in order to fill the bottomless pit of SA Airways which has become a house of plunder and theft. Why are you not standing up to these misguided solutions, Deputy President? Why do you allow the President to turn the Treasury into a Ponzi scheme?

Hon Deputy President, generalising and philosophising is not enough. Why don't you free yourself from this voluntary bondage? Before we can declare you an accomplice of this shameful betrayal, why do you allow them to use your image to achieve nefarious ends? The Minister of Finance is raking havoc with the blessings of the President. Deputy President, is this Minister of Finance ... [Interjections.]



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Mr B A RADEBE: On a point of order!

The SPEAKER: Yes, hon Radebe!

Mr B A RADEBE: I am rising on Rule 85: The member who is on the floor has cast aspersion on the Minister of Finance and the President by ... [Interjections.]

The SPEAKER: Go on, hon Radebe!

Mr B A RADEBE: He has just cast aspersions on the Minister that they are in for the nefarious ... They are looting this thing - the Treasury!

The SPEAKER: The hon Plouamma, do you want to withdraw that?

Mr M A PLOUAMMA: No, no, no: What I have said is true!

The SPEAKER: No, hon Plouamma, what the hon Radebe is point out is that you are not raising an issue in the appropriate manner, as you know how the Rules require you to.

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Mr M A PLOUAMMA: Okay, hon Speaker, I hear that.

[Interjections.]

The SPEAKER: Hon Plouamma, I am saying withdraw.

Mr M A PLOUAMMA: Alright! Hon Deputy Speaker, I withdraw.

[Interjections.] Hon Speaker, I withdraw. Hon Deputy President, is this Minister of Finance better than the former Minister Pravin Gordhan?

The DEPUTY PRESIDENT: Hon Plouamma started off by talking about castor oil. I last took castor oil when I was a very young boy. Now, I don't know what its effects are on an adult. Maybe hon Plouamma can tell us what the effects of castor oil are on an adult person like himself. I don't know what it does. Hon Plouamma is often quite flowery in his language because he also refers to Treasury as a Ponzi scheme and all that. All those things are unknown to me. What I do know is that we have got a Treasury which is highly respected throughout the world. Our Treasury is one of our best-performing departments in government.

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Now, you also want me to make a value judgement on my colleague and compare him with another colleague who is no longer a Minister of Finance. I am not going to please you by making that type of value judgement. [Interjections.] What I do know is that our Minister of Finance is doing his work. He just came back from Washington at the annual meetings of the IMF and the World Bank, where he represented our country with a great deal of capability and ability. We thank him for that! [Applause.]

Our Minister of Finance is obviously in this very difficult economic circumstance dealing with a very difficult challenge. More than anything else, you should be wishing him well for next week when he delivers his very first Medium Term Budget Policy Statement. I would like you, with your usual flowery language, to be heaping a lot of not praise but encouragement to him as he delivers his statement. That is what he needs so that he has vision, wisdom and ability to steer our economy in the right path. Thank you very much, hon Plouamma.

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The SPEAKER: We now come to Question 41 ... [Interjections.]

Mr H P CHAUKE: Speaker! Speaker!

The SPEAKER: Who is calling?

Mr H P CHAUKE: Speaker, something has happened next to hon Plouamma. Can we get some assistance, please?

The SPEAKER: We will get somebody to come and help.

Mr M A PLOUAMMA: Hon Speaker, can we declare Mr Chauke that he is sick, he needs help?

The SPEAKER: It sounds like we need a clinic in the corner there.

The CHIEF WHIP OF THE OPPOSITION: Madam Speaker, I wouldn't worry too much, I went to have a look: It was the ANC Manifesto lying on the floor. [Laughter.]

Question 41:



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The DEPUTY PRESIDENT: Hon Speaker, the challenges that face our young people require urgent and sustained action by all social partners. Our blueprint in seeking to address these challenges, clearly, is the National Youth Policy 2020, which proposes a range of interventions, including interventions to support youth absorption in employment, providing work exposure and developing and supporting youth enterprises and co-operatives to facilitate economic participation by young people, as well as ensuring support, guidance and provision of education and training for young people.

Now, these multisectoral interventions to support young people run across quite a number of issues, including things like substance abuse amongst the youth, better co-ordination and implementation of the National Youth Service and broadening sports and recreational opportunities for young people. These are just some of those interventions.

Now, different government departments and agencies drive specific youth-empowerment programmes. The Department of Small

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Business Development has incentives for youth owned cooperatives and the programme on business development for young people. The expanded works programme also has a number of interventions. The Department of Higher Education and Higher Education and Training also has a number.

But in the end, government cannot address all these challenges that are facing young people alone. Strategic partnerships with the private sector and civil society groups are critical in unlocking empowerment opportunities for our young people. One of these key initiatives that we have been able to reach an agreement with business on, an idea which came up when the Presidential Business Working Group met we asked the business community and challenged them to help in creating jobs, internships and learnerships for young people. We said that we are facing a huge unemployment challenge amongst young people and we need everyone in our country to respond to this challenge, particularly the biggest job creation effort which is in the private sector. We said that we would like them to

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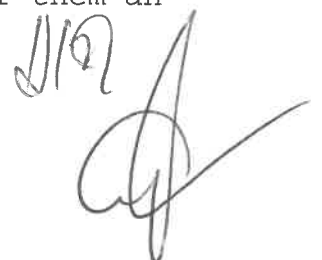
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respond positively and having been challenged they came back with a programme or project which is now called the Youth Employment Service which is going to see that up to 1 million unemployed young people over the next three years being offered an opportunity to get into the world of work through internships, learnerships and be able to be economically active as key participants in our economy.

For us this is a huge achievement and we are hoping that this programme will be rolled out on a pilot basis later this year and on a more focused basis early next year when we will be able to absorb. At the moment up to 330 000 young people just next year and we are hoping to bump it up to at least half a million young people through the length and the breadth of our country who will be able to get into this programme. This for us is an important project and we hope that young people will be able to take it up.

What is it going to offer them? It is going to offer them an opportunity to get into employment. It is going to offer them an

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opportunity to learn the world of work and be actively involved in it. Now a number of other NGOs are also involved in assisting young people to deal with the ongoing challenges faced by young people. In Botshabelo last month, through an NGO we launched another programme which is called a Thari Programme and which is going to assist young people to be actively involved after school in a safe area. This NGO is launching safe parks where young people from school particularly basic education, will go to parks like these and be able to be helped with their homework, be able to participate in various other past times or areas of activity improving their capability in schools and so forth.

The Department of Health has also launched as we all know a programme which is called She Conquers campaign and all these programmes are aimed at making sure that we address the challenges and the problems of young people all around the country. Now recently when it comes to basic education, we were all saddened when we heard about the challenges that young girls



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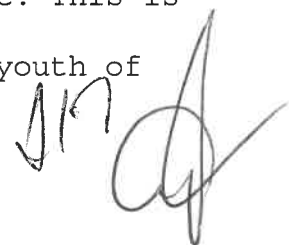
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experience in a school in Soweto where 87 primary girls were allegedly sexually abused by a security guard. These are matters that government is determined to address on an ongoing basis so that we minimise and lessen the challenges that our young people are facing on an ongoing basis. Some of them are on substance abuse and drugs.

We have a plethora of initiatives and interventions that are aimed at empowering our young people. But I would say that one of the key ones as I said earlier is economic one. We would like the majority of our young people to be actively involved as key participants in the economy of our country and we continue to lay out a number of opportunities and we are calling on young people to come forward. Those who are tempted to get out of school should stay in school as we will be offering assistance with bursaries and all that.

In the end hon Mahlalela, the opportunities that we are laying out for young people in our country are quite extensive. This is a government that is determined to make sure that the youth of

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our country, and I am particularly pleased that there are so many young people here today, the youth of our country are as empowered as they possibly can get. To this end, spending so much money up to 215 of our of our budget on education and empowering young people, means that this government is really committed to making sure that young people in our country get a better life than their parents so that they can participate as active participants in the economy and drive this country forward. [Applause.]

Mr A F MAHLALELA: Hon Speaker, let me take this opportunity to thank the Deputy President for his comprehensive response on this important matter which has the potential to affect the future of our people and that of our country.

Siswati:

Njengobe nesintfu sisho nje kutsi bantfu labasha bangumliba loya embili.

English:

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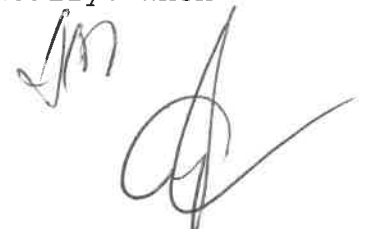
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As you have reflected, Deputy President that drugs and alcohol abuse in South Africa is said to be alarming and a cause or a contributor to many social ills, health and economic problems affecting the population in general and the youth in particular. This results in crime, interpersonal violence, rapes, sexual behaviour. This is a challenge that is denying this population group an opportunity to fully participate in the socioeconomic development of our country.

Hon Deputy President, may you share with this House and the people of South Africa the extent to which these plans and/or strategies have been effective to create window opportunities, creativity, innovation, talents and energies to these young people of South Africa? Thanks.

The DEPUTY PRESIDENT: Hon Speaker, I can testify to the fact that we found that quite a number of these initiatives are having a positive impact on the many young people whose lives are touched by these interventions and we found that quite a number of young people are participating enthusiastically. When

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we get them involved in these initiatives, they search forward and they want more, they want more of these initiatives because they are seeing great benefit. It is actually a joy to see some of these young people participating in our public employment projects. Many of these projects have young people as participants and of course others have women as participants. But the young people who are participating in these, use them as a stepping stone and a ladder to accede to higher levels of economic activity. We find that many of those who participate do in the end find jobs as they move away from work opportunities to jobs.

As we deal with some of the social issues that have to do with drug and substance abuse, we are finding that young people do finally realise the challenge and the problems we are in. I had occasioned to be in Soshanguve the other time and found that the nyaope challenge is quite a big one, but we also found that many young people are amongst themselves taking initiatives to reduce the further attraction of young people towards the scourge of

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substance abuse and they need assistance. They need to be assisted rather than to be pulled away from all these activities.

This Thari programme that I was talking about earlier where an NGO is creating safe parks in a number of areas; it is young people who are driving this. They are driving this and getting skills and our government is doing very well in training young people as counsellors, mentors with a view of assisting other young people. This is having an impact but clearly we need to massify it. We need more of these initiatives and we call upon NGOs and all other role players to participate in this effort of empowering young people in our country and positioning them to be active participants in the development of our country in many ways than one. Thank you very much. [Applause.]

Ms B S MASANGO: Hon deputy President, do you accept responsibility for the increase in poverty levels where we are sitting now at half the country's population during your Deputy



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Presidency are living in poverty? If you are not accepting responsibility who do you think should?

The DEPUTY PRESIDENT: Hon Speaker, all of us as leaders should accept that we do have a responsibility to lead, come up with policies, strategies and initiatives that will lead our people out of poverty. It is all very well do say do you as the ANC accept this, including myself. The DA is also the government of the Western Cape, now there is poverty here in the Western Cape and let us never run away from that. There are people who are living in poverty here. Now, what is our responsibility as leaders rather than pontificate and point fingers, we should say that this is a collective and common problem for all of us as leaders of our people in South Africa. We, as we were all voted into this Parliament, we were voted to help our people have a better life and we all as we were voted for, embraced a National Development Plan and a plan which we all subscribed to. Our responsibility therefore is to see this plan implemented and

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reduce poverty, reduce unemployment, the plan says that by 2030 we should have reduced unemployment to around 6%.

We have our job cut out for us instead of wasting time, pointing fingers at one another we should just get down and do the work that our people expect us to do. So, who is responsible? We are all responsible. We are responsible to lead our people out of poverty. Thank you very much.

Ms L L VAN DER MERWE: Speaker and to you Deputy President, it is a fact that three out of four young people cannot find a job and therefore many poor families rely on a social grant. You will also be aware that your government in the next five months must be ready to payout social grants yourselves as per the Constitutional Court directive. But this week in a report to the Constitutional Court, the Constitutional Court appointed task team comprising of the auditor-general and a panel of experts have said the following about Sassa. They say that:

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The measures taken so far by Sassa together with the proposed deadlines are unlikely to enable a seamless transition to a new system by 01 April 2018.

My question to you as the hon Deputy President, as a leader of government business are you not concerned about the slow concern between Sassa and the Post Office which is again putting at risk the lives of the most vulnerable citizens in our society and as a vocal advocate for the future success of the Post Office. Can you give us the assurance that there are no deliberate attempts within your government to sabotage the Post Office and therefore keeping the back door opened for CPS to come back as a service provider to pay social grants?

The DEPUTY PRESIDENT: Hon Speaker, yes I think that all of us should be concerned and be able to keep this matter on our radar screen because it is important that what the Constitutional Court ruled on should be implemented. Therefore I am as equally concerned as you are if this is not going to happen. So, we must therefore ensure and work that it does happen. I am not aware of

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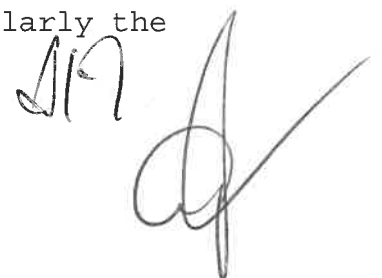
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any plans or machinations within government to make sure that the Post Office does not succeed and it fails. I am not aware of that. I am hoping that all these efforts that are being made, are being made with the view of implementing what the Constitutional Court ruled or declared. So I think that we should base our conviction and belief in making sure that that happens. If somehow that it is suggested that it will not happen it has not reached my ears and we will certainly look into it as well. Thank you very much.

Mr N S MATIASE: Thank you so much, Speaker. Deputy President, the spread of HIV and Aids is directly linked, in the main, to two factors: high levels of illiteracy among young people and lack of access to educational opportunities especially for working class and peasant children; and, secondly, because of the lifestyle of some leaders and patterns of conduct of sugar daddies, blessers and paedophiles in society, especially among members of the ANC ... [Interjections.] ... particularly the

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President who is not a good example when it comes to matters of HIV and Aids. Now, the question is: Are we ever going to roll back ...

Mr B A RADEBE: Point of order ...

Mr N S MATIASE: ... the spread of HIV and Aids

...

[Interjections.] ... in an environment in which there is no ...

The SPEAKER: Hon Matiase, just hold on. There is a point of order.

Mr N S MATIASE: ... free, quality ... [Inaudible.]

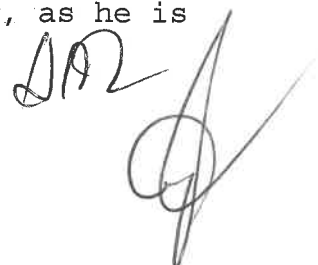
... education.

The SPEAKER: Yes, hon ...

Mr B A RADEBE: Hon Speaker, I am rising on Rule 85.

[Interjections.] Member Matiase has just cast aspersions on the President of the Republic - that do not deal with issues of ...

[Inaudible.] [Interjections.] ... in the proper way, as he is



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promoting that. Please, could he withdraw that because this must come in the form of a substantive motion, if there is such a thing?

The SPEAKER: Hon Matiase, you know that it ought to come in the form of a substantive motion.

Mr N S MATIASE: Madam Speaker, I never said "Members of Parliament". I said "members of the ANC". Some of them are not here. [Interjections.]

The SPEAKER: Uh-uh, hon Matiase. [Interjections.]

Mr N S MATIASE: I said "members of the ANC" ...

The SPEAKER: No! No!

Mr N S MATIASE: ... not "Members of Parliament".
[Interjections.]



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The SPEAKER: No. No. Hon Matiase, could you withdraw?

[Interjections.]

Mr N S MATIASE: Withdraw what, Madam Speaker?

The SPEAKER: Withdraw your reference, in a derogatory manner, to the President of the ANC. [Interjections.] Just withdraw.

Mr N S MATIASE: I want to understand: what should I withdraw?

The SPEAKER: I'm saying your reference, in a derogatory manner, to the President of the ANC.

Mr N S MATIASE: All that I referred to the President of the ANC is that he is not a good example.

The SPEAKER: No, hon member. You know you went further.

Mr N S MATIASE: That's all that I said.

The SPEAKER: You went further.

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Mr N S MATIASE: And in that line, what is it that I must withdraw?

The SPEAKER: You went further.

Mr N F SHIVAMBU: Hon Speaker, I don't think it is fair to ask a member ...

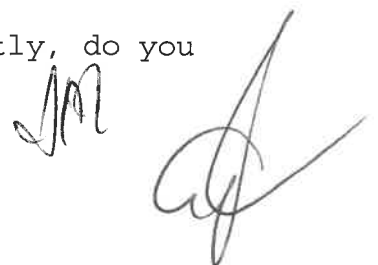
The SPEAKER: No, hon Shivambu! Please take your seat.

Mr N F SHIVAMBU: ... to say he must withdraw that the ...

[Inaudible.] ... example.

The SPEAKER: Take a seat. I will look at the Hansard and then I will come back and tell you what you said.

Mr N S MATIASE: Can I proceed? Given these two dominant factors, do you think that it is possible for us to roll back the spread of HIV and Aids in this environment and if government fails to usher in free decolonised and quality education; is there any chance that HIV and Aids can be brought down? Lastly, do you



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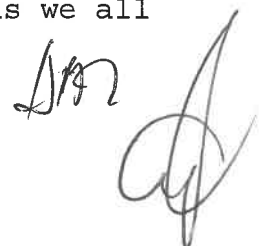
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have the courage, Deputy President, to tell Mr Zuma to release the report on the Commission on Fees for Higher Education, to make it possible that we do a massive dent on the levels of illiteracy and lack of access to higher education in this country, to roll back the spread of HIV and Aids?

The DEPUTY PRESIDENT: Hon Speaker, yes, clearly one of the key strategies that this government has embarked upon is to address some of those social ills y=that the hon Matiase is talking about through education. We have developed a very clear intervention through the Department of basic Education on, for instance, HIV/Aids which is being rolled out in our various schools and our Deputy Minister Surty was here, would be able to talk about that in terms of the effectiveness that we foresee this type of programme having on the reduction of HIV/Aids, particularly amongst young people.

When it comes to the courage to tell the President to release the report, courage is always there and it does not even require courage. The President is going through the report as we all

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know and once the President has appointed the commission of enquiry the report is first given to him to study it, go through it and therefore he is able to release the report and as he releases the report he will then be able to deal with the recommendations as government and say this is how government is going to respond to the various recommendations in the report. So, it does not require courage, the President will do the job that he has to do as the President of the republic of South Africa. Thank you Madam Chair.

Question 42:

The DEPUTY PRESIDENT: Hon Speaker, the office of the Deputy President does not procure any auditing services or other entities that report to the office of the Deputy President.

On the broader question I'm informed by the Minister of Finance that there is no intention from the Minister of Finance to retrospectively review the work done by KPMG.

Since government entities confirm the appointment of Audit Firms annually at their annual general meeting, AGMs, the



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statement was to give guidance that they consider the factor surrounding this

Audit Firm when they do so because they have to do so themselves at their annual general meeting and therefore guidance statement was issued.

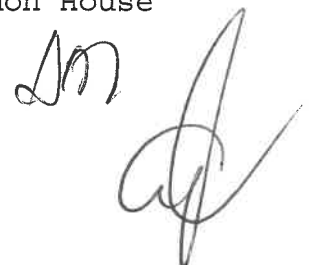
The objective is to protect the integrity and standard of accounting systems which are international and global accounting systems. The announcement was to ensure that good governance is not compromised going forward. Thank you Madam Speaker.

Mr M P GALO: Thank you, Chair of Chairs. Deputy President, I'm satisfied because I also wanted to check as to whether you are going to support the Reserve Bank when supporting Absa and Standard Bank on this issue, but I'm satisfied. Thank you.

The DEPUTY PRESIDENT: I'm happy to respond to the statement of satisfaction. I am here to give satisfaction. So I'm here that the hon member is satisfied. Thank you very much.

[Applause.]

Mr M N PAULSEN: Eh, I don't think there is anyone in the ANC that can satisfy me. Deputy President, through you hon House



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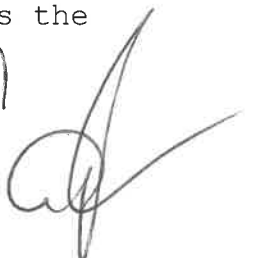
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Chair, the EFF has warned the ANC about a number of things that are taking place and only months later you will discover that we were correct, on 2015 we spoke about illicit financial flows; we spoke about how certain organisations have undue influence on government; we spoke about the McKinsey and KPMG's involvement in corruption.

Furthermore, we have a warning about another thing now, since the hon Galo pose his question and gave a really sweetheart response to your response. I'm asking you now, what is the sense in taking 26 Wards from Matatiele, incorporate it into the KwaZulu-Natal, which is over 800 Wards, when you have taken it away from the Eastern Cape, which is about 708 Wards? What is the sense in that? The EFF is warning you again, it is a big mistake, don't do it.

The DEPUTY PRESIDENT: Eh, I don't know whether Matatiele has anything to do with KPMG. Hon Paulsen, we hear the warning and we noted and this is a process that is underway but because you have anointed yourself as a prophet and I don't know who is the

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greater prophet, whether it is yourself or hon Shivambu because he often comes up with this prophetic words. So but we note what you are saying. Thank you very much.

Ms D G MAHLANGU: Thank you Chairperson and thank you hon Deputy President for the answer. Deputy President, given what happened in the KPMG case, what is the government doing or one can say what is the government's approach regarding good governance, especially on financial governance in both the private and public sector. Thank you very much Chair.

The DEPUTY PRESIDENT: Thank you, hon House Chair. Government clearly would like strict adherence with accounting standards; with proper governance processes, particularly when it comes to matters that have to do with the money of the public.

We want to insist that as we manage government or the people's money we should do so in strict adherence and conforming to clear best practice rules, governance processes and procedures



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and the accounting standards that are often of an internationally recognised nature.

So government will be making sure that as we address the whole question of the governance of our state-owned enterprises, and indeed government departments, we adhere to all this and we make sure that as much as we possibly can, we do adhere. Now, this is where the Auditor-General also plays a key role, the Auditor-General gives a lot of attention to lapses in adherence to financial standards, financial procedures, and we are hoping that the Auditor-General particularly in the light of what has happened, now with companies like KPMG, McKinsey would be focusing more attention on making sure ... [Interjections.]

Mr I M OLLIS: Bell Pottinger.

The DEPUTY PRESIDENT: Yes, Bell Pottinger - on making sure that there is strict adherence, and if there ever was a time when our country has gone through a process where we should look at our

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self, this is the time. This is the opportunity and the moment where we now need to have learnt important lessons.

Because all that has been happening in our country now should not just be something that has happened in vain, it should be something that gives out good and important lessons for us so that we never ever, ever again go through this type of challenges, problems and corruption. Thank you very much.

[Applause.]

Mr T J BRAUTESETH: Thank you, House Chair. Deputy President, you are aware obviously from obvious questions that there is quite concern about KPMG, in particular the Matatiele branch which is known as "keeping promises made to Galo".

In this light Deputy President, will you answer the following question: Will the Deputy President ensure that the Sars Commissioner immediately releases the now discredited KPMG Rogue Unit Report for public scrutiny, and will the Deputy President here and now on behalf of the South African government publicly



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apologise to hon Pravin Gordhan for the damage this report has caused. Thank you. [Applause.]

The DEPUTY PRESIDENT: Thank you, hon House Chair. What you are asking for is within the purview of the Minister of Finance as the person who has oversight over Sars. The same issue has to go with the apology that you seek, and I can say that the report clearly is something of public interest. We will need to look at the efficacy of having that report being released because it is a matter that concerns the public and the public is interested in it.

Flowing from that we should then be able to examine precisely what this report says; but from optically looking at it, from where I stand, it is quite clear that the report itself was grossly, grossly, unfair to former Minister Pravin Gordhan. Indeed, the apology that should be forthcoming should be forthcoming from an appropriate quarter, which will be dealing with how we should manage this whole report.

So I don't want to flippantly say now that this is what we are now going to do or say, but it is a matter of great

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concern because it is a very controversial report that has led to a number of consequences, which were undesirable.

So therefore we need to look at it very carefully and judiciously, judiciously not in the legal sense, but in terms of just being very precise and careful in terms of what we do, but thank you very much for raising it. Thank you.

The HOUSE CHAIRPERSON (Mr C T Frolick): Thank you hon Deputy President. Hon members that conclude questions to the Deputy President, I wish to thank the hon Deputy President...

[Interjections.]

Mr B A RADEBE: Hon Chair, I'm referring to the ruling of the Speaker, where she said she is going to look at the Hansard. I will request that she looks at the entire input of hon Matiasse. Thank you, that's what I'm requesting.

The HOUSE CHAIRPERSON (Mr C T Frolick): Well the Speaker is not in the Chair now, so we will - the Table will convey to the Speaker. Order hon members! Hon members, that concludes the business for the day and the House is adjourned.

A handwritten signature in black ink, appearing to be 'SM' followed by a stylized flourish.

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The House adjourned at 16:10.

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Annexure "MCR17"

Annexure "MCR17"
"Performance Agreement Bundle"

This annexure was separated to form 1 single bundle
and can be found in bundle CR-BUNDLE-04

RED PAGES
BBB3-MCR-RSA-350 to BBB3-MCR-RSA-1228

BLACK PAGES
CR-BUNDLE-04-001 to CR-BUNDLE-04-879



Annexure “MCR18”

POLITICAL RESEARCH NOTE
AN INDEPENDENT ANALYST'S VIEW



This political research note was prepared by JP Landman in his personal capacity. JP is an independent political and economic analyst and the opinions expressed in this article are his own and do not reflect the views of the Nedbank Group.

CORRUPTION

14 AUGUST 2020

There is palpable anger in the land about corruption. The anger is largely focused on what the ANC is doing and failing to do about the scourge. If we separate party and state, it is useful to look at the scoreboard of what the state has achieved so far in fighting corruption.

Critical state institutions

President Ramaphosa, 10 months after coming into power, fired erstwhile South African Revenue Service (SARS) Commissioner Tom Moyane in November 2018. Moyane fought mightily to keep his job, all the way to the Constitutional Court, who sent him away empty-handed. By May 2019 new Commissioner Edward Kieswetter was in office. Four senior SARS executives left in the next three months, bringing the total senior executive departures to seven. Now, a year later, SARS seems on its way back.

At the Public Investment Commission (PIC) no fewer than 17 board members and senior executives left in the nine months between June 2018 and April 2019. The Mpati Commission's report was released in March. A special team under Judge Yvonne Mokgoro is now assisting the new board in implementing the recommendations of the Mpati Commission and a much stronger organisation is emerging. Some have already received summonses to repay money and I suspect more summonses will be issued.

Eskom retrieved R1 billion from McKinsey and R150 million from Deloitte. (Two Deloitte directors also resigned.) Eskom cancelled a coal contract of R3,7 billion with Tegeta, the erstwhile Gupta company, as well as a R14 billion oil supply agreement. Other contracts are being investigated. On 3 August Eskom and the Special Investigating Unit (SIU) launched proceedings to recover R3,8 billion from 12 individuals, including the Guptas, a former minister, former senior executives and former board members. In its investigations at Eskom, the SIU notified the board of wrongdoers – some resigned before disciplinary hearings started. There are consequences, even if we don't see orange overalls yet. (As an aside, 300 managers left Eskom with voluntary severance packages.)

At Transnet, a new board was put in place and 15 senior executives left over a period of 12 months. South China Rail has repaid R618 million; the two Transnet pension funds recovered R1,168 billion from Gupta entities; and assets worth R232 million from a former Gupta associate were frozen.

Not all institutions were cleaned up as successfully. The Passenger Rail Agency of South Africa (Prasa) remains a mess and is now thankfully under administration. Gratifyingly, SARS attached some of former CEO Lucky Montana's private properties. The Land Bank had to be bailed out with R3,5 billion, but three people have been sent to jail for fraud at the bank – one for 20 years. Mercifully, South African Airways is on its way out (unless a benefactor appears) and SA Express is in liquidation. Denel also saw a clean-up and has a new and very competent board, but it can probably no longer be saved from the ravages of earlier corruption – the military procurement environment has changed too much.

National Prosecuting Authority (NPA)

A most critical institution for corruption is the NPA. A walk along the timeline of what has happened there since Ramaphosa became president is quite revealing. (I apologise for the detail, but it discloses a lot.)

In **August 2018** Ramaphosa fired previous National Director Shaun Abrahams. (Like Moyane, Abrahams challenged his dismissal in court, but he too was eventually sent away empty-handed.)

In **October 2018** Ramaphosa suspended the two deputy directors, advocates Nomgcobo Jiba and Lawrence Mrwebi. As required by law, he appointed a commission to investigate the suitability of the two to hold office. Following the report, they were fired in April 2019. Like Moyane and Abrahams, Jiba challenged her dismissal in court. She

threatened hellfire and brimstone, but eventually simply abandoned her case and went into oblivion. New permanent deputies have been appointed.

In **February 2019**, while these clean-up processes played out, Shamila Batohi assumed her position, having been recruited from The Hague.

Also in February, Ramaphosa announced in his state of the nation (Sona) speech that a special investigative unit would be created inside the NPA to prosecute state capture cases. The unit would combine prosecutorial and investigative capabilities like the Scorpions used to have. Ramaphosa promised that skills from 'within government *and the private sector*' (my emphasis) will be brought in. He also left the door open for 'a more enduring (anti-corruption) solution' to be developed.

The unit was gazetted in **April**, and in **May 2019** Hermione Cronjé was duly appointed from outside the NPA to head this new unit.

In **September 2019** Ramaphosa returned to the NPA and revoked the appointment of five senior prosecutors who were promoted by Zuma just before he left office. Two accepted the reversal in their fortunes; three threatened to challenge it in court – of which only one has done so far. The director general in the Presidency revealed that Ramaphosa took this decision on the five prosecutors after consulting Wim Trengove SC. Clearly Ramaphosa does not just blunder in.

In **October 2019** the Treasury allocated R38 million to get the special unit going; a further R25 million was allocated to appoint private sector practitioners to assist the NPA (there is Ramaphosa's promise of 'private sector skills'); and R102 million was allocated to fill vacancies at the NPA.

In **February 2020**, 800 posts at the NPA were advertised. More positions were advertised in August 2020.

In **July 2020** the regulations on the Zondo Commission were changed to allow the NPA to use evidence from the commission in criminal prosecution as well as to use the services of people currently working for the commission. This was not possible under the commission's previous regulations. One must remember that the Zondo regulations were promulgated by Zuma just before he left office; and it was a balancing act to protect people's right to remain silent, but still get the stories out. That balancing act now favours the NPA.

In **August 2020** the ANC's National Executive Council (NEC) has resolved that 'government (must) urgently establish a permanent multidisciplinary agency to deal with all cases of white-collar crime, organised crime and corruption'. Later, Justice Minister Ronal Mamola confirmed 'it is clear, the country needs a permanent structure'. This sounds much like Ramaphosa's Sona speech of February 2019 where he left the door open 'to develop a more enduring (anti-corruption) solution'. Looks like he knows where he wants to go and is playing the long game.

In the meantime, several investigative agencies have been pulled together in a 'fusion centre' to work on Covid-19 corruption, creating precisely the integration of skills and a more enduring capacity President Ramaphosa was looking for.

Prosecutions

Sixteen months ago, in this column, I tried to temper expectations for quick prosecutions. I wrote that prosecutions will only happen in 2020. Legal processes take time, simple as that.

How much time was again illustrated by an adjournment of the Zuma case to September to allow for documents to be exchanged between the two sides and for other preliminary matters to be concluded. If these matters are all cleared, a trial date can be set. In the meantime, Zuma has suffered a number of setbacks in various courts. As he is discovering, the wheels of justice turn slowly, but they do turn.

The Hawks are investigating 250 cases of municipal fraud of which 93 are already before the courts. More people will discover that the wheels of justice actually turn, if slowly.

In June 2020, nine suspects were arrested for the VBS Mutual Bank saga. They were granted bail and will appear on 8 October 2020. One of the nine has turned state witness, which should help to secure convictions. The danger of relying on proceedings at commissions, in books and by investigative journalists (undeniably useful as they are), were underlined this week when one of the prime suspects in the VBS case brought a successful application against the

report of Advocate Terry Motau on the VBS scandal. The NPA has to build every case, piece by piece, with its own witnesses.

In the meantime, five of the nine VBS accused, including the former chair, chief executive officer, chief financial officer and chief operations officer, were sequestered and their assets seized to repay moneys to the bank. Two directors were declared delinquent and cannot be company directors again. Consequences are following even without jail sentences.

Special Investigating Unit (SIU) and Special Tribunal

The SIU is a division of the NPA with the mandate to investigate and recover public moneys through **civil claims** – it is not a prosecutorial body. Where the SIU comes across evidence of criminal wrongdoing, it is referred to the prosecutors at the NPA. (For example, it laid criminal charges against three companies in Gauteng and identified two senior officials as 'enablers of corruption' relating to Covid-19.)

Criminal prosecutions can still follow a successful civil claim. Criminal cases require 'beyond all reasonable doubt' while civil claims require the less strenuous test of 'on a balance of probabilities' (as we are seeing with some of the VBS accused being both sequestered and now also charged criminally).

To speed up civil litigation by the SIU, President Ramaphosa created a Special Tribunal to adjudicate in the civil proceedings the SIU brings against alleged wrongdoers. It became operational on 1 October 2019 and consists of eight judges under the chairmanship of Judge Thami Makhanya. Currently 22 cases are before the tribunal. They include, among others, luxury car purchases, dodgy scholar transport claims and inflated government contracts. In two cases the tribunal ruled that the pension of suspects be frozen, giving the SIU the opportunity to seize the money. (Resigning and running with one's pension has just become more difficult.)

The SIU has R14,7 billion in cases ready that it wishes to submit to the tribunal.

Asset Forfeiture Unit (AFU)

The AFU is an old division of the NPA and was established in President Mandela's time. It is an old workhorse that was deliberately restrained in the Zuma era. It now seems to have a new lease of life. In the last reported year it recovered nearly R2 billion from economic crimes against a mere R180 million the previous year. Over the five years to 2019 the AFU has recovered R11,8 billion in 2 707 cases. The AFU focuses on 10 specific crimes, including fraud, cash smuggling, human trafficking, counterfeit fraud and drug-related offences.

An example: in the current Covid-19 corruption saga the AFU seized a bank account two weeks ago with R700 000 siphoned off UIF money meant for underemployed workers.

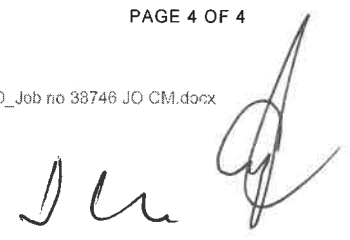
So what?

- As the timeline clearly shows, getting rid of people, replacing them with better ones, and building up institutions take time.
- A lot of action is being taken through civil proceedings (sequestration, asset seizure, and civil claims). This does not have the drama of orange overalls, but there are still consequences for the perpetrators and public money is being recovered.
- Progress has been made with some state-owned enterprises (certainly most of the big ones); however, most of the current Covid-19 corruption seems to take place at a provincial and local government level.
- One must distinguish between what the state is doing and what the ANC is doing or not doing. President Ramaphosa has clearly put the state on a new trajectory. It is important that the ANC now follows suit.

JP Landman
Political Analyst

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Annexure "MCR19"

South Africa's State Owned Companies' Reform



Presentation to Cabinet

01 November 2016

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Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

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Purpose of the presentation

- Articulate the evolution of Government policy on State Owned Companies (SOCs) since 1994
- Outline the key findings of the Presidential Review Committee (PRC) on State Owned Enterprises
- Outline the key recommendations of the PRC and how the current SOCs reform sought to implement these recommendations
- Decisions made by Cabinet post the acceptance of the PRC recommendations
- Conclusion and recommendation

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Evolution of SOCs Policy post 1994



- **1994 - 1997:** Government Established as the office of privatisation focused on disposal of SOC (with the intrinsic assumption that SOC had intrinsically negative developmental impacts.)
- **1997 - 2004:** Emphasise shifts to restructuring of SOC with focus on equity partnerships, initial public offerings and concessioning of specific assets to optimise shareholder value and economic efficiency.
- **2004 - 2008:** Develop the SOC as focused sustainable state owned business entities delivering on a specific strategic economic mandate.
- **2008 - 2009:** Abandonment of privatisation as Government Policy and repositioning of SOCs as key instruments of a developmental state
- **2010:** Challenges faced by SOCs prompted Government to commence with a new reform process (PRC Review)

• Post 2010 it was clear that SOCs faced challenges to deliver on the state's developmental requirements and that a comprehensive SOCs reform was necessary



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Key lessons from previous reform process

- The privatisation of SOCs was largely informed by short term pressures and undermined long term growth development and ability of the State to influence the structure of the economy e.g.
 - Disposal of Government shares in MTN & Vodacom created monopolies that focused on profit maximisation rather than quality of services and universal access whilst ensuring financial sustainability. Government has introduced South Africa Connect to respond to these challenges
 - Disposal of Iscor to AMSA undermined the industrialisation programme of Government. This resulted in the creation of monopoly which did not invest in modern technology and equipment.
 - Privatisation of SASOL saw privatisation of State's intellectual property for the benefit of the few
- Introduction of the private as equity partners has not worked to the benefit of the State e.g. SwissAir



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13 Key findings of the PRC

- 1) There has been a proliferation of SOEs including commercial and non commercial across all spheres of Government.
- 2) There is no common agenda for and understanding of the SOEs. This included the establishment of the long term vision and plan for SOEs that will guide the State's investments.
- 3) There are no commonly agreed strategic sectors and priorities including the absence of SOCs repository and there is confusion regarding the classification of SOCs
- 4) The challenge of balancing the trade-offs between commercial and non-commercial objectives of SOEs
- 5) Inadequate legislative framework for SOEs, displaying evidence of duplication and conflict
- 6) The governance, ownership policy and systems of oversight were found to be inadequate resulting into relatively poor performance of Government's portfolio

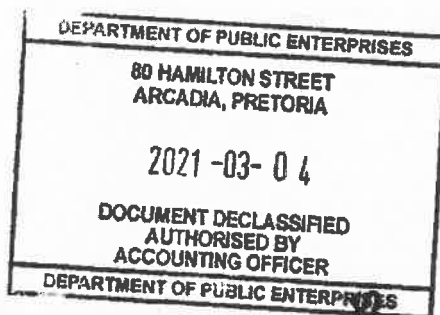


public enterprises
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Key findings of the PRC

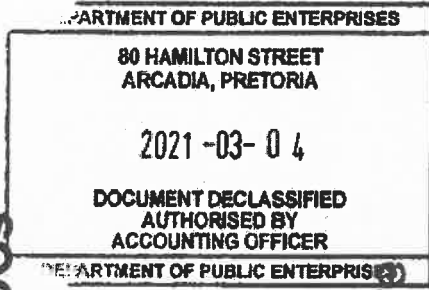
7. The quality of the Boards and Executive recruitment was found to be inadequate
8. The lack of clarity on the distinctive roles of the Executive Authority, the Boards and chief executive in the governance and operational management of SOCs
9. Inconsistent remuneration frameworks and practices
10. Most SOEs required capital injections as a result of weak balance sheets and prolonged poor financial performance
11. Funding models for social and economic mandates of SOEs are blurred and confusing leading, in some instances, to undercapitalisation
12. The service delivery performance of the SOEs was mixed some exhibiting excellence providing high quality of services and others suffering from deficiencies characterised with lower customer satisfactions, complaints and service delivery protests
13. Compliance to the governance framework of shareholder compacts



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31 PRC Recommendations

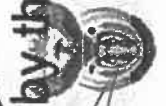
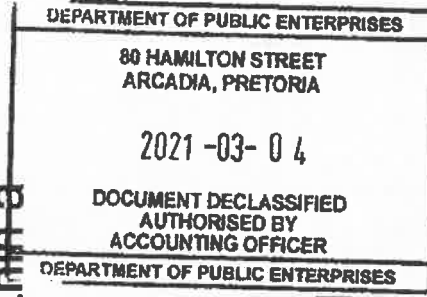
1. **Recommendation 1: Development of an overarching long term strategy for SOEs that will also identify strategic sectors and SOCs**
2. **Recommendation 2: Development of the SOE overarching legislation that will address duplication, omissions, conflicting provisions in different legislation and cover all SOEs including subsidiaries**
3. **Recommendation 3: Development of the Board as well as CEO Appointment Framework that will clarify the roles of the Executive Authority, Cabinet and parliament**
4. **Recommendation 4: mandatory framework for SOEs collaboration informed by the State's developmental strategy**
5. **Recommendation 5: Establish a Central Remuneration Authority with a certain degree of independence and authority**
6. **Recommendation 6: Develop a uniform framework for economic regulation that will address the current inconsistencies**
7. **Recommendation 7: Development of a common performance management system**



31 PRC Recommendations

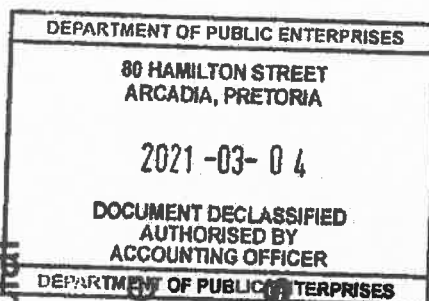
8. **Recommendation 8:** The mandates of SOEs should be subject to critical strategic review every five years, and the requirement thereof should be factored into the SOE Act
9. **Recommendation 9:** The agreement and sign-off of statements of strategic intent and corporate performance plans should be made mandatory for every executive oversight authority and developed within a specified time-line
10. **Recommendation 10:** All Government entities and SOEs should be required to develop transformation plans
11. **Recommendation 11-16:** These recommendations are related to increasing the contributions of SOCs to skills development and broader transformation as well as promoting good governance
12. **Recommendation 17:** Government should rationalise its holdings by focusing on those SOEs that provide public goods and those deemed to be strategic

13. **Recommendation 18:** The Government should develop a consolidated funding model for commercial SOEs and DFIs and should be undertaken by the central authority that oversees strategic SOEs



31 PRC Recommendations

14. **Recommendation 19:** The Government should develop and adopt a policy shift towards a greater mix of debt finance and equity finance
15. **Recommendation 20:** Private sector participation in partnering with SOEs should be encouraged and expanded
16. **Recommendation 21:** A funding model for the funding of public infrastructure based on a distinction between economic and social infrastructure must be developed
17. **Recommendation 22:** Funding options for SOEs which must be informed by sectors in which they operate
18. **Recommendation 23:** The Government should turn select SOEs into national world-class state commercial (industrial and economic) flagships
19. **Recommendation 24:** Government should address the issue of non-financially viable commercial SOEs using mechanisms such as rationalisation or keeping them as non-commercial SOCs



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31 PRC Recommendations

- 20. Recommendation 25:** The Government should actively promote a common national understanding and commitment to a developmental state vision
- 21. Recommendation 26:** The Government should build its capacity to develop and implement an overarching strategy for SOEs through empowering central authority through structurally empowering the central SOEs authorities to formulate, monitor and facilitate implementation of the SOE overarching strategy
- 22. Recommendation 27:** A transitional SOEs Reforms Committee (Execution Management and Monitoring Task Team) must be established to drive the implementation of the PRC's recommendations
- 23. Recommendation 28:** The proposed SOE Council of Ministers and the central SOEs authorities should develop customised human capacity building programmes



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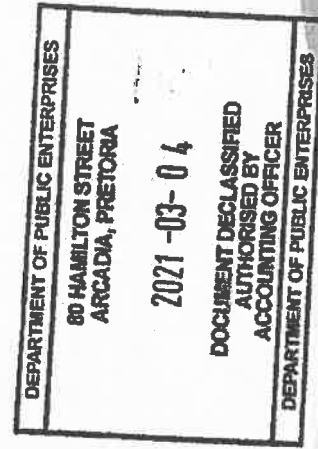
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31 PRC Recommendations

24. **Recommendation 29:** The Government should ensure that the Executive Authorities' SOE strategic management and relationship is professional
25. **Recommendation 30:** The Government should improve financial decision-making capacity in all departments dealing with SOEs
26. **Recommendation 31:** The Government should develop an integrated reporting, monitoring and evaluation capacity for SOEs across all spheres of government



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Implementation: Phase I

(est. 2-Year Horizon)

Phase I preceded by the appointment of the SOE Reforms Committee

- A common understanding of a developmental state vision within the SOEs and their structures;
 - Strategy for SOEs must be formulated and communicated;
 - A white paper for SOEs must be drafted and adopted by the Cabinet;
 - The process of formulating an SOE Bill must be initiated;
 - SOE categorisation
- Strategy for SOEs (with strategic objectives, sectors and categorisation);
 - Clear SOE performance targets aligned to developmental state plan e.g., sustainable jobs; transformation targets; competitiveness (viability) targets etc.;
 - Signed performance agreements with transformation targets;
 - White paper outlining the restructuring and rationalisation of SOEs, including new SOEs structures and the relevant legislation



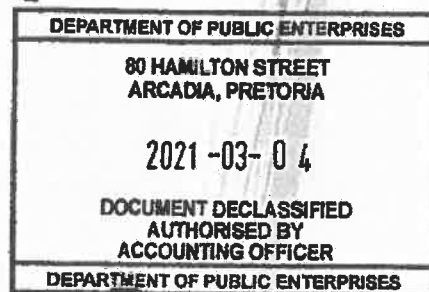
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Implementation: Phase II

(est. 5-Year Horizon from appointment of SOE Reforms Committee)

- SOE Council of Ministers and the SOEs central authorities for Commercial Entities and for DFIs must be established
 - An Ownership, governance, and oversight policy must be developed
 - The central remuneration authority must be established.
 - Rationalisation of SOEs must be finalised
 - Partnerships with the private sector on infrastructure development must be entrenched
 - Improved infrastructure funding methodologies and models
- SOE Council of Ministers and SOEs authorities for Commercial Entities and one for DFIs
 - Ownership, governance, and oversight frameworks and policies are implemented
 - Ability to monitor, evaluate, and report on SOE performance in an integrated manner
 - Rationalised and manageable portfolio of SOEs;
 - Improved economic regulation
 - Improved transformation targets achievements and overall performance of SOEs.



Implementation: Phase III

Ensure that all reforms are fully implemented, in particular:

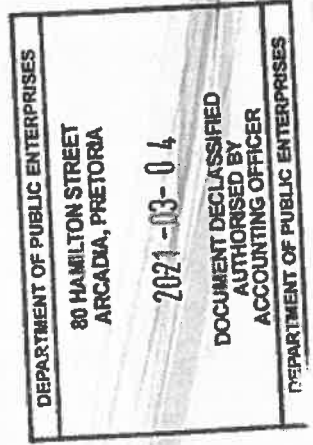
- SOE policies and legislation implemented, including streamlined transformation legislation;
- Uniform economic regulation framework introduced; and
- Selected world-class commercial SOEs are in place.

In this phase, the SOE sector would have:

- A strategy for SOEs aligned to developmental state vision
- An enabling environment, i.e., legislation, structures, policies
- SOEs will be meeting their performance targets in a balanced manner
- The state owner/shareholder and oversight capacity appropriately enhanced



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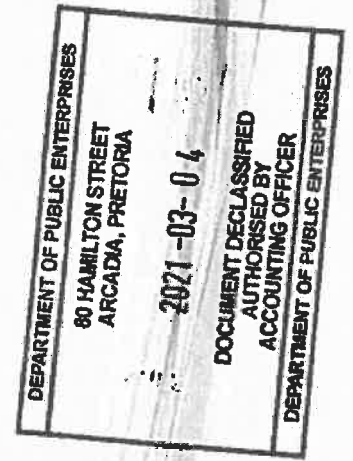


Cabinet decisions post the PRC

- Subsequent to the Cabinet accepting the PRC Recommendations, a series of Cabinet decisions have been made to support the SOCs Reform Process. These are:
 - Mandate to DPISA to develop a Board Appointment Manual to address the current inconsistencies
 - 12 Cabinet Lekgotla Resolutions that directly supported the implementation of the PRC recommendations



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How are the PRC Recommendation being implemented?

Proposal	PRC recommendation being implemented
1. Government Shareholder Policy	Recommendations 1, 2, 6, 17, 23, 25 & 26
2. Remuneration Guidelines	Recommendation 5
3. Board appointment Guidelines	Recommendation 3
4. Private Sector Participation Framework	Recommendations 19 and 21
5. Funding of developmental mandates	Recommendation 21
6. Presidential Coordination Council and SOC Reform IMC	Recommendations 27 & 28

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The proposals being tabled directly respond to the implementation of the PRC recommendations and constitute the SOC Reform Programme that is guided by the long term developmental requirements



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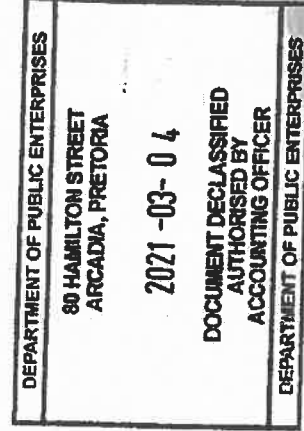
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Conclusion and recommendations

- The current SOCs reform commenced in 2004 with Government abandoning the restructuring programme that resulted in the privatisation of SOCs
- The current proposals in the SOCs Reform are directly linked to the implementation of the PRC Recommendations
- It is recommended that Cabinet Recognises the current SOCs Reform as part of the implementation of the PRC Recommendations



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Annexure "MCR20"

04/03/2021

Statement on the Cabinet meeting of 10 December 2014 | Government Communication and Information System (GCIS)

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

Statement on the Cabinet meeting of 10 December 2014

11 December 2014

From the outset, Cabinet would like to clarify the misperception that President Jacob Zuma has refused to answer questions in Parliament. Cabinet also noted efforts by Deputy President Cyril Ramaphosa to interact with political parties in the National Assembly following chaotic scenes recently.

The Constitution of the Republic of South Africa stipulates that the President is accountable to Parliament. The President has continuously fulfilled his role of accounting to Parliament. He has been answering written and oral questions posed to him by the members in both the National Assembly and the National Council of Provinces.

The President went to orally answer questions in the National Assembly on 21 August 2014. Unfortunately Honourable Members disrupted him whilst answering the third of six questions posed to him. It is the Honourable Members who, through their own disrespectful behaviour, disrupted the President as he was answering questions. Those Honourable Members who prevented the President from orally answering questions in the National Assembly have no moral grounds to twist the facts and suddenly claim that it is the President who does not want to orally reply to their questions. The National Assembly has since censured those Honourable Members who disrupted the President.

Further, Cabinet is not aware of any Order Paper in the National Assembly which had scheduled the President to answer oral questions after the disruption of his oral replies. Therefore it is not true that the President has refused to answer questions in the National Assembly.

Cabinet remains concerned over the disruptive effect of the recent power outages on the daily lives of South Africans, and their impact on households and businesses across the country. Cabinet has adopted a five-point plan to address the electricity challenges facing the country. The lack of sufficient capacity to meet the country's energy needs remains a challenge and all attempts are being made to ensure that we overcome the tight energy situation.

To meet the country's future energy requirements, government is implementing an energy mix which comprises coal, solar, wind, hydro, gas and nuclear energy. In future biomass, wind power, solar power and hydro-power will contribute 11.4 Gigawatts of renewable energy to the grid. Since 1994, five million more households were connected to the grid. In 2004 this increased to 12 million households. This happened without additional power stations being built. This increase of households was set off the existing grid.

Today Eskom will sign a Memorandum of Understanding with the Strategic Fuel Fund and Transnet Ports Authority so that the country can be assured of a regular supply of diesel. The focus will be to improve the strategic maintenance and operational efficiency to ensure that the level of efficiency is increased from the current 72% to the target of 80%. Eskom will present a detailed finance plan to manage its cash flow beyond 2015. This plan will be presented to the IMC by December 2014. Simultaneously, government will finance the funding model.

Cogeneration (the generation of electricity and useful heat jointly, especially the use of the steam left over from electricity generation for heating) options will be pursued with the sugar paper and pulp industries to harness waste energy to the extent of 1 000 megawatts. There are significant opportunities for the importation of gas. A coal independent power producer programme will be launched by the end of January 2015 with a generation capacity of 2 500 megawatts. We are therefore appealing to the public to help our country to reduce the demand

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of energy, which means switching off electricity when not in use. We will have some relief from 15 December 2014 when manufacturing and industrial processes close for the year. A technical team war room for the implementation of the five-point plan has been constituted with immediate effect. The five-point plan addresses the strain our electricity system faces. The plan covers:

- (I) the interventions that Eskom will undertake in the period over the next 30 days
- (II) harnessing the cogeneration opportunity through the extension of existing contracts with the private sector
- (III) accelerating the programme for substitution of diesel with gas to fire up the diesel power plants
- (IV) launching a coal independent power producer programme, and
- (V) managing demand through specific interventions within residential dwellings, public and commercial buildings and municipalities through retrofitting energy efficient technologies.

Cabinet is concerned about the performance of some of the State-owned companies (SoCs), in particular the South African Airways (SAA), South African Post Office (SAPO) and Eskom. These SoCs play a critical developmental role within the South African economy. The President has assigned Deputy President Ramaphosa to oversee the turnaround of the SAA, SAPO and Eskom. Working with the relevant ministries, the SAA will be transferred from the Department of Public Enterprises to National Treasury. The Presidency will closely monitor the implementation of the turnaround plans of these three critical SoCs that are drivers of the economy.


1. Implementation of key government programmes


1.1. Cabinet welcomes the positive outcomes of the President's State Visit to the People's Republic of China from 4 to 5 December 2014, which is a true reflection of the deepening bilateral, trade and investment relations between South Africa and China.

South African businesses are urged to take advantage of the new economic opportunities that our relationship with China offers. Last week's adoption of the China-South Africa 5-10 Year Framework on Cooperation entrenches implementation of the agreements entered into since the conclusion of the Beijing Declaration in 2010 and expands on the Comprehensive Strategic Partnership.

1.2. Cabinet lauds the Department of Basic Education, provincial education departments, principals, teachers and learners for their perseverance as we conclude another busy academic year.

The Minister of Basic Education Angie Motshekga will announce the outcome of the 2014 National Senior Certificate (NSC) examinations on 5 January 2015 and the results will be released to candidates on 6 January 2015.

Cabinet encourages learners who qualify for higher-education studies to explore all available opportunities. Those learners who have not yet been accepted at an institution of higher learning at the time of the release of the NSC results should make use of the Central Applications Clearing House (CACH) service in January and February 2015. The CACH service develops a register of potential candidates that meet institutions' minimum admission requirements to all Post-School Education and Training (PSET) institutions in South Africa. The service also offers career advice and assists prospective applicants with possible alternatives. The service can be accessed through the call centre on: 0800 356 635 or through an SMS with your name and identity number to 49200. 

1.3. Cabinet welcomes the release of the 2014 Annual National Assessments (ANA) last week, which shows an upward trend in performance of all grades except Grade 9. 

The ANA remain a powerful tool to assess the health of our education system and where immediate interventions are required as identified for the Grade 9 learners in mathematics.

1.4. Cabinet thanks all South Africans, civil society and the media for their participation in this year's 16 Days of Activism campaign under the theme: Count me in: Together moving a non-violent South Africa forward.

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The call to all South Africans to 'Count me in' seeks to ensure the longevity of established partnerships by translating our activism during this period into everyday actions throughout the year so that we can eliminate the scourge of violence against women and children.

1.5. South Africa will mark National Reconciliation Day on 16 December 2014 under the theme: Social Cohesion, Reconciliation and National Unity in the 20 Years of Democracy at the Ncome Museum in the uMzinyathi District Municipality, KwaZulu-Natal.

1.6. Cabinet conveys its gratitude to all South Africans and the international community that commemorated the anniversary of the passing of the country's first democratically elected President Nelson Mandela on 5 December 2014.

We must stay true to Madiba's legacy by continuing his unwavering dedication to democracy, selflessness, reconciliation, service to humanity and striving for a better life for all. It is through these values and dedication to the service of humanity that we remain inspired to become a united and prosperous nation.

2. Key Cabinet decisions

2.1. Cabinet approved that the 2013/14 performance report of the Research and Development (R&D) Tax Incentive programme be tabled in Parliament.

Government offers R&D tax incentive in terms of Section 11D of the Income Tax Act of 1962 in order to encourage private sector R&D activities. South Africa offers 150% deduction on approved operational expenditure incurred on R&D activities and is recognized to be amongst the countries that offer the more generous tax incentive for R&D.

The incentive, which has been in place since November 2006, saw 810 companies participating as at February 2014. From 2005/06 to 2012/13, companies reported an estimated R44.1 billion R&D expenditure, and National Treasury estimated that just over R3,2 billion was claimed in R&D tax deduction from South African Revenue Service (Sars). 2013/14 saw 44.2% small and medium enterprises (SMEs) with an annual turnover of less than R40 million participating in the R&D tax incentive.

2.2. Cabinet was updated on progress made with the MeerKAT project, the collateral benefits that have accrued to the local communities and South Africa, and the international negotiations underway relating to the hosting of the Square Kilometre Array (SKA) project.

The construction of the MeerKAT telescope – the pathfinder to the eventual SKA – is progressing well, with significant opportunities for the local South African industry. South Africa is driving a number of cutting-edge technology developments especially in the area of high-performance computing. Local communities in the Northern Cape have also benefitted through the many social investment partnerships.


On the international front, the hosting agreement, the funding model for the SKA and the procurement policy are being discussed and finalised. Negotiations are also continuing on the establishment of an intergovernmental treaty organisation.

Cabinet approved a joint task team between the Ministers of Science and Technology and Higher Education and Training to identify the required human resources, and to ensure that academic and other research institutions are aligned to the development and needs of the MeerKAT, SKA and similar projects.

Cabinet also approved collaboration between the Ministers of Science and Technology and Small Business Development should opportunities arise for empowering and capacitating SMEs in light of the potential economic impact.

2.3. Cabinet approved for Statistics South Africa to conduct stakeholder consultations in preparation for the amendment of the Statistics Act, 1999 (Act 6 of 1999).

Consultations between the organs of state and other relevant organs are necessary to facilitate the development of the series of data collections needed for the National Development Plan (NDP).



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2.4. Cabinet was briefed on the compliance of members of the Senior Management Service (SMS) with the Financial Disclosure Framework, which is monitored by Parliament.

Of the 5 425 SMS members in national departments who were required to submit their financial disclosures forms for the 2012/13 financial year, the Public Service Commission received 4 413 (81%) by the due date of 31 May 2013.

Cabinet highlights that a culture of zero tolerance for non-compliance should be entrenched in the day-to-day functioning of the State.

2.5. Cabinet was briefed on the 2013/14 audit outcomes of the Public Finance Management Act (PFMA), 1999 (Act 1 of 1999) compliant institutions and on the tabling status of their annual reports and financial statements.

There has been an improvement in compliance by institutions on the timeous tabling of their 2013/14 annual reports and financial statements. For the year under review, 417 PFMA-compliant institutions were required to table their annual reports and financial statements by 30 September 2014. A total of 379 institutions (91%) met the deadline, which is a 7% improvement from the 353 in the previous year.

Cabinet approved that accounting officers and accounting authorities submit to their relevant executive authorities corrective steps that would be taken to address concerns raised in their audit reports.

Cabinet supports the need for executive authorities to monitor the progress made to address concerns raised in audit reports and to receive regular updates thereon.

2.6. Cabinet approved a range of steps to reform the Supply Chain management (SCM) system. These include: (a) SCM performance criteria to be included in the performance agreements of accounting officers as from 1 April 2015; (b) Accounting officers to conduct a capacity review of SCM staff and to take remedial action where required; (c) Accounting officers to brief executive authorities quarterly on the SCM performance in their department, municipalities or entities.

Cabinet also approved for the Office of the Chief Procurement Officer to accelerate the SCM reform by modernising the function in the Public Service. The Office of the Chief Procurement Officer has embarked on a strategy to simplify, standardise and automate procurement.

National Treasury will conduct consultations with the National School of Government with a view to develop a curriculum on training and standardisation of professional qualifications.

2.7. Cabinet approved the submission of South Africa's Periodic Report (2002-2013) on the United Nations (UN) International Convention against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment to the UN Human Rights Council.

Compilation and submission of this report demonstrates governments' commitment to the global effort to protect and promote human rights. South Africa fully complies with the convention in that it has criminalised torture, and courts may now prosecute torture in terms of statute and not common law.

The report provides South Africa with the opportunity to assess its compliance or lack thereof with international obligations. The fight against torture is in line with South Africa's key priority of ensuring safer communities, which is in line with the NDP.

2.8. Cabinet noted the draft White Paper on the Police. The 2014 White Paper on Police emanates from a review of the 1998 White Paper on Safety and Security. The review reassessed how the practice and understanding of crime prevention has developed in South Africa post-1994.

The White Paper responds to the NDP Vision 2030 by articulating the need and framework for a professional police service that is skilled, accountable and community-centered. In addition, the police service is required to operate in an integrated manner within the criminal justice system in executing its constitutional mandate.

2.9. Cabinet approved that the draft Youth Policy 2014-2019 be made available for public comment. The draft policy is a progression from the first Youth Policy 2009-2014. Youth development is at the core of South Africa's development agenda; the NDP has a youth lens aimed at nurturing a demographic dividend.

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The 2014-2019 policy ensures that the youth dividend is realised. Implementation of the policy will intentionally enhance the capabilities of young people to transform the economy and society by addressing their needs for holistic development, particularly those outside the social, political and economic mainstream.

2.10. Cabinet also approved publication of the draft National Disability Rights Policy in the Government Gazette for public comment. This serves to: update the White Paper on an Integrated National Disability Strategy, integrates both the obligations in the UN Convention on the Rights of Persons with Disabilities and the provisions of the Continental Plan of Action for the African Decade of Persons with Disabilities with South African legislation, policy frameworks and the NDP 2030.

2.11. Cabinet approved the proposed vision for the Border Management Agency of South Africa as a basis for the business case and enabling legislation as work in progress.

Cabinet also approved that a pilot site be established and a proper legal framework be put in place.

A two-phased approach will be used to establish the agency:

- Transition Phase (January 2015-December 2016) – used to start legislative drafting and its enactment, and to make government initiatives in the borderline environment more visible. There will also be a continuation with current collaborative efforts at ports of entry under formalised multiparty agreements to strengthen the Border Control Operational Coordinating Committee's management authority.
- Agency Phase (January 2017 and beyond) – entails implementation of legislation to operationalise the agency as a public entity in the ports of entry environment, and to provide for the expansion of its mandate and functions to include the air, land (Border Guard) and maritime (Coast Guard) border environment.

The experiences of the transitional phase (including the pilot) will better inform the final proposals.

2.12 Cabinet approved the relocation of the lead agency role for the Border Control Operational Coordinating Committee from Sars to the Department of Home Affairs.

2.13 Cabinet was briefed on the results of a pilot audit on transformation in a sample of National Sport Federations. This provided the extent to which sport bodies in South Africa have transformed over the last two decades since the targets for transformation in sport were set. The results will be used by the Department of Sport and Recreation to provide focused support to those federations that need administrative support.

The purpose of the study was to establish a draft framework for evaluating the transformation in the different dimensions of the transformation charter; performance levels, demographics, access, skills and capabilities, governance, employment equity, and preferential procurement.

Based on the lessons learnt from the first pilot study, the second phase of the audit began in March 2014. The scope of this audit covers all 16 priority sport codes.

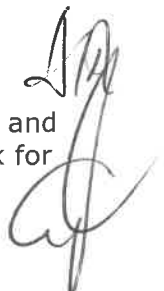
2.14 Cabinet declared an annual National Recreation Day on the first Friday of October each year. This provides an opportunity to all South Africans to actively be involved by participating in recreation activities that will improve their health and well-being.

A healthy and active citizenry is a key factor in realising the NDP objectives.

To fully exploit the potential of recreation, the National Recreation Day needs solidarity, joint activities and cross-sectoral initiatives. To this end Cabinet also approved the establishment of a National Steering Committee.

3. Bills

3.1. Cabinet approved publication of the second draft of the Financial Sector Regulation Bill and its submission to Parliament, and the release of the Draft Market Conduct Policy Framework for public comment. The draft framework will enable the public to be better informed when commenting on the Bill.



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3.1.1. The second draft of the Financial Sector Regulation Bill, 2014 follows comments received on the first draft, which was approved by Cabinet in December 2013. The aim of the Bill is to make the financial sector safer by implementing the 'twin peaks' regulatory system, which is a comprehensive and complete system for regulating the financial sector, prioritising the customer and protecting their funds.

The 'twin peaks' approach to financial regulation underpins a comprehensive regulatory system, with two aims: (a) to strengthen the financial stability and soundness of financial institutions by creating a dedicated 'Prudential Authority' (within the South African Reserve Bank) and (b) to protect financial customers and ensure that they are treated fairly by financial institutions by creating a dedicated Financial Sector Conduct Authority, which also supervises how financial services conduct their business.

The Bill will provide the Financial Sector Conduct Authority and the Prudential Authority jurisdiction over all financial institutions and provide them with a range of supervisory tools to fulfil their mandates.

This goes beyond two regulators as it sets up an underlying and harmonised system of licensing, supervision, enforcement, customer complaints (including ombuds), appeal mechanism (tribunal) and consumer advice and education.

3.1.2. The Draft Market Conduct Policy Framework drives fair treatment of customers in the financial sector, which is a key lesson for South Africa from the 2008 Global Financial Crisis. While South Africa's financial sector has proven to be resilient, government has recognised that the sector could be delivering better outcomes for financial customers and the economy.

There have been a number of well-known market conduct failings in South Africa's financial sector, and government has intervened to address these. However, the persistence of systematic market conduct challenges has highlighted the need for a more comprehensive and holistic approach to addressing the problem of poor conduct across the financial sector in its entirety.

3.2. Cabinet approved submission of the Plant Breeders Rights Amendment Bill to Parliament. The Bill amends the Plant Breeders' Rights Act, 1976 (Act 15 of 1976). The Bill aims to strengthen the protection of intellectual property rights relevant to new varieties of plants. Such protection contributes to economic growth as it has a positive impact on the competitiveness of South Africa's agricultural sector.

Some of the key amendment proposals include: extending protection to all plant genera and species; addressing matters of infringement of plant breeders' rights through the appropriate fines and penalties, and defining the limits and the beneficiaries in the application of farmer's privilege; and empowering the Minister to establish a Plant Breeders' Rights Advisory Committee to advise the Registrar on matters related to plant variety protection.

3.3. Cabinet approved the submission of the Plant Improvement Amendment Bill to Parliament.

The Plant Improvement Act, 1976 (Act 53 of 1976), which has been amended a few times, the last being in 1996, regulates plant improvement in South Africa. The amendments align the scope and provisions of the Act to the Constitution and other related legislation in the agricultural sector.

The Bill enhances sustainable crop production in South Africa by regulating the quality of plants and seed.

The significance and role of plant improvement legislation lies in recognising the importance of quality plant propagating material to support sustainable production as well as participation in the global market by setting quality standards for plants and seeds, and the types of business dealing with plants and seed.

3.4. Cabinet approved submission of the Performing Animals Protection Amendment Bill to Parliament.

The Bill amends section 2 and 3 of the Performing Animals Protection Act, 1935 (Act 24 of 1935), which were declared unconstitutional insofar as they relate to magistrates deciding on and issuing licences to persons intending to train and exhibit animals and to persons who use dogs for safeguarding.

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The Bill proposes to remedy the defect identified by the Constitutional Court by transferring the functions of issuing licences for performing animals from the Judiciary to the Executive.

This is within the context of the Animal Protection Act, 1962 (Act 71 of 1962), which consolidates the laws relating to the prevention of cruelty to animals.

4. Cabinet's position on current issues

4.1. Cabinet calls on all South Africans to join the fight against Ebola by participating in the African Union (AU) SMS resource mobilisation campaign. The AU Commission has so far raised more than 20 million dollars in donations through its hashtag "#AfricaAgainstEbola" campaign, but more is still needed. By sending a 'Stop Ebola' SMS to 40797 South Africans will not only be donating R10 but will also fuel the hope and determination that Ebola can and will be stopped.

4.2. Cabinet wishes all South Africans a restful, peaceful year-end holiday and urges all of us to put Ubuntu/Botho in practice by assisting those in our communities that are unable to support themselves and to show compassion as a nation that cares for, and respects each other. All parents to take care of their children during this period. Victims of abuse must speak out, report abuse and contact the 24 hour command centre 0800 428 428.

Cabinet calls on all South Africans to take every precaution during the upcoming festive season, stay away from the abuse of alcohol and drugs, and to enjoy the holiday period in a safe and responsible manner. All South Africans have a part to play in curbing incidents of crime, accidents and abuse, which tend to increase during this period.

Cabinet reiterates that traffic officials will have a zero-tolerance approach to lawlessness on our roads during this festive season. We urge all road users to adhere to the speed limit; ensure vehicles are roadworthy; not to drive intoxicated and to wear safety belts at all times. Pedestrians are urged to ensure that when using the roads they do not endanger their well-being or that of other pedestrians or motorists.

Government will play its part by leading a range of campaigns such as Healthy Lifestyles and Arrive Alive in a bid to partner with communities to promote responsible and safe behaviour.

4.3. Cabinet was saddened by the tragic killing of South African teacher Pierre Korkie who was in Yemen and that of Werner Groenewald, and his two children, Rode and Jean-Pierre, who died in an attack in Afghanistan. Cabinet conveys its deepest condolences to their families and friends.

4.4 The work to identify the remaining 11 South Africans who died tragically in the Nigerian building collapse continues and government is intensifying efforts to ensure their remains are brought home without undue delay.

4.5 Cabinet conveys its condolences to the Gigaba family on the loss of their father, Reverend Jabulani Gigaba. He was the father to the Minister of Home Affairs, Mr Malusi Gigaba. Cabinet also conveys its condolences to the family and friends of Sisi Mabe, who was the Speaker of the Free State Legislature.

4.6 Cabinet congratulates the national soccer team Bafana Bafana and coach Ephraim "Shakes" Mashaba on qualifying for the Africa Cup of Nations 2015 in Equatorial Guinea, which begins on 17 January 2015, and calls on all South Africans to support the national team as they fly our flag higher and higher.

4.7 Cabinet noted the launch of the Human Settlements Youth Brigade on 1-2 December 2014 by the Departments of Human Settlements, Small Business Development, and the National Youth Development Agency at the National Human Settlements Youth Summit.

The summit deliberated on the empowerment programmes of the departments targeting young people and how they can participate in the delivery of houses. At the end of the summit all stakeholders signed the National Human Settlements Youth Accord, which serves as a statement of intent towards creating a holistic and integrated approach to human settlements delivery through youth mobilisation, development and participation in a form of National Human Settlements Youth Brigades. The intention is to mobilise young people behind the target of 1.5 million housing opportunities, and aims to recruit and train about 10 000 Youth Brigades in the next five years.

5. Upcoming events

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5.1 On 12 December 2014, the President of South Sudan, His Excellency Salva Kiir Mayardit, will pay an official visit to South Africa and President Zuma will host him in Cape Town.

6. Appointments

Cabinet approved the following appointments subject to the verification of qualifications and the relevant clearance:

6.1. To the Council for Scientific and Industrial Research (CSIR) Board:

- a) Prof Thokozani Majozi (Chairperson);
- b) Dr Ramatsemela Masango;
- c) Prof Mamokgethi Phakeng;
- d) Dr Philip Hugh Goyns;
- e) Dr Ayanda Noah;
- f) Dr Antonio Llobell;
- g) Ms Phindile Baleni;
- h) Adv Ghandi Badela;
- i) Ms Mokgadi Maseko; and
- j) Mr Joel Netshitenzhe.

6.2. To the Air Services Licensing Council:

- a) Dr Malindi Neluheni (Chairperson);
- b) Ms Kenosi Selane (Vice Chairperson);
- c) Adv Frans Johannes van der Westhuizen;
- d) Mr Bheki Innocent Dladla; and
- e) Ms Sibongile Rejoyce Sambo.

6.3. To the International Air Services Council:

- a) Adv Phetole Patrick Sekhule (Chairperson);
- b) Dr Xolani David Gwala (Vice-Chairperson);
- c) Ms Deshnee Govender;
- d) Adv Lufuno Tokyo Nevondwe; and
- e) Ms Fulufhelo Velda Mphuti.

6.4. To the Board of the Land Bank and Agricultural Development Bank:

- a) Prof Abdus Salam Mohammad Karaan (reappointment);
- b) Ms Susan Ann Lund (reappointment);
- c) Mr Mabothe Arthur Moloto (Chairperson);
- d) Ms Njabulo Zwane; and
- e) Ms Dudu Hlatshwayo.

6.5. To the Transnet SOC Ltd Board (Non-Executive Directors):

- a) Ms Linda Carol Mabaso (Chairperson);
- b) Mr Stanley David Shane;
- c) Mr Mogokare Richard Seleke;

04/03/2021

Statement on the Cabinet meeting of 10 December 2014 | Government Communication and Information System (GCIS)

- d) Dr Gideon Mahlalela;
- e) Ms Potso Elizabeth Bridgette Mathekga;
- f) Ms Zainul Abedeen Nagdee;
- g) Mr Vusi Matthew Nkonyane;
- h) Mr Peter George Williams;
- i) Mr Brett Gerard Stagman;
- j) Ms Yasmin Forbes (reappointment); and
- k) Ms Nazmeera Moola (reappointment).

6.6. To the Eskom SOC Ltd Board (Non-Executive Directors):

- a) Mr Zola Andile Tsotsi (reappointment and Chairperson);
- b) Ms Chwayita Mabude (reappointment);
- c) Mr Norman Tinyiko Baloyi;
- d) Dr Pathmanathan Naidoo;
- e) Ms Venete Jarlene Klein;
- f) Ms Nazia Carrim;
- g) Mr Romeo Kumalo;
- h) Mr Mark Vivian Pamensky;
- i) Mr Zethembe Wilfred Khoza;
- j) Dr Baldwin Sipho Ngubane; and
- k) Ms Devapushpum Viroshini Naidoo.

6.7. Mr Geoff Qhena has been reappointed as the Chief Executive Officer (CEO) of the Industrial Development Corporation (IDC). Minister Patel will announce the rest of the IDC Board members in the next few days.

6.8 Public Service/other appointments:

- a) Appointment of the CEO of the Land Bank, Mr TP Nchocho, with effect from 1 January 2015 on a five-year contract to 31 December 2019.
- b) Appointment of the CEO of the Public Investment Corporation, Dr Daniel Mmushi Matjila, with immediate effect, for a period of five years until 30 November 2019.
- c) Reappointment of Mr Murray Michell, the Director of the Financial Intelligence Centre, for a further period of two years from 1 January 2015 to 31 December 2016.
- d) Extension of the contract of the Director-General of the Department of Home Affairs, Mr Mkuseli Apleni, for a further period of five years from 1 April 2015 to 31 March 2020.
- e) Appointment of the Chief Operations Officer of the Department of Rural Development and Land Reform, Mr Marks Charles Thibela.
- f) Appointment of the Chief Financial Officer of the Department of Rural Development and Land Reform, Ms Rendani Sadiki.

Conclusion

Cabinet would like to wish everyone happy holidays and let's come back energised in 2015 collectively to ensure we deliver on the mandate of the government. Together, we move South Africa forward.

Enquiries: Mr Donald Liphoko

Contact: 082 901 0766



04/03/2021

Statement on the Cabinet meeting of 10 December 2014 | Government Communication and Information System (GCIS)

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Issued by: Department of Communications (DoC)

Cabinet statements

Year: 2014 **Media Statement date:** Thursday, December 11, 2014

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Annexure "MCR21"

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Cabinet

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3 and 4 February 2015

6 MINISTERS OF RURAL DEVELOPMENT AND LAND REFORM AND OF ECONOMIC DEVELOPMENT

6.1 STRENGTHENING STATE-OWNED COMPANIES (SOCs) THROUGH IMPLEMENTING KEY ASPECTS OF THE REPORT OF THE PRESIDENTIAL REVIEW COMMITTEE ON STATE-OWNED ENTITIES

(Document entitled "Strengthening State Owned Companies: Cabinet Lekgotla – 3 February 2015". Refer to paragraph 2.1.3(d) of the minutes dated 1 October 2014 as well as item 3.4.1 of the minutes dated 30 April 2013)

6.1.1 The Cabinet noted and discussed the above-mentioned presentation (for record purposes only). The presentation focused on –

- (a) the review of State-Owned Companies (SOCs) Report of the Presidential Review Commission (PRC);
- (b) the current situation and the following key challenges:
 - (i) The Problem Statement;
 - (ii) The underperformance of SOCs as a result of various external and internal challenges; and
 - (iii) The erosion of value through the weak performance of major SOCs;
- (c) the process of identifying priorities:
 - (i) Identification through the application of pre-defined criteria;
 - (ii) The filtering of SOCs according to defined criteria to obtain a sequence of prioritisation; and
 - (iii) Priority 1 and 2 SOCs: Strategic interventions to meet their economic objectives;
- (d) addressing challenges through proposed external and internal interventions in order to drive transformation; and
- (e) recommendations.

6.1.2 The Extended Cabinet discussed the presentation and approved -

- (a) the development of an overarching Shareholder Policy defining criteria for State Ownership which would be developed by the Minister of Public Enterprises (DPE), in consultation with the

Minister L
Brown

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Cabinet

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3 and 4 February 2015

Economic Sectors, Employment and Infrastructure Development (ESEID) Cluster and the provision of feedback in the Mid-Year Cabinet Lekgotla;

- (b) the determination of the appropriate Shareholder Ownership Model (centralised, decentralised, dual, etc.) to be led by the Minister of Public Enterprises (DPE) in consultation with the Cluster and the provision of feedback to the Mid-Year Cabinet Lekgotla; Minister L Brown
- (c) the establishment of an Inter-Ministerial Committee (IMC) led by the Deputy President and comprising the Ministers of Public Enterprises, of Finance, of Energy, of Transport, of Telecommunications and Postal Services and of Water and Sanitation to promote the prioritisation, alignment and coordination across focus SOCs to achieve the Government's objectives, building on the work that is already being done with regard to the South African Airways (SAA), South African Post Office (SAPO) and Eskom. Other Ministries with similar shareholder agreements and economic impact could be co-opted as and when required; Deputy President, MC Ramaphosa; L Brown, NM Nene, TM Joemat-Pettersson, ED Peters, NP Mokonyane and SC Cwele
- (d) the provision of support to the IMC through the use of the relevant Inter-departmental Forum;
- (e) that the Inter-departmental Forum should initiate a process to -
- (i) draft a position paper on the key elements of the Government Shareholder Management Model; and
- (ii) facilitate the establishment and implementation of a standardised State-Owned Enterprise (SOE) Bill. Feedback on this work must be submitted to the IMC and the Cluster by June 2015;
- (f) the separation of the functions of Shareholder, Policy-maker and Regulator across State-Owned Companies (SOCs), where applicable;
- (g) the development and implementation of a standardised approach to the appointment of SOC Boards. This work is already underway under the leadership of the Minister for the Public Service and Administration and must be submitted to the Cluster by the end of March 2015; Minister OC Chabane

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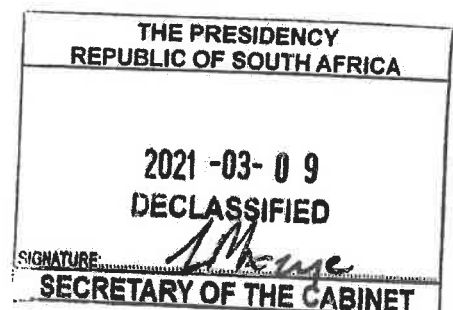
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3 and 4 February 2015

- (h) the development of a Private Sector Participation Framework. The National Treasury must lead the process and provide feedback to the Cluster by June 2015; Minister NM Nene
- (i) the consideration of a Framework on the disposal of less strategic State assets to fund critical SOCs. The first list must be submitted for Cabinet approval through the IMC by June 2015;
- (j) that the separation of the developmental and commercial mandates of SOCs be referred back to the IMC for further consideration;
- (k) that training and skills development, in particular scarce skills, be included in the developmental mandates of SOCs;
- (l) that the IMC reconsider the proposal to empower Boards to take decisions and manage their systems;
- (m) that the linking of the remuneration of officials to performance be referred back to the IMC for further consideration; and
- (n) that the implementation of SOC-specific interventions in relation to the following SOCs be referred back to the IMC for further consideration and submission to Cabinet for approval:
- (i) Eskom;
 - (ii) Trans-Caledon Tunnel Authority (TCTA) & Water Boards;
 - (iii) Transnet;
 - (iv) The Passenger Rail Agency of South Africa (PRASA); and
 - (v) Telkom;
 - (vi) South African National Roads Agency Limited (SANRAL);
 - (vii) Central Energy Fund (CEF); and
 - (viii) the State-Owned Mining Company (SOMCO).

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Annexure "MCR22"

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Report on State Owned Companies Reforms

Presented by Minister of Public Enterprises

Cabinet Lekgotla

18-19 August 2016

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Presentation Outline

The purpose of this presentation on State Owned Companies Reform is to brief the Cabinet Lekgotla on:

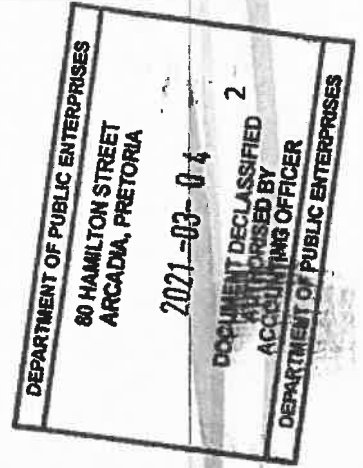
1. The progress on the implementation of the 2015 Cabinet Lekgotla resolutions led by different Ministers
2. The progress on the implementation of the Stabilisation Programme
3. Emerging proposals on the institutional structure & approach with sector complexes of the shareholder oversight function for political executive authority (Cabinet) direction & oversight over the state-owned companies & the reform process



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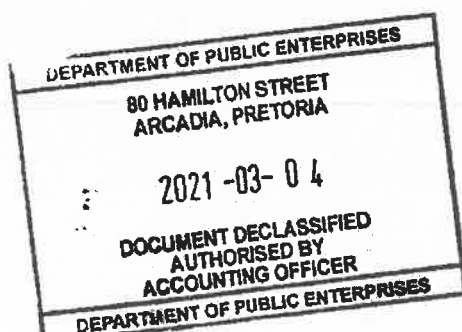
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February 2015 Cabinet Lekgotla Resolutions

Progress Update

- a) Development of an (1) **overarching shareholder policy** defining the criteria for state ownership & the (2) determination of an appropriate shareholder ownership model led by DPE
- A draft discussion document on **the shareholder policy** is ready for discussion at the Inter-Departmental Task Team. The discussion document also makes a (3) proposal on the separation of the different functions performed by Government, namely, shareholder, policy-maker & regulator. The policy addresses the resolution on the (4) empowerment of Boards of State Owned Companies & will be submitted to Cabinet by November 2016
- b) Led by the Presidency, the (5) **Inter-Ministerial Committee**, with approved terms of reference, has been established. (6) **The Committee of DGs & Technical Committee** to support the IMC is operational
- c) **The draft Handbook (7)** on the appointment of Boards has been developed by DPSA & ready for IMC & consideration by Cabinet in October 2016



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*** Date envisaged for submission to Cabinet**

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February 2015 Cabinet Lekgotla Resolutions

Progress Update (continued)

- d) Led by National Treasury (NT), the draft framework for (8) **private sector participation in new infrastructure projects to accelerate investments** has been canvassed with relevant departments & ready for further consideration by IMC & submission to Cabinet by October 2016
- e) The framework for the (9) **disposal strategy for non-strategic assets** led by NT has been presented to the Technical Task Team & ready for consideration by the IMC & submission to Cabinet by November 2016
- f) A framework for the (10) **separation & quantification of the developmental & commercial mandates** including (11) **training & skills development** has been developed & consultation continues
- g) The (12) **linking of remuneration to performance of executives** is a fundamental principle in the draft SOC Remuneration & Incentive Standards, which has been developed, was tabled at Cabinet previously & is ready for consideration by the IMC in October 2016



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Progress on Stabilisation Programme

- 1) **The implementation of the stabilisation programme has progressed with varying degree of success. Strengthening of leadership to execute the turnaround strategies remains critical**
- 2) **Eskom has largely been stabilised, both operational & financial performance is improving**
 - a) Stable Board & experienced CEO & CFO have been appointed
 - b) Reduction in load shedding & use of diesel generators as the unplanned outages have reduced & energy availability factor improved
- 3) **Losses at SAA have been significantly reduced but full turnaround only projected to be realised in 2020/21 financial year**
 - a) Potential candidates for appointment to the Board identified
 - b) Long term turnaround strategy & network plan refined & aligned with Mango & SAX
 - c) Appointment of advisors to assist Government in giving consideration to possible merger of SAA & SAX & the introduction of a Strategic Equity Partner being finalised



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Progress on Stabilisation Programme..

- 4) More stability has been achieved at SAPO through:
- a) Appointment of the full Board & new CEO
 - b) Rebasings of the corporate strategy to address weaknesses
 - c) Securing of finance to enable the settlement of long outstanding creditors & implementation of the turnaround strategy
 - d) Negotiation of amicable settlement with labour unions
 - e) Obtaining SARB approval to allow for the establishment of the Post Bank as a fully fledged Bank
- 5) The IMC continues to oversee other (13) SOC specific interventions in those priority companies as identified in the 2015 February Cabinet Lekgotla e.g. PRASA, SANRAL, TCTA, Transnet, CEF (Petro SA), Denel & establishment of State Mining Company



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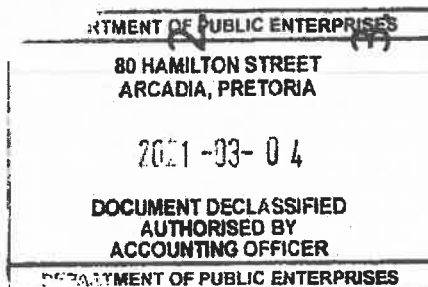
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Recommendations

It is recommended that the Lekgotla:

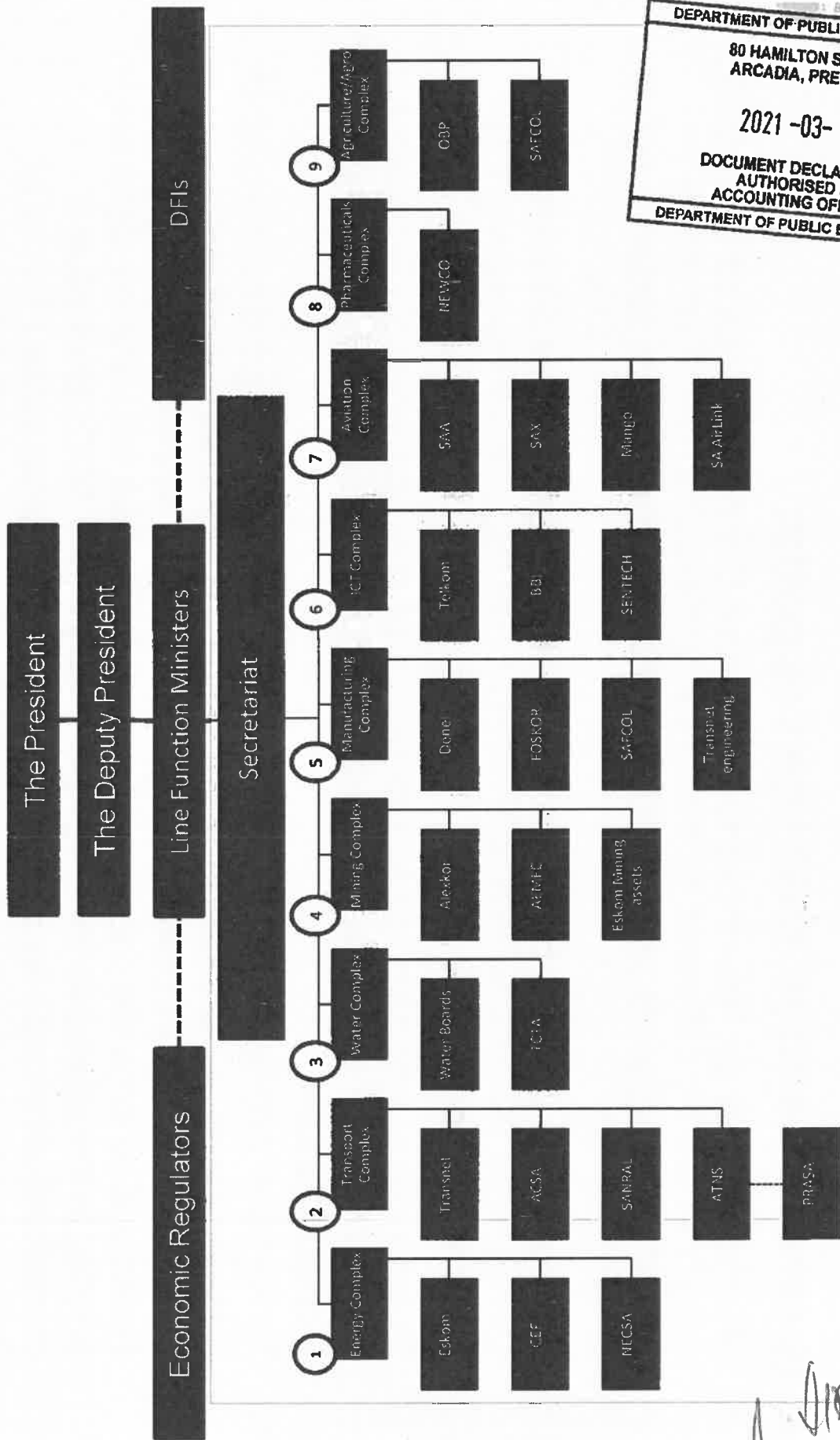
1. Note progress on the implementation of the resolutions of the 2015 Lekgotla led by different Ministers & anticipated dates of when specific proposals & interventions will be submitted to Cabinet for consideration
Support that priority be given to the finalisation of the **Shareholder Ownership Model, which will inform the legislative framework for reform by November 2016**
Note progress on the implementation of the **Stabilisation Programme & the need for continued strengthening of leadership & oversight by Departments**
4. To further strengthen the line of oversight on strategic decisions and interventions, note emerging proposal for the creation of the **Presidential SOCs Coordinating Council. See Annexure A: high-level structure to provide the President as CEO of SA Inc. line of sight on strategic decisions & interventions to create SOCs that play a transformative role in a capable developmental state (Terms of Reference to be finalised by the IMC in September & tabled to Cabinet in October 2016)**




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Annexure A

High-level Structure: Draft Presidential SOCs Coordinating Council



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Annexure "MCR23"

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Cabinet

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16 to 18 August 2016

1 PRESIDENT**1.1 MOMENT OF SILENCE**

The **Cabinet observed** a moment of silence for prayer or meditation.

1.2 CONDOLENCES

The **Cabinet expressed** its heartfelt condolences on the passing of former Minister of Sport and Recreation, Reverend M Stofile.

1.3 OPENING ADDRESS

(Document entitled "Opening Remarks by His Excellency President Jacob Zuma at the mid-year Cabinet Lekgotla held on 16 August 2016". Refer to item 1.2 of the minutes dated 2 to 4 February 2016)

The **President welcomed** Ministers, Deputy Ministers and Directors-General from National Departments to the Extended Meeting of the Cabinet (Lekgotla) (Opening Remarks attached as Annexure A) and -

All Members

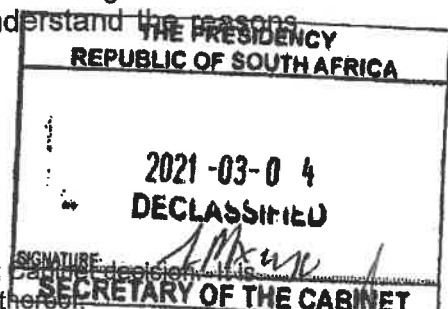
(a) emphasised -

- (i) that the Lekgotla followed the local government elections -
 - (aa) that the civilians of the Country felt that Government did not do as well as expected;
 - (bb) it cannot be business as usual;
 - (cc) the door-to-door interaction over the past few months in the run-up to the elections provided much needed insight; and
 - (dd) progress was made but communities expressed concerns;
- (ii) that citizens had three priorities which included unemployment, crime and corruption; and
- (iii) matters raised by citizens, including amongst others, -
 - (aa) Government was too distant from its citizens;
 - (bb) the level of service delivery;
 - (cc) that Government was no longer a caring Government and that Government did not understand the reasons for community protests;

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16 to 18 August 2016

- (dd) concerns were raised in relation to the actions of some institutions such as the Municipal Demarcation Board (MDB) which caused instability; and
- (ee) that Government had to strengthen its interaction with communities;
- (b) **noted** the Community Engagement Report of Ministers and Deputy Ministers;
- (c) **noted** with concern that some Ministers and Deputy Ministers did not have community meetings during the last six months;
- (d) **noted** that Government made a commitment to the people of the Country and we should be listening to the concerns raised;
- (e) **noted** the International Visits Report of Ministers and Deputy Ministers; and
- (f) in addressing some of the challenges the meeting would be:
 - (i) Reviewing the implementation of the Nine Point Plan (9PP) especially in view of –
 - (aa) the assessment of the rating agencies;
 - (bb) building confidence for enhanced investment; and
 - (cc) the constraints such as the slower domestic global economic growth;
 - (ii) Briefed on the domestic and global economic situation;
 - (iii) Reviewing the progress by the Presidential Infrastructure Co-ordinating Commission (PICC);
 - (iv) Discussing progress in relation to the implementation of the Medium Term Strategic Framework (MTSF) 2014 to 2019, especially as it relates to the key interventions required to implement the National Development Plan (NDP);

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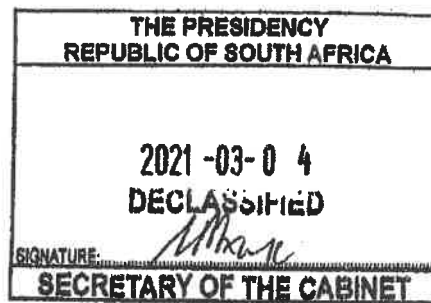
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Cabinet

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16 to 18 August 2016

- (v) briefed on the need for better alignment between the budget and national priorities; and
- (vi) briefed on the implementation of aspects from the Presidential Review Committee (PRC) on State Owned Entities (SOEs) with a specific focus on key State Owned Companies (SOCs).



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16 to 18 August 2016

- (iv) Finalising Youth Service Framework;
 - (v) Massify access to quality skills development and second chance programmes;
 - (vi) Basic computer literacy should be included in the school curriculum. Developing and implementing a Youth in Information and Communications Technology (ICT) Strategy;
 - (vii) Implementing an improved Drug Master plan;
 - (viii) Supporting implementation of campaigns aimed at healthy lifestyles such as the Campaign to reduce new HIV infections amongst girls and young women launched in June 2016; and
 - (ix) Amending the Youth Development Act (YDA) with a view to providing provincial coordinating structures and financial resources;
- (n) Key actions to accelerate progress towards **NDP** targets for 2030:
- (i) Optimising the Youth Development machinery by establishing funded youth desks at the national, provincial and local levels where they do not exist; and
 - (ii) Expanding access to skills and second chances: Government to progressively expand mechanisms for introducing free education for poor learners until undergraduate level and increasing funding options for deserving students.

2.2

ALIGNMENT OF THE NATIONAL BUDGET TO THE POLITICAL MANDATE

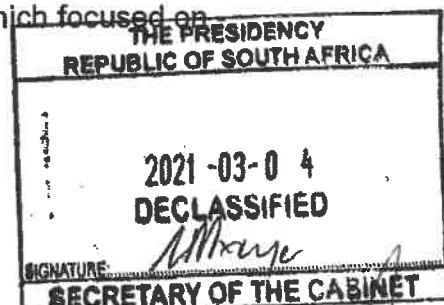
(Document entitled "Alignment of the National Budget to the Political Mandate - Minister in The Presidency for Planning, Monitoring and Evaluation". Ministers in the Presidency for Planning, Monitoring and Evaluation and of Finance)

2.2.1 The **Extended Cabinet** noted and discussed the presentation made by the **Minister in the Presidency for Planning, Monitoring and Evaluation** entitled "Alignment of the National Budget to the Political Mandate" (*presentation for record purposes only*) which focused on

- (a) purpose of the presentation;

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16 to 18 August 2016

- (b) problems we were addressing;
- (c) context lagging against the National Development Plan (NDP) goals:
 - (i) NDP committed us by 2030 to:
 - (aa) Eradicate poverty (from 39% to zero); and
 - (bb) Reducing inequality (Reduce Gini Coefficient from 0.7 to 0.6);
 - (ii) Currently we are lagging:
 - (aa) Growth: average of 2.1% per year against required 5.4% per year; and
 - (bb) Jobs: only 1.7 million against 2.8 million target (2015 - 5 million by 2020);
 - (iii) To respond to the economic challenge requires more than budget decisions, and includes policy decisions and effective implementation of the Nine Point Plan and MTSF; and
 - (iv) Some key issues to be addressed (as raised by rating agencies and IMF):
 - (aa) Policy uncertainty, e.g. on the Mineral and Petroleum Resources Development Act (MPRDA);
 - (bb) The energy challenge: generation, distribution and maintenance;
 - (cc) Poor outcomes on skills/education;
 - (dd) Labour market: minimum wage, extension of wage agreements and strike ballots;
 - (ee) Market concentration not allowing sufficient competition and new entrants;
 - (ff) Uncertainty on SOCs: debt levels affecting sovereign debt; and governance challenges; thus SOCs not playing the role they need to play; and

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16 to 18 August 2016

5 MINISTER OF PUBLIC ENTERPRISES**5.1 BRIEFING BY THE INTER-MINISTERIAL COMMITTEE ON STATE-OWNED ENTITIES**

(Document entitled "Briefing by the IMC on State-Owned Entities - Presentation to the Cabinet Lekgotla 16 to 18 August 2016". Refer to item 6.1 of the minutes dated 5 February 2015. Minister of Public Enterprises)

5.1.1 The **Extended Cabinet** noted a presentation by the **Minister of Public Enterprises** on the report by the Inter-Ministerial Committee (IMC) on State-Owned Entities (*presentation for record purposes only*) which focused on –

- (a) the outline;
- (b) progress update on February 2015 Cabinet Lekgotla resolutions;
- (c) progress on Stabilisation Programme;
- (d) principles underpinning the Council on State Owned Companies;
- (e) proposed Council of Ministers on State Owned Companies; and
- (f) recommendations.

5.1.2 The **Extended Cabinet** –

- (a) **noted and concurred** with the general thrust of the presentation;
- (b) **noted** the progress made on the decisions of the Extended Cabinet meeting held in February 2015 (refer to item 6.1 of the minutes dated 5 February 2015);
- (c) **noted** the challenges and the progress made on the Stabilisation Programme;
- (d) **noted** the complex approach which would be indicative of various industries and State Owned Companies (SOCs);
- (e) **approved** the establishment of a Council on State Owned Companies comprising of relevant Members responsible for State Owned Companies in their respective portfolios;
- (f) **approved** that the Council meetings are scheduled quarterly during the first year of its establishment; and

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16 to 18 August 2016

(g) approved that an updated Handbook on the Appointment of Persons to Boards and State Controlled Institutions be drafted by the Department of Public Service and Administration (DPSA) with a view to presenting to the IMC on State Owned Entities (SOEs) (Refer to paragraph 3.4.6 (d) of the minutes dated 2 June 2010 as well as item 3.1.2 of the minutes dated 26 August 2009).

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Annexure A



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Inter-Ministerial Committee on State Owned Entities Reform

Draft Terms of Reference

June 2016

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DRAFT TERMS OF REFERENCE FOR THE INTER-MINISTERIAL COMMITTEE ON STATE OWNED ENTITIES REFORM

1. HISTORICAL BACKGROUND

1.1 On 12 May 2010, President Jacob Zuma announced the establishment of the Presidential Review Committee (PRC) on State Owned Entities (SOEs) during his budget vote. The primary mandate of the PRC was to review all SOEs, including Development Finance Institutions (DFIs) in all three spheres of government. The President announced the establishment of the PRC in response to the acknowledgement that there is a need to strengthen the role of SOEs to ensure that they respond to a clearly defined public mandate and support the developmental state aspirations of government.

1.2 The Presidential Review Committee (PRC) completed its work and handed its report in 2012, presenting 31 recommendations for consideration by the President and Cabinet for implementation in order to turn around the State Owned Entities.

1.3 The recommendations are clustered into four main categories:

- (i) SOE Strategy;
- (ii) Enabling environment for SOEs;
- (iii) Performance of SOEs; and
- (iv) Capacity of the state and its SOEs.

1.4 The actual PRC recommendations as set out in the final report of the PRC are:

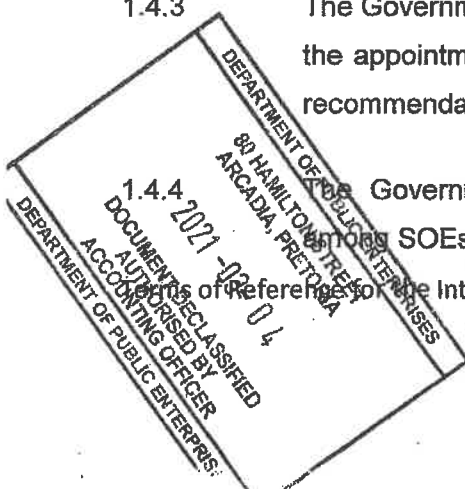
1.4.1 The Government should develop an overarching, long-term strategy for SOEs;

1.4.2 The Government should enact a single overarching law ('State-owned Entities Act') governing all state-owned entities;

1.4.3 The Government should develop a framework for the appointment of SOE boards and that the appointment of the CEO be done by the Minister in concurrence with Cabinet, at the recommendation of the board;

1.4.4 The Government should develop a mandatory framework for effective collaboration between SOEs;

1.4.5 The Government should develop a mandatory framework for effective collaboration between SOEs and the Inter-Ministerial Committee on SOEs Reform- May 2016



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- 1.4.5 The Government should establish a Central Remuneration Authority (CRA);
- 1.4.6 Government should develop a uniform framework for economic regulation and undertake a process of identifying policy inconsistencies and policy conflicts; clarify the role of economic regulators; and develop a blueprint to guide regulatory designs;
- 1.4.7 The Government should develop a common performance management system;
- 1.4.8 The mandates of SOEs should be subject to critical strategic review every five years, and the requirement thereof should be factored into the SOE Act;
- 1.4.9 Strategic intent and corporate performance plans;
- 1.4.10 All Government entities and SOEs should be required to develop transformation plans;
- 1.4.11 SOEs should lead the South African economy in prioritising skills development;
- 1.4.12 SOEs should ensure that the procurement process is transformational;
- 1.4.13 SOEs should play a leading role in socioeconomic development;
- 1.4.14 Transformation should be an integral part of the contractual agreement between the executive authority and SOEs;
- 1.4.15 Sanctions for corrupt activities as well as fronting should be supplemented by a register of delinquent individuals and companies that are involved in corruption practices. The common register should be made available to SOEs;
- 1.4.16 The empowerment framework and legislation should be streamlined to facilitate substantial contribution towards transformation as opposed to box-ticking compliance;
- 1.4.17 Government should rationalise its holdings by focusing on those SOEs that provide public goods and those deemed to be strategic;
- 1.4.18 The Government should develop a consolidated funding model for commercial SOEs and DFIs;

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- 1.4.19 The Government should develop and adopt a policy shift towards a greater mix of debt finance and equity finance;
- 1.4.20 Private sector participation in partnering with SOEs should be encouraged and expanded;
- 1.4.21 A funding model for the funding of public infrastructure based on a distinction between economic and social infrastructure must be developed;
- 1.4.22 Funding Options for SOEs;
- 1.4.23 The Government should turn select SOEs into national world-class state commercial (industrial and economic) flagships;
- 1.4.24 Government should address the issue of non-financially viable commercial SOEs;
- 1.4.25 The Government should actively promote a common national understanding and commitment to a developmental state vision;
- 1.4.26 The Government should build its capacity to develop and implement an overarching strategy for SOEs;
- 1.4.27 A transitional SOEs Reforms Committee (Execution Management and Monitoring Task Team) must be established to drive the implementation of the PRC's recommendations;
- 1.4.28 The proposed SOE Council of Ministers and the central SOEs authorities should develop customised human capacity building programmes;
- 1.4.29 The Government should ensure that the Executive Authorities' SOE strategic management and relationship is professional;
- 1.4.30 The Government should improve financial decision-making capacity in all departments dealing with SOEs; and
- 1.4.31 The Government should develop an integrated reporting, monitoring and evaluation capacity for SOEs across all spheres of government.

Terms of Reference for the Inter-Ministerial Committee on SOEs Reform - May 2016 2021-02-04

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2. FEBRUARY 2015 EXTENDED CABINET LEKGOTLA RESOLUTIONS

- 2.1 To promote the prioritisation, alignment and coordination of the PRC recommendations across Government, the February 2015 extended Cabinet Lekgotla approved the establishment of an Inter-Ministerial Committee (IMC) led by the Deputy President and comprising the Ministers of Public Enterprises, of Finance, of Energy, of Transport, of Telecommunications and Postal Services and of Water and Sanitation.
- 2.2 The IMC will build on the work already being done by the Deputy President with regard to the SAA, SAPO and Eskom since 2014¹. Other Ministries with similar shareholder agreements and economic impact will be co-opted as and when required.
- 2.3 In addition, the Cabinet Lekgotla further approved the establishment of the Inter-Departmental Forum (also known as the Technical Task Team); and that the Inter-Departmental Forum will support the IMC (administratively and technically) so as to carry out its mandate.
- 2.4 Having considered the PRC recommendations as listed above, Cabinet Lekgotla granted approval for twelve proposals as revised and re-clustered below:
- 2.4.1 The development of an overarching Shareholder Policy defining criteria for State Ownership which should be developed by the Minister of Public Enterprises (DPE), in consultation with the Economic Sectors, Employment and Infrastructure Development (ESEID) Cluster (hereafter "the Cluster");
- 2.4.2 The determination of the appropriate Shareholder Ownership Model (centralised, decentralised, dual, etc.) to be led by the Minister of Public Enterprises (DPE) in consultation with the Cluster;
- 2.4.3 The separation of the functions of Shareholder, Policy-maker and Regulator across State-Owned Companies (SOEs), where applicable;

¹ In 2014 the Deputy President was assigned the responsibility to oversee the implementation of the recommendations of the PRC on SOEs; and turnaround of Eskom, South African Airways (SAA) and the South African Post Office (SAPO).

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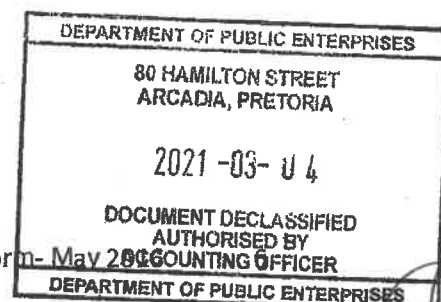
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- 2.4.4 The development and implementation of a standardised approach to the appointment of SOC Boards, taking into account the work already underway led by the Minister of Public Service and Administration;
- 2.4.5 The development of a Private Sector Participation Framework. The National Treasury must lead the process and provide feedback to the Cluster;
- 2.4.6 The development of a Framework on the disposal of less strategic State assets to fund critical SOEs. The first list must be submitted for Cabinet approval through the IMC;
- 2.4.7 The separation of the developmental and commercial mandates of SOEs be referred back to the IMC for further consideration;
- 2.4.8 The training and skills development, in particular scarce skills, be included in the developmental mandates of SOEs;
- 2.4.9 The IMC to reconsider the proposal to empower Boards to take decisions and manage their systems; and
- 2.4.10 The linking of the remuneration of officials to performance be referred back to the IMC for further consideration and submission to Cabinet for approval.
- 2.4.11 The implementation of SOC-specific interventions in relation to the following SOEs be referred back to the IMC for further consideration and submission to Cabinet for approval:
- (a) Eskom;
 - (b) Trans-Caledon Tunnel Authority (TCTA) & Water Board;
 - (c) Transnet;
 - (d) The Passenger Rail Agency of South Africa (PRASA); and
 - (e) Telkom;
 - (f) South African National Roads Agency Limited (SANRAL);
 - (g) Central Energy Fund (CEF); and
 - (h) The State-Owned Mining Company (SOMCO).

3. MANDATE OF THE IMC ON SOE REFORM

Terms of Reference for the Inter-Ministerial Committee on SOEs Reform



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3.1 Consistent with paragraph 1.6. above, the mandate of the IMC is, broadly to oversee the process of implementing the SOE reform in line with the PRC recommendations and for that purpose ensure that the Government:

3.1.1 Develops an overarching policy and long-term strategy for SOEs;

3.1.2 Promotes a common national understanding and commitment to a developmental state vision; and

3.1.3 Builds its capacity to develop and implement an overarching strategy for SOEs.

3.2 The mandate of the IMC was further bolstered by the 2016 State of the Nation Address whereby the President said the process of implementing the PRC recommendations involved the streamlining and sharpening the mandate of SOEs, rationalising them where there is an overlap of mandates, and phasing out those SOEs that are no longer relevant to our developmental agenda.

4. AIMS AND OBJECTIVES

4.1 The IMC has been established to achieve the following high level aims and objectives which are also set out in detail in Annexures "A" and "B":

4.1.1 Develop a strategy for SOEs aligned to developmental state vision;

4.1.2 Create an enabling environment, i.e. legislation, structures, policies for SOEs to operate;

4.1.3 Ensure SOEs will be meeting their performance targets in a balanced manner; and

4.1.4 Ensure that the state owner/shareholder and oversight capacity are appropriately enhanced.

5. MEMBERS OF THE IMC ON SOE REFORM

5.1 The IMC on SOE Reform will be chaired by the Deputy President and in his absence the IMC will be chaired by the Minister of Planning, Monitoring and Evaluation.

Terms of Reference for the Inter-Ministerial Committee on SOEs Reform - May 2016

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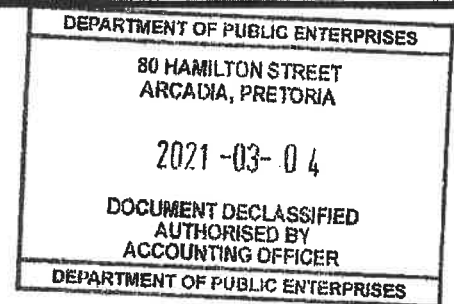
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5.2 The members of the IMC on SOE reform are as follows:

- Deputy President
- Minister of Finance
- Minister of Transport
- Minister of Public Enterprises
- Minister of Public Service and Administration
- Minister of Public Works
- Minister of Energy
- Minister of Water and Sanitation
- Minister of Telecommunications and Postal Services
- Minister of Mineral Resources
- Minister of Planning, Monitoring and Evaluation
- Co-opted members when required in line with paragraph 1.6. above.



6. ROLE AND RESPONSIBILITIES OF THE INTER-MINISTERIAL COMMITTEE

6.1 The IMC is expected to provide political oversight and oversee the implementation of the PRC recommendations.

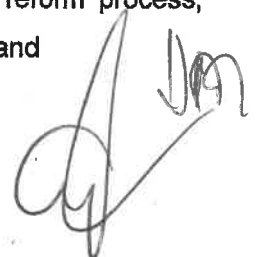
6.2 For this purpose, its role will cover the following set of activities:

6.2.1 **Setting desired outcomes and priorities.** The recommendations of the PRC need to be translated into an implementation plan set outcomes, priorities and timeframes;

6.2.2 **Coordination and integration:** The role of the IMC is amongst others, to:

- Provide strategic oversight;
- Secure high-level agreement;
- Unblock institutional roadblocks;
- Ensure information is shared; and
- Ensure implementing structures have the necessary resources and capacity.

6.2.3 **Identifying and addressing risks.** Given the scale and scope of the reform process, there is a need to identify, manage and mitigate any risks that may arise; and



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6.2.4 **Monitoring the progress towards achieving these outcomes.** Once the desired outcomes are set, prioritised and sequenced there is no need to monitor progress towards achieving the outcomes.

7. COMMITTEE OF DIRECTORS-GENERAL ON SOE REFORM

7.1 The Committee of Directors-General will be the senior technical structure that will provide strategic support to the IMC. The Committee will be composed of the Directors-General of the departments represented in the IMC on SOE Reforms as listed in paragraph 5.2 above.

7.2 For each of the deliverables the role of the Committee of Directors-General will be to:

7.2.1 Support the development, formulation, coordination, and implementation of the integrated policy and its various instruments and develop the rules regarding the business that goes before the IMC for consideration of:

- (a) All "Major Issues";
- (b) Questions that significantly engage the collective responsibility of government; Questions on which there is unresolved argument between departments; and
- (c) Identify contending views and interests, suggest to the IMC ways of resolving them either at the IMC or at any other appropriate forum;

7.2.2 Making recommendations for policy and its instruments, coordinate these recommendations, and oversee their implementation;

7.2.3 Identifying obvious policy and policy instruments inconsistencies with prior decisions or that have been adequately vetted through the appropriate channels;

7.2.4 Clarifying the specific issues at stake and decision to be taken, provide the IMC adequate time to consider them;

7.2.5 Recording the decisions and disseminate them to the relevant agencies and SOEs; and

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- 7.2.6 Proactively advising, to ensure that policy priorities do not evaporate under the day-to-day demands of individual departments, agencies, and SOEs and to serve as an extension of the IMC in questioning the submissions of those that are responsible for the various deliverables.


8. TECHNICAL TASK TEAM

- 8.1 The Technical Task Team coordinates and carries out the technical activities in relation to the implementation of the PRC recommendations and deal with any operational matters which may be delegated to it from time to time.
- 8.2 The Technical Task Team shall be responsible for developing a comprehensive strategy for the implementation of the PRC Recommendations.
- 8.3 Identify contending views and interests and suggest to the DG's Committee on SOE's proposals of resolving these or escalating them to the appropriate forum.
- 8.4 Make recommendations for policy ad instruments, coordinate these recommendations, and oversee their implementation.
- 8.5 Identify policy; policy instruments inconsistencies with prior decisions that have not been adequately vetted through appreciate channels.
- 8.6 Clarify the specific issues at stake, decisions to be taken and provide the DG's Committee adequate time to consider them.

9. INDEPENDENT TECHNICAL ADVISORY SERVICES

- 9.1 In regular pursuit of the mandate and in carrying out its activities, the IMC, when required, can solicit independent technical advisory services, provided that:

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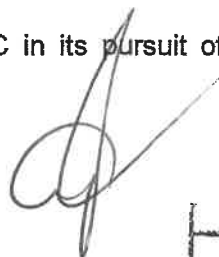
- 9.1.1 Such services have been agreed to at a fully constituted meeting of the IMC;
- 9.1.2 The scope and the cost implication are clear and agreed to by the IMC; and
- 9.1.3 The IMC support structures are unable to provide such services.
- 9.2 This could be through sourcing of external service providers or secondments from within and outside of the state.

10. THE SECRETARIAT

- 10.1 The Office of the Deputy President provides secretariat and administrative services to the IMC and other support structures.
- 10.2 Specifically, the Office of the Deputy President as the Secretariat is responsible for the following:
- 10.2.1 Preparing the agenda for IMC Meetings;
- 10.2.2 Receiving and reviewing documents to be placed before the IMC;
- 10.2.3 Coordination of information and documents between and amongst the department for the purposes of IMC work;
- 10.2.4 Arranging for the distribution of IMC documents;
- 10.2.5 Briefing the IMC Chairperson;
- 10.2.6 Recording proceedings of IMC;
- 10.2.7 Distributions minutes and decisions of IMC Meetings;
- 10.2.8 Arranging for the attendance of officials who may need to appear before the IMC; and
- 10.2.9 Any other function delegated to it by the IMC in its pursuit of its mandate outlined in paragraph 2. Above.

11. FREQUENCY OF MEETINGS

Terms of Reference for the Inter-Ministerial Committee on SOEs Reform- May 2016



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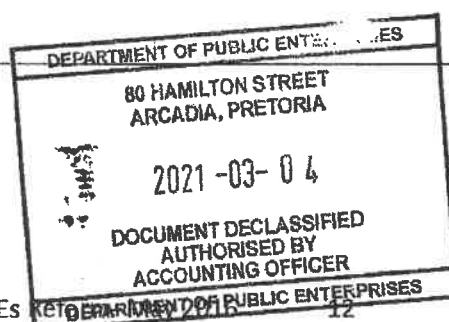
- 11.1 The IMC shall meet [once] per quarter on a date to be agreed by the Chairperson of the IMC.
- 11.2 The Committee of Directors-General shall meet [once] per quarter on a date to be agreed by the Director General in the Presidency.
- 11.3 The Technical Task Team shall meet twice per month on a date to be agreed by the Chairperson of the Technical Task Team.

12. PROXIES TO IMC MEETINGS

- 12.1 In the event that a member of the IMC is unable to attend an IMC meeting for any reason whatsoever, the member of the IMC shall nominate a Deputy Minister to attend an IMC meeting on his/her behalf, and shall ensure that the Deputy Minister is fully briefed of the proceedings of the IMC and delegate the necessary authority to make decisions to the Deputy Minister.
- 12.2 The Chairperson and the Secretariat shall be informed of the nominee at least three (3) days prior to the scheduled meeting.

13. PROXIES TO TECHNICAL TASK TEAM MEETINGS

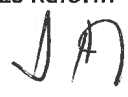
- 13.1 In the event that a member of the Technical Task Team is unable to attend a Technical Task Team meeting for any reason whatsoever, the member of the Technical Task Team shall nominate an official from the department to attend on his/her behalf a Technical Task Team meeting and shall ensure that the official is fully briefed of the proceedings of the Technical Task Team and delegate the necessary authority to make decisions to the official.
- 13.2 The Head of the Secretariat shall be informed of the nominee at least two (2) days prior to the scheduled meeting.



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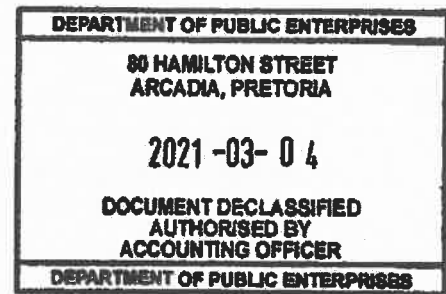
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Annexure “MCR25”

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MINISTRY OF PUBLIC ENTERPRISES

CABINET MEMORANDUM NO : 6 of 2018

DATE : 23 MAY 2018

FILE NUMBER : 2/2/1

1. SUBJECT**PRESIDENTIAL STATE-OWNED ENTERPRISE COUNCIL****2. PURPOSE**

To request Cabinet to:

- 2.1 Confirm the establishment of the Presidential State-Owned Enterprise Council (PSC);
- 2.2 Approve the Terms of Reference of PSC; and
- 2.3 Approve the membership of the PSC.

3. SUMMARY

- 3.1 In August 2016, Cabinet approved the establishment of a Council on state-owned enterprises (SOEs) to be chaired by the President. This ensued from the review of SOEs that had been undertaken by the Presidential Review Commission (PRC) and the process of implementing the approved recommendations emanating from the review.
- 3.2 In November 2016, based on recommendations from the newly established Council, Cabinet endorsed a guideline for the remuneration of incentive standards, a process for the appointment of Boards and Executives at SOEs, and a framework for collaboration between SOEs and the private sector on infrastructure projects. Cabinet also noted a proposal to determine and cost the developmental mandates of SOEs and recommended further consultation on the draft shareholder policy.

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3.3 In the interim, evidence has emerged of serious failures in the governance and management of SOEs. Simultaneously, there has been continued weakening in the financial position of a number of SOEs, posing a significant risk to the fiscus. This calls for government to take decisive action to address the challenges.

3.4 The Terms of reference for the council, which is to be called the "Presidential SOE Council (PSC)", are recommended, setting out its proposed mandate and membership.

4. STRATEGIC FOCUS OF THE MEMORANDUM

4.1 The National Development Plan (NDP) and the Medium Term Strategic Framework (MTSF) envisage a central role for State-owned Enterprises (SOEs) in rolling out infrastructure and supporting government's developmental objectives.

4.2 SOEs are significant contributors to the economy. They play a key role in delivering key public services, e.g. ensuring a reliable and cost-effective electricity supply and an efficient road, rail, port and aviation logistics infrastructure. National Treasury estimates that they account for 21 percent of total investment in the local economy. By making South Africa a more attractive location for companies to do business, further investment by the private sector can be crowded-in.

4.3 The President, in the 2018 State of the Nation Address (SONA), indicated that, "We will intervene decisively to stabilize and revitalize state owned enterprises. As we address challenges in specific companies, work will continue on the broad architecture of the state owned enterprises sector to achieve better coordination, oversight and sustainability. Government will take further measures to ensure that all state owned companies fulfil their economic and developmental mandates".

4.4 The Presidential SOE Council (PSC) will promote the achievement of the objectives set out in the NDP, MTSF and SONA.

5. DISCUSSION

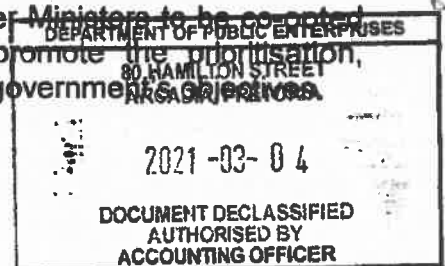
Background

5.1 The Presidential Review Committee (PRC) on state-owned enterprises (SOEs) was established in 2010. Government acknowledged the need to strengthen the management of SOEs in order to ensure that they play a central role in supporting the developmental objectives of government. The PRC undertook a review all SOEs across all three spheres of government.

5.2 In February 2015, Cabinet approved the establishment of an Inter-Ministerial Committee (IMC) led by the Deputy President and comprising the Ministers of Public Enterprises, Finance, Energy, Transport, Telecommunications and Postal Services, and Water and Sanitation (with other Ministers to be co-opted as required). The purpose of the IMC was to promote the prioritisation, alignment and coordination across SOEs to achieve government's objectives.

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- 5.3 Based on the PRC recommendations, Cabinet approved a number of interventions to be overseen by the IMC. These included determining an appropriate shareholder ownership model and an overarching shareholder policy, developing a standardised approach to the appointment of SOE boards, developing a private sector participation framework, considering a framework on the disposal of state assets to fund critical SOEs, consider proposals to empower boards, separating the developmental and commercial mandates of the SOEs, and linking the remuneration of officials to performance. In addition, a number of SOEs were identified where SOE-specific interventions should be implemented. The IMC also took responsibility for overseeing the finalisation of new SOE Remuneration and Incentive Standards as per Cabinet's December 2012 decision.
- 5.4 In August 2016, during the Cabinet Lekgotla, the Minister of Public Enterprises provided a report back on the work of the IMC. Following this presentation, Cabinet approved the establishment of a Council on state-owned companies comprising of relevant Ministers responsible for State-owned companies in their respective portfolios. The Council was to be chaired by the President.
- 5.5 In November 2016, based on recommendations from the newly established Council, Cabinet:
- 5.5.1 Noted the proposal to determine and cost the developmental mandates of state-owned enterprises.
- 5.5.2 Endorsed a framework to guide collaboration between state-owned companies and the private sector on infrastructure projects
- 5.5.3 Adopted a guideline for the remuneration and incentive standards for directors of state-owned entities.
- 5.5.4 Approved the broad thrust of a guide for the appointment of boards and executive officers.
- 5.5.5 Recommended further consultation on the first draft of a new government shareholder policy, which will culminate in overarching legislation for state-owned companies.

Governance and financial challenges

- 5.6 Inefficient management and operations in the SOEs imposes a significant cost on the economy. For instance, the load-shedding in 2015 and 2016 is estimated to have reduced Gross Domestic Product (GDP) by around 1 percent. Improvements in the efficiency of the transport and telecoms sectors could add approximately 1 percentage point to potential growth over the medium term in South Africa.

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5.7 Allegations of "state capture" and corruption at SOEs provide evidence of weaknesses in the governance framework for managing SOEs as well as in the internal controls, especially in relation to procurement. Government needs to demonstrate a credible approach to investigate such allegations and hold implicated individuals to account, whilst taking decisive steps to strengthen SOE governance.

5.8 The financial position of a number of SOEs is extremely weak. These include South Africa Airways (SAA), South African Express Airways (SA Express), Denel, South African National Roads Association (SANRAL), Trans-Caledon Tunnel Authority (TCTA), South African Post Office (SAPO) and the South African Broadcasting Corporation (SABC). Many have been turning to government for fiscal support. This has had an adverse impact on the perceived sustainability of government debt. Careful management of these risks and the reform of SOEs, would assist in mitigating the potential negative economic impact this would have.

Proposed Terms of Reference for the Presidential State-owned Enterprises Council (PSC)

5.9 The following draft terms of reference have been developed for a "Presidential State-owned Enterprise Co-ordinating Council" (PSC): To reposition SOEs as effective instruments of economic development, the mandate of the PSC should be to provide political oversight and strategic management by:

5.9.1 Strengthening the framework governing SOEs, including:

5.9.1.1 The need for the introduction of an overarching act governing SOEs;

5.9.1.2 Determining an appropriate Shareholder Ownership Model, including the future role of the PSC;

5.9.1.3 Appointing competent individuals with unquestionable integrity through a transparent and robust process to SOE Boards and Senior Management positions;

5.9.1.4 Clarifying the respective roles and responsibilities of the Executive Authority, Boards and Executives;

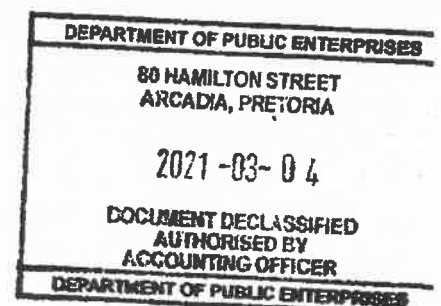
5.9.1.5 Regularly reviewing and updating the guidelines for the remuneration of Boards and Executives; and

5.9.1.6 Reforming procurement by SOEs to reduce the likelihood of corruption;

5.9.2 Ensuring that SOE-specific interventions are implemented to stabilise companies through strengthening governance, addressing immediate liquidity challenges, implementing turnaround strategies, and investigating allegations and taking steps against those implicated in corruption;

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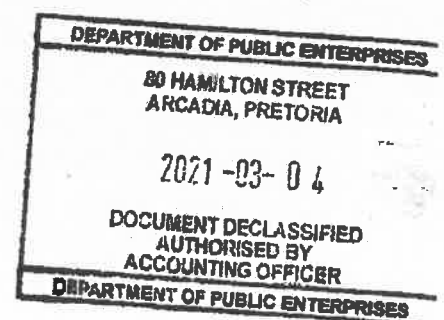
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- 5.9.3 Reviewing the role and mandate of the SOEs to ensure a positive socio-economic contribution and alignment to national developmental objectives, including determining where initiatives/projects should be discontinued or additional initiatives/projects should be undertaken as well as where SOEs should be created or disposed of or wound up;
- 5.9.4 Reviewing the SOE corporate plans to ensure alignment to Government priorities and ensure that appropriate systems are put in place to monitor implementation and the operational and financial performance of the SOEs;
- 5.9.5 Reviewing the business models, capital structure and sources of financing for the SOEs and ensuring that the necessary steps are taken for an appropriate capital structure, mix of financing and funding model for non-commercial SOE activities is in place that enables the entities to operate financially sustainably;
- 5.9.6 Reviewing the appropriateness of each SOE's structure and operating model for delivering on the SOE's strategy and the development role and mandate as well as whether the sectors within which the SOE operates is appropriately structured to deliver optimal economic outcomes and ensure that any required restructuring is implemented;
- 5.9.7 Improving coordination and applying lessons that have been learnt in the implementation of infrastructure projects by SOEs;
- 5.9.8 Identifying opportunities for private sector participation to better advance the national development agenda of the country;
- 5.9.9 Monitoring the financial and operational performance of the SOEs;
- 5.9.10 Monitoring the risks arising from the companies to identify and ensure mitigating action is taken in response to potential sources of risk;
- 5.9.11 Overseeing all transactions falling within the ambit of Section 54 of the Public Finance Management Act (PFMA) and significant procurement transactions (as defined in the significance and materiality framework); and
- 5.9.12 Monitoring and reviewing reports on the implementation of decisions taken by the PSC.
- 5.10 Taking the Cabinet decision of February 2015 into account, it is recommended that the core members of the PSC comprise:
- 5.10.1 President (Chairperson);
- 5.10.2 Deputy President;
- 5.10.2 Minister of Public Enterprises;
- 5.10.3 Minister of Finance;
- 5.10.4 Minister of Energy;
- 5.10.5 Minister of Transport;

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- 5.10.6 Minister of Telecommunications and Postal Services;
- 5.10.7 Minister of Water and Sanitation; and
- 5.10.8 Minister of Economic Development.
- 5.11 The President may invite Ministers, Chairs or Chief Executive Officers (CEO) of SOEs to be in attendance at meetings relevant to their mandate.
- 5.12 The recommendation is for the central focus of the PSC, at least initially, to be on the national, non-financial SOEs that have commercial operations. These include: Eskom, Transnet, the Central Energy Fund (CEF)/PetroSA, Passenger Rail Association of South Africa (PRASA), SANRAL, TCTA, Water boards, Denel, SAA, SA Express, SAPO, Airports Company South Africa (ACSA), Alexcor, Broadband Infracore (BBI), the SABC, Armscor, Air Traffic Navigation Services (ATNS), the Nuclear Energy Corporation of South Africa (NECSA), Safcol and the State-owned Mining Company (SOMCO) (once established).
- 5.13 Over time, other categories of entities could be also be included within the ambit of the PSC, e.g. provincial and municipal entities, economic regulators, research institutions, and other entities responsible for undertaking public-policy activities. Reforms and guidelines will apply to all public entities.
- 5.14 The rationale for limiting the initial scope of the PSC is that the proposed set of companies tend to be the most significant in size, most strategically important, and, currently, pose the greatest risk to the fiscus. A clear distinction is made between companies principally engaged in public-policy activities, which are largely funded directly from the fiscus, and those that are more commercially oriented, generating their own revenue from the goods or services they provide in order to cover the majority of their costs. A fundamentally different approach to the management of commercially oriented companies is required, as they tend to have more independence in view of the fact that they generate their own revenues and may also borrow¹. The Public Finance Management Act (PFMA) already creates such a distinction through its classification of the public entities into different schedules. The need for such a distinction was also recognised by Cabinet and the PRC.
- 5.15 The PSC would be supported by a Secretariat located in the Department of Public Enterprises (DPE), responsible for undertaking technical analysis and fulfilling the secretariat functions.

¹ Companies listed in Schedule 3 of the PFMA require authorisation from the Minister of Finance.

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6. IMPLEMENTATION PLAN

The Secretariat will convene the first meeting of the PSC, which will be to review the work done to date by the IMC and define the work programme for the PSC, over the next year and over the medium-term.

7. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

None

8. FINANCIAL IMPLICATIONS

No immediate financial implications. However, through the interventions to stabilize the SOEs and through the review of their role, the source of funding for the non-commercial developmental mandates undertaken by the SOEs, their business models, operating models, business structure and capital structures, and opportunities for partnering with the private sector, financial implications for government may emerge.

9. COMMUNICATION IMPLICATIONS

The PSC will play a key role in responding to the immediate governance and financial challenges facing the SOEs. It will also ensure that work to implement reforms relating to SOEs is expedited, including strengthening the governance framework for managing state-owned companies with aim of preventing a recurrence of the current problems. Furthermore, the PSC will reorient the SOEs to efficiently delivering on their core mandates and use their collective resources and capability to promote inclusive growth, investment, transformation and the creation of jobs.

10. CONSTITUTIONAL IMPLICATIONS

The memorandum was finalised in consultation with the President, the Ministers of Finance, Trade and Industry, Economic Development and Small Business Development.

11. IMPLICATIONS FOR VULNERABLE GROUPS

None

12. SECURITY IMPLICATIONS

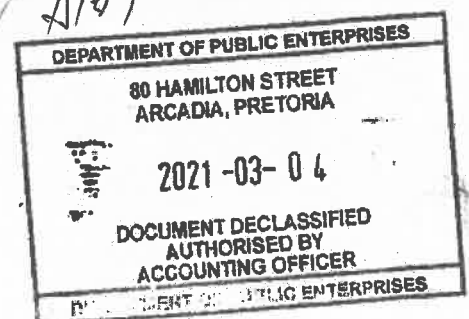
None

13. RESPONSES AND COMMENTS FROM DEPARTMENTS AND PARTIES CONSULTED AND CONSIDERATION BY THE RELEVANT DIRECTORS-GENERAL CLUSTER

None

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14. RECOMMENDATIONS

It is recommended that Cabinet:

- 14.1 **Confirm** the establishment of the Presidential State-Owned Enterprise Council (PSC);
- 14.2 **Approve** the Terms of Reference of PSC; and
- 14.3 **Approve** the membership of the PSC.

15. OFFICIAL RESPONSIBLE FOR THE MEMORANDUM

I declare that the memorandum adheres to the Guidelines dated July 2015 provided by the Cabinet Secretariat for the drafting of memoranda. The requirements in relation to electronic presentations were noted.

Name: Ms Avril Halstead
 Designation: Acting Deputy Director General
 Contact details: 012 431 1187
 Telephone: 012 431 1187
 E-mail: avril.halstead@dpe.gov.za

16. HEAD OF DEPARTMENT

MS MAKGOLA MAKOLOLO
ACTING DIRECTOR-GENERAL

17. AUTHORISATION FOR PROCESSING THE MEMORANDUM

MR PRAVIN GORDHAN, MP
MINISTER OF PUBLIC ENTERPRISES

DATE:

In order to assist with time allocation to meetings, Ministers are kindly requested to respond to the following question:

Is there a need for an electronic presentation to be done in addition to the memorandum? : Yes

Final CabMemo 6 of 2018 PSC Presentation.ppt

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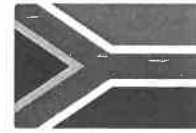
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Statement on virtual Cabinet Meeting of 18 November 2020

19 Nov 2020

Statement on the virtual Cabinet meeting of Wednesday, 18 November 2020

A. Issues in the environment

1. 12th Brazil, Russia, India, China and South Africa (BRICS) Summit

1.1. Cabinet welcomed the outcomes of the 12th BRICS Summit which was led by President Cyril Ramaphosa. Hosted by President Vladimir Putin of the Russian Federation, the summit deliberated on the BRICS partnership for global stability, shared security and innovative growth.

1.2. The outcomes included the adoption of a revised Strategy for BRICS Economic Partnership (2020-2025) and the adoption of the BRICS Counter-Terrorism Strategy. The Moscow Declaration adopted at the end of the summit expressed, among other issues, support for the African Union (AU) Agenda 2063 and the efforts towards intensified integration and development in the continent, including implementation of the Agreement on the African Continental Free Trade Area.

1.3. The summit also noted progress achieved by the AU in addressing infrastructure gaps, particularly within the framework of the New Partnership for Africa's Development, and the importance of promoting investments to support industrial development, create jobs, ensure food security, fight poverty and provide for Africa's sustainable development.

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2. Working Visit by the President of Malawi

- 2.1. Cabinet welcomed the recent successful Working Visit to South Africa by members of the Malawian Government led by President Lazarus Chakwera. The meeting between Presidents Chakwera and Ramaphosa discussed bilateral, regional and continental matters of mutual interest.
- 2.2. South Africa remains committed to deepening and strengthening relations with Malawi through expanded trade and investment with a goal of achieving decent livelihoods in both countries. The two countries have cordial relations dating back many decades.
- 2.3. Cabinet was also briefed on the issue of Mr Shepherd and Mrs Mary Bushiri, who fled to Malawi while out on bail of R200 000 each following charges of fraud and money-laundering.
- 2.4. Cabinet was satisfied with the manner in which the Justice, Crime Prevention and Safety Cluster has handled the matter and the cluster will update the public on the developments regarding this matter. Extradition processes have been initiated.

3. Municipal by-elections

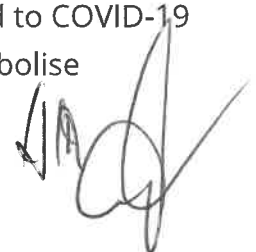
- 3.1. Cabinet commends the Independent Electoral Commission for the successful by-elections, held in 95 wards across 55 municipalities on Wednesday, 11 November 2020. Municipal elections remain a pillar of sharpening our democracy at district and municipal levels.
- 3.2. Cabinet thanked all South Africans who took part in the by-elections, which were the first time after election activities were suspended in March owing to the Coronavirus Disease (COVID-19) pandemic.

4. Five national days of mourning

- 4.1. Cabinet has urged South Africans to take part in the five days of mourning to remember those who have lost their lives to COVID-19 and gender-based violence and femicide (GBVF). All national flags will fly at half-mast during five days of mourning starting from Wednesday, 25 November to Sunday, 29 November 2020.
- 4.2. In a united move to honour and remember all those who have succumbed to COVID-19 and GBVF, all citizens are encouraged to wear attires and ornaments which symbolise mourning based on their culture, tradition and religious belief.

5. Signing of Sugar Master Plan

- 5.1. Cabinet welcomed the signed Sugar Industry Master Plan by Agriculture, Land Reform and Rural Development Minister Thoko Didiza and the sugar industry sector. The Sugar Master Plan seeks to take urgent action to protect thousands of jobs, rural livelihoods and businesses, and at the same time create a bold new ambition for the future, which seeks to



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Statement on virtual Cabinet Meeting of 18 November 2020 | South African Government

create diversified revenue streams for sugar producers, and deliver significant new job opportunities.

5.2. The sugar industry is a critical employer of workers and a source of livelihood for large numbers of rural communities

B. Cabinet decisions

1. National Anti-Corruption Strategy (NACS)

1.1. Cabinet approved the NACS which provides a nationwide intervention framework. The strategy is the culmination of a countrywide consultation with various sectors, including business, government and civil society. The NACS Reference Group, comprising civil society, academia, business and government representatives, supported the compilation of this strategy.

1.2. The NACS covers six pillars, which include promoting and encouraging active citizenry, whistle-blowing, integrity and transparency; advancing the professionalization of employees, enhancing governance in institutions, and strengthening resourcing and coordination of performance and accountability.

1.3. The strategy also proposes an interim National Anti-Corruption Advisory Council as a structural arrangement to ensure greater monitoring, accountability and transparency. This interim structure will commence a process to set up an independent overarching statutory structure that will report directly to Parliament.

2. National Protected Areas Expansion Strategy (NPAES)

2.1. Cabinet approved the revised NPAES for implementation. The strategy was approved for public consultation in November 2018. These consultations resulted in a number of revised inputs being added in the nine chapters of this strategy.

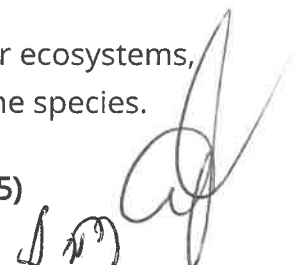
2.2. South Africa is one of the richest countries in terms of plants and animal diversity. It is listed as one of the world's top three mega diverse nations. Managing and conserving these essential biodiverse elements also contributes to creating jobs through tourism and nature conservation programmes, and also serves as places of scientific research.

3. Revised National Biodiversity Framework (NBF)

3.1. Cabinet approved the publication of the NBF for public comment. This is a sectoral plan of action to address the biodiversity threats identified during the scientific assessment of the state of biodiversity and ecosystems in South Africa done by the South African National Biodiversity Institute in 2019.

3.2. The most critical areas in the assessment report relates to fresh water ecosystems, rivers and estuaries with fresh water fish being the most vulnerable of all the species.

4. Commercial Forestry Sector (CFS) Master Plan for South Africa (2020-2025)



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4.1. Cabinet approved the implementation of CFS Master Plan, which has been agreed upon by the industry, government and labour. The plan balances environmental, economic and social benefit from the forestry resources.

4.2. It captures seven key focus areas: (a) expansion of the forestry resource and maintenance/protection, (b) transformation of the sector, (c) value addition and processing, (d) timber theft and illegal activities, (e) research, development, innovation and skills development, (f) key inhibitors to the growth of the sector and (g) institutional development.

5. A national implementation framework towards the professionalization of the Public Service

5.1. Cabinet approved publication of the draft national implementation framework towards the professionalization of the Public Service. This is in line with the commitment made by the sixth administration to create a capable, ethical and developmental Public Service.

5.2. The framework proposes five critical professionalization pillars which will be led by the National School of Government (NSG), in partnership with various institutions of learning. The five pillars include pre-entry recruitment and selection within the Public service; induction and onboarding; planning and performance management; continuous learning and professional development, and career progression and career incidents.

6. Policy proposals to amend Public Service Administration Management Act (PAMA) of 2014 and Public Service Act (PSA) of 1994

6.1. Cabinet has approved policy proposals that seek to amend the PAMA, 2014 (Act 11 of 2014) and the PSA, 1994 (Act 103 of 1994). Among other things, they propose a move towards a single Public Service, retention of the status of the NSG as a national department and clarify the role of the Office of Health Standards Compliance in respect of mechanisms for the coordination of norms and standards in the public administration.

6.2. The policy proposals for the PSA include clarifying the heads of department in the Office of the Premier and The Presidency, and also correct some of the issues occasioned by the court judgements.

6.3. The amendments are premised on furthering the Single Public Administration initiative and also give effect to the policy reforms envisaged in the National Development Plan to build a professional public service.

6.4. The Single Public Administration initiative is underpinned by the principle to ensure efficient, quality, collaborative and accountable service delivery.

7. Official Identity Management Policy

7.1. Cabinet approved the Official Identity Management Policy to be released for public comment. The policy proposes a number of changes, including amending the Identification



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Act, 1997 (Act 68 of 1997) and Alteration of Sex Description and Sex Status Act, Act 40 of 2003) to align them with the Constitution of the Republic of South Africa Act of 1996 and the Protection of Personal Information Act, 2013 (Act 4 of 2013).

7.2. It also proposes the integration of the National Population Register to enable a single view of a person with features to interface with other government and private sector identity management systems. It will integrate the current systems into a biometric-enabled National Identity System. The new proposed population register will form the basis of an official e-identity which will serve as the backbone of state and private digital platforms.

8. Protocol to the Constitutive Act of the AU Relating to the Pan-African Parliament (PAP)

8.1. Cabinet approved the submission of the Protocol to the Constitutive Act of the AU to the PAP for ratification. To give effect to this protocol, member states need to ratify them through their respective parliaments. South Africa hosts the PAP, which is the legislative arm of the AU.

C. Bills

1. National Small Enterprise Amendment (NSEA) Bill of 2020

1.1. Cabinet approved the publishing of the NSEA for public comment, which seeks to amend the National Small Enterprise Act, 1996 (Act 102 of 1996). The amendments provide for the Office of the Small Enterprises Ombud Service and repeal the provision for the establishment of an Advisory Body.

1.2. The Bill broadens access to justice for small enterprises through the Ombud Service, which will be tasked with considering and disposing of complaints by small enterprises.

1.3. Implementation of the amendments will realise greater stability to the sector and advance economic opportunity through the creation of job opportunities by small, medium and micro enterprises.

2. National Youth Development Agency (NYDA) Amendment Bill

2.1. Cabinet approved the submission of the NYDA Amendment Bill for public comment. The amendments enhance the operational effectiveness of the NYDA in expanding its reach and increasing responsiveness to young people's needs.

2.2. Youth constitute nearly a third of South Africa's population and implementation of this Bill will go further in contributing towards building a highly skilled labour force and also increasing support for entrepreneurship. This will contribute towards addressing the triple developmental challenges of poverty, inequality and unemployment.

D. Upcoming events

1. 16 Days of Activism



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1.1. Cabinet approved the theme: “Women’s Economic Justice towards a non-violent and non-sexist South Africa” for the 16 Days of Activism campaign, which is the high-point of the 365 Days against GBVF campaign. Due to the National State of Disaster regulations that prohibits large gatherings, President Ramaphosa will launch the campaign virtually on Wednesday, 25 November 2020. The Emergency Response Action Plan to combat GBVF that was approved in 2019 commenced to give effect to support survivors; uplift awareness and prevention campaigns; improve laws and policies; promote the economic empowerment of women, and strengthen the criminal justice system.

1.2. The adopted National Strategic Plan (NSP), which was received by President Ramaphosa early this year, takes forward the emergency response intervention that were started in 2019. The Inter-Ministerial Committee on GBVF led by the Minister in The Presidency for Women, Children and Persons with Disabilities, Ms Maite Nkoana-Mashabane, continues to oversee the mainstream operationalisation of the programmes of the NSP.

2. World Aids Day – 1 December 2020

2.1. The theme for World AIDS Day on 1 December 2020: “We’re in this together, Cheka Impilo!” underscores individual responsibility to ensure that the gains made thus far in responding to the HIV and tuberculosis (TB) epidemics are not lost.

2.2. South Africa has the biggest HIV epidemic in the world, with about 7.7 million people living with HIV, and accounts for a third of all new infections in Southern Africa. More people are now testing for HIV. South Africa has the world’s largest antiretroviral therapy programme. It is the first country in sub-Saharan Africa to fully approve Pre-exposure Prophylaxis, which is now being made available to those at high risk of infection.

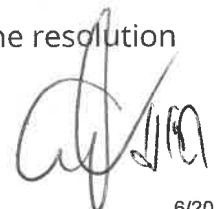
2.3. Cabinet urges South Africans to follow the Cheka Impilo three steps: First, get your health checked, get tested for HIV and TB for free at any clinic near you. Second, take action once you know your results, begin treatment immediately or stay on treatment. Lastly, live smart, live healthy by avoiding risky sexual behaviour, avoiding unhealthy habits, and maintaining a healthy, balanced diet.

3. Group of Twenty (G20) Leaders’ Summit

3.1 President Ramaphosa will lead the South African delegation to the virtual G20 Leaders’ Summit on Saturday, 21 November and Sunday, 22 November.

3.2 The G20 Leaders’ Summit is convened by the Kingdom of Saudi Arabia with a focus on deepening global cooperation around the theme of “Realising Opportunities of the 21st Century for All”. The summit is set out to lead international efforts to develop a robust coordinated global response to fight the COVID-19 pandemic, safeguard the global economy and enhance international cooperation.

3.3 Discussions will centre on empowering people, protecting the planet and the resolution of global challenges through solutions that benefit all of humanity.



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A. Messages

1. Congratulations

Cabinet extends its congratulations and well wishes to:

- President Ramaphosa for celebrating his 68th birthday on Tuesday, 17 November 2020.
- President Alassane Ouattara and the people of Cote d'Ivoire for conducting successful elections.
- United States of America (USA) President-elect Joseph R. Biden, and the people of the USA, following a successful election.
- Master KG for winning the Best African Act Award at the MTV EMA's following the hit song Jerusalema that featured Nomcebo Zikode, which became one of the biggest songs on the planet.
- Banyana Banyana who earned a fourth successive COSAFA Women's Championship title with a 2-1 victory over Botswana.
- Bafana Bafana who completed a double over Sao Tome and Principe to stay on course for the 2022 Africa Cup of Nations tournament.

2. Condolences

Cabinet sent condolences to the:

- people of Ghana and the family and friends of Ghana's former President Jerry Rawlings.
- family, friends and colleagues of the outgoing Auditor-General Mr Kimi Makwetu who served our country with distinction and contributed towards inculcating a culture of accountability in the use of state resources. Mr Makwetu's death was a huge loss to the auditing profession and the ongoing task of building an accountable administration. Cabinet expressed pride that Mr Makwetu was elected by acclamation to the United Nations' Independent Audit Advisory Committee, a task he would, without a doubt, have executed with distinction.
- government and people of the State of Palestine following the passing of Dr Saeb Erekat. Dr Erekat was the Secretary-General of the Executive Committee of the Palestine Liberation Organisation, member of the Fatah Central Committee and prominent academic, the lead Palestinian peace negotiator and a close friend of South Africa.

E. Appointments

All appointments are subject to the verification of qualifications and the relevant clearance.



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Statement on virtual Cabinet Meeting of 18 November 2020 | South African Government

1. Governing Body of the Commission for Conciliation, Mediation and Arbitration:
 - a. Mr Enos Ngutshane (Chairperson);
 - b. Mr Siobhan Leyden;
 - c. Mr Kaizer Moyane;
 - d. Mr Sifiso Lukhele;
 - e. Ms Riefdah Ajam;
 - f. Mr Narius Moloto;
 - g. Mr Bheki Ntshalintshali;
 - h. Mr Thembinkosi Mkalipi;
 - i. Ms Thabitha Constance Mametja; and
 - j. Ms Tshepo Mahlaela.

2. Non-executive members to the Board of Directors of the Armaments Corporation of South Africa:
 - a. Ambassador Jeanette Thokozile Ndhlovu (reappointment);
 - b. Dr Reginald Cassius Lubisi;
 - c. Dr Phillip David Dexter;
 - d. Ms Refilwe Matenche;
 - e. Maj Gen (ret) Lungile Christian Pepani;
 - f. Ms Fundiswa Skweyiya-Gushu;
 - g. Mr Timothy Mandla Sukazi; and
 - h. Ms Peta Nonceba Mashinini.

3. 6th-Term on the Council of the Engineering Council of South Africa:
 1. Ms Refilwe Buthelezi;
 2. Ms Prudence Madiba;
 3. Ms Tshwaraganang Ramagofu;
 4. Mr John Daniels;
 5. Mr Mashao Lawrence Lebea;
 6. Mr Kasango Nyembwe;
 7. Mr Simphiwe Nathaniel Zimu;
 8. Mr Thembinkosi Cedric Madikane;
 9. Mr Sipo Mkhize;
 10. Ms Nirvana Rampersad;
 11. Ms Liezl Smith Smith;
 12. Ms Refilwe Lesufi;
 13. Ms Sarah Skorpen;
 14. Ms Abimbola Olukunle;
 15. Mr Sandiswa Jekwa;
 16. Ms Linda Njomane;
 17. Mr Mpho Ramuhulu;
 18. Ms Philile Precious Mdletshe;



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Statement on virtual Cabinet Meeting of 18 November 2020 | South African Government

19. Mr Lesetja Boshomane;
 20. Ms Amelia Mtshali;
 21. Mr Thulebona Memela;
 22. Ms Simangele Mngomezulu;
 23. Ms Otilia Mthethwa;
 24. Mr Thembinkosi Gamedze;
 25. Ms Phumza Zweni;
 26. Mr Bhekinkosi Williamson Mvovo;
 27. Ms Patronella Fikile Sibiya;
 28. Ms Cingisa Mbola;
 29. Ms Thulisile Mwelase;
 30. Mr Kemraj Ramgobind Ojageer;
 31. Mr Enson Muranganwa Mangwengwende;
 32. Ms Thandeka Chili;
 33. Mr Sifiso Keswa;
 34. Ms Sejako Morejwane;
 35. Ms Nirasha Sampson;
 36. Ms Sewela Mutileni;
 37. Ms Nokhana Moerane;
 38. Mr Mamadi Isau Mailula;
 39. Ms Natalie Skeepers;
 40. Mr Matome Edmund Modipa;
 41. Dr Reginald Sethole Legoabe.
 42. Mr Carlo Van Zyl;
 43. Mr Ranthekeng Moloisane;
 44. Mr Njabulo Nhleko;
 45. Ms Elizabeth Theron;
 46. Mr Arnold Heinz Sommer;
 47. Ms Rachel Ledwaba;
 48. Mr Nic Smit; and
 49. Mr Sekete Zachia David Botsane;
-
4. Commission for Employment Equity
 - a. Ms Tabea Kabinde (Chairperson);
 - b. Mr Bhabhali kaMaPhikela Nhlapho;
 - c. Ms Lebogang Mulaisi;
 - d. Mr Puleng Tsebe;
 - e. Mr Mpho Vuma;
 - f. Thembi Chagonda;
 - g. Ms Zinzisa Pearl Mgobondela;
 - h. Ms Stieneke Jensma; and
 - i. Ms Dineo Mmako.



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Statement on virtual Cabinet Meeting of 18 November 2020 | South African Government

5. Mr Mashwahle Joseph Diphofa – Extension of five-year contract as Director-General (DG) of the Department of Traditional Affairs.
6. Dr Phil Mjwara – Extension of two-year contract as DG of the Department of Science and Innovation.
7. Dr Duncan Ettienne Pieterse – Deputy DG (DDG): Economic Policy, Department of National Treasury.
8. Dr Thuli Nomsa Khumalo – DDG: Climate Change and Air Quality Management, Department of Environment, Forestry and Fisheries.

Enquiries:

Ms Phumla Williams
Cabinet Spokesperson
Cell: 083 501 0139

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Xitsonga

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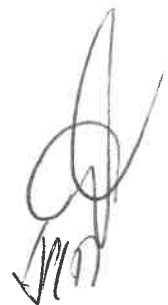
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President Cyril Ramaphosa: Launch of Health Sector Anti-Corruption Forum

1 Oct 2019

Remarks by President Cyril Ramaphosa at the launch of the Health Sector Anti-Corruption Forum, Union Buildings, Tshwane

Programme Director, Ms Khusela Diko,
Minister of Health, Dr Zweli Mkhize,
Deputy Minister of Justice and Constitutional Development, Mr John Jeffery,
Ministers, Deputy Ministers,
Premiers and MECs,
National Director of Public Prosecutions, Adv Shamila Batohi,
Director of the Financial Intelligence Centre, Adv Xolisile Khanyile,
Director of the Special Investigating Unit, Adv Andy Mothibi,
Representatives of the other parties to this agreement:

- Council for Medical Schemes
- Directorate for Priority Crime Investigation
- Health Funders Association
- Health Professions Council of South Africa
- Corruption Watch
- Section 27
- Board of Healthcare Funders
- Health Funders Association

Distinguished Guests,
Ladies and Gentlemen,

It is immensely encouraging to have amongst us such a broad representation of stakeholders on what is truly a historic occasion.

The signing of the Terms of Agreement of the Health Sector Anti-Corruption Forum is one of the critical steps we are taking to transform the health care system in South Africa and to rid it of the inefficiencies of the past.

President Cyril Ramaphosa: Launch of Health Sector Anti-Corruption Forum | South African Government

This initiative and the Health Market Inquiry Report that was released yesterday are concrete ways of reducing wastage and collusion and ending uncompetitive behaviour in the market.

Ladies and Gentlemen,

Health care is the third largest item of government expenditure, and yet there is a fundamental disjoint between what we are spending on health care and the health outcomes of our citizens.

We continue to rank low in global rankings on health care system efficiency owing to, among other things, inefficient resource management, poor institutional accountability, ineffective monitoring and evaluation, and corruption.

In the months leading up to the national elections earlier this year, I got to interact with men, women and children across the country to understand the everyday challenges they were facing.

It pained me, as it should every citizen of this country, to hear how this most fundamental of rights, of access to health care services, has been impacted by the stench of corruption.

In some parts of the country, citizens are forced to make payments to get access to medical treatment either at above the official rate or for services that are meant to be free.

In other places, our parents and grandparents are being turned away because doctors and nurses are moonlighting elsewhere during work hours.

In other cases, state property in hospitals and clinics, including vehicles and equipment, are being stolen, hired out or resold.

This isn't a problem confined to the public sector.

Suppliers and service providers are involved in false invoicing, collusion and price fixing especially on medicines.

It is because of problems like these, and the lack of accountability that accompanies them, that the audit outcomes of our provincial health departments continue to decline.

When there is corruption in our health care system, when the costs of unauthorised, fruitless and wasteful expenditure balloons, we all suffer.

Corruption in the health system is not a victimless crime.

It targets the poorest and most vulnerable in our society.

It further impoverishes people, it violates their Constitutional right to health, and it costs lives.

This initiative emerged from the Presidential Health Summit in 2018, which was convened to identify the challenges in the health sector and to agree on practical solutions to address areas of weakness.



President Cyril Ramaphosa: Launch of Health Sector Anti-Corruption Forum | South African Government

One of the key recommendations to improve the quality of the health system was to address supply chain management of medicines, medical products, equipment and machinery.

This sector was considered to be vulnerable to corruption because of the large volume of goods and services transacted.

These include fraudulent orders, tender irregularities, fiscal dumping through NGOs, bribery, overpricing, poor governance, transfer of liabilities to the state, and fraudulent qualifications.

The Summit identified the serious challenge of corruption at all levels, coupled with lack of consequent management and an inadequate response from criminal justice system.

Political interference in the tendering system was also found to contribute to corruption.

These problems prompted the participants at the Presidential Health Summit to recommend that an anti-corruption forum be established in the health sector.

We are here because we share a commitment to ensuring that the substantial resources this country invests in health care are used for nothing other than the provision of quality health care to all South Africans.

The Health Sector Anti-Corruption Forum brings together several departments, government agencies, professional bodies and civil society formations to coordinate our national response to corruption in this critical area of development.

This initiative has become all the more critical as we prepare to implement the most-far reaching policy for social transformation this country has seen since 1994, namely the National Health Insurance.

One of the fundamental principles underpinning the NHI is that the funds spent on health in the public and private sectors annually should result in better care and outcome for all South Africans.

It is about spending money more efficiently and effectively.

It is about reducing wastage and excess.

But most importantly, it is about ensuring that our people live better lives, that they live healthier for longer, that they can be more productive and that they can emerge from poverty.

We cannot achieve these objectives for as long as corruption remains pervasive across the health sector.

The agreement that is being signed today is the product of many months of hard work by all the parties to develop an integrated and coordinated approach to these challenges.

It draws on the resources and capabilities of all these partners, recognising that they have separate but complementary powers and mandates.

Importantly, it acknowledges that no institution or body can undertake its work without cooperation



President Cyril Ramaphosa: Launch of Health Sector Anti-Corruption Forum | South African Government

and assistance from other players within the State and across society.

This agreement makes the important statement that it is only through working together that we can decisively rid our health system of corruption and maladministration.

This Anti-Corruption Forum must respond not only to the challenges of the health sector today; it must also respond to the challenges of a fundamentally transformed health system of the future.

As we plan to introduce NHI, it is critical to adequately prepare to secure the National Health Insurance Fund even before it starts transacting and when it is transacting.

The NHI aims to ensure that the use of health services does not result in financial hardship for individuals and their families.

The National Health Insurance Bill is therefore intended to prevent undesirable, unethical and unlawful practices in relation to the NHI Fund and its users.

Therefore, if corruption in the health care system is not addressed decisively, it will undermine the government efforts to ensure universal access to quality health care.

We must ensure that the pool of funds that is earmarked to ensure universal access to quality health care is not wiped out through fraud and corruption, and in this regard this Forum will play a critical role..

It has the potential to fundamentally transform our approach to corruption not only in health, but across many parts of the State and across the society.

This Forum is, therefore, seen as an essential mechanism to ensure that the NHI is not exposed to fraud and corruption.

For the Forum to be successful, it is important that its work is well-known, and that its mandate is widely appreciated and supported.

We will continue to rely on the support and cooperation of health professionals, patients and the general public.

I call upon all South Africans to become actively involved.

Where you see acts of theft and corruption, report them.

The government has a tollfree hotline that you can report to anonymously; make use of it.

Most importantly, don't be party to such acts.

When you pay bribes to get treatment; when you offer money in return for securing or keeping a job in a clinic or hospital; when you buy equipment or medicines you know are stolen, you are adding to the erosion of trust and the decline in services.

Worse yet, you will be depriving someone else of access to a service that could mean life or death



President Cyril Ramaphosa: Launch of Health Sector Anti-Corruption Forum | South African Government

for them.

Remember that tomorrow it could be your child, your parent, and even yourself in that ambulance or hospital bed.

This needs to be a society-wide effort, in which all South Africans are actively involved and appropriately empowered to clean up our health system.

In conclusion, I wish to commend all the parties to this agreement and welcome the important work that has already been done.

I am certain that this Forum will live up to the great ambitions of its founding, and will prove itself worthy of the confidence that the people of South Africa have in it.

I thank you.

Issued by: The Presidency
More from: The Presidency
More on: Anti-corruption initiatives Fighting crime Health



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Annexure "MCR28"



PRESIDENT'S ACT NO. 78

In terms of section 8(1) of the Intelligence Services Act, 2002 (Act No. 65 of 2002), I hereby concur with the decision of the Minister of State Security to appoint Mr L Mhlanga as the Director Domestic Branch of the State Security Agency.

Given under my Hand at PRETORIA on this 13th day of MARCH Two Thousand and Nineteen.

A large, stylized handwritten signature in black ink, likely belonging to the President of the Republic of South Africa.

PRESIDENT

Handwritten initials "JA" followed by a smaller handwritten signature or mark.

Confidential



**MINISTER
STATE SECURITY
REPUBLIC OF SOUTH AFRICA**

PO Box 1037, Menlyn, 0077, PRETORIA, Ruth First Building, Bogare, Cnr Atterbury Road & Lois Avenue, MENLYN Tel: (012) 367 0766/0700 Fax: (012) 367 0751
PO Box 51278, Waterfront, 8002, CAPE TOWN, 18th floor, 120 Plein Street, Parliament, CAPE TOWN, Tel: (021) 401 1801 Fax: (021) 461 5878
www.ssa.gov.za

Min/01/1/5/2

28 February 2019

The Honourable Mr C Ramaphosa
President of the Republic of South Africa

Honourable President C Ramaphosa

APPOINTMENT OF DIRECTOR DOMESTIC BRANCH FOR THE STATE SECURITY AGENCY

1. The Minister of State Security ("the Minister") and the Acting Director-General of the State Security Agency ("the Agency"), Mr L Jafta, have identified Mr L Mhlanga as suitable for appointment to the position of Director: Domestic Branch of the Agency.
2. On 1 July 2018 the Minister re-established the position of Director: Domestic Branch. The Minister subsequently appointed Mr Mhlanga into the vacant position in an acting capacity on a contractual basis with effect from 1 November 2018 until 30 April 2019 in accordance with section 19(3) and (4) of the Intelligence Services Act, 2002 (Act 65 of 2002).
3. The Minister is authorised to appoint a person as a member of the Agency in accordance with section 8(1) of the Intelligence Services Act, 2002 (Act 65 of 2002), provided the appointment in respect of a Deputy Director-General on an M5 level or the equivalent post may only be effected in consultation with the President. It is common cause that the position of Director: Domestic Branch is on M6 level, which is

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. Confidential

higher than the position of a Deputy Director-General on an M5 level. In light thereof, the aforementioned contract was terminated on 1 February 2019 in order to consult with the Honourable President regarding the appointment of Mr Mhlanga on an M6 level.

4. It is further noted that the Minister is empowered in terms of regulation 8(3) of Chapter V *Recruitment, Selection, Appointment and Termination of Service* of the Intelligence Services Regulations, 2014 to, by invitation, appoint a person outside the normal recruitment process in exceptional circumstances. It is submitted that Mr Mhlanga's appointment qualified as exceptional circumstances for two reasons:
 - 4.1 the contract employment was to address a particular need; and
 - 4.2 the Minister and the Acting Director-General are convinced that the appointment is in the best interests of the Agency.
5. It is submitted that a need exists to re-launch and stabilise the management echelon in the Domestic Branch, and the capable and experienced leadership demonstrated by Mr Mhlanga is necessary in the short term in order to realise that objective while a process ensues for the identification and appointment of a permanent appointee. It is envisaged at this stage that the process for such an appointment would not exceed the four month duration of the contractual arrangement with Mr Mhlanga.
6. The financial implication of the contractual appointment totalling R 626'926.67 is budgeted for against the vacant funded position in the personnel budget allocation of the Domestic Branch of the Agency.
7. The Minister humbly submits undercover hereof the President's Minute for the signature of the President authorising the appointment of Mr Mhlanga on contract with effect from 1 March 2019 to 30 June 2019. The President's Minute has been duly signed by the Minister.
8. Thank you for your attention.

Yours sincerely



Ms D Lesatsi-Duba (MP)
Minister of State Security

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Annexure "MCR29"

17/03/2021

OPT - OPT - Optimum Coal Holdings Limited - Joint cautionary announcement of an - 01/09/2011



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OPT - Optimum Coal Holdings Limited - Joint cautionary announcement of an

Release Date: 01/09/2011 10:45:21

Code(s): OPT

OPT - Optimum Coal Holdings Limited - Joint cautionary announcement of an expression of interest to make a general offer to the shareholders of Optimum Coal Holdings Limited

Optimum Coal Holdings Limited
(Registration number: 2006/007799/06)

Share Code: OPT

ISIN: ZAE000144663

("Optimum" or the "Company")

Piruto BV

(Registration number

B.V. 1610663)

Lexshell 849 Investments

(Proprietary) Limited

(Registration number 2010/023373/07)

JOINT CAUTIONARY ANNOUNCEMENT OF AN EXPRESSION OF INTEREST TO MAKE A GENERAL OFFER TO THE SHAREHOLDERS OF OPTIMUM COAL HOLDINGS LIMITED

1. INTRODUCTION

Further to the cautionary announcement published on Friday, 26 August 2011 by Optimum, shareholders of Optimum are advised that a consortium ("Consortium") comprising Piruto B.V. ("Glencore"), a whollyowned subsidiary of Glencore International AG, and Lexshell 849 Investments (Proprietary) Limited, a company wholly-owned by Mr Cyril Ramaphosa ("Lexshell"), has submitted a letter to the Board of Directors of Optimum ("Board") advising of its interest to acquire, directly and indirectly, the entire issued ordinary share capital of Optimum ("Proposed Transaction"), other than the shares of certain shareholders that are restricted from selling. The Proposed Transaction would include a general offer to the shareholders of Optimum for a cash consideration of R34 per share ("Proposed Offer").

The letter does not constitute a firm intention by the Consortium to make an offer as contemplated in the Companies Act 71 of 2008 ("Companies Act") and the Takeover Regulations issued in terms of section 120 of the Companies Act ("Takeover Regulations"). There is therefore no Proposed Offer in respect of which the Board is required to provide a recommendation. If the Board receives a firm offer, it will consider its position and make a recommendation to shareholders, taking into account independent advice received, its own views of the fairness and reasonableness of the Proposed Offer, and any alternative offers.

2. DESCRIPTION OF THE CONSORTIUM

The Glencore group is a leading integrated commodities producer and marketer. It produces, sources, processes, refines, transports, stores, finances and supplies commodities needed by industries around the world. The Glencore group combines the strength of its unique marketing capability with the insight and supply of its own diversified portfolio of production and logistics assets. Glencore International plc is listed in London and Hong Kong, registered in Jersey, and headquartered in Baar, Switzerland. Its relationships with producers and consumers of commodities are supported by its global network of 50 offices in 40 countries throughout Europe, North, Central and South America, the Commonwealth of Independent States, Asia, Australia, Africa and the Middle East. Over 2 700 people work in Glencore's marketing operations. Glencore's industrial operations directly or indirectly employ over 54 800 people in 30 countries.

Lexshell is a company which has been formed by Mr Cyril Ramaphosa and the issued share capital of Lexshell will be held 100% by Mr Cyril Ramaphosa. Mr Cyril Ramaphosa is the Executive Chairman of Shanduka Group (Proprietary) Limited ("Shanduka Group") and holds a number of non-executive directorships including being the non-executive Chairman of MTN Group and Bidvest Group. Lexshell's participation in the Proposed Transaction will be partly funded by the Shanduka Group.

3. EXISTING BENEFICIAL INTEREST IN OPTIMUM

Glencore had, as at the close of business on Wednesday, 31 August 2011, acquired a beneficial interest of 14.1% in Optimum.

4. BEE TRANSACTIONS

As part of the Proposed Transaction:

- the Consortium has concluded agreements ("Acquisition Agreements") with the relevant shareholders of the following companies ("BEE Companies") (all of which hold equity interests in Optimum) to acquire, subject to certain conditions precedent, through a Special Purpose Vehicle, Lexshell 165 General Trading (Proprietary) Limited ("SPV"), the stated percentages of the respective shares in issue of each such company;
- Warrior Coal Investments (Proprietary) Limited ("Warrior") (which holds a

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13.70% interest in Optimum) 100%;

- Micsan Investments (Proprietary) Limited ("Micsan") (which holds a 7.55% interest in Optimum) 49%; and
- Kwini Mining Investments (Proprietary) Limited ("Kwini") (which holds a 10.33% interest in Optimum) 52%. The agreement in respect of Kwini is subject to a pre-emptive right in favour of a third party which has until 21 September 2011 to validly pre-empt such acquisition and as such the Consortium may not conclude this transaction.

The Consortium is committed to black economic empowerment and recognises that Optimum is a true leader in the field of transformation. The Consortium has provided assurances to the board of Optimum that, because the SPV qualifies as a Historically Disadvantaged South African ("HDSA"), Optimum's black economic empowerment status will not be adversely affected as a consequence of the Proposed Transaction.

In addition, the Consortium has entered into put and call option arrangements with Mr Michael Teke, the sole shareholder of Micsan and current CEO of Optimum, in respect of the balance of his shares in Micsan, which, if exercised, will provide the Consortium with an additional effective interest of 3.85% in the issued share capital of Optimum. The Consortium, however, supports the retention of Mr Michael Teke as CEO of Optimum and neither party currently intends to exercise the put and call option.

Glencore has also concluded an agreement with a shareholder of one of the BEE Companies to acquire, subject to completion of the transactions set out above, 2.80% of Optimum which such shareholder holds outside of the relevant BEE Company.

Accordingly, in aggregate, at the date of this announcement, Glencore and the Consortium, directly and indirectly have acquired, or have entered into conditional agreements and options to acquire, a total effective interest of 38.14%, plus an additional 5.37% if the pre-emptive right over the Kwini interest is not exercised, in the issued share capital of Optimum.

5. THE PROPOSED TRANSACTION

The Consortium proposes, on fulfilment of the pre-conditions set out in paragraph 6 below, to submit a firm intention to make a general offer to all shareholders of Optimum to acquire all of the outstanding shares in Optimum held by such shareholders, as contemplated in section 117(1)(c)(v) of the Companies Act and Regulation 102 (1) of the Takeover Regulations.

The Proposed Offer, if made, would be for a cash consideration of R34 per Optimum share ("Offer Consideration").

The Offer Consideration assumes that Optimum will not declare or pay a dividend or other distribution (other than the dividend of 30 cents per share declared on 25 August 2011) prior to the implementation date of the Offer and that Optimum has 251 786 186 shares in issue and that no additional shares or other securities (including options) will be issued before the implementation date of the Offer. If a dividend or other distribution is made or additional shares or other securities (including options) are issued, the Offer Consideration will be adjusted.

The Consortium understands that, pursuant to existing contractual arrangements, the BEE Companies, the Optimum Employee Benefit Trust and the Optimum Community Trust (collectively, the "Trusts") (both of which constitute empowerment structures and which hold in aggregate 50 000 000 shares in Optimum) are subject to restrictions which will affect their ability to accept the Proposed Offer. In addition to these restrictions, Warrior and Micsan have, pursuant to the conclusion of the Acquisition Agreements, irrevocably undertaken in favour of the Consortium not to accept the Proposed Offer.

The Consortium recognises the value in having the Trusts as key shareholders in Optimum and believes that the significant stake held by the Trusts contributes to the alignment of the incentives of the workforce of Optimum and the community with those of shareholders. The Consortium informed the Board of its willingness to consult with Optimum and the Trusts regarding the Trusts' ability to participate in the Proposed Offer.

6. PRE-CONDITIONS TO MAKING AN OFFER

The Consortium requires the following pre-conditions to be fulfilled before extending the Proposed Offer to Optimum shareholders:

- Confirmation by the independent board of Optimum ("Independent Board") of its willingness to provide a recommendation of the Proposed Offer in the firm intention announcement; and
- The independent board of Optimum obtaining an opinion from an appropriate independent expert confirming that the Proposed Offer consideration is fair and reasonable to Optimum shareholders.

The Consortium has reserved the right to waive any or all of the above pre-conditions at any time and the right not to make the Proposed Offer even if the above pre-conditions are fulfilled.

7. INDEPENDENT EXPERT AND VIEWS OF THE INDEPENDENT BOARD

At the appropriate time the Independent Board will appoint an independent expert to evaluate the Proposed Offer, and if the Proposed Offer is made, it will, in accordance with its obligations under the Takeover Regulations, advise shareholders of Optimum of the views of the independent expert and the recommendation of the Independent Board in relation to the Proposed Offer, taking into account the independent advice received, its own views of the fairness and reasonableness of the Proposed Offer, and any alternative offers.

17/03/2021

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8. THE CONSORTIUM RESPONSIBILITY STATEMENT

The Directors of Glencore and Lexshell accept responsibility for the information contained in this announcement to the extent that it relates to the Consortium, including any statement regarding the beneficial interest secured by the consortium, or members of it. In addition, they certify that, to the best of their knowledge and belief, the information in this announcement regarding the Consortium and its interest are true.

9. OPTIMUM RESPONSIBILITY STATEMENT

The Independent Board accepts responsibility for the information contained in this announcement to the extent that it relates to Optimum. In addition the Independent Board certifies that, to the best of its knowledge and belief, the information in this announcement relating to Optimum is true.

10. ALTERNATIVE OFFER AND CAUTIONARY ANNOUNCEMENT

The shareholders of Optimum are further advised that the Board has also received a further unsolicited, non-binding expression of interest from a third party ("the Alternative Party") to acquire a controlling interest in Optimum. The expression of interest provides for certain pre-conditions to be met before the Alternative Party will be prepared to express a firm intention to make an offer, including a due diligence investigation conducted to the satisfaction of the Alternative Party. The Board will continue to engage with the Alternative Party following publication of this announcement. Shareholders are advised that there is currently no certainty that Optimum will receive a firm intention to make an offer from the Alternative Party.

Shareholders of Optimum are advised to continue to exercise caution when dealing in Optimum's securities until a further announcement is made.

Johannesburg

1 September 2011

Financial Adviser to Optimum

Standard Chartered

Financial Adviser to Glencore

Bank of America Merrill Lynch

Legal Adviser to Optimum

Webber Wentzel

Legal Adviser to Glencore

Werksmans

Sponsor to Optimum

RAND MERCHANT BANK (A division of FirstRand Bank Limited)

Legal Adviser to Lexshell

Edward Nathan Sonnenbergs

General

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Annexure "MCR30"



MEDIA STATEMENT BY SHANDUKA EXECUTIVE CHAIRMAN
19 DECEMBER 2012

Shanduka Executive Chairman Cyril Ramaphosa said today:

“As a consequence of my election to the position of ANC Deputy President at the ANC’s 53rd National Conference in Mangaung, I have initiated a review of my interests in business.

“This is necessary to address any potential conflicts of interest, and to ensure that I can adequately perform the responsibilities of this position.

“In consultation with the ANC national officials, I am undertaking a process of engagement with several stakeholders on the implications of my election to this post.

“This will include a review of existing positions, responsibilities and obligations. It is intended that this process result in an arrangement that removes the possibility of any conflict of interest.

“I will make further public statements at the appropriate time.”

ENDS

For more information:

Steyn Speed
Corporate Communications
Shanduka Group
sspeed@shanduka.co.za
011 305 8900
082 572 7304

Thabo Leshilo
Fleishman-Hillard
082 466 8140
Thabo.leshilo@fleishman.co.za

A handwritten signature in black ink, appearing to be Cyril Ramaphosa's, with the initials "C.R." written below it.

Annexure "MCR31"

Shanduka and Pembani combine to create a new black-controlled natural resources and industrial group

26 May 2014

Pembani and the majority shareholders in Shanduka, comprising Mr Cyril Ramaphosa's family trust, Jadeite Limited and Standard Bank, amongst others, announced today that they have entered into an agreement to combine their interests and create a new black-controlled natural resources and industrial holding group ("Group") (the "Proposed Transaction").

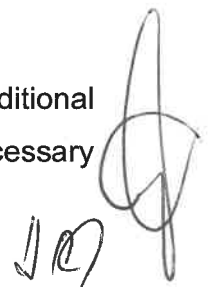
The Proposed Transaction will enable Mr Cyril Ramaphosa to exit his business interest in Shanduka to focus on his responsibilities in government, and ensure that his family's business interests do not conflict with his functions in government or fall within the ambit of any state-regulated sectors.

The Group will have a gross asset value in excess of R13.5 billion, which will give it significant scale with liquidity to pursue value creating opportunities in sub-Saharan Africa. The Group will be managed by a strong management team and board, chaired by Mr Phuthuma Nhleko, co-founder and Chairman of Pembani.

Mr Ramaphosa commented: *"This transaction is the culmination of a review of my business interests that I initiated soon after my election as ANC Deputy President in December 2012. Following a process of engagement with various stakeholders, we have arrived at an agreement that addresses the strategic objectives of all parties, bringing together two excellent organisations to create a new large black-controlled natural resources and industrial holding group. It enables me to leave Shanduka and eliminate any conflicts of interest confident that its founding vision of value creation, empowerment and transformation will continue through the new entity."*

Mr Nhleko commented: *"The Proposed Transaction creates an African champion. The combined entity will benefit from a strong capital base and it will continue to build on the individual platforms created by Shanduka and Pembani in the past. The shared long term vision and investment sector focus of the two entities makes the fit a very logical one."*

The Proposed Transaction is subject to the conclusion of a number of additional agreements and the fulfilment of conditions precedent, including the necessary

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regulatory approvals and consents of various third parties. It is anticipated that the Proposed Transaction will be implemented and completed before the end of 2014.

Pembani is an investment holding company that is co-founded and controlled by Mr Nhleko, currently Chairman and previously CEO of MTN Group. Pembani holds numerous investments in resources and industrial companies such as Engen, BHP Billiton Energy Coal South Africa, Exxaro and AfriSam.

Shanduka was founded in 2001 as a black-owned investment holding company. It is invested in a diverse portfolio of listed and unlisted companies, with key holdings in the resources, food and beverage industries. Shanduka is also invested in the financial services, energy, telecommunications, property and industrial sectors. The group has investments in South Africa, Mozambique, Mauritius, Ghana and Nigeria.

Jadeite Limited is a wholly-owned subsidiary of CIC International, which is controlled by China Investment Corporation.

The Standard Bank of South Africa Limited is acting as investment bank and facilitator to the Proposed Transaction.

Rand Merchant Bank, a division of FirstRand Bank Limited, and Werksmans Attorneys are acting as advisers to Pembani.

Bowman Gilfillan is acting as adviser to Shanduka's majority shareholders.

Standard Chartered Bank (Hong Kong) Limited and Baker & McKenzie are acting as advisers to Jadeite Limited.

A handwritten signature in black ink, consisting of a stylized cursive name, followed by the initials 'JM' written in a similar style to the right of the signature.

Media enquiries:

For Pembani:

Brunswick

Rob Pinker:

Tel: +2711 502 7300

Email: rpinker@brunswick.co.za

Georgie Armstrong:

Tel: +2711 502 7300

Email: garmstrong@brunswick.co.za

Lufuno Makhari +2711 783 6210

For Shanduka's majority shareholders:

Fleishman-Hillard

Thandi Moticoe

Tel: +2711 548 2041

Cell: +2771 600 2429

Email: thandi.moticoe@fleishman.co.za

Handwritten signature and initials, possibly 'JA', in the bottom right corner.

Annexure “MCR32”

"MCR30"



DEPUTY PRESIDENT: REPUBLIC OF SOUTH AFRICA
Private Bag X1060, Pretoria 0001

24 July 2014

Mr Jacob Zuma
President: Republic of South Africa
The Presidency
Private Bag X 1000
CAPE TOWN
0001

Dear Mr President,

As you may be aware, following my appointment to the position of Deputy President, I initiated a process to dispose of those business interests that may give rise to a conflict of interest with respect to the performance of my functions.

That process is currently underway and is expected to be completed shortly.

I therefore request an extension of the period in which I am required to dispose of such interests or place the administration of the interests under the control of an independent and professional person or agency be granted in terms of rule 3.6 of the Executive Ethics Code, 2000.

I anticipate that a period of four months from the date of 25 July 2014 would be sufficient.

In the interim, I hereby make a provisional declaration of my interests.

Yours sincerely,

MR CYRIL RAMAPHOSA

Annexure “MCR33”

"MCR 21"

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PRESIDENT'S ACT NO. 218

In terms of Paragraph 3.6 of the Executive Ethics code, published under Proclamation No. R41 in the Government Gazette No. 21399 of 28 July 2000, I hereby determine a Four (4) months period, with effect from 25 July 2014, for Mr C.M Ramaphosa to dispose of any financial or business interests that may give rise to a conflict of interest when performing his functions as a Deputy President of the Republic of South Africa or place the administration of such interests under the control of an independent and professional person or agency.

Given under my Hand at PRETORIA on this 15th day of AUGUST, Two thousand and Fourteen.

PRESIDENT

Annexure "MCR34"

**MEDIA RELEASE****RAMAPHOSA DIVESTS FROM SHANDUKA**

26 November 2014. Shanduka Group today announced a restructuring of the group that sees the complete divestment of its founder and former Chairman, Deputy President Cyril Ramaphosa. This marks the completion of a process that Mr Ramaphosa initiated soon after his appointment as Deputy President to remove the potential for any conflict of interest.

In effecting Mr Ramaphosa's exit, Shanduka has disposed of certain assets in 'non-regulated' sectors to Mr Ramaphosa. These include properties and McDonald's South Africa. Shanduka Group will retain the bulk of its assets, predominantly in resources and energy.

Shanduka's new shareholding comprises Mabindu Trust (49.5%), a non-profit entity set up in 2002 and financed by Shanduka to promote enterprise development, the China Investment Corporation (33.6%) and Standard Bank (16.9%).

A proposed transaction announced earlier this year that would have seen a merger of the assets of Shanduka and Pembani Group was not successful, but discussions between CIC, Standard Bank, Pembani and other interested parties are ongoing.

Shanduka Group CEO Phuti Mahanyele said: "Shanduka is a successful and established investment holding company. Since our formation 13 years ago, we have built up a capable and experienced leadership team and skilled professionals. We will continue to pursue our vision of a black-owned and -managed company creating value for all our stakeholders."

#ENDS#

Contact:

Mmabatho Maboya

Shanduka Group

Email: mmaboya@shanduka.co.za

Tel: +27 11 305 8900/ 27 82 885 3804

A handwritten signature in black ink, appearing to be the name of the contact person, Mmabatho Maboya.



Thandi Moticoe
FleishmanHillard
Email: thandi.moticoe@fleishman.co.za
Tel: 011 548 2041/071 600 2429

About Shanduka Group

Shanduka Group is a black-owned and managed investment holding company established in 2001.

For more information on Shanduka, please visit our website at: www.shanduka.co.za

About Mabindu Trust

Mabindu Trust is a non-profit entity established in 2002 to hold a stake of 2.5% of the Shanduka Group. It was established to support small business development. In 2010 the trust's beneficiaries were extended to include education initiatives. Shanduka Black Umbrellas and Shanduka Black Pages are supported under Mabindu Trust. Mabindu Trust now owns 49.5% of the Shanduka Group.

A handwritten signature in black ink, appearing to be "Thandi Moticoe".

Annexure "MCR35"



DEPUTY PRESIDENT: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

25 November 2014

Mr Jacob Zuma
President: Republic of South Africa
The Presidency

Dear Mr President,

My correspondence of 24 July 2014, in which I requested an extension of the period in which I am required to dispose of business interests that may give rise to a conflict of interest in terms of rule 3.6 of the Executive Ethics Code, 2000, refers.

Please be advised that I have today informed the Secretary of Cabinet that I have consequently disposed of my shareholding in Shanduka Group, an investment holding company with assets in a number of 'regulated' industries. Certain elements of the disposal are dependent on regulatory approval. I have taken all the steps required for this to materialise and have every faith the relevant transactions will be approved.

Although not a requirement of the Executive Ethics Code, I have decided to place my remaining business interests in a trust managed by independent and professional persons. Guided by the Executive Ethics Code, I will not give any instructions with respect to the management of these interests for the duration of my term in office, save for the purposes of complying with a legal requirement or to give instructions to sell such interest.

I will update my disclosure of financial interests with the Secretary of Cabinet accordingly.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C. Ramaphosa', written over a horizontal line.

CYRIL M RAMAPHOSA

A handwritten signature in black ink, appearing to be 'J. M.', written over a horizontal line.

"MCR32"



DEPUTY PRESIDENT: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

25 November 2014

**Dr Cassius Lubisi
Secretary to Cabinet
The Presidency**

Dear Dr Lubisi,

As you may be aware, on 24 July 2014 I wrote to the President requesting an extension of the period in which I am required to dispose of business interests that may give rise to a conflict of interest in terms of rule 3.6 of the Executive Ethics Code, 2000.

The President granted me an extension of four months from the date of 25 July 2014.

Please be advised that I have consequently disposed of my shareholding in Shanduka Group, an investment holding company with assets in a number of 'regulated' industries. These interests could have given rise to a conflict of interest.

Certain elements of the disposal are dependent on regulatory approval.

Although not a requirement of the Executive Ethics Code, I have decided to place my remaining business interests, all in 'unregulated' sectors, in a trust managed by independent and professional persons. Guided by the Executive Ethics Code, I will not give any instructions with respect to the management of these interests for the duration of my term in office, save for the purposes of complying with a legal requirement or to give instructions to sell such interest.

I will update my disclosure of financial interests accordingly.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C. Ramaphosa', written over a large, stylized circular mark.

CYRIL M RAMAPHOSA

A handwritten signature in black ink, appearing to be 'C. Lubisi', written over a large, stylized circular mark.

Annexure "MCR36"

Pembani and Shanduka merger – signature of transaction agreements and submission of regulatory filings

01 June 2015

Further to the announcements on 26 May and 27 November 2014, the Pembani shareholders and the remaining Shanduka shareholders (post the exit of Mr Cyril Ramaphosa and other minorities), being Standard Bank and Jadeite Limited, are pleased to announce that following the signature of the transaction agreements, they have submitted the requisite regulatory filings in order to combine their interests in Pembani and Shanduka to create a new black controlled, Pan African Industrial holdings Group (“Group”) with a leading role in the natural resources, infrastructure and industrial sectors (the “Transaction”). Some of the larger assets in the Group will include the interests in Engen, AfriSam and Shanduka Resources. The Group will further have an interest in assets such as Standard Bank and Liberty Group. As a result of his divestment from Shanduka, which was announced in November 2014, Mr Ramaphosa will not have any shareholding or any direct or indirect commercial interests in the Group.

The Group will have a portfolio value in excess of R9 billion which will give it significant scale, with liquidity to pursue value creating opportunities in sub-Saharan Africa. The Group will be led by a strong executive team and board, chaired by Mr Phuthuma Nhleko, co-founder and Chairman of Pembani.

The completion of the Transaction remains subject to the required regulatory approvals and consents being obtained and finalisation of ancillary transaction documents. The requisite approvals will be sought in the shortest practicable time possible.

Rand Merchant Bank, a division of FirstRand Bank Limited, is acting as financial adviser and investment bank to Pembani. Werksmans Attorneys is acting as legal adviser to Pembani.

The Standard Bank of South Africa Limited is acting as financial adviser and investment bank to Shanduka. Bowman Gilfillan is acting as legal adviser to Shanduka.

Standard Chartered Bank (Hong Kong) Limited is acting as financial adviser and investment bank to Jadeite Limited. Baker & McKenzie is acting as legal adviser to Jadeite Limited.



Media enquiries:

For Shanduka:

Mmabatho Maboya

Email: mmaboya@shanduka.co.za

Tel: +27 11 305 8900 / +27 82 885 3804

Thandi Moticoe

FleishmanHillard

Email: thandi.moticoe@fleishman.co.za

Tel: +27 11 548 2041 / +27 71 600 2429

For Pembani:

Lufuno Makhari

Tel: +27 11 783 6210

Email: lufuno@pembani.co.za

Itumeleng Mahabane

Brunswick

Tel: +27 11 502 7300

Email: imahabane@brunswick.co.za

A handwritten signature in black ink, appearing to be 'Lufuno Makhari' or similar, located in the bottom right corner of the page.

Annexure "MCR37"

05/03/2021

Presidency clarifies Deputy President's role in Eskom War Room | SAnews

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Presidency clarifies Deputy President's role in Eskom War Room

Wednesday, May 20, 2015

Pretoria - The Presidency has moved to clarify Deputy President Cyril Ramaphosa's work in the Eskom War Room.

Deputy President Ramaphosa's work in the operation is guided by Cabinet's five-point plan to address the electricity challenges facing the country, the Presidency said on Wednesday.

In the wake of loadshedding, President Jacob Zuma in December assigned Deputy President Ramaphosa to oversee the turnaround of Eskom in what was labelled the "war room."

The war room - made up of the Departments of Energy, Cooperative Governance and Traditional Affairs, Public Enterprises, National Treasury, Economic Development, Water and Sanitation and Eskom, as well as technical officials - is expected to look into Eskom's short- and long-term energy challenges.

Cabinet at the time adopted a five-point plan to address the lack of sufficient capacity to meet the country's energy needs.

The plan covers interventions that Eskom will undertake; harnessing the cogeneration opportunity through the extension of existing contracts with the private sector; accelerating the programme for substitution of diesel with gas to fire up the diesel power plants; launching a coal independent power producer programme; and managing demand through specific interventions within residential dwellings, public and commercial buildings and municipalities through retrofitting energy efficient technologies.

On Tuesday, Democratic Alliance MP Pieter Van Dalen questioned Deputy President Ramaphosa's role in leading the war room, saying his company Shanduka Group had made money from selling coal to Eskom.

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Presidency clarifies Deputy President's role in Eskom War Room | SAnews

Deputy President Ramaphosa has divested his financial interests in the Shanduka Group, the Presidency said on Wednesday.

"The Office of the Deputy President reiterates that Deputy President Ramaphosa has divested his financial interests in the Shanduka Group following his assumption of office.

"Consequently, Deputy President Ramaphosa holds no mining interests," it said. - SAnews.gov.za

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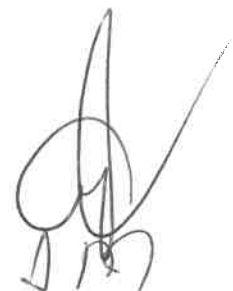
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A handwritten signature or set of initials in black ink, consisting of a large, stylized 'M' or similar character with a long horizontal stroke extending to the right, and some smaller characters below it.

Annexure "MCR38"

05/03/2021

Presidency on claims by EFF MPs against Deputy President Cyril Ramaphosa on Eskom | South African Government

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Presidency on claims by EFF MPs against Deputy President Cyril Ramaphosa on Eskom

24 Jun 2015

Statement on claims by EFF MPs against Deputy President Cyril Ramaphosa on Eskom

In view of claims made by Economic Freedom Fighters (EFF) MPs in the National Assembly against Deputy President Cyril Ramaphosa today, Wednesday 24 June 2015, the Presidency wishes to reiterate the following:

It is a matter of public knowledge that Deputy President Ramaphosa has divested from Shanduka Group and holds no mining interests.

Deputy President Ramaphosa's divestment, announced in November 2014, is the result of a process that he initiated to remove the potential for any conflicts of interest.

Deputy President Ramaphosa was assigned by Cabinet in December 2014 to lead the Eskom war room, which is focused solely on the implementation of government's five point plan to address the current electricity constraints facing the country and does not stand to benefit personally from these processes



05/03/2021

Presidency on claims by EFF MPs against Deputy President Cyril Ramaphosa on Eskom | South African Government

The Presidency calls on the EFF to have the courage of its conviction to substantiate their claims or withdraw them.

Contact: Ronnie Mamoepa
Cell: 082 990 4853

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Presidency on claims by EFF MPs against Deputy President Cyril Ramaphosa on Eskom | South African Government

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A handwritten signature in black ink, appearing to be 'J. M.', located in the bottom right corner of the page.

Annexure "MCR39"

**MEMORANDUM**

To: Honourable Deputy President of the Republic of South Africa

Copy: Honourable Minister of Public Enterprises,
Eskom Board of Directors and Eskom Executive Committee

From: Eskom Senior Management

Date: 19 January 2018

SUBJECT: MEMORANDUM FROM ESKOM SENIOR MANAGEMENT

1. The purpose of this memorandum is to raise Eskom Senior Management's concerns over the current governance, ethical, leadership and financial issues facing Eskom, and calls for urgent action by those in position of authority.
2. The Memorandum is addressed to the Honourable Deputy President of the Republic of South Africa directly due to the lack of credibility and the breakdown of trust.
3. As Eskom Guardians it has been extremely painful for us to see our once highly-regarded and top-performing organisation dragged from one reputational crisis to another.
4. It is clear that issues of governance, ethics, and leadership are at the centre of Eskom's current crisis, and are having a devastating impact on Eskom's liquidity and financial sustainability.
5. Whilst various issues need to be addressed to bring this "ship to calmer waters", it is clear to us and all our stakeholders that these leadership and governance issues need to be addressed urgently.

Two handwritten signatures in black ink, one above the other, located in the bottom right corner of the page.

MEMORANDUM FROM ESKOM SENIOR MANAGEMENT

6. We, as Eskom's Senior Leadership hereby raise serious concerns over the lack of decisive and bold action against allegations of fraud, corruption, and maladministration. We request urgent action and visible change, or commitment to address the following three (3) issues by 31 January 2018 or sooner, whichever date coincides with the release of the Eskom interim financial results:
- 6.1. Urgent legal processes be taken against all employees that have brought Eskom into disrepute. The process followed should be in accordance with legal prescripts and should include the institution of civil and criminal proceedings. "Golden handshakes" should not be considered for such transgressors. The continued inaction perpetuates the toxic environment and the perceptions regarding their ethical standing severely impacts good corporate governance.
 - 6.2. The appointment of a credible Eskom Board, comprising of Directors with an exemplary track record in large, complex organisations to turn around Eskom's reputation and rebuild trust and confidence in the Company. This is a requirement from all lenders, investors, and credit rating agencies.
 - 6.3. The Eskom Executive Management team be re-constituted with credible leaders, including the appointment of a Group Chief Executive and Chief Financial Officer that will be well received by investors and citizens of this country.
7. This memorandum is submitted by us as a collective, in pursuit of saving Eskom and the economy of South Africa, and to honour the 48 000 employees that diligently and honestly serve this company, its customers, and its investors - many of whom daily raise their concerns with us as Senior Management.

Supported by Eskom Senior Management

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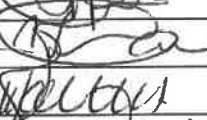
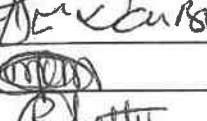

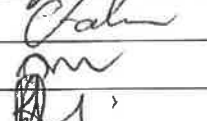
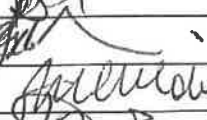
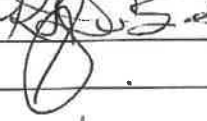




MEMORANDUM FROM CONCERNED EMPLOYEES

Signatories to memorandum to Eskom Shareholder Representative, Eskom Board and Eskom Executive Committee dated 19 January 2018

Name	Position	Signature
DR. DANA GAMPEL Murenda Khemola	CORPORATE SPECIALIST, STRATEGY Shared Services	
Maria Bowers	Snr Mgr	
Chris Gross	Corp Specialist	
Miriam Bantye/leh	Corp Sp.	
Nico Kleynhans	Snr Mgr	
Clint Fisher	Snr Mgr	
ALGIE KIEWITZ	GM. Cust. Serv.	
Lawrence Podarshi	Snr Mgr	
Ryan John	Snr Mgr	
MARK SIMS	Snr Mgr	
SOS SOKRAJH	Snr Mgr.	
Segomoe Sihiphe	SE. M (TX)	
THABAU GURU	SM FAC CAPITAC	
Sibusiso Mudlala	SM DX Finance	
PROF SANGHIAN GONENDE	CORPORATE SPECIALIST	
MAUREST MOKOME	Snr Mgr BPM	
GRASSWEL MABANDWA	Snr Mgr	
Stephane Marais	Snr Specialist	
Praon Mooling	Snr Mgr (Mandating)	
Kees Frimandil	Snr Mgr	
Andrea Fortune	Snr Mgr GIT	
DIKA Modise	Snr Mgr GIT	

MEMORANDUM FROM CONCERNED EMPLOYEES

Signatories to memorandum to Eskom Shareholder Representative, Eskom Board and Eskom Executive Committee dated 19 January 2018

Name	Position	Signature
Janale Manda	Snr Mgr	
Francois Venter	Treasurer	
SANJIV KALICHARAN	Snr Manager/Coord	
GODFREY QUICKFALL	Sr. MGR.	
Eric Sunningum	Snr. Mgr	
Thys Moller	CS	
Ravi NARAYAN	ERGR	
MANDLA MALOHA	Snr Manager	
Gertrude Mokoane	Corp. Professional	
Vincent MAICIVITHA	Snr Manager	
Kurtel Kellekhorst	Finance	
MARVIN VAN DER MERWE	Finance	
Makgwaye Moringa	Snr Manager	
Rochelle Chetty	Snr Manager	
Gabriel Kgabo	Snr Mgr	
TOM SKINNER	Snr MGR.	
Callie FABRICIUS	GM	
Thandi Mazonke	CS	
Motshabi Molgatla	Snr Manager	
CHARLES MATONYI	CORP. SPECIALIST	
Lloyd Molgatla	Snr Manager	
KEVIN VAN BERG	CORP. SPECIALIST	
MOATHE BATA	GM. KZN	

MEMORANDUM FROM CONCERNED EMPLOYEES

Signatories to memorandum to Eskom Shareholder Representative, Eskom Board and Eskom Executive Committee dated 19 January 2018

Name	Position	Signature
NANDHA GOVENDER	GM	
André van Heerden	Snr Manager	
Khulu Phasiwe	Spokesperson	
Antonie Mammee	Snr Mgr	
SNEHAL NAGAR	Snr Mgr	
Sagie Chetty	Senior Manager	
Vuyisile Ncube	GM (ACRWE)	
CEPH FUNDUFUNDU	SR Manager	
John MAMABOLO	GM (Acting)	
Jayshree Naidoo	Senior Manager	
SANJITH KANJATH	Snr Manager	
Mike BASHE	E.F.C. Mgr.	
Sumaya Nassiep	Act GM	
Fikile Segole	Senior Mgr	
Nyadi Mkhici	Senior Mgr	
Andrew Johnson	GM EAL	
Phiso Mokohe	Snr Mgr	
Thembeka Ndaba	Senior Mgr	
A Mamba	CM	
Phineas Ntshhezi	Technology	
Albert van Walt	Snr Manager	
Atha Scott	Snr Manager	
Ngeako Huma	GM	

MEMORANDUM FROM CONCERNED EMPLOYEES

Signatories to memorandum to Eskom Shareholder Representative, Eskom Board and Eskom Executive Committee dated 19 January 2018

Name	Position	Signature
EZEKIEL THUNTANE	PPSCM	
MDUBIODWA MOUNATRE	PPSCM	
E.D Mchizama	P&SCM	
H. LANGENHOVEN	PPSCM	
Manasse Mathabane	Gen Mgr	
A. T. Dlamini	SR Mgr	
Peter le Roux	P&SCM	
M. J. J. J. J.	PPSCM	
C. D. HENDRICKS	SUB MANAGER PPSCM	
MUSA MABICU	DL	
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GAV HURFORD	NCM	
T. Gangi	EUL	
Stanley Lasker	EAL	
Charlotte Gwend	DL	
Philip Maphya	SR Mgr	
M. Mupfema	EEG	

MEMORANDUM FROM CONCERNED EMPLOYEES

Signatories to memorandum to Eskom Shareholder Representative, Eskom Board and Eskom Executive Committee dated 19 January 2018

Name	Position	Signature
Dean Conradi	SNR MGR: PRICING	
Shirley Salvoldi	CORP SPECIALIST	
Keser Pattar	GM-SS	
Manhi Strauss	SM SD	
Zureka Davids	Corp. Professional	
Dean Teubert	Corp. Spec.	
Marin Ruy	Financial Reporting	
Stefaan Cronje	FINANCE	
Aziz LAHER	COMPLIANCE/KRA	
Ragiri Romkumar	Finance	
Suseta Mookan	Finance	
Caer Meerholz	FINANCE	
BRENICE TEWARIKIS	FINANCE	
Deleka Mangcipu	Finance	
PETRY MASLATOLA	HR	
LESLIE NAISSO	Tx	
Ressabel Marcus	Tx	
JACOB MACHINJIKI	Tx	
JUDITH MALINHA	Tx	
Wendy Poulton	Strategy	
Cathy Loring	Strategy	
Hasha Thottahemaje	Regulation	

MEMORANDUM FROM CONCERNED EMPLOYEES

Signatories to memorandum to Eskom Shareholder Representative, Eskom Board and Eskom Executive Committee dated 19 January 2018

Name	Position	Signature
SINCEDILE SHWENI	CORPORATE SPECIALIST	
Judy RAPHAEEL	CORPORATE SPECIALIST	
T. Mphahlele	Corp Fin	
M Khan	Corp Fin	
A. Rajbansi	Corp Fin	
N. Singh	Finance	
T. Mabele	Finance	
A. Scholtz	Finance	
N. Singh	Finance	
C. Motlhamme	A&F	
B. PABIE	A&F	
G. Goedloff	A&F	
N. SITHOLE	Business Enablement	
M. Rambharos	Sustainability & Risk	
V. Raj Kumar	Corporate Specialist	
F. Mawanya	Gen Quality	
L. Angela Magwenyushu	S.A.E.	
J. SANKAR	Commercial	
L. VAJETH	GENERATION	
E. THUNTSANE	Procurement	
M. MLHO	Strategy Support	
G. DAWOES	Corp Specialist	
NARESH SINGH	GM: SAE	

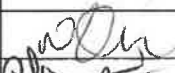





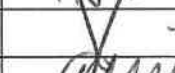



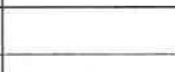



MEMORANDUM FROM CONCERNED EMPLOYEES

Signatories to memorandum to Eskom Shareholder Representative, Eskom Board and Eskom Executive Committee dated 19 January 2018

Name	Position	Signature
M. Richardson	SNR MANAGER - Finance	
N. Moyo	SNR Manager	
M. Skosana	SNR Manager	
H. Lenzinko	SNR Manager	
S. VAKAZ	SNR Manager	
B. Nkhosho	SNR Manager	
M. Dingo	SNR Manager	
V. Pheko	SNR Manager	
Vusi Sibaya	Senior Manager	
Refilwe Kgogo	SNR Act.	
Bongekile Mthemba	SNR Mgr NRB	
Nosipho Maphumulo	SNR Mgr CS	
Compot Masike	SNR Manager	
Pruneshia Padayachy	SNR Manager	
BANDILE JACK	GENERAL MANAGER	
DAVE GORRILE	COMMERCIAL	
Louise Thabane	SNR MGR. GEN	
Olwa Zole	SNR Mgr GEN	
Mosebo Dingale	SNR Manager	

MEMORANDUM FROM CONCERNED EMPLOYEES

Signatories to memorandum to Eskom Shareholder Representative, Eskom Board and Eskom Executive Committee dated 19 January 2018

Name	Position	Signature
NERINA OTTO	LEGAL	
Mogel Cheyo	SD	
UREKA RANGABANY	ACF	
Sylvia Mamorane	GM	
Bertumelo Genabazza	E-BRAND	
Khayakazi Dikga	SSG	
Sidwell Mtetwa	SSG	
Ronnie Scheepers	SSG	
Jumil Walker	EVAL Strategy	
Tebatso Mogale	RTD	
Mojabeng Mashao	RTAD	
Dante Miller	CEO	
Karabo Ralegolela	Academy SVP	
Dan Mashigo	COM - EEI	



Annexure "MCR40"

05/03/2021

Statement on measures to strengthen governance at Eskom | The Presidency



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Statement on measures to strengthen governance at Eskom

20 January 2018 - 12:00am



Government today announces a number of measures to strengthen governance at Eskom, including the appointment of new board members and stabilising management at the energy parastatal.

This follows a meeting of President Jacob Zuma, Deputy President Cyril Ramaphosa, Public Enterprises Minister Lynne Brown and Minister of Finance Malusi Gigaba on Friday 19 January 2018 to address urgent challenges at the company. This intervention will be ratified by Cabinet at its next meeting.

Eskom is critical to the South African economy. As a key enabler of economic growth and social transformation, any further deterioration of Eskom's financial and operational conditions could have a severe impact on the country.

The company has been facing several challenges, including a weak financial position, declining revenues and governance failures, which are threatening the sustainability of the company going forward.

As a result, government has decided on the following immediate measures to strengthen governance and management. This is the first step towards restoring confidence in the company, improving its financial position and restoring its operational performance.

The appointment of new board members:

The new board will consist of:

1. Mr Jabu Mabuza as Chairperson
2. Mr Sifiso Dabengwa
3. Ms Sindi Mabaso-Koyana
4. Mr Mark Lamberti
5. Prof Tshepo Mongalo
6. Prof Malegapuru Makgoba
7. Ms Busisiwe Mavuso

05/03/2021

Statement on measures to strengthen governance at Eskom | The Presidency

8. Ms Nelisiwe Magubane
9. Dr Rod Crompton
10. Mr George Sebulela
11. Dr Pulane Molokwane
12. Dr Banothile Makhubela
13. Ms Jacky Molisane

Stabilising management:

Government has recommended the appointment of Mr Phakamani Hadebe as the Acting Group Chief Executive with immediate effect.

Further, the board is directed to appoint a permanent Group Chief Executive and Group Chief Financial Officer within the next three months.

The board is directed to immediately remove all Eskom executives who are facing allegations of serious corruption and other acts of impropriety, including Mr Matshela Koko and Mr Anoj Singh.

Government further calls on all Eskom employees and other stakeholders who may have evidence of wrongdoing to bring this to the attention of law enforcement agencies so that culprits can be brought to book.

The Ministers of Public Enterprises, Energy and Finance will work together under the leadership of the Deputy President, to deal with other structural issues, which include the funding model and other industry challenges identified by the Inter-Ministerial Committee on SOE Reform.

Deputy President Cyril Ramaphosa, Chair of the Inter-Ministerial Committee on SOE Reform, said: "We are confident this intervention will restore the important contribution Eskom makes to our economy. We are determined to address the damage that has been done to this institution and place it on a new path of efficiency and integrity.

"Government calls on all stakeholders, employees, suppliers and members of the public to work together to ensure that these measures are successful.

"For South Africa to flourish, Eskom must work and work well," he said.

With the appointment of the new board and acting Group Chief Executive, government firmly believes that Eskom can be returned to financial sustainability and contribute positively to the objective of shared prosperity.

Government will continue to act decisively to address challenges at key state owned enterprises to restore public and investor confidence and to ensure that they fulfil their economic and developmental mandates.

Enquiries:

Tyrone Seale (Office of the Deputy President)
083 575 7440

Colin Cruywagen (Department of Public Enterprises)
082 377 9916

Mayihlome Tshwete (National Treasury)
072 869 2477

A handwritten signature in black ink, appearing to be Cyril Ramaphosa, located at the bottom right of the page.

05/03/2021

Statement on measures to strengthen governance at Eskom | The Presidency

Issued by: The Presidency
Pretoria

The Presidency Profiles

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[Deputy President David Mabuza \(/profiles/deputy-president-david-mabuza%3A-profile\)](/profiles/deputy-president-david-mabuza%3A-profile)

[Minister Jackson Mthembu \(/profiles/minister-jackson-mthembu%3A-profile\)](/profiles/minister-jackson-mthembu%3A-profile)

[Minister Maite Nkoana-Mashabane \(/profiles/minister-maite-nkoana-mashabane%3A-profile\)](/profiles/minister-maite-nkoana-mashabane%3A-profile)

[Deputy Minister Hlengiwe Mkhize \(/profiles/deputy-minister-hlengiwe-mkhize%3A-profile\)](/profiles/deputy-minister-hlengiwe-mkhize%3A-profile)

[Deputy Minister Thembi Siweya \(/profiles/deputy-minister-thembi-siweya%3A-profile\)](/profiles/deputy-minister-thembi-siweya%3A-profile)

[Dr Tshepo Motsepe \(http://www.presidency.gov.za/profiles/dr-tshepo-motsepe%3A-profile\)](http://www.presidency.gov.za/profiles/dr-tshepo-motsepe%3A-profile)

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Annexure "MCR41"

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Cabinet

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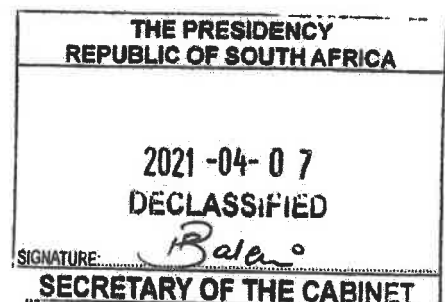
31 January 2018

3 / MINISTER OF PUBLIC ENTERPRISES**3.1 / APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO THE ESKOM SOC LTD ("ESKOM") BOARD**

(Cabinet memorandum 1 of 2018, dated 25 January 2018, file number 2/2/1, Ministry of Public Enterprises. Refer to item 3.5.15 of the minutes dated 10 February 2014 and item 10.1 of the minutes dated 6 December 2017)

The Cabinet -

- (a) **noted** the resignations of the following Non-Executive Directors of the Board with effect from 19 January 2018:
- (i) Mr ZW Khoza (Acting Chairperson);
 - (ii) Dr P Naidoo;
 - (iii) Mr G Leonardi;
 - (iv) Mr S Dingaane; and
 - (v) Mr S Gounden;
- (b) **endorsed** the ex post facto appointment of Mr J Mabuza as Non-Executive Director and the new Chairperson of the Eskom Board for a period of three years with effect from 19 January 2018, subject to the verification of qualifications and the relevant security clearance and an annual review by the Minister of Public Enterprises;
- (c) **endorsed** the ex post facto appointment of the following Non-Executive Directors to the Eskom Board for a period of three years with effect from 19 January 2018, subject to the verification of qualifications and the relevant security clearance and an annual review by the Minister of Public Enterprises:
- (i) Ms N Magubane;
 - (ii) Dr R de Brissac Crompton;
 - (iii) Ms S Mabaso-Koyana;
 - (iv) Ms JM Molisane;
 - (v) Mr JG Sebulela;
 - (vi) Mr S Dabengwa;



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Cabinet

9

31 January 2018

- (vii) Mr M Lamberti; and
- (viii) Ms B Mavuso;
- (d) **noted** the appointment of Mr P Hadebe as the Interim Group Chief Executive with effect from 22 January 2018 until the recruitment process for a new Group Chief Executive is finalised; and
- (e) **approved** that the Minister of Public Enterprises updates the memorandum to reflect that the appointments were made "ex post facto" and that the revised memorandum be submitted for Cabinet record only.

Minutes approved on 20 February 2018

SECRETARY
Date:

PRESIDENT

THE PRESIDENCY REPUBLIC OF SOUTH AFRICA
2021-04-07 DECLASSIFIED
SIGNATURE: <i>Raleo</i>
SECRETARY OF THE CABINET

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Annexure "MCR42"



This Memorandum of Incorporation was submitted and adopted by Special Resolution passed by the Shareholder of the Company on 1 July 2016 and initialled by the Chairperson for the purpose of identification.

MEMORANDUM OF INCORPORATION OF

ESKOM HOLDINGS SOC LTD

Registration number: 2002/015527/30

which is a state-owned company, may have up to 15 director(s) who shall not be entitled to appoint alternate directors, is authorised to issue securities as described in clause 6, and is referred to in the rest of this MOI as "the Company".

This MOI is in a form unique to the Company, as contemplated in section 13 (1) (a) (ii) of the Companies Act 71 of 2008, as amended.

Adoption of MOI

This MOI was proposed by the Board of the Company in accordance with section 16 (1) (c) (i) (aa) and was adopted by Special Resolution passed by the Shareholder of the Company on 1 July 2016 in accordance with section 16 (1) (c) (ii) in substitution for the existing MOI of the Company in accordance with section 16 (5) (a) and Initialled by the Chairperson for the purpose of identification.

Preamble

The Company is a pre-existing company as contemplated in Item 2 of Schedule 5 of the Companies Act and was incorporated in accordance with the Enabling Legislation to carry on the business of providing energy/electricity and related services, including the generation, transmission, distribution and retail thereof, it being recorded that the Company is also subject to the provisions of the PFMA.

The Government is the sole Shareholder of the Shares in the Company and the rights attached to those Shares are exercised by the Minister. This Memorandum of Incorporation regulates the Company and its relationship with its Shareholder, subject to the provisions of the Legislative and Policy Framework.

A handwritten signature in black ink, appearing to be "Buz".

A large, stylized handwritten signature in black ink, possibly "D. M. M." or similar.

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1 INTERPRETATION

In this Memorandum of Incorporation-

- 1.1 Capitalised words that are not defined in this MOI will bear the same meaning in the Companies Act or the PFMA, unless the context provides otherwise.
- 1.2 Unless the context provides or requires otherwise, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings: –
- 1.2.1 **“Ad Hoc Committee”** means an ad hoc committee established by the Board from time to time for a specific task or objective and dissolved after the completion of the task or the achievement of the objective;
- 1.2.2 **“Administrator”** means the person appointed by the Shareholder in terms of clause 3 of this MOI;
- 1.2.3 **“Approval of the Shareholder”** means a written notice from the Shareholder to the Company recording the Shareholder’s approval of a matter or a copy of a Shareholder’s resolution granting approval of a matter.
- 1.2.4 **“Auditing Profession Act”** means the Auditing Profession Act, No. 26 of 2005;
- 1.2.5 **“Board”** means the “board” of the Company from time to time, as defined in the Companies Act, which is also the Accounting Authority for purposes of the PFMA;
- 1.2.6 **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in the Republic;
- 1.2.7 **“Group Chief Executive”** means the group chief executive of the Company;
- 1.2.8 **“Group Chief Financial Officer”** means the group chief financial officer of the Company;
- 1.2.9 **“Companies Act”** means the Companies Act, No. 71 of 2008 as amended, consolidated or re-enacted from time to time and includes all schedules thereto and the Regulations;
- 1.2.10 **“Company”** means Eskom Holdings SOC Ltd, Registration no. 2002/015527/30 or whatever other name it may be known by from time to time;
- 1.2.11 **“Company in general meeting”** means a formal meeting of, or a resolution passed by, the Shareholder;
- 1.2.12 **“Consultation/Consult”** means a formal engagement requested by one party, at such time, in such manner and at such place agreed to between the parties, having first provided the other party, in writing, with such relevant information as the party might reasonably require, including information that the party may specifically request, to allow the party to consider the matter upon which the party is being Consulted.
- 1.2.13 **“Corporate Plan”** means the three-year plan of the Company as contemplated in the PFMA read with the Treasury Regulations, regulatory framework as set out in the Electricity Regulation Act, Companies Act and other legislation governing and prescribing the role and functions of the Company, which plan must include (but is not limited to): –
- 1.2.13.1 strategic objectives and outcomes identified and agreed on by the Shareholder in the Shareholder’s Compact;
- 1.2.13.2 strategic and business initiatives as embodied in business function strategies;
- 1.2.13.3 key performance measures and indicators for assessing the Company’s performance in delivering the desired outcomes and objectives;

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- 1.2.13.4 a risk management plan;
- 1.2.13.5 a fraud prevention plan;
- 1.2.13.6 the SMF;
- 1.2.13.7 a financial plan addressing –
- 1.2.13.7.1 quarterly projections (for the first year) of revenue, expenditure and borrowings against annual targets;
- 1.2.13.7.2 asset and liability management;
- 1.2.13.7.3 cash flow projections;
- 1.2.13.7.4 capital expenditure programmes; and
- 1.2.13.7.5 dividend policies;
- 1.2.13.8 such other issues as may be required in terms of the PFMA from time to time;
- 1.2.14 **"Deliver"** means in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 26 of this MOI and the Companies Act, including Table CR3 of the Regulations, and **"Delivered"** and **"Delivering"** shall have the corresponding meaning as the context may indicate;
- 1.2.15 **"Directors"** means the "directors" of the Company from time to time, as defined in the Companies Act;
- 1.2.16 **"Directive"** means the directive given by the Shareholder in terms of clause 3 of this MOI in which the Shareholder states the steps to be undertaken to remedy a situation contemplated in clause ** and which will include the reasons for issuing the directive and time within which the steps must be taken;
- 1.2.17 **"Distribution"** means a "distribution" as defined in the Companies Act and **"Distribute"** and **"Distributed"** shall have the corresponding meaning as the context may indicate;
- 1.2.18 **"DoA"** means the Delegation of Authority Framework approved by the Board from time to time governing the principles and conditions upon which the Board shall delegate authority;
- 1.2.19 **"Effective Date"** with reference to any particular provision of the Companies Act, means the date on which that provision came into operation in terms of section 225 of the Companies Act otherwise the date set out as the Effective Date in the Shareholders' resolution adopting this MOI;
- 1.2.20 **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Company by the Shareholder;
- 1.2.21 **"Electronic Communication"** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.2.22 **"Enabling Legislation"** means the Eskom Conversion Act, No. 13 of 2001 as amended or any legislation that replaces it;
- 1.2.23 **"Exco"** means the members of the Executive Management Committee of the Company from time to time;
- 1.2.24 **"Ex Officio Director"** means an "ex officio director" of the Company from time to time, as defined in the Companies Act;

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- 1.2.25 "Financial Assistance" has the meaning set out in section 45(1) of the Companies Act;
- 1.2.26 "Financial Year" has the meaning set out in clause 27 of this MOI;
- 1.2.27 "Gazette" means the Government Gazette of the Republic;
- 1.2.28 "Government" means the Government of the Republic;
- 1.2.29 "Guidelines" means the 'guidelines for the appointment of a Chief Executive for a State Owned Enterprise' as issued by the Minister from time to time;
- 1.2.30 "Ineligible or Disqualified" means ineligible or disqualified as contemplated in the section 69 of the Companies Act or as contemplated in clause 14.13 of this MOI which shall apply not only to Directors but also to members of Board committees and Prescribed Officers;
- 1.2.31 "Law" means any law of general application, as amended and re-enacted from time to time, and includes the common law, constitution, decree, treaty, ordinance, by-law, order, regulation or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;
- 1.2.32 "Legislative Framework" means the legislative and regulatory framework from time to time in force which relates to or affects the Company including, the Companies Act, the PFMA, the National Treasury Regulations, the Enabling Legislation, National Energy Regulator Act, Electricity Regulation Act, the National Nuclear Regulator Legislation and Regulations and any and every other Law, which relates to or affects the Company;
- 1.2.33 "Material" means "material" as defined in the Companies Act;
- 1.2.34 "Memorandum of Incorporation" or "MOI" means this Memorandum of Incorporation of the Company, as amended from time to time;
- 1.2.35 "Minister" means the Minister of Public Enterprises in her/his capacity as the representative of the Government and the Executive Authority (as defined in the PFMA) of the Company, or if any other Minister is designated as being the representative of the Government or the executive authority, then that Minister acting in such capacity;
- 1.2.36 "Month" means a calendar month;
- 1.2.37 "Notice" means notice in writing and delivered according to the provisions of the MOI and more particularly the provisions of clause 26 of the MOI;
- 1.2.38 "Office" means the registered office of the Company;
- 1.2.39 "Ordinary Resolution" means a resolution adopted with the support of more than 50% (fifty per cent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting, or by the Shareholder acting other than at a meeting, as contemplated in section 60 of the Companies Act;
- 1.2.40 "Ownership Control", in relation to the Company, means the ability of the Shareholder, in accordance with the provisions of section 1 of the PFMA, to exercise any of the following powers to govern the financial and operating policies of the Company in order to obtain benefits from its activities:
- 1.2.40.1 to appoint or remove all or the majority of the Directors;
- 1.2.40.2 to appoint or remove the Company's CE;
- 1.2.40.3 to cast all, or the majority of, the votes at meetings of the Board;
- 1.2.40.4 to control all, or a majority of, the voting rights at a general meeting of the Company.

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- 1.2.41 **"Person"** includes a Juristic Person;
- 1.2.42 **"PFMA"** means the Public Finance Management Act, No. 1 of 1999, as amended;
- 1.2.43 **"Policy Framework"** means any and every , directive, guideline, framework, or policy , from time to time in force concerning and affecting the Company or its Subsidiaries and the relationship between the Shareholder, the Company and the Board from time to time and which comprise, without limitation, the Strategic Intent Statement, the Shareholder's Compact, the SMF, the Corporate Plan, Governance Codes of Good Practice and Protocol's from time to time, the Delegation of Authority Framework and the SMF.
- 1.2.44 **"Prescribed Officers"** means a person who, within a company, performs any function that has been designated by the Minister of Trade and Industry in terms of section 68(10) of the Companies Act which, for the avoidance of doubt, includes any member of Exco;
- 1.2.45 **"Present"** shall have the meaning ascribed to the term "present at a meeting" in the Companies Act;
- 1.2.46 **"Public Audit Act"** means the Public Audit Act, No. 25 of 2004;
- 1.2.47 **"Regulations"** means the regulations published pursuant to the Companies Act from time to time;
- 1.2.48 **"Remuneration Policy"** means the Remuneration Policy of the Company which will incorporate any "Remuneration Guidelines" and/or "Standards" published by the Minister from time to time which will be confirmed by the Company on an annual or biennial basis as contemplated in clause 13.1.1.3 of this MOI;
- 1.2.49 **"Republic"** means the Republic of South Africa;
- 1.2.50 **"Revenue Fund"** has the meaning set out in section 1 of the PFMA;
- 1.2.51 **"Round Robin Resolution"** means a resolution passed other than at a –
- 1.2.51.1 Shareholder's Meeting, which –
- 1.2.51.1.1 was submitted for consideration to the Shareholder; and
- 1.2.51.1.2 was voted on in Writing by the Shareholder or by a duly authorised representative on behalf of the Shareholder, within 20 (twenty) Business Days after the resolution was submitted to the Shareholder as contemplated in section 60 (1);
- 1.2.51.2 meeting of Directors, in respect of which 75% (seventy five per cent) of the Directors voted on in Writing by signing a resolution, within 10 (ten) Business Days after the resolution was submitted to them as contemplated in section 74;
- 1.2.52 **"Securities"** means "securities" as defined in the Companies Act;
- 1.2.53 **"Securities Register"** means the register of Issued Securities of the Company required to be established in terms of section 50(1) of the Act and referred to in clause 8 hereof;
- 1.2.54 **"Shareholder"** means the Government represented by the Minister;
- 1.2.55 **"Shareholder's Compact"** means the agreement, entered into pursuant to the Treasury Regulations, between the Shareholder and the Board annually;
- 1.2.56 **"Shareholder's Meeting"** means with respect to any particular matter concerning the Company, a meeting of the Shareholder who is entitled to Exercise Voting Rights in relation to that matter;

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- 1.2.57 **"Shares"** means one of the units into which the proprietary interest of the company is divided and issued, or to be issued, by the Company;
- 1.2.58 **"Sign"** and **"Signature"** include, respectively, lithography, printing, electronic signature or signing by a mechanical or electronic process or means;
- 1.2.59 **"Significance and Materiality Framework"** or **"SMF"** means the agreement between the Minister and the Company for the purposes of the PFMA, in particular sections 51, 54 and 55 thereof and pursuant to Treasury Regulations, in particular regulation 28.3.1 thereof, which sets out a framework of levels of significance and materiality applicable to certain matters and transactions and the process that must be followed for authorisation by the Executive Authority;
- 1.2.60 **"Special Resolution"** means a resolution adopted with the support of at least 75% (seventy five per cent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting or by the Shareholder acting other than at a meeting, as contemplated in section 60 of the Companies Act;
- 1.2.61 **"Standing Committee"** means a permanent committee of the Board with a continued existence established by the Board or in accordance with the Legislative or Policy Frameworks to deal with a specified set of duties. This excludes Ad Hoc Committees;
- 1.2.62 **"Strategic Intent Statement"** means the primary tool used by the Shareholder to communicate its expectations of the Company strategy and which contains the Company's strategic purpose, scope of business, core business, consultation thresholds or investment strategy developed by the Shareholder in consultation with sector departments, National Treasury and the Presidency of the Republic and taking into account an assessment of the interaction between the policy and regulatory environment with the financial and operational goals of the Company to ensure shareholder value optimisation and achievement of wider socio-economic objectives;
- 1.2.63 **"Subsidiary"** means a "subsidiary" of the Company, as such term is defined in the Companies Act;
- 1.2.64 **"Treasury Regulations"** means the regulations made by the National Treasury of the Republic in terms of section 76 of the PFMA and any amendment thereof or substitution therefor from time to time;
- 1.2.65 **"Voting Rights"**, with respect to any matter to be decided by the Company, means the rights of the Shareholder to vote in connection with that matter; and
- 1.2.66 **"Writing"** includes Electronic Communication.
- 1.3 In this MOI, unless the context clearly indicates otherwise:
- 1.3.1 Words importing the singular number shall include the plural number and vice versa.
- 1.3.2 Words importing any one gender shall include the other two genders.
- 1.3.3 Words importing natural persons shall include Juristic Persons (whether corporate or not and including partnerships and trusts) and vice versa.
- 1.3.4 References to the Shareholder entitled to vote Present at a meeting or acting in person shall include the Shareholder represented by duly authorised representative/s (which duly authorised representatives may be natural or Juristic Persons) as contemplated in this MOI or acting in the manner prescribed in the Companies Act.

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- 1.3.5 Reference to a section by number in this MOI shall be a reference to the corresponding section in the Companies Act and or the PFMA, as applicable, unless otherwise stated.
- 1.3.6 A reference to a clause by number refers to a corresponding provision of this MOI.
- 1.3.7 Clause headings are for convenience only and are not to be used in its interpretation.
- 1.3.8 Reference to any provision of any Law shall include such provision as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such Law. Any reference to a particular section in a Law is to that section as at the date of adoption of this MOI, and as amended or re-enacted from time to time and/or an equivalent measure in a Law, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this MOI are changed, the relevant provision of this MOI shall be read also as if it had been amended as necessary, without the necessity for an actual amendment.
- 1.3.9 Subject to the preceding clause, any words or expressions defined in any Law shall, unless the context otherwise requires, bear the same meaning in this MOI as in the Law in which they are defined. If any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision.
- 1.3.10 Reference to a Shareholder represented by a proxy shall include a Shareholder represented by (i) an agent appointed under a general or special power of attorney; or (ii) the Minister.
- 1.3.11 Any reference to a notice shall be construed as a reference to a Written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Companies Act and/or the Regulations.
- 1.3.12 If the Companies Act is amended at any time to confer any right or benefit on the Company, then this MOI shall be deemed to have been amended so as to result in the Company enjoying the full benefit of any such amendment to the Companies Act.
- 1.4 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.
- 1.5 The words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.
- 1.6 The words "other" and "otherwise" shall not be construed eiusdem generis with any preceding words where a wider construction is possible.
- 1.7 Any reference in this MOI to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.
- 1.8 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- 1.9 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

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- 1.10 This MOI shall be deemed to authorise the Company to do anything which the Act empowers a Company to do if so authorised by its MOI unless that authority is expressly excluded.

2 INCORPORATION AND NATURE OF THE COMPANY AND GOVERNING PROVISIONS

2.1 Juristic Personality

- 2.1.1 The Company is a pre-existing company as defined in the Companies Act and, as such, continues to exist as a public company as if it has been incorporated and registered in terms of the Companies Act, as contemplated in item 2 of Schedule 5 of the Act, and this MOI replaces and supersedes the MOI of the Company applicable immediately prior to the filing hereof.
- 2.1.2 The Company was registered and incorporated on 1 July 2002 in terms of the Enabling Legislation and operates as a State Owned Company as defined in Section 1 of the Companies Act being listed as a major public entity in Schedule 2 of the PFMA.

2.2 Governing Provisions

The Company shall be governed by:

- 2.2.1 the unalterable provisions of the Companies Act subject to:
- 2.2.1.1 any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(a)(iii); and
- 2.2.1.2 any exemption granted in accordance with the provisions of section 9;
- 2.2.2 the alterable provisions of the Companies Act (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 15(2)(a)(ii)); and
- 2.2.3 the provisions of this MOI (subject to and in accordance with section 15(2)); and
- 2.2.4 the provisions of the Legislative Framework; and
- 2.2.5 the provisions of the Policy Framework.

2.3 Conflicting Provisions with the Companies Act

In any instance where there is an inconsistency between a provision, be it express or tacit, of the Companies Act and:

- 2.3.1 A provision of the PFMA then:
- 2.3.1.1 the provision of both the Companies Act and the PFMA apply concurrently, to the extent that is possible to apply and comply with the one inconsistent provision without contravening the second (section 5 (4) (a)); and
- 2.3.1.2 to the extent that it is impossible to apply or comply with the inconsistent provision without contravening the second the applicable provision of the PFMA shall prevail except to the extent provided otherwise in sections 30 (8) or 49 (4) as provided for in section 5 (4) (a) of the PFMA.
- 2.3.2 a provision of the Policy Framework the provision of the Companies Act shall apply to the extent it has not been altered by the MOI in which case the provisions of clause 2.4.4 of the MOI shall apply.

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2.4 Conflicting Provisions with the MOI

In any instance where there is a conflict between a provision, be it express or tacit, of this MOI and:

- 2.4.1 an unalterable provision of the Companies Act; the unalterable provision of the Companies Act shall prevail;
 - 2.4.2 an alterable provision of the Companies Act: the provisions of this MOI shall prevail; and
 - 2.4.3 a provision of the PFMA: the provisions of the PFMA shall prevail; and
 - 2.4.4 a provision of the Policy Framework: the provisions of this MOI shall prevail, provided that if:
 - 2.4.4.1 the provision of the Policy Framework simply adds to but is not inconsistent with this MOI; or
 - 2.4.4.2 the provisions of this MOI provide for the Policy Framework to prevail; or
 - 2.4.4.3 the Companies Act does not require the MOI to take precedence over that provision of the Policy Framework;
- the provisions of the Policy Framework shall prevail.

3 PURPOSE, POWERS AND CAPACITY OF THE COMPANY

- 3.1 The objective of the Company is to provide energy/electricity and related services, including the generation, transmission, distribution and retail thereof. In doing so it has all the powers to implement this mandate subject to any limitations set out herein, the Shareholder's Compact, the Strategic Intent Statement and any other limitations imposed by the Shareholder. In fulfilling its obligations, it is specifically acknowledged that the Company has a developmental role and will through its activities promote transformation, economic development, broad based black economic empowerment and may support relevant national initiatives.
- 3.2 In addition to the Strategic Intent Statement which shall be issued by the Shareholder by 30 April each year, the Shareholder may, after Consultation with the Board, require changes to the mandate and objectives of the Company if-
 - 3.2.1 it is reasonably necessary to do so; or
 - 3.2.2 it is in the best interest of the Company.
- 3.3 The Company is not subject to any restrictive conditions or prohibitions contemplated in section 15(2) (b) or (c);
- 3.4 The Company has, subject to section 19(1)(b)(i), all of the legal powers and capacity of an individual which are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii);
- 3.5 Notwithstanding anything to the contrary contained herein or any omissions from this MOI of any provisions to that effect, the Company may do anything that the provisions of the Legislative Framework or the Policy Framework empower it to do if not expressly prohibited in terms thereof.

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- 3.6 The Company shall not:
- 3.6.1 appoint to or remove a Director from the Board; or
- 3.6.2 appoint or remove the Chairperson of the Board, Group Chief Executive or Group Chief Financial Officer other than as provided for in terms of this MOI.
- 3.7 It is specifically recorded that only the Shareholder, in exercising its Ownership Control in terms of section 63 (2) of the PFMA, may appoint or remove Directors in accordance with the provisions of section 66 (4) (a) (i) of the Companies Act.;
- 3.8 The Shareholder may direct the Company to take any action specified by the Shareholder if the Company:
- 3.8.1 is in financial difficulty or is being mismanaged;
- 3.8.2 fails to perform its functions effectively or efficiently;
- 3.8.3 has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under the Legislative or Policy Framework;
- 3.8.4 has failed to comply with any law or any policy envisaged in the Legislative or Policy Framework;
- 3.9 A Directive contemplated in clause 3.8 must state in writing:
- 3.9.1 the reasons for issuing the directive;
- 3.9.2 the steps which must be taken to remedy the situation; and
- 3.9.3 a reasonable period within which the steps contemplated in clause 3.9.2 must be taken.
- 3.10 If the Company fails to comply with the Directive as contemplated in clause 3.8 within the stated period, the Shareholder may:
- 3.10.1 after having given the Company a reasonable opportunity to be heard; and
- 3.10.2 after having afforded the Company a hearing on any submissions received,
- 3.10.2.1 initiate an investigation into the matter in accordance with terms of reference determined by the Shareholder; and /or
- 3.10.2.2 where circumstances so require, appoint a person as Administrator to assume responsibility for and to ensure fulfilment of the Directive to the extent as may be further determined in writing by the Shareholder from time to time..
- 3.11 If the Shareholder appoints an Administrator in terms of clause 3.10.2.2:
- 3.11.1 the Administrator may do anything which the Company might otherwise be empowered or required to do by or under the Legislative or Policy Framework and this MOI to the exclusion of the Company and any of its directors, officers or employees;
- 3.11.2 the Board may not, while the Administrator is responsible for fulfilling the Directive, exercise any of its powers or perform any of its duties relating to the Directive or matters incidental thereto;
- 3.11.3 a director, officer, employee or a contractor of the Company must comply with a directive given by the Caretaker.

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- 3.12 The Shareholder shall:
- 3.12.1 review the performance of the Company regularly whilst it is under administration of the Administrator; and
- 3.12.2 while the intervention continues, review the intervention and the performance of the Administrator regularly; and
- 3.12.3 within six months or any shorter period of time as may be determined by the Shareholder in writing, of appointing the Administrator and thereafter at intervals of every three months, table a report on the Administrator's findings in the National Assembly.
- 3.13 Once the situation has been remedied to the satisfaction of the Shareholder and the Company is able to perform its functions effectively, the Shareholder shall terminate the appointment of the Administrator.
- 3.14 Notwithstanding clause 3.10, the Shareholder may dissolve the Board if the Shareholder, on good cause shown, loses confidence in the ability of the Board to perform its functions effectively and efficiently. The Shareholder may dissolve the Board only:
- 3.14.1 after having given the Board a reasonable opportunity to be heard; and
- 3.14.2 after having afforded the Board a hearing on any submissions received.
- 3.15 If the Shareholder dissolves the Board, the Shareholder
- 3.15.1 may appoint an Administrator to take over the functions of the Board and to do anything which the Board might otherwise be empowered or required to do by or under this Act, subject to such conditions as the Minister may determine; and
- 3.15.2 shall, as soon as it is feasible but not later than three months after the dissolution of the Board, replace the members of the Board in the manner as contemplated in this MOI.
- 3.16 The costs associated with the appointment of an Administrator shall be for the account of the Company.
- 3.17 The appointment of the Administrator terminates in accordance with the provisions of clause 3.13 or when a new Board is in place in terms of clause 3.15.2.
- 3.18 If the Board, any of its members or any officer or employee of the Company is alleged to have committed financial misconduct as contemplated in Chapter 10 of the PFMA then the Shareholder must initiate an investigation into the matter and if the allegations are confirmed, the Shareholder must ensure that appropriate disciplinary proceedings are initiated immediately.
- 3.19 Notwithstanding this section, the Shareholder retains the right at any time to approach a competent court for relief in any matter the Shareholder considers appropriate.
- 3.20 The Company shall not, without the prior Written approval of the Shareholder: --
- 3.20.1 enter into any transaction which exceeds or falls outside of the limits prescribed by the Shareholder's Compact or the SMF;
- 3.20.2 establish or participate in --
- 3.20.2.1 the establishment of a company; or
- 3.20.2.2 a significant partnership, trust, unincorporated joint venture or similar arrangement;
- 3.20.3 acquire or dispose of a significant shareholding in a company or a significant asset;

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- 3.20.4 commence or cease a significant business activity;
- 3.20.5 commit the Company or its Subsidiaries to borrowings which confer rights to a lender to convert debt into Shares of any kind;
- 3.20.6 undertake or agree to a significant change in the nature or extent of the Company's interest in a significant partnership, trust, unincorporated joint venture or similar arrangement;
- 3.20.7 approve the candidate nominated by Board for the position of the FD;
- 3.20.8 issue, or approve the transfer of, any Shares in the Company; and
- 3.20.9 subject to clauses 4.1 and 4.2 below, amend the provisions of this MOI.
provided that the provisions of the PFMA are not contravened.
- 3.21 In addition to the limitations and restrictions set out in clause 3.6 and 3.20 above, the Board shall ensure that –
- 3.21.1 the proposed Board-approved Shareholder's Compact for the following Financial Year to be submitted to the Shareholder by 30 September of each year;
- 3.21.2 the annual budget, the Corporate Plan and the Shareholder's Compact of the Company shall be presented and/or submitted to the Shareholder prior to 28 February of each year; and
- 3.21.3 the Company discloses to the Shareholder all changes to terms and conditions of trade which may have a Material impact on the Company.
- 3.22 Subject at all times to the PFMA, the Shareholder may, in exceptional circumstances specify any limitations regarding the general authority of the Company to raise or borrow funds from time to time for the purposes of the Company, or secure the payment of such sums provided that the borrowing programme in terms of the Shareholder's Compact is not affected.

4 AMENDMENTS TO MOI

- 4.1 Save for correcting patent errors in spelling, punctuation, reference, grammar or similar defects on the face of the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) of the Companies Act and the provisions of this MOI.
- 4.2 The Board shall publish a notice of any alteration of the MOI correcting a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the MOI on the Company's website, furnish a copy of the alteration to the Shareholder, and file the notice of such alteration as contemplated in section 17(1) of the Companies Act.

5 THE MAKING OF RULES

The Board is prohibited from making, amending or appealing any rules contemplated in section 15(3) of the Act and the Board's capacity to make such rules is hereby excluded.



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6 AUTHORISED SHARES IN THE COMPANY, ALLOTMENT AND ISSUE

6.1 Authorised Shares in the capital of the Company

- 6.1.1 Subject to the Enabling Legislation, the Company is authorised to issue no more than 100 000 000 000 (one hundred billion) ordinary Shares of no par value and the same class, which shall rank *pari passu* in all respects and each such ordinary Share entitles the Shareholder to:-
- 6.1.1.1 attend, participate in, speak at and vote on any matter to be considered at any meeting of the Shareholder;
- 6.1.1.2 vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share;
- 6.1.1.3 participate proportionally in any Distribution made by the Company to the Shareholder;
- 6.1.1.4 participate in Distributions to the Shareholder;
- 6.1.1.5 receive proportionally the net assets of the Company upon its liquidation/dissolution; and
- 6.1.1.6 Exercise any other rights attaching to the ordinary Shares in terms of the Companies Act or any other law.
- 6.2 At the date of this MOI, there are 83 000 000 001 (eighty three billion and one) ordinary Shares in issue. The issued ordinary Shares are held by the Shareholder.
- 6.3 The Board shall not have the power to amend the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights and preferences) as contemplated in section 36(2)(b) read with section 36(3) of the Companies Act.
- 6.4 Subject to provisions of the Companies Act and the Enabling Legislation, the Company may from time to time by Special Resolution passed by the Shareholder: -
- 6.4.1 increase or decrease the number of its authorised Shares;
- 6.4.2 reclassify any Shares that have been authorised but not issued;
- 6.4.3 classify any unclassified Shares;
- 6.4.4 create any class of Shares and establish any preferences, rights, limitation or other terms in respect of any class of Shares so created, in terms of section 37 of the Companies Act;
- 6.4.5 alter the provisions of this MOI with respect to the objects and powers of the Company;
- 6.4.6 convert any Shares in the Company to Shares of a different class, whether issued or not, and in particular (but without derogating from the generality of the foregoing) convert ordinary Shares or preference Shares to redeemable preference Shares, provided that moneys other than dividends due to the Shareholder or the amount payable on the redemption of any preference Shares shall be held in trust by the Company indefinitely until lawfully claimed by the Shareholder; and
- 6.4.7 to the extent that the Company immediately before the Effective Date has authorised but unissued par value Shares in its capital of a class of which there are issued Shares, issue the unissued Shares of that class at par or at a premium or at a discount.

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- 6.5 The Board shall not have the power to issue: -
- 6.5.1 authorised Shares as contemplated in section 38 of the Companies Act; or
- 6.5.2 options relating to the allotment or subscription of authorised Shares or other Securities and secured and unsecured debt instruments as contemplated in sections 42 and 43 of the Companies Act; or
- 6.5.3 capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47 of the Companies Act,
- without an Ordinary Resolution of the Shareholder.
- 6.6 Certificates of Securities
- The Securities issued by the Company shall be evidenced by certificates, which shall contain the information specified in section 51(1) of the Companies Act, and which shall be issued in the manner prescribed in section 51 of the Companies Act.
- 6.7 Register of Securities
- The Company shall establish and keep a register of its issued Securities at its Office in the manner specified in section 50 of the Companies Act.

7 PRE-EMPTION ON ISSUE OF ORDINARY SHARES

- 7.1 Save if –
- 7.1.1 ordinary Shares are to be issued for the acquisition of any asset or for an Amalgamation or Merger;
- 7.1.2 the Shareholder by Ordinary Resolution approves the issue of ordinary Shares for any other purpose without this clause applying;
- 7.1.3 a capitalisation issue of ordinary Shares is to be undertaken;
- 7.1.4 ordinary Shares are to be issued in terms of option or conversion rights;
- 7.1.5 ordinary Shares are to be issued for a subscription price which is not a cash amount payable in full on subscription,

the Shareholder has a right, before any other Person to be offered and within a reasonable time, to subscribe for all the ordinary Shares to be issued. The offer to the Shareholder shall be Delivered in Writing specifying the number of ordinary Shares offered, and specifying a time (which shall not be less than 14 (fourteen) Business Days after the date of the offer) by which the offer must be accepted and the requisite portion of the subscription price paid, failing which it shall be deemed to be rejected. After the expiration of the time within which an offer may be accepted, or on the receipt of a response from the Shareholder that it declines to accept the ordinary Shares offered, the Board may, subject to the foregoing provisions and clause 3.20.8 of this MOI, issue such ordinary Shares.

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8 PROHIBITION REGARDING BENEFICIAL INTERESTS

The Company shall not permit its Shares to be held by, and registered in the name of, one Person for the Beneficial Interest of another Person, as set out in section 56(1) of the Companies Act.

9 RESTRICTION ON THE TRANSFER OF SHARES

In addition to any other prescribed obligations which the Shareholder may agree to, no Shares shall be transferred without the prior Written consent of the Shareholder.

10 TRANSFER OF SECURITIES

- 10.1 The Shareholder is the holder of all the Issued Shares which relate to the Company as set out in clause 6.2 above.
- 10.2 Where the Shareholder may elect to sell, cede or transfer any of the Securities in the Company the instrument of transfer of any such Securities shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such Securities until the name of the transferee is entered in the Securities Register.
- 10.3 Subject to such restrictions as may be applicable, (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question), any Shareholder or holder of Securities may transfer all or any of its Securities by instrument in Writing in any usual or common form or any other form which the Board may approve.
- 10.4 Every instrument of transfer shall be Delivered to the Office of the Company, accompanied by:
- 10.4.1 the certificate issued in respect of the Securities to be transferred; and/or
- 10.4.2 such other evidence as the Company may require to prove the title of the transferor, or her/his right to transfer the Securities.
- 10.5 All authorities to sign transfer deeds or other instruments of transfer granted by holders of Shares for the purpose of transferring Securities which may be lodged, produced or exhibited with or to the Company at its Office shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at such of the Company's Office at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company as being in order before the giving and lodging of such notice.
- 10.6 All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Board shall from time to time decide. Any instrument of transfer which the Board may decline to register shall (unless the Board shall resolve otherwise) be returned on demand to the person who lodged it.
- 10.7 Securities transfer tax and other legal costs payable in respect of any transfer of Securities pursuant to this MOI will be paid by the Company to the extent that the Company is liable therefore in Law, but shall, to that extent, be recoverable from the person acquiring such Securities.

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11 SHAREHOLDER'S AND DIRECTORS' RIGHT TO INFORMATION

- 11.1 The Shareholder shall have the rights to all such information relating to the Company as contemplated in this MOI, or in accordance with the Legislative or Policy Framework.
- 11.2 The Board shall procure that detailed management accounts of the Company and its Subsidiaries shall be prepared on a quarterly basis and submitted to the Shareholder within the Month after the end of the quarter or such other period as may be agreed by the Shareholder and the Company in Writing in respect of which such accounts are being prepared. Any Director or the Shareholder shall be entitled to request from time to time such accounting and other information as may be reasonably required by such Director or the Shareholder.

12 RECORD DATE

If, at any time, the Board fails to determine a Record Date as contemplated in section 59(1) of the Companies Act, the Record Date for the relevant action or event is as determined in accordance with section 59(3) of the Companies Act.

13 SHAREHOLDER'S MEETINGS AND ROUND-ROBIN RESOLUTIONS

13.1 Convening of Shareholder's Meetings and Annual General Meetings

- 13.1.1 Subject to any exemption which may be granted to the Company in terms of the Companies Act, the Board shall convene an Annual General Meeting at least once a year but no later than 15 (fifteen) Months after the date of the previous Annual General Meeting or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –
- 13.1.1.1 presentation of the integrated report, comprising –
- 13.1.1.1.1 the Directors' report;
- 13.1.1.1.2 report of the external auditors;
- 13.1.1.1.3 audited Financial Statements for the immediately preceding Financial Year, subject to the provisions of section 84(3) of the Companies Act;
- 13.1.1.1.4 an audit committee report; and
- 13.1.1.1.5 the social and ethics committee report;
- 13.1.1.2 appointment of Directors by the Shareholder, to the extent required by the Companies Act, this MOI or the PFMA;
- 13.1.1.3 consideration of the Remuneration Policy of the Company and confirmation that such Remuneration Policy is in accordance with any "Remuneration Guidelines" and/or "Standards" published by the Minister from time to time;
- 13.1.1.4 approval of the remuneration payable to non-executive Directors by Special Resolution (except where such remuneration has been approved by the Shareholder by Special Resolution within the previous two years, although this may be considered on an annual basis if so required by the Shareholder);
- 13.1.1.5 approval of the remuneration payable to executive Directors and members of Exco by Ordinary Resolution;

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- 13.1.1.6 appointment of an Auditor for the current Financial Year, subject to the provisions of section 84(3) of the Companies Act;
- 13.1.1.7 noting of the audit fees for the previous Financial Year under review;
- 13.1.1.8 authorising the Board to fix the audit fees for the current Financial Year;
- 13.1.1.9 appointment of an audit committee, subject to clause 19 below;
- 13.1.1.10 approval of the Distribution to the Shareholder, if any, which shall have been recommended by the Board in accordance with any Distribution policies applicable to the Company, from time to time and the provisions of clause 24 of this MOI and any applicable provisions of the PFMA, on condition that the Shareholder may not approve a Distribution higher than that recommended by the Board. In the event Board resolving not to declare a Distribution such resolution to be noted by the Shareholder.;
- 13.1.1.11 noting of the Shareholder's Compact for the current Financial Year;
- 13.1.1.12 consideration and/or approval of the SMF;
- 13.1.1.13 consideration of the performance of the Board, through the Board performance appraisal report for the previous Financial Year; and
- 13.1.1.14 any matters raised by the Shareholder, with or without advance notice to the Company.
- 13.1.2 The Shareholder or Board may, subject to the provisions of section 61 of the Companies Act, convene a Shareholder's Meeting at any time.
- 13.1.3 The Company authorises the Minister to call a Shareholder's Meeting for the purposes of section 61(11) of the Companies Act.
- 13.1.4 The Shareholder's Meetings referred to in clauses 13.1, 13.1.2 and 13.1.3 above shall be held in Johannesburg, Pretoria or Cape Town, provided however, that in exceptional circumstances, such meetings shall be held at any other place as the Shareholder deems fit.
- 13.1.5 The Company shall, as determined by the Board, either --
- 13.1.5.1 hold a Shareholder's Meeting in order to consider one or more resolutions; or
- 13.1.5.2 as regards such resolution/s that could be voted on at a Shareholder's Meeting, other than an Annual General Meeting, instead require such resolutions to be dealt with by Round Robin Resolution of the Shareholder.
- 13.1.6 Within 10 (ten) Business Days after the Shareholder adopts a Round Robin Resolution, the Company must Deliver a statement describing the results of the vote, consent process, or appointment to the Shareholder.
- 13.1.7 The Company must hold a Shareholder's Meeting or put the proposed resolution to the Shareholder by way of a Round Robin Resolution: --
- 13.1.7.1 at any time that the Board is required by the Companies Act or the MOI to refer a matter to the Shareholder for decision; or
- 13.1.7.2 whenever required to fill a vacancy on the Board; and
- 13.1.7.3 when otherwise required in terms of section 61(3) of the Companies Act or by this MOI.

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13.2 Notice of meetings of the Shareholder

- 13.2.1 Subject to compliance with section 62 of the Companies Act, an Annual General Meeting and a general meeting of the Shareholder shall be convened by giving notice of at least 15 (fifteen) Business Days to the Shareholder.
- 13.2.2 A notice of a Shareholder's Meeting must be in Writing, in plain language and must include:
- 13.2.2.1 the date, time and place for the meeting, and the Record Date for the meeting;
- 13.2.2.2 the general purpose of the meeting, and any specific purpose contemplated in section 61(3) (a) of the Companies Act if applicable;
- 13.2.2.3 in the case of the Annual General Meeting, the complete Financial Statements to be presented and directions for obtaining a copy of the complete annual Financial Statements for the preceding Financial Year;
- 13.2.2.4 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Shareholder's Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;
- 13.2.2.5 a reasonably prominent statement that: --
- 13.2.2.5.1 the Shareholder shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Shareholder's Meeting in the place of the Shareholder or give or withhold Written consent on behalf of the Shareholder to a decision by Round Robin Resolution of the relevant Shareholder;
- 13.2.2.5.2 a proxy need not be a Shareholder;
- 13.2.2.5.3 a Shareholder may appoint more than 1 (one) proxy to Exercise Voting Rights attached to different Securities held by that Shareholder in respect of any Shareholder's Meeting;
- 13.2.2.5.4 the proxy may delegate the authority granted to her/him as proxy, subject to any restriction in the instrument appointing the proxy her/himself;
- 13.2.2.5.5 participants in a Shareholder's Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the person presiding at the Shareholder's Meeting that the right of that person to participate and vote, either as the Shareholder, or as a proxy for the Shareholder, has been reasonably verified; and
- 13.2.2.5.6 participation in the Shareholder's Meeting by Electronic Communication is available, and provide any necessary information to enable the Shareholder or its proxy to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Shareholder or proxy, except to the extent that the Company determines otherwise.
- 13.2.3 A Shareholder's Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 13.2.4 below, only if every Person who is entitled to Exercise Voting Rights in respect of each item on the agenda of the Shareholder's Meeting is Present at the Shareholder's Meeting and votes to approve the ratification of the defective notice.

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- 13.2.4 If a Material defect in the form or manner of giving notice of a Shareholder's Meeting relates only to one or more particular matters on the agenda for the Shareholder's Meeting: -
- 13.2.4.1 any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
- 13.2.4.2 the Shareholder's Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of clause 13.2.3 above.
- 13.2.5 A non-Material defect in the form or manner of Delivering notice of a Shareholder's Meeting, or an accidental or inadvertent failure in the Delivery of the notice to the Shareholder to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Shareholder's Meeting.
- 13.2.6 The Shareholder or its proxy, who is Present at a Shareholder's Meeting: -
- 13.2.6.1 is regarded as having received or waived notice of the Shareholder's Meeting if at least the required minimum notice was given;
- 13.2.6.2 has a right to: -
- 13.2.6.2.1 allege a Material defect in the form of notice for a particular item on the agenda for the Shareholder's Meeting; and
- 13.2.6.2.2 participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and
- 13.2.6.3 except to the extent set out in clause 13.2.6.2 above, is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholder's Meeting.
- 13.3 Proceedings at meetings of the Shareholder
- 13.3.1 The Annual General Meeting shall deal with and dispose of all matters prescribed by the Companies Act and the provisions of this MOI and may deal with any other business raised by the Shareholder or any other business laid before it.
- 13.3.2 The quorum necessary for the commencement of a Shareholder's Meeting or for a matter to be considered at a Shareholder's Meeting shall be the Shareholder Present in person or represented by proxy. Business at any Shareholder's Meeting may only be conducted while a quorum is Present.
- 13.3.3 The appointment of a proxy to represent the Shareholder in any Shareholder's Meeting or Annual General Meeting of the Company shall be in accordance with the provisions of the Companies Act and this MOI.
- 13.3.4 A Shareholder's Meeting may be conducted by way of Electronic Communication or by any one or more persons participating in the Shareholder's Meeting by Electronic Communication.
- 13.3.5 Any Shareholder's Meeting may be postponed or adjourned as provided for in the Companies Act.
- 13.3.6 If within 1 (one) hour from the time appointed for the Shareholder's Meeting, a quorum is not Present,
- 13.3.6.1 for the meeting to begin, the Shareholder's Meeting shall be postponed, without motion or vote or further notice to the date, time and place, as agreed to by the Shareholder

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- as soon as reasonably practicable after the date of such postponed or adjourned meeting;
- 13.3.6.2 for consideration of a particular matter to begin, if there is no other business on the agenda of the meeting, consideration of the matter may be postponed without motion or vote or further notice to the date, time and place, as agreed to by the Shareholder as soon as reasonably practicable after the date of such postponed or adjourned meeting.
- 13.3.7 No further notice is required to be Delivered by the Company of a Shareholder's Meeting that is postponed or adjourned as contemplated in clause 13.3.6 above, unless the location or time for the Shareholder's Meeting is different from a location or time announced at the time of postponement or adjournment, in the case of a postponed or adjourned Shareholder's Meeting.
- 13.3.8 The chairperson of the Board shall preside as chairperson at every Shareholder's Meeting of the Company. If the chairperson is not Present at the Shareholder's Meeting, or if s/he is not Present within 30 (thirty) minutes after the time appointed for holding the Shareholder's Meeting, the Shareholder shall choose any non-executive Director Present to be chairperson of the Shareholder's Meeting. If no such Director is Present or if none of the non-executive Directors Present are willing to chair the meeting, then the Shareholder (or a duly authorised representative thereof) shall be entitled to chair the Shareholder's meeting.
- 13.3.9 The chairperson may, in accordance with section 64(10) of the Companies Act, with the consent of any Shareholder's Meeting at which a quorum is Present (and shall if so directed by the Shareholder's Meeting), adjourn the Shareholder's Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Shareholder's Meeting other than the business left unfinished at the Shareholder's Meeting from which the adjournment took place.
- 13.3.10 When a Shareholder's Meeting is adjourned as a result of a direction given in terms of any applicable provision in the Companies Act, notice of the adjourned Shareholder's Meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned Shareholder's Meeting. No Shareholder's Meeting may be adjourned beyond a period of 60 (sixty) Business Days from the date on which the adjournment occurred.
- 13.3.11 Every resolution of the Shareholder is either an Ordinary Resolution or a Special Resolution.
- 13.3.12 A Round Robin Resolution signed by the Shareholder or by a duly authorised representative on behalf of the Shareholder, within 20 (twenty) Business Days after it has been submitted to the Shareholder in terms of section 60 of the Companies Act, shall be as valid and effective as if it had been passed at a Shareholder's Meeting of the Company duly convened and held.

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14 DIRECTORS

14.1 General

- 14.1.1 The Shareholder shall have the exclusive power to appoint Directors pursuant to the provisions of section 66 (4) (a) (i) of the Companies Act and section 63(2) of the PFMA.
- 14.1.2 The Board shall consist of a minimum of 3 (three) Directors and a maximum of 15 (fifteen) Directors, the majority of which shall be Directors that are not employed by the Company ("non-executive Directors") and at least 2 (two) of which shall be Directors who are employees of the Company, being the Group Chief Executive and the Group Chief Financial Officer ("executive Directors").
- 14.1.3 It is specifically recorded that the executive Directors are not ex officio directors as contemplated in section 66 (4) (a) (ii) of the Companies Act.
- 14.1.4 No Director shall be entitled to appoint an Alternate Director.
- 14.1.5 The Shareholder shall endeavour to ensure that the Board shall: -
- 14.1.5.1 be appropriately balanced in terms of executive and non-executive Directors;
- 14.1.5.2 be representative of the gender and race demographics of the Republic;
- 14.1.5.3 be appointed on the grounds of their knowledge and experience which, when considered collectively, should enable the Board to attain the objects of the Company;
- 14.1.5.4 when viewed collectively, possess appropriate skills and experience relevant to the business of the Company; and
- 14.1.5.5 not include persons who are Ineligible or Disqualified, as set out in section 69 of the Companies Act.
- 14.1.6 The Shareholder shall have the right to appoint a Director to the Board, who may be a Government official, whenever the Shareholder deems it necessary, subject always to the provisions of the Companies Act, this MOI and the Policy Framework.

14.2 Appointment of non-executive Directors

The non-executive Directors shall be appointed by the Shareholder for a period of 3 (three) years at a time ("a term"), which appointment is reviewable annually, provided that no non-executive Director is appointed for longer than 3 (three) consecutive terms.

14.3 Process of appointment and removal of the Group Chief Executive

- 14.3.1 The Shareholder shall, on behalf of the Company, have the exclusive power, in exercising its Ownership Control pursuant to the provisions of sec 63 (2) of the PFMA, to appoint and remove the CE as an employee of the Company in accordance with the Guidelines
- 14.3.2 The Shareholder may request the Board to identify, nominate and evaluate potential candidates for appointment as the Group Chief Executive in accordance with the Guidelines and to submit a shortlist of candidates to the Shareholder to assist the Shareholder with the appointment.
- 14.3.3 The Shareholder's act of appointment of the Group Chief Executive binds the Company to the exclusion of the Board.
- 14.3.4 The Minister shall be noted as a party to any contract of employment between the Company and the Group Chief Executive.

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- 14.3.5 The Group Chief Executive shall report to the Board and shall only become an executive Director of the Company if appointed to the Board by the Shareholder in terms of clause 14.1.1 of this MOI.
- 14.3.6 The Shareholder shall, on behalf of the Company, have the exclusive power to remove the Group Chief Executive as an employee of the Company which removal would constitute a dismissal as envisaged in terms of Section 186(1)(a) of the Labour Relations Act 66 of 1995 ("the LRA"). Consequently, the provisions of the LRA apply to any such removal.
- 14.4 Process of appointment of the Group Chief Financial Officer
- 14.4.1 The Board shall identify, nominate, evaluate and appoint a candidate for the position of Group Chief Financial Officer, provided that the Shareholder shall, in Writing, approve such candidate prior to the appointment by the Board.
- 14.4.2 If the Shareholder does not approve the candidate nominated by the Board for the position of the Group Chief Financial Officer, the Shareholder shall be required to provide a Written substantive motivation to the Board as to why the Shareholder does not approve the candidate nominated by the Board.
- 14.4.3 Provided the Shareholder provides such Written substantive motivation to the Board, such candidate shall not be appointed as the Group Chief Financial Officer and the Board shall identify and nominate an alternative candidate for appointment as the Group Chief Financial Officer and the process contemplated in this clause 14.4 shall be repeated until such time as an appointment has been made.
- 14.4.4 The Group Chief Financial Officer shall only become an executive Director of the Company if appointed to the Board by the Shareholder in terms of clause 14.1.1 of this MOI.
- 14.5 Chairperson of the Board
- 14.5.1 The chairperson of the Board shall be appointed by the Shareholder.
- 14.5.2 The Company in general meeting shall be entitled to designate an acting chairperson (from any of the non-executive Directors) and determine the period for which such acting chairperson is to hold office and any other terms and conditions applicable to such appointment until the Shareholder appoints the chairperson.
- 14.5.3 The chairperson of the Board shall chair all the meetings of the Board. If the chairperson is not Present at any such meeting or if s/he is not Present within 30 (thirty) minutes after the time appointed for holding the meeting, the Directors Present shall choose any non-executive Director to be chairperson of the meeting.
- 14.5.4 The Director appointed as chairperson of the meeting in terms of clause 14.5.3 above shall act as chairperson: -
- 14.5.4.1 for the duration of the meeting until the meeting is adjourned; or
- 14.5.4.2 for such a period of time after the adjournment of the meeting at which such Director was appointed as chairperson until the chairperson of the Board becomes available.
- 14.5.5 The chairperson of the Board shall not be appointed or serve as the chairperson of a Standing Committee (save for the People and Governance Committee) or as the chairperson of a Subsidiary board.

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- 14.6 Appointment of Directors to the boards of the wholly-owned Subsidiaries of the Company
- 14.6.1 For so long as the Government is the sole Shareholder, it is recorded that the board of a wholly-owned Subsidiary of the Company should, subject to clause 14.6.2 below and any other law applicable to the Subsidiary, comprise employees of such Subsidiary or the Company.
- 14.6.2 It is recorded that, should any wholly-owned Subsidiary of the Company wish to appoint directors who are not employees of the Subsidiary or the Company, such appointments shall be approved by the Shareholder in Writing.
- 14.7 Remuneration of Directors
- 14.7.1 The Board or the committee of the Board responsible for remuneration matters of the Company shall determine the remuneration of the individual Directors and Exco within the framework of the Remuneration Policy and which remuneration shall be approved by Special Resolution or Ordinary Resolution as contemplated in clauses 13.1.1.4 and 13.1.1.5 respectively of this MOI.
- 14.7.2 Non-executive Directors may be paid all travelling, hotel and other expenses properly incurred by them in or about the performance of their duties as Directors, including, those expenses incurred in attending and travelling to and from meetings of the Directors or any committee of the Directors or at any Shareholder's Meeting.
- 14.8 Powers of Directors
- 14.8.1 Subject to clause **Error! Reference source not found.**, the management and control of the Company shall be vested in the Board which, in addition to the powers and authorities expressly conferred upon it by section 66 (1) of the Companies Act, sections 49 to 55 of the PFMA, this MOI, , may Exercise all such powers, and do all such acts and things, as may be Exercised or done by the Company and are not, in terms of this MOI or the Legislative and Policy Framework, expressly directed or required to be Exercised or done by the Company in general meeting or with the prior Written consent of the Shareholder.
- 14.8.2 The Board may, subject to the provisions of section 56 of the PFMA, delegate, any of its powers or functions to any Directors, employee(s) and/or to committees. The delegation shall be Exercised lawfully, within prescribed powers and authorisation levels and in terms of the Company's policies, directives and procedures.
- 14.8.3 The delegation: -
- 14.8.3.1 may be made on and subject to any conditions determined by the Board;
- 14.8.3.2 may be given together with the power to sub-delegate subject to the provisions of the PFMA and the Companies Act and further subject to any conditions so determined (if any);
- 14.8.3.3 shall be communicated to the delegate in Writing and such Written communication must contain full particulars of the matters being delegated and of the conditions determined under clauses 14.8.3.1 and 14.8.3.2 above, if any, and where the power of sub-delegation is also conferred, must state that fact, as well as any conditions determined under this clause 14.8.3.3 if any; and
- 14.8.3.4 shall be reviewed on a regular basis.

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- 14.8.4 The Board may, without requiring the consent of the Shareholder, and in accordance with clause 14.8.3 above from time to time revoke, withdraw or vary such powers contemplated in this clause 14.8.
- 14.9 Recognition of the DoA
It is recorded that the DoA records (but does not create) certain limitations on the powers of the Directors, which limitations arise as a result of this MOI, the Companies Act and the PFMA. It is further recorded that it is the intention of the Board that it shall delegate certain of its powers and functions to Directors, employees and/or committees as contemplated in the DoA by passing a resolution of the Board adopting the DoA in accordance with the principles set out in clause 14.8 above.
- 14.10 Proceedings at Meetings of Directors
- 14.10.1 The Directors may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 14.10.2 The company secretary or a Director may at any time: -
- 14.10.2.1 when authorised by the Board; or
- 14.10.2.2 if requested by at least 1 (one) Director which request shall also be approved by the chairperson of the Board; or
- 14.10.2.3 if requested by at least 2 (two) Directors of the Company
convene a meeting of the Board.
- 14.10.3 The Board shall determine the period of notice which shall be given for meetings of Directors and/or for Round Robin Resolutions and may determine the form or medium of giving such notice, which may include Electronic Communication. It shall be necessary to give notice of a meeting of Directors and/or for Round Robin Resolutions to all Directors even those for the time being absent from the Republic.
- 14.10.4 A meeting of Directors shall proceed even if the Company has not given the required notice of such meeting in accordance with clause 14.10.3 above or if there was a defect in the giving of the notice, provided that all Directors: -
- 14.10.4.1 acknowledge actual receipt of the notice of the meeting concerned; and
- 14.10.4.2 are Present at the meeting; or
- 14.10.4.3 waive notice of the meeting.
- 14.10.5 A meeting of Directors may be conducted by one or more Directors participating in the meeting by Electronic Communication.
- 14.10.6 The quorum for a meeting of Directors shall be not less than a majority of Directors.
- 14.10.7 Subject to exclusions in the Companies Act, each Director shall have 1 (one) vote on a matter before a meeting of Directors.
- 14.10.8 Resolutions of the Directors in a meeting shall be decided by a majority of votes. In case of an equality of votes, the chairperson shall not have a casting vote (in addition to her/his vote as a member of the Board or a Board committee) and the matter being voted on fails.
- 14.10.9 Subject to the Companies Act and this MOI, a Round Robin Resolution, signed and approved by not less than 75% (seventy five per cent) of the Directors shall be as valid

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and effective as if it had been passed at a Board or Board committee meeting, duly called and constituted.

- 14.10.10 Resolutions adopted by the Directors –
- 14.10.10.1 must be dated and sequentially numbered; and
- 14.10.10.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 14.10.11 The company secretary shall attend meetings and record the minutes of the meetings. Where it is not at all possible for the company secretary to attend any such meeting, the Board or Board committee, as the case may be, shall ensure that minutes are recorded, kept and prepared for that meeting. The Director or any other person elected by the Board or Board committee to record and keep minutes of a meeting held by making use of Electronic Communication shall, as soon as is reasonably possible after such meeting has been held, provide the company secretary with a copy of the minutes of the meeting.
- 14.11 Removal of Directors
- 14.11.1 Despite anything to the contrary in the Companies Act, this MOI, or any agreement between the Company and a Director, or between any Shareholder and a Director, the Shareholder shall be solely responsible for the removal of a Director in accordance with the provisions of Section 63(2) of the PFMA, provided that the Director concerned shall:
- 14.11.1.1 be removed by an Ordinary Resolution adopted at a Shareholders Meeting as provided for in section 71 (1) of the Companies Act; and
- 14.11.1.2 have been given 15 (fifteen) Business Days Written notice of the meeting and the resolution; and
- 14.11.1.3 be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to the vote.
- 14.11.2 Where an allegation contemplated in section 71(3) of the Companies Act has been made the Board must determine, by resolution, whether that the Director has either:
- 14.11.2.1 become Ineligible or Disqualified to be a Director of the Company in terms of the Companies Act; or
- 14.11.2.2 become incapacitated to the extent that such Director is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time; or
- 14.11.2.3 neglected or been derelict in the performance of the functions of a Director.
- 14.11.3 Before the Board may consider a resolution contemplated in clause 14.11.2 above the Director concerned must be given:
- 14.11.3.1 notice of the meeting and the resolution proposed to be passed at such meeting and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the Director to prepare and present a response; and:
- 14.11.3.2 a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to the vote.
- 14.11.4 Where the Board has made a determination as contemplated in 14.11.2 then the Board, having regard to the provisions of section 5(4) of the Companies Act, shall not remove the Director but must, within 24 hours of having made its determination, refer its determination to the Shareholder in which case the provisions of clause 14.11.1 shall apply *mutatis mutandis*.

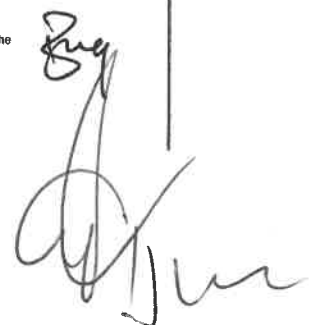
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14.12 Rotation of Directors and filling of vacancies

- 14.12.1 if a Director ceases to hold office or a term of office of any Director is due to expire, the Shareholder shall, in compliance with the provisions of section 70 of the Companies Act, ensure that necessary steps are taken to appoint the requisite number of eligible persons as Directors in the place of the retiring Director/s as soon as possible. In this regard the Board shall, where possible, advise the Shareholder within a reasonable time of such impending vacancy.
- 14.12.2 The Shareholder shall fill in any vacancy that arose on the Board by a new appointment as contemplated in terms of section 70(3) (a) of the Companies Act.
- 14.12.3 A person shall cease to be a Director and a vacancy on the Board shall arise: -
- 14.12.3.1 when the Director's term of office expires as contemplated in clause 14.12.3.3 below;
- 14.12.3.2 if, subject to the provisions of 14.11.2, any of the circumstances referred to in section 70(1)(b) of the Companies Act occur, which include the following, if the Director: -
- 14.12.3.2.1 resigns (provided that such resignation is given by Written notice to the Shareholder and the Company);
- 14.12.3.2.2 dies;
- 14.12.3.2.3 in the case of an *Ex Officio* director, ceases to hold the office, title, designation or similar status that entitled the person to be an *Ex Officio* Director of the Company;
- 14.12.3.2.4 becomes incapacitated to the extent that the person is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable period, subject to section 71(3) of the Companies Act;
- 14.12.3.2.5 is declared delinquent by the court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company, in terms of section 162 of the Companies Act;
- 14.12.3.2.6 becomes Ineligible or Disqualified in terms of section 69, subject to section 71(3) of the Companies Act; or
- 14.12.3.2.7 is removed as a Director by: -
- 14.12.3.2.7.1 a resolution of the Shareholder in terms of section 63 (2) of the PFMA and in accordance with the provisions of 14.11.1; or
- 14.12.3.2.7.2 a resolution of the Shareholder in terms of section 63 (2) of the PFMA and in accordance with the provisions of 14.11.2; or
- 14.12.3.2.7.3 an order of the court in terms of section 71(5) or (6) of the Companies Act; or
- 14.12.3.2.7.4 if s/he is absent from Board meetings for 3 (three) consecutive meetings without leave of the Board and the Shareholder resolves that the office be vacated;
- 14.12.3.3 in the case of non-executive Directors: -
- 14.12.3.3.1 a Director's appointment is reviewed and her/his term is terminated prematurely to the 3 (three) year term;
- 14.12.3.3.2 a Director has served for a 3 (three) year term, and fails to be re-appointed as Director for a 2nd (second) term; or
- 14.12.3.3.3 a Director has served for 2 (two) consecutive 3 (three) year terms, and fails to be re-appointed as a Director for a 3rd (third) term;

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- 14.12.3.3.4 a Director has served for 3 (three) consecutive 3 (three) year terms, which 3rd (third) term has now expired.
- 14.12.4 Unless the Shareholder resolves otherwise, a Director shall also cease to hold office and a vacancy shall arise if: -
- 14.12.4.1 s/he is Knowingly interested in any contract or proposed contract with the Company and fails to declare her/his interest and its nature in the manner required by the Companies Act and the PFMA; or
- 14.12.4.2 s/he assigns her/his estate for the benefit of her/his creditors, or suspends payment or files a petition for the liquidation of her/his affairs, or compounds generally with her/his creditors; or
- 14.12.4.3 s/he ceases to be an employee of the Company or is suspended as an employee of the Company and the Shareholder has resolved to remove such director in accordance with the provisions of clause 14.11.1.
- 14.12.5 In addition, if the CE or FD ceases to hold office as a Director for any reason whatsoever, her/his appointment as CE or FD (as the case may be) shall *ipso facto* terminate without prejudice to any claims for damages which may accrue to her/him as a result of such termination in accordance with applicable employment laws; provided however, that s/he shall not be precluded from being employed in any other position of the Company by virtue of the fact that s/he is no longer a Director.
- 14.13 Ineligibility or Disqualification of Directors
- 14.13.1 A person is Ineligible to be a Director of the Company if the person-
- 14.13.1.1 is a Juristic Person;
- 14.13.1.2 is an unemancipated minor, or is under a similar legal disability; or
- 14.13.1.3 does not satisfy any qualification set out in the MOI.
- 14.13.2 A person is Disqualified to be a Director of the Company if-
- 14.13.2.1 a court has prohibited that person to be a Director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 69 of 1984; or
- 14.13.2.2 save under authority of the court, the person -
- 14.13.2.2.1 is an unrehabilitated insolvent;
- 14.13.2.2.2 is prohibited in terms of any public regulation to be a Director of the Company;
- 14.13.2.2.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty;
- 14.13.2.2.4 has been convicted, in the Republic or elsewhere and imprisoned without the option of a fine, or fined more than the prescribed amount for theft, fraud, forgery, perjury or an offence: -
- 14.13.2.2.4.1 involving fraud, misrepresentation or dishonesty;
- 14.13.2.2.4.2 in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or 69(5) of the Companies Act; or

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14.13.2.2.4.3 under the Companies Act, Insolvency Act, 1936; Close Corporation Act, 1984; Competition Act, 1998; Financial Intelligence Centre Act, 2001; Securities Services Act, 2004; or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004.

15 FINANCIAL ASSISTANCE AND BORROWING POWERS OF THE COMPANY AND COMPANY'S SUBSIDIARIES

15.1 Financial Assistance

15.1.1 The Company is prohibited from and shall not have the power to –

15.1.1.1 authorise the provision by the Company of Financial Assistance to any person for the purpose of, or in connection with, the subscription of any option, or any Shares, issued or to be issued by the Company or a Related Person or Inter-Related company, or for the purchase of any Shares of the Company or a Related or Inter-Related company;

15.1.1.2 provide any direct or indirect Financial Assistance to a Related or Inter-Related company or corporation, or to a member of a Related or Inter-Related corporation or to a person Related to any such company, corporation, or member,

15.1.1.2.1 except, in each case, where –

15.1.1.2.2 the Shareholder has approved such Financial Assistance, either for the specific recipient or generally for a category of potential recipients (and the specific recipient falls within that category), by Special Resolution adopted within the previous two years; provided that where the Shareholder is requested to approve the provision of specific Financial Assistance, the Board shall, at the request of the Shareholder, provide such information to the Shareholder as the Shareholder may require, to satisfy the Shareholder that the conditions set out in clauses 15.1.1.2.3, 15.1.1.2.4 and 15.1.1.2.5 below have been met, or will be met; and

15.1.1.2.3 the provisions of the PFMA have been met; and

15.1.1.2.4 the provisions of section 44 and/or 45 (as the case may be) of the Companies Act have been met; and

15.1.1.2.5 the Board is satisfied that –

15.1.1.2.5.1 immediately after providing the Financial Assistance, the Company would satisfy the solvency and liquidity test prescribed in section 4 of the Companies Act; and

15.1.1.2.5.2 the terms under which the Financial Assistance is proposed to be given are fair and reasonable to the Company.

15.1.2 The Company shall be prohibited from providing any direct or indirect Financial Assistance to any Director or Prescribed Officer of the Company or to a person Related or Inter-Related to any such Director or Prescribed Officer save in respect of any Financial Assistance which has been approved in terms of section 45 of the Companies Act and in terms of clause 15.1.1.2 above and contemplated in accordance with the terms of employment applicable to Prescribed Officers, subject always to the provisions of section 45 of the Companies Act.

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15.2 Board's power to effect borrowing

Subject to the provisions of the PFMA (and, in particular, section 66 of the PFMA), the Board may raise or borrow funds from time to time for the purposes of the Company, or secure the payment, of such sums as is in accordance with its Corporate Plan and the borrowing programme submitted to the Shareholder, unless otherwise determined by the Shareholder subject to clause 3.22 of this MOI.

15.3 Company's power to issue guarantees, indemnities, security or to enter into other transactions that bind the Company to any future financial commitment

The Company may not –

15.3.1 issue a guarantee, indemnity or security; or

15.3.2 enter into any other transactions that bind, or may bind, the Company or the Revenue Fund to any future financial commitment,

unless the provisions of the PFMA, in particular, section 66 thereof, are complied with.

15.4 Financing and funding structures

The Board shall, in accordance with the PFMA and the Enabling Legislation, consider and determine the funding structures of the Company having regard to the funding requirements of the Company from time to time.

16 PERSONAL FINANCIAL INTEREST AND DECLARATION BY DIRECTORS

16.1 For purposes of this clause 16, "Director" includes a Prescribed Officer and a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

16.2 The Company shall establish a policy that will deal with Personal Financial Interests and conflicts of interest of Directors and employees of the Company, which shall be consistent with the provisions of the Companies Act and the PFMA.

16.3 If a Director has a Personal Financial Interest or Knows that a Person Related to the Director, as described in section 2 of the Companies Act, has a Personal Financial Interest in respect of any matter to be considered by the Board, the Director: -

16.3.1 must disclose the interest and its general nature in Writing before the matter is considered at the meeting;

16.3.2 must disclose to the meeting any Material information relating to the matter, and that is known to the Director;

16.3.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

16.3.4 if Present at the meeting of the Board, must leave the meeting immediately after making any disclosure contemplated in clause 16.3.2 or 16.3.3 above;

16.3.5 must not take part in the consideration of the matter, except to the extent of the disclosures contemplated in clauses 16.3.2 or 16.3.3 above;

16.3.6 while absent from the meeting as provided in clause 16.3.4 above: -

16.3.6.1 shall be regarded as being Present at the meeting for the purpose of determining whether sufficient Directors are Present to constitute a quorum of the meeting;

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- 16.3.6.2 shall not be regarded as being Present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- 16.3.7 must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 16.4 If a Director of the Company acquires, or Knows that a Related Person has acquired, a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, after the agreement or other matter has been approved by the Company, the Director shall promptly disclose to the Board, the nature and extent of that interest, and the Material circumstances relating to the Director or Related Person's acquisition of that interest, as the case may be.
- 16.5 If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director, has a Material interest in the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.
- 16.6 A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person related to the Director, only if: -
- 16.6.1 it was approved following disclosure of that interest in the manner contemplated in section 75 of the Companies Act; or
- 16.6.2 despite having been approved without disclosure of that Personal Financial Interest, it
- 16.6.2.1 has subsequently been ratified by an Ordinary Resolution of the Shareholder following disclosure of that Personal Financial Interest; or
- 16.6.2.2 has been declared to be valid by the court in terms of section 75(8) of the Companies Act.
- 16.7 A Director may at any time disclose any general Personal Financial Interest in advance by delivering a Written notice to the Board setting out the nature and extent of that interest for the purposes of this clause 16 until changed or withdrawn by such Director in Writing.
- 16.8 A court, on application by any interested Person, may declare valid a transaction or agreement that had been approved by the Board, or Shareholder as the case may be, despite the failure of the Director to satisfy the requirements of this clause 16 and section 75 of the Companies Act.
- 16.9 The provisions of this clause 16 do not derogate from those Directors' duties prescribed by the PFMA and the Directors shall be required to comply both with the provisions of this clause 16 and the provisions of the PFMA.

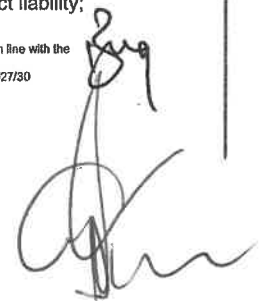
17 INDEMNIFICATION AND DIRECTORS' INSURANCE

- 17.1 For the purposes of this clause 17, "Director" includes a former Director, a Prescribed Officer, a person who is a member of a committee of the Board or of the audit committee of the Company, irrespective of whether or not the person is also a member of the Board.
- 17.2 Subject to the provisions of the PFMA, the Company may –
- 17.2.1 not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation unless the conviction is based on strict liability;

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- 17.2.2 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company. For purposes of this clause 17, "service to the Company" includes services which are directly linked to the activities of the Company, and services which the Company consents to or acknowledges; and
- 17.2.3 directly or indirectly indemnify a Director for –
- 17.2.3.1 any liability, other than in respect of –
- 17.2.3.1.1 any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or sections 86(2) or (3) of the PFMA, or from wilful misconduct or wilful breach of trust on the part of the Director; or
- 17.2.3.1.2 any fine contemplated in clause 17.2.1 above;
- 17.2.3.2 any expenses contemplated in clause 17.2.2 above, irrespective of whether it has advanced those expenses, if the proceedings –
- 17.2.3.2.1 are abandoned or exculpate the Director; or
- 17.2.3.2.2 arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 17.2.3.1 above.
- 17.3 Subject to the provisions of the PFMA, the Company may purchase insurance to protect –
- 17.3.1 a Director against any liability or expenses contemplated in clause 17.2.2 or 17.2.3 above; or
- 17.3.2 the Company against any contingency including but not limited to –
- 17.3.2.1 any expenses –
- 17.3.2.1.1 that the Company is permitted to advance in accordance with clause 17.2.2 above; or
- 17.3.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 17.2.3.2 above; or
- 17.3.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 17.2.3.1 above.
- 17.4 The Company is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78 of the Companies Act.

18 AUDITORS

- 18.1 Subject to clause 18.2 of this MOI, Auditors shall be appointed, and their duties regulated in accordance with the provisions of sections 90, 91, 92 and 93 of the Companies Act, the Auditing Profession Act and applicable provisions of the Public Audit Act.
- 18.2 The Company shall not be required to appoint an Auditor for any Financial Year in respect of which the Auditor-General has elected, in terms of the Public Audit Act, to conduct an Audit of the Company.
- 18.3 Subject to the provisions of the Companies Act, the Auditing Profession Act and the Public Audit Act, all acts done by any Person acting as Auditor, shall, as regard to all Persons dealing in good faith with the Company, be valid notwithstanding that there was some defect in that appointment.

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- 18.4 Nothing precludes the election by the Company at its Annual General Meeting of an Auditor other than one nominated by the audit committee referred to in clause 19 below, but if such an Auditor is elected, the appointment is valid only if the audit committee is satisfied that the proposed Auditor is independent of the Company.
- 18.5 In considering whether, for the purposes of the Companies Act, a Registered Auditor is independent of the Company, the audit committee must –
- 18.5.1 ascertain that the Auditor does not receive any direct or indirect remuneration or other benefit from the Company, except –
- 18.5.1.1 as Auditor; or
- 18.5.1.2 for rendering other services to the Company, to the extent permitted in terms of the Companies Act;
- 18.5.2 consider whether the Auditor's independence may have been prejudiced –
- 18.5.2.1 as a result of any previous appointment as Auditor; or
- 18.5.2.2 having regard to the extent of any consultancy, advisory or other work undertaken by the Auditor for the Company; and
- 18.5.3 consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act,
- 18.6 in relation to the Company, and if the Company is a member of a Group of Companies, any other company within that Group of Companies.

19 AUDIT COMMITTEE

- 19.1 In terms of section 94 of the Companies Act, the Board shall propose, and the Shareholder shall appoint, an audit committee. In the event that the Shareholder elects not to appoint any person proposed by the Board to the audit committee, the Board shall propose an alternate person for appointment by the Shareholder.
- 19.2 The audit committee shall comprise at least 3 (three) members, all of whom shall, subject to clauses 19.5 and 19.6 below, be non-executive Directors of the Company and whose appointment shall comply with (i) section 77 of the PFMA read with the Treasury Regulations; and (ii) to the extent that the provisions of section 94(5) of the Companies Act and Regulation 42 do not conflict with section 77 of the PFMA read with the Treasury Regulations, section 94(5) of the Companies Act and Regulation 42.
- 19.3 The audit committee shall meet at least 4 (four) times in a year to execute its duties.
- 19.4 The Board shall, subject to clause 19.5 below, propose a chairperson for the audit committee, for approval by the Shareholder at the Annual General Meeting.
- 19.5 In accordance with the Treasury Regulations the chairperson of the audit committee shall be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be the chairperson of the Board or a person who fulfils an executive function in the Company.
- 19.6 Each member of the audit committee must –
- 19.7 satisfy any applicable requirements prescribed by the Minister of Trade and Industry from time to time in terms of section 94(5) of the Companies Act.

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- 19.7.1 not be --
- 19.7.1.1 involved in the day-to-day management of the Company's business or have been so involved at any time during the previous Financial Year;
- 19.7.1.2 a Prescribed Officer, or full-time employee, of the Company or another Related or Inter-Related Person, or have been such an Officer or employee at any time during the previous 3 (three) Financial Years; or
- 19.7.1.3 a Material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that Director is compromised by that relationship; and
- 19.7.2 not be a Related Person to any person who falls within the criteria in clauses 19.7.1.1 to 19.7.1.3 above.
- 19.8 The Board must appoint a person to fill any vacancy on the audit committee within 40 (forty) Business Days after the vacancy arises.
- 19.9 The audit committee shall execute all the functions as may be prescribed from time to time by the Companies Act (as read with the Regulations) and the PFMA (as read with the Treasury Regulations).
- 19.10 The Company may determine that its audit committee will perform the functions required by section 94 of the Companies Act on behalf its Subsidiaries.
- 19.11 The Company must pay all expenses reasonably incurred by its audit committee, including, if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions.
- 19.12 No person shall be elected as a member of the audit committee, if s/he is Ineligible or Disqualified and any such election shall be a nullity. A person who is Ineligible or Disqualified must not consent to be elected as a member of the audit committee nor act as a member of the audit committee. A person placed under probation by a court must not serve as a member of the audit committee unless the order of court so permits.

20 SOCIAL AND ETHICS COMMITTEE

- 20.1 In terms of section 72 (4) of the Companies Act, the Board must appoint a social and ethics committee unless it has been exempted in terms of the Companies Act from having to have a social and ethics committee.
- 20.2 The Company may determine that its social and ethics committee will perform the functions required by Regulation 43 on behalf of its Subsidiaries.
- 20.3 The social and ethics committee shall comprise at least 3 (three) members, all of whom shall be Directors of the Company, at least 1 (one) of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous 3 (three) Financial Years and whose appointment shall be in compliance with the Companies Act and any regulations published thereunder.
- 20.4 The social and ethics committee shall meet at least once a year to deal with and attend to all functions and matters that are required to be dealt with by the committee in terms of the Companies Act and any regulations published thereunder.

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- 20.5 The social and ethics committee shall execute all the functions as may be prescribed from time to time by the Companies Act (as read with the Regulations) and the PFMA (as read with the Treasury Regulations).
- 20.6 The social and ethics committee of the Company is entitled to –
- 20.6.1 require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions;
- 20.6.2 request from any employee of the Company any information or explanation necessary for the performance of the committee's functions;
- 20.6.3 attend any Shareholder's Meeting;
- 20.6.4 receive all notices of and other communications relating to any Shareholder's Meeting; and
- 20.6.5 be heard at any Shareholder's Meeting on any part of the business of the meeting that concerns the committee's functions.
- 20.7 The Company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

21 BOARD COMMITTEES

- 21.1 Other than the statutory committees of the Audit Committee and the Social and Ethics Committee the Board may, in terms of section 72 of the Companies Act, establish Standing Committees and Ad Hoc Committees.
- 21.2 The Minister takes cognisance of the Standing Committees established by the Board as set out in clause 21.4 below, however should the Board wish to establish new Standing Committees, such committees may only be established with the prior Written consent of the Minister.
- 21.3 Furthermore, in the application by the Board to the Minister of a new Standing Committee, the Board must submit Written terms of reference including *inter alia* the need for such a committee, the functions of the committee and any other information required by the Minister. The number of Directors appointed to serve on the committee will be at the discretion of the Minister.
- 21.4 Standing Committees at date of this MOI (in addition to those required by the Companies Act) include: -
- 21.4.1 People & Governance committee;
- 21.4.2 Tender committee;
- 21.4.3 Investment and Finance committee; and
- 21.4.4 Risk Committee
- 21.5 No person shall be appointed as a member of a Board committee, if s/he is Ineligible or Disqualified and any such appointment shall be a nullity. A person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.

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21.6 Meetings of a committee of the Board shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

22 PRESCRIBED OFFICERS

22.1 No person shall hold office as a Prescribed Officer, if s/he is Ineligible or Disqualified. A person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions. A person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

22.2 A Prescribed Officer shall cease to hold office as such immediately s/he becomes Ineligible or Disqualified in terms of the Companies Act.

23 COMPANY SECRETARY

23.1 The Board must appoint the company secretary from time to time, who –

23.1.1 shall be a permanent resident of the Republic and remain so while serving as company secretary; and

23.1.2 shall have the requisite knowledge of, or experience in, relevant laws; and

23.1.3 may be a Juristic Person subject to the following: -

23.1.3.1 every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;

23.1.3.2 at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 23.1.1 and 23.1.2 above.

23.2 The company secretary shall not be a Director.

23.3 Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Board considers to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a vacancy in the office of company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 23.1.3 above.

23.4 If at any time a Juristic Person or partnership holds office as company secretary of the Company –

23.4.1 the Juristic Person or partnership must immediately notify the Board if the Juristic Person or partnership no longer satisfies the requirements of clause 23.1.3 above, and is regarded to have resigned as company secretary upon giving that notice to the Company;

23.4.2 the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 23.1.3 above, until the Company has received a notice contemplated in clause 23.4.1 above; and

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MEMORANDUM OF INCORPORATION	Document Identifier	240-65347859	Rev	0
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- 23.4.3 any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 23.1.3 above at the time of that action.
- 23.5 The company secretary may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.
- 23.6 If the company secretary is removed from office by the Board, the company secretary may, by giving Written notice to that effect to the Company by not later than the end of the Financial Year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that Financial Year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

24 DISTRIBUTIONS TO THE SHAREHOLDER

- 24.1 The Board may make Distributions to the Shareholder from time to time in accordance with the Enabling Legislation and the Distributions or similar policy of the Company from time to time, subject to the provisions of clauses 13.1.1.10 and 24 of this MOI, the provisions of section 46 of the Companies Act and any applicable provisions of the PFMA.
- 24.2 The Board, after Consultation with the Shareholder, shall develop an appropriate Distribution or similar policy and framework for the Company taking into account, *inter alia*, the Corporate Plan and strategic objectives which shall be reviewed on a regular basis. In addition, the Company shall be entitled to invest sufficient funds of the Company for the adequate capitalisation and on-going investment in Subsidiaries deemed appropriate. Such capitalisation or investment, and expenditure incurred in respect of industry restructuring, delivery of universal services or any other socio-economic activities carried out by the Company upon the request of the Shareholder shall be taken into account in calculating any Distribution and other payments payable to the Shareholder.
- 24.3 Without derogating from the provisions of clause 24.1 above and subject to the requirements of the Companies Act and clause 13.1.1.10 of this MOI, the Board may resolve to Distribute or deal with, in any way authorised by the Companies Act, all or any part of the amount for the time being standing to the credit of any of the Company's reserves or any share capital of the Company.

25 ACCOUNTS

- 25.1 The Board shall cause to be kept such Accounting Records and books of account as are prescribed by the Companies Act and the PFMA.
- 25.2 The Financial Statements, books of account and other books and documents of the Company shall be kept at, or be accessible from, the Office of the Company or (subject to the provisions of section 25 of the Companies Act, and the PFMA) at such other place as the Board thinks fit, and shall be open to inspection by the Shareholder and the Board during normal business hours.
- 25.3 The Board shall, in accordance with sections 30 and 31 of the Companies Act and section 55 of the PFMA, cause to be prepared and presented at the Company's Annual General Meeting such reports as are referred to in those sections and required in terms of this MOI.

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25.4 Subject to the provisions of the Companies Act, a copy of the documents referred to in clause 25.3 above shall be Delivered or sent by post to the registered address of the Shareholder at least 15 (fifteen) Business Days before the Annual General Meeting, so that such period shall not include the day on which such documents are Delivered or sent, or deemed to be Delivered or sent, or the day on which the meeting is to be held. Alternatively, the Shareholder may give the Company an Electronic Address in which case a copy of the said documents may be Delivered to the Shareholder at that address.

26 NOTICES

- 26.1 Notices and documents required to be published as contemplated in sections 15(3)(a) or 17(1)(a) of the Companies Act shall be Delivered by the Company to the Shareholder by hand delivery to the registered address of the Shareholder or by transmission through the post in a prepaid letter, by telefax or any Electronic Communication addressed to the Shareholder at its registered address or Electronic Address (as the case may be).
- 26.2 The Shareholder chooses the address of the permanent office of the Shareholder in Pretoria as its registered address or such other address (including an Electronic Address) as the Shareholder shall upon Written notice be entitled to change.
- 26.3 The Shareholder after having furnished an Electronic Address to the Company, by doing so-
- 26.3.1 authorises the Company to use Electronic Communication to give notices, documents, Records or statements or notices of availability of the foregoing to it; and
- 26.3.2 confirms that same can conveniently be printed by the Shareholder within a reasonable time and at a reasonable cost.
- 26.4 Every notice calling any general meeting shall comply with the provisions of the Companies Act unless otherwise determined by the Board.

27 FINANCIAL YEAR

The Financial Year of the Company is the 12 (twelve) Month period ending on 31 March of each year. The Financial Year may not be changed by the Board without the prior Written consent or approval of the Shareholder and subject to the PFMA and the requirements of section 27(4) of the Companies Act.

28 WINDING UP

Subject to the provisions of the Companies Act, the Company shall not be wound up or be placed into "business rescue" as contemplated in the Companies Act without the prior Written consent of the Shareholder.

29 SUBSIDIARIES

The Company may, from time to time, form or acquire further Subsidiaries, subject to the provisions of this MOI, the PFMA and the Enabling Legislation.

30 PROTECTION OF WHISTLE-BLOWERS

The Company shall establish and maintain a system to receive disclosures contemplated in section 159 of the Companies Act.

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Annexure "MCR43"

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

CONFIRMATORY STATEMENT BY DEPUTY DIRECTOR-GENERAL OF THE NATIONAL TREASURY

I, the undersigned,

Ismail Momoniat

do hereby state under oath that:


1. I am the Deputy Director-General of the National Treasury responsible for Tax and Financial Sector Policy. I have held the position of Deputy Director-General at the National Treasury since 2001.
2. I depose to this affidavit to confirm the affidavit of H.E. Matamela Cyril Ramaphosa, the President of the Republic of South Africa (*"the President"*) in so far as it relates to me.
3. The facts deposed to in this affidavit are within my own personal knowledge and belief and are true and correct.
4. I hereby confirm the contents of Mr Ramaphosa's statement to the limited extent that such contents relate to me.


ISMAIL MOMONIAT

I hereby certify that the deponent declares that he knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Johannesburg on this 25th day of May 2021 and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.


COMMISSIONER OF OATHS

FULL NAMES: Vincent Soloane
ADDRESS: Suite 9, National bank Building
DESIGNATION: Practising Attorney
AREA: 40 Simmons Street, Cnr
Stamp: Commissioner Street
Johannesburg, 2107


V.S.

Page 10 of 10

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Annexure "MCR44"



intelligence

Office of the Inspector-General of Intelligence
REPUBLIC OF SOUTH AFRICA

PO Box 1175, MENLYN PARK, 0077 Bogare, Cnr Atterbury & Lois Street, MENLYN
Tel: (012) 367 0844/47, Fax: (012) 367 0920

OIG/IG10/1/5/2
DIR* 10409

22 July 2020

HE Mr MC Ramaphosa
President of the Republic of South Africa
Private Bag X1000
PRETORIA
0001

Dear Mr. President

NOTIFICATION IN TERMS OF SECTION 7 (8) (b) OF THE INTELLIGENCE SERVICES OVERSIGHT ACT, 1994 (Act 40 OF 1994) (OVERSIGHT ACT)

1. In 2018 the Office of the Inspector-General of intelligence (OIG) was approached by the investigators from the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including Organs of State, for an affidavit and testimony at the said Commission.
2. The request was premised on information the OIG could provide to the Commission sourced through the execution of its functions in terms of the Oversight Act.
3. Many engagements with the Commissions investigators and Counsels ensued, the resultant effect being that testimony from the OIG would be vital in assisting the Commission. Such testimony would be provided with due regard to the provisions of the Oversight Act and without compromising national security.



NOTIFICATION IN TERMS OF SECTION 7 (8) (b) OF THE INTELLIGENCE SERVICES OVERSIGHT ACT, 1994 (Act 40 OF 1994) (OVERSIGHT ACT)

4. Further the Counsels and investigators from the Commission have advised that the portions of the testimony of the OIGI will be heard in camera and that classified information will be afforded the necessary protections as prescribed in law
5. Whilst the Inspector-General of Intelligence (IGI) does not have the power to declassify reports based on classified information accessed from the Intelligence Services in terms of section 7 (8) (a) of the Oversight Act, the IGI is empowered to invoke the provisions of section 7 (8) (b) of the Oversight Act.
6. Section 7 (8) (b) authorises the IGI to disclose information subject to to conditions contained therein which are:
 - 7 (8) (b) (i) - *'after consultation with the President and Minister responsible for the Service in question; and*
 - 7 (8) (b) (ii) - *'subject to appropriate restrictions placed on such intelligence or information by the Inspector-General, if necessary; and*
 - 7 (8) (b) (iii) – *to the extent that such disclosure is not detrimental to the national interest.'*
7. These are discretionary powers vested in the IGI, which the IGI intends invoking in disclosing information pertinent to the request from the Commission. In so doing due regard would be given to the limitations in the Intelligence Services, 2002 (Act 65 of 2002), in particular section 10 (4) that seeks to protect national security intelligence, intelligence methods and sources of information.
8. Although the Oversight Act does not envisage permission to be granted by your respectful Office, this letter serves to discharge the onus of consultation with relevant persons as provided for in section 7 (8) (b) (i).
9. It is however our absolute desire and would be appreciated if that a response is received from your Office that confirms receipt of this letter prior to the envisaged appearance at the Commission.

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NOTIFICATION IN TERMS OF SECTION 7 (8) (b) OF THE INTELLIGENCE SERVICES OVERSIGHT ACT, 1994 (Act 40 OF 1994) (OVERSIGHT ACT)

10. I thank you.



**Dr SI-Dintwe
INSPECTOR-GENERAL OF INTELLIGENCE**



Annexure “MCR45”



**MINISTER
STATE SECURITY
REPUBLIC OF SOUTH AFRICA**

PO Box 51278, Waterfront, 8002, CAPE TOWN, 18th floor, 120 Plein Street, Parliament, CAPE TOWN Tel: (021) 401 1800 Fax: (021) 461 4644
PO Box 1037, Menlyn, 0077, PRETORIA, Ruth First Building, Bogara, Cnr Atterbury Road & Lois Avenue, MENLYN Tel: (012) 367 0700 Fax: (012) 367 0749
www.intelligence.gov.za

Dr Setlhomamaru Dintwe
Inspector-General of Intelligence

Dear Inspector-General

RE: NOTIFICATION IN TERMS OF SECTION 7(8)(b) OF THE INTELLIGENCE SERVICES OVERSIGHT ACT, 1994 (Act 40 OF 1994) (OVERSIGHT ACT)

1. The letter of the Inspector-General of Intelligence (IG) with the subject "Notification in terms of section 7(8)(b) of the Intelligence Services Oversight Act, 1994 (Act 40 of 1994)(Oversight Act)" dated 22 July 2020 refers.
2. I must state from the outset that the legislative requirement for consultation prior to disclosure is not discharged by the notification of your engagements with the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including Organs of State ("the Commission") and your intention to disclose intelligence and information to the Commission.
3. Section 7(8) of the Intelligence Service Oversight Act, 1994 (Act 40 of 1994)("the Oversight Act") expressly stipulates the conditions prior to disclosure of intelligence or information received by the IG from the Services. Section 7(8)(b) is quoted for your convenience:

"(8) Notwithstanding anything to the contrary in this or any other law or the common law the Inspector-General -

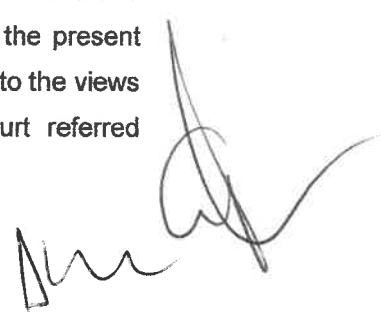
(a) ...

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- (b) may, if the intelligence or information received by him or her in terms of paragraph (a) is subject to any restriction in terms of any law, disclose it only -
 - (i) after consultation with the President and the Minister responsible for the Service in question; and
 - (ii) subject to appropriate restrictions placed on such intelligence or information by the Inspector-General, if necessary; and
 - (iii) to the extent that such disclosure is not detrimental to the national interest".

- 4. The import of the section 7(8)(b) of the Oversight Act is the following:
 - 4.1 the conditions that must be met prior to disclosure are of paramount importance and must take precedence over any other right or obligation in law as stated in the introductory words "**Notwithstanding anything to the contrary in this or any other law or the common law**";
 - 4.2 there is both a right and corresponding obligation on the IG with respect to any intelligence and information of a Service accessed by the IG in the performance of his or her functions;
 - 4.3 the obligation on the IG with respect to such intelligence and information is that if the intelligence or information is subject to a restriction in law, it is mandatory that the IG disclose it only after meeting the following conditions:
 - 4.3.1 after consultation with the President and the Minister of the relevant Service; and
 - 4.3.2 placing appropriate restrictions on such intelligence or information by the IG, if necessary; and
 - 4.3.3. disclosure must be limited to the extent that it is not detrimental to the national interest.
 - 4.4 Failure on the part of any person to comply with the above mentioned section is an offence in terms of section 7A of the Oversight Act, and he or she may upon conviction be sentenced to a fine or imprisonment not exceeding five years.
- 5. What is meant by "after consultation" has been settled in our law by the Supreme Court of Appeals in *President of South Africa and others v Reinecke* (210/13)[2014] ZASCA 3; 2014 (3) SA 205 (SCA). In the present instance, the requirement in common law is that you be receptive to the views of the President and the Minister when consulting. The court referred

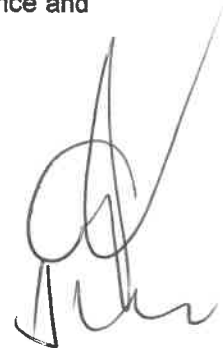


approvingly to *McDonald & others v Minister of Minerals and Energy & others* 2007 (5) SA 642 (C) wherein it is stated at paragraph 17:

“where a statute requires a functionary to act ‘after consultation’ with another functionary, ...this requires ... that the ultimate decision must be taken in good faith, after consulting with and giving serious consideration to the views of the other functionary.”

6. In light of the above, I disagree that you have discharged your statutory responsibility to consult with me, because I have not been furnished with the necessary information in order to be in a position to apply my mind and articulate my views on the disclosure the IG intends making to the Commission.
7. To that extent, I have not been informed of the following:
 - 7.1 the context of such disclosure;
 - 7.2 the content of the disclosure that has and/or is intended to be made;
 - 7.3 what intelligence or information relating to the State Security Agency has been or is intended to be disclosed;
 - 7.4 the restrictions in law applicable to such intelligence or information of the State Security Agency that has been or will be disclosed;
 - 7.5 the necessity of applying restrictions on the intelligence or information of the State Security Agency that the IG has or intends to disclose, if any;
 - 7.6 what are the appropriate restrictions that have been or will be applied to the intelligence and information of the State Security Agency;
 - 7.7 whether the disclosure of such intelligence or information is likely to be detrimental to the national interest; and
 - 7.8 limitations that will be considered and applied so that such disclosure is not detrimental to the national interest.
8. In the event that the IG has already disclosed information to the Commission without complying with the legislative imperative to consult with me, it renders any consultation that is undertaken after the fact perfunctory since I am presented with a *fait accompli*. Moreover, the consultation will not be conducted in good faith due to the fact that serious consideration cannot be given to my views before taking your decision to disclose the intelligence and information to the Commission.

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9. On the other hand, if the IG intends to engage in meaningful consultation prior to taking the decision to disclose intelligence and information of the State Security Agency, then I request the IG to provide me with the following:
- 9.1 The notice or subpoena from the Commission requesting your testimony and/or affidavit;
- 9.2 A copy of the affidavit of the IG setting out the disclosures that have been or which the IG intends to make, as well as the supporting documents;
- 9.3 Clarity on what is meant by "without compromising national security" as stated in paragraph 3 of your letter, as well as the measures that will be implemented to prevent national security from being compromised;
- 9.4 Clarity on what necessary protections will be applied to classified information. I disagree that the IG is empowered to declassify intelligence and information of the State Security Agency which was accessed in terms of section 7(8) (a) of the Oversight Act.
10. Finally, it is clear from your letter that your office has already started "engagements" with the Commission. The nature of such engagements is unknown to the Ministry as there has not been any consultation with me prior to and regarding such engagements to date. Accordingly, intelligence and information that was accessed from the State Security Agency in terms of section 7(8)(a) of the Oversight Act and which has been disclosed by the IG, contravenes section 7A of the Oversight Act and is therefore unlawful.
11. I raise the above concerns to ensure compliance with the Constitution of the Republic of South Africa, 1996 and intelligence-related legislation. Most importantly, in order to ensure national security is not compromised.
12. The IGI is kindly requested to cease any further engagements and plans to disclose intelligence and information accessed from the State Security Agency until the matters raised above are adequately clarified and addressed.

Yours Sincerely



Ms Ayanda Dlodlo, MP
Minister

Date 3/08/2020

HE Mr MC Ramaphosa
President of the Republic of South Africa

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Annexure “MCR46”



14 August 2020

Dear Dr Dintwe,

**NOTIFICATION IN TERMS OF SECTION 7(8)(b) OF THE INTELLIGENCE SERVICES
OVERSIGHT ACT NO 40 OF 1994**

Your letter dated 22 July 2020 refers.

I also refer to the letter to you from Minister Dlodlo, dated 3 August 2020.

I apologise for the delay in responding to your letter. It was only brought to my attention on Friday, 7 August 2020.

I concur with the Minister's exposition of the applicable law.

I would therefore ask that you refrain from any disclosures to the Commission until we – yourself, the Minister and I – have had an opportunity to engage, as required by law, on the information you wish to disclose, the measures to be taken to protect this information, and the disclosure's impact on national security.

I understand that the Commission Chairperson alone decides whether evidence will be heard in camera or not and has made no ruling in that regard as yet. This serves to reinforce the need for the legally required consultation to take place prior to disclosure.

To prepare for this consultation I would appreciate if your office could provide mine with all the information that you intend disclosing to the Commission and/or evidence you intend to proffer.

I appreciate the urgency of the matter. Kindly avail two copies of the relevant documents, information or other matter by Wednesday, 19 August 2020.

Yours Sincerely,

**Mr Matamela Cyril Ramaphosa
President of the Republic of South Africa**

Dr SI Dintwe
Inspector-General of Intelligence
PO Box 1175
MENLYN PARK
0077

Annexure "MCR47"

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MINISTER
STATE SECURITY
REPUBLIC OF SOUTH AFRICA

PO Box 51278, Waterfront, 8002, CAPE TOWN, 18th floor, 120 Plain Street, Parliament, CAPE TOWN Tel: (021) 401 1800 Fax: (021) 461 4844
PO Box 1037, Menlyn, 0077, PRETORIA, Ruth First Building, Bogare, Cnr Atterbury Road & Lois Avenue, MENLYN Tel: (012) 367 0700 Fax: (012) 367 0749
www.intelligence.gov.za

Dr Setihomamaru Dintwe
Inspector-General of Intelligence

Dear Inspector-General

**RE: CONSULTATION IN TERMS OF SECTION 7(8)(b) OF THE
INTELLIGENCE SERVICES OVERSIGHT ACT, 1994 (Act 40 OF 1994)
(OVERSIGHT ACT)**

1. The consultative meeting between His Excellency, President Ramaphosa, the Honourable Minister of Defence and Military Veterans, Ms Mapisa-Nqakula (MP), and ourselves conducted in accordance with section 7(8)(b) of the Intelligence Services Oversight Act, 1994 (Act 40 of 1994) ("the Oversight Act") on 3 September 2020 refers.
2. I confirm that you had admitted to the parties that you had, prior to the consultation, submitted intelligence and information to the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including Organs of State ("the Commission") that you stated you had not accessed in terms of section 7(8)(a) of the Oversight Act. You assured us that you had retrieved the documents prior to the consultation, but could not confirm that it had not been reproduced by the functionaries at the Commission.

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3. It was noted that the intelligence or information, which you had submitted to the Commission, was accessed by virtue of your position as the Inspector-General of Intelligence (IG), and you had disclosed documents that, in terms of their nature and content, may contain classified information. A real risk therefore exists that classified information relating to the Intelligence Services may have been reproduced prior to you retrieving the documents from the Commission. It is in that light that we will therefore request the Commission to indicate the nature of the disclosures that you have made to the Commission, as well as to establish whether all the documents you have submitted to the Commission have been returned to you, and that they have not been reproduced.
4. I further confirm that we resolved during the meeting on 3 September 2020 that:
 - 4.1 Your office will furnish copies of the documents you intend submitting to the Commission to the Ministry of Police and Ministry of Defence and Military Veterans;
 - 4.2 In order to facilitate the engagement, your office will provide all the parties with a full index detailing the documents you intend submitting to the Commission;
 - 4.3 During the engagement, an assessment will have to be made as to which documents should be declassified, which should retain their classification status, and the reasons therefor, as well as whether the disclosure is detrimental to the national interest;
 - 4.4 We will endeavour to finalise the consultative process by the first week of October 2020; and
 - 4.5 The IG will inform the Chairperson of the Commission, in writing, of the progress made during the consultative process, and confirm our agreement that intelligence and information will only be submitted to the Commission after we have concluded our consultation process.

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5. I am hopeful that we will be able to engage with regard to the documents on the index by next week to allow sufficient time for meaningful consultation. In order to expedite the consultation on the matter, I accordingly request that you furnish all the parties with the index at the earliest opportunity and by the latest 16 September 2020.
6. Your co-operation is appreciated always.

Yours Sincerely



Ms Ayanda Dlodlo, MP
Minister
Date 14/09/2020

HE Mr MC Ramaphosa
President of the Republic of South Africa

CONFIDENTIAL



Annexure "MCR48"



16 September 2020

Dear Inspector General,

1. Our meeting of 3 September 2020 refers.
2. I am also in receipt of the letter of 14 September 2020 sent to you by Minister Dlodlo. I concur with her summary of the decisions taken at the meeting of 3 September 2020, in paragraph 4 of her letter.
3. You will further recall that it was decided the consultation required by section 7(8) of the Intelligence Services Oversight Act, 1994 (*"the Oversight Act"*) ought to be finalised by the end of this month in order that a final determination can be made and conveyed to the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including Organs of State (*"the Commission"*) by early October 2020 at the latest.
4. This decision was informed by your indication that you were not expected at the Commission before next month or November 2020 at the earliest.
5. My office is however yet to receive the index of the documents that you undertook to furnish, which you intend to disclose to the Commission. As was made clear during our meeting of 3 September by yourself, not all the information shared in the files provided to my office would be the subject of possible disclosure. We need to know which documents among the files you have shared with us, will be the subject of the consultation required in terms of the Oversight Act.
6. In addition, I believe it necessary that we acknowledge the time constraints faced by the Commission. We committed to engage in this consultation expeditiously and so we should.
7. Kindly revert by close of business tomorrow, Thursday 17 September 2020 with the promised index, so that meetings that need to take place can be arranged within this and the next week at the very latest.

Sincerely,

Matamela Cyril Ramaphosa
President of the Republic of South Africa

Copied to: Chairperson of the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including Organs of State, Deputy Chief Justice Zondo

And copied to: Minister of State Security, Minister Dlodlo

Annexure “MCR49”



intelligence

CONFIDENTIAL

Office of the Inspector-General of Intelligence
REPUBLIC OF SOUTH AFRICA

PO Box 1175, MENLYN PARK, 0077 Bogare, Cnr Atterbury & Lois Street, MENLYN
Tel: (012) 367 0844/47, Fax: (012) 367 0920

OIGI/IG10/1/5/2
DIR* 10424

19 August 2020

HE Mr MC Ramaphosa
President of the Republic of South Africa
Private Bag X1000
PRETORIA
0001

Dear Mr. President

NOTIFICATION IN TERMS OF SECTION 7 (8) (b) OF THE INTELLIGENCE SERVICES OVERSIGHT ACT, 1994 (Act 40 OF 1994) (OVERSIGHT ACT)

1. The letter from the Honourable President dated 14 August 2020 bears reference on this matter.
2. I would like to confirm that there will be no disclosures to the Commission until the process of consultation has been concluded.
3. I therefore enclose all information under the cover of this letter and this consists of the following:
 - 3.1. The notice from the Commission and the list of information required from the Inspector-General of Intelligence,
 - 3.2. The draft affidavit, and
 - 3.3. The annexures to the affidavit.
4. Furthermore, I need to bring to the attention of the President that the same process of consultation will be followed with regard to the Ministry of



Ithovisi Lomhloli Jikelele Wezobunhloli • Kantoro ya Mothankedimogolo wa tsa Matihale • Hofisi ya Mutavisi-Jenerali wa Vunhlorthi • Kantoor van die Inspekteur-generaal van Intelligensiedienste • I ofisi yomhloli omkhulu wazoBunhlakani • Ofisi ya Mohlahlobi Kakaretso wa Bohwela • Ofisi ya Mutoli-Dzhanerafa wa Vhusevhi • Ofisi ya Mohlahlobi-pharephare ya Bunhloli • I Ofisi yoMhloli-Jikelele wobuNtola • Lihovisi leMhloli-Jikelele weTebunhloli

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CONFIDENTIAL

2

NOTIFICATION IN TERMS OF SECTION 7 (8) (b) OF THE INTELLIGENCE SERVICES OVERSIGHT ACT, 1994 (Act 40 OF 1994) (OVERSIGHT ACT)

Police as well as the Ministry of Defence and Military Veterans to whom the letters have already been sent.

5. I thank you.



Dr SI Dintwe
INSPECTOR-GENERAL OF INTELLIGENCE



CONFIDENTIAL

Annexure “MCR50”



2nd Floor, Hillside House
17 Empire Road
Parktown
Johannesburg
2193
Tel: (010) 214-0651
Email:
inquiries@sastatecapture.org.za
Website:
www.sastatecapture.org.za

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

Date: 13 November 2020

Our reference: Ms Farrhah Khan

Email: farrhahk@commissionsc.org.za

His Excellency Mr MC Ramaphosa
President of the Republic of South Africa
Union Buildings
PRETORIA

Dear Mr President

**Re: Compliance with Section 7(8) of the Intelligence Services Oversight Act,
1994 (Act 40 of 1994) (Oversight Act)**

1. I acknowledge receipt of your letter dated 6 November 2020.
2. I have noted the contents of your letter. I am not aware what documents the Commission had requested from the Inspector-General because it would have been the Commission's Legal Team or Investigation Team that would have requested documents. However, Advocate Paul Pretorius SC tells me that

1

whatever documents had been made available to them – I think by the Inspector-General – were returned to the Inspector-General. I think that was done pending the consultation in terms of section 7(8). I think that what the Commission's Legal Team wants to do next is to interview, and, take a statement from, the Inspector-General for purposes of the Commission's Investigation.

3. I believe that enough time has been allowed for the section 7(8) consultation to take place and be completed. In the light of this and the fact that compliance with section 7(8) does not appear to necessarily require that agreement be reached in a section 7(8) consultation, I give a final extension up to 23 November 2020. After that date the Commission's Legal Team will be seeking to interview the Inspector-General.
4. The Commission continues to appreciate your support and co-operation.

Yours sincerely



RMM ZONDO

Deputy Chief Justice of the Republic of South Africa

and

Chairperson of the Commission



Annexure "MCR51"



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

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

03 December 2020

To: His Excellency

The Honourable President Matamela Cyril Ramaphosa

The State President of the Republic of South Africa

Pretoria

0001

By e-mail: Nokukhanya Cele Nokukhanya@presidency.gov.za Nokukhanya Jele
NokukhanyaJ@presidency.gov.za Geoffrey Mphaphuli Geoffrey@presidency.gov.za
Lusanda@presidency.gov.za

Dear Mr President

**RE: THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING
ORGANS OF STATE ("THE COMMISSION")
STATE SECURITY AGENCY // INSPECTOR GENERAL OF INTELLIGENCE //
COMPLIANCE WITH SECTION 7 (8) OF THE INTELLIGENCE SERVICES
OVERSIGHT ACT**

1. Receipt of your letter addressed to the Chairperson and dated 23 November 2020 is acknowledged. Its contents have been noted.

2. The contents of the letter addressed to the Inspector General and dated 23 November 2020 have also been noted.
3. As far as the Commission is aware, the Inspector General is yet to make a final decision regarding any restrictions to be placed on documents he intends to disclose or has disclosed to the Commission.
4. For its part, the Commission is duty bound to consider relevant evidence placed before it. It will continue to do so lawfully and responsibly and with due regard to the need to protect work method and the identity of operatives.
5. Similarly, any decision on the part of the Commission to lead evidence in open hearing will be made lawfully and responsibly and in accordance with the same considerations.
6. As far as members of the legal team are concerned, they operate under professional constraints and duties. They have also taken an oath of secrecy before the Chairperson. Investigators who are dealing with the relevant material have top secret clearance.
7. Further, the Chairperson has directed that any application contemplated by any Minister concerned may be brought before the Commission by way of formal application in terms of the Rules of the Commission.

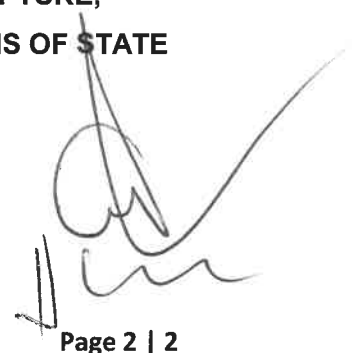
Yours faithfully



PROF. ITUMELENG MOSALA

Secretary

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



Annexure "MCR52"



13 October 2020

Dear Honourable Maake,

**REFERRAL OF MATTERS TO THE JOINT STANDING COMMITTEE
ON INTELLIGENCE**

- 1) I write to you with reference to the 3 attached letters received by my office from the Ministers of State Security, Defence and Police.
- 2) In these letters, the relevant Minister in the main raise serious concerns about the Inspector's General conduct and performance.
- 3) They raise the Inspector General's failure to follow prescribed processes in disclosing information to the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector including Organs of State ("the Commission"), from his initial engagements with the Commission in 2018 to his recent disclosure of numerous documents together with his draft affidavit to the Commission.
- 4) They further raise the submission of certificates directly to the Committee by the Inspector General, thereby contravening section 7(11)(d) of the Oversight Act.
- 5) They raise the Inspector General's presumption to have authority or any role to play in authorising former members of the Services to disclose classified information to the Commission.
- 6) Lastly and significantly they assert that the failures above combined raise concerns about the Inspector General's mishandling of intelligence and information, potentially creating risks to national security, and undermining the authority of the national executive over matters of national security (as provided for in sections 198(d)¹, 209² and

¹ It reads:

"The following principles govern national security in the Republic: ... (d) National security is subject to the authority of Parliament and the national executive."

² It reads:

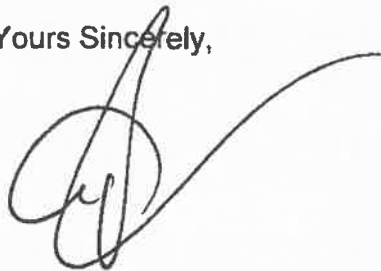
"Establishment and control of intelligence services.—(1) Any intelligence service, other than any intelligence division of the defence force or police service, may be established only by the President, as head of the national executive, and only in terms of national legislation.

(2) The President as head of the national executive must appoint a woman or a man as head of each intelligence service established in terms of subsection (1), and must either assume political responsibility for the control and direction of any of those services, or designate a member of the Cabinet to assume that responsibility."

210³ of the Constitution).

- 7) As a result of these very serious allegations being made about the Inspector General's conduct and performance of his duties, I hereby request the Committee to conduct an investigation into these matters, as listed in paragraphs 3), 4), 5) and 6) above, in line with sections 7(4) and 7(5) of the Oversight Act.
- 8) I trust the Committee will allow the Inspector General due procedural fairness in this process.
- 9) As a first step, I would appreciate if the Committee could revert back to me within 2 weeks of this letter on whether or not they recommend that I suspend the Inspector General pending the finalisation of the investigation or not. The allegations that national security is at risk warrant speedy consideration of this matter.
- 10) Thereafter I would appreciate it if the investigation itself could be finalised by the end of this Parliamentary year.

Yours Sincerely,



Mr Matamela Cyril Ramaphosa
President of the Republic of South Africa

Mr JJ Maake
Chairperson:
Joint Standing Committee on Intelligence
Parliament of the Republic of South Africa
PO Box 15
CAPE TOWN
8000



³ It reads:

" Powers, functions and monitoring.—National legislation must regulate the objects, powers and functions of the intelligence services, including any intelligence division of the defence force or police service, and must provide for—

(a) *the co-ordination of all intelligence services; and*

(b) *civilian monitoring of the activities of those services by an inspector appointed by the President, as head of the national executive, and approved by a resolution adopted by the National Assembly with a supporting vote of at least two thirds of its members.*" (underlining added)



Annexure "MCR53"



13 October 2020

Dear Inspector-General,

**REFERRAL OF MATTERS TO THE JOINT STANDING COMMITTEE
ON INTELLIGENCE**

I have received the attached three letters from the Ministers of State Security, Police as well as Defence and Military Veterans.

In light of the seriousness of the concerns raised by all three Ministers responsible for Services, I have asked the Joint Standing Committee on Intelligence to inquire into these allegations, per sections 7(4) and 7(5) of the Oversight Act.

I have asked them to recommend to me whether or not you ought to be suspended pending finalisation of this investigation, and to revert to me within 2 weeks of my letter to them.

I trust they, as the entity to whom you report and in the spirit of the relevant Constitutional provisions, will provide you the audi you are entitled to in responding to these matters.

Yours Sincerely,

**Mr Matamela Cyril Ramaphosa
President of the Republic of South Africa**

**Dr SI Dintwe
Inspector-General of Intelligence
PO Box 117
Menlyn Park
0077**

Annexure "MCR54"

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PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

Joint Standing Committee on Intelligence
PO Box 15 Cape Town 8000 Republic of South Africa
Tel: 27(21) 403 2319 Fax: 27 (21) 465 2867
www.parliament.gov.za

JSCI/4/1/17

28 October 2020

His Excellency, Mr MC Ramaphosa
President of the Republic of South Africa
Private Bag X1000
PRETORIA
0001

Dear President Ramaphosa,

RE: REFERRAL OF MATTERS TO THE JOINT STANDING COMMITTEE ON INTELLIGENCE

1. The above matter and your letter regarding same, dated 13 October 2020 refer.
2. We note the contents of your letter and your request for the Joint Standing Committee on Intelligence (JSCI) to conduct an investigation on the four (4) allegations against the Inspector-General of Intelligence (IGI) being that he allegedly:
 - (a) disclosed information to the judicial commission of inquiry into state capture;
 - (b) submitted the certificate directly to the Joint Standing Committee on Intelligence in contravention of section 7(11) (d) of the Act;
 - (c) authorised former members of the services to disclose information to the commission; and
 - (d) mishandled intelligence and information, risking national security and undermining the Executive.
3. The Committee deliberated on the matter and even sought legal advice due to the seriousness of the allegations against the IGI as they relate to the fitness of the IGI to hold office as set in section 7(4) of the Intelligence Services Oversight Act, No. 40 of 1994 ("the Act").

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4. It is worth noting that the allegations against the IGI as serious as they are, have not been substantiated and the Committee considers it prudent to firstly test the veracity of the allegations prior to instituting an investigation as requested in paragraph 7 of the President's letter.
5. With regard to the issue of the suspension or removal of the IGI from office as provided for in the legislation, the matter must be operationalised by the regulations in terms of section 8(1)(d) of the Act. It is notable that there are currently no regulations made by the Minister to deal with the matter of removal and suspension of the IGI.
6. Similarly, there are currently no approved Parliamentary Rules by the Joint Rules Committee pertaining to conducting investigations on the IGI, which may expose Parliament, and the JSCI, to litigation. The Committee is concerned that in the absence of the specific regulatory framework as outlined above and developing special rules in order to conduct an investigation of the IGI as requested, may not withstand legal scrutiny. There is judicial precedence indicating that developing special rules for a suspension and removal of an officer bearer from office may lead to litigation.
7. As a result of the afore-mentioned, the Committee may be constrained from conducting an investigation pending the finalisation of the regulations "regarding the suspension or removal from office of the Inspector-General and the termination of employment of the Inspector-General", and approved Rules by the Joint Rules Committee. Consequently, the Committee is not in the position to express a view on whether the IGI should be suspended or not. The Committee is however, cognisant that the final decision rests with the President.
8. Given the serious nature of the allegations raised, the JSCI, within its oversight mandate, can look into the allegations even though it would not be an investigation due to the lack of both regulations and approved Parliamentary Rules as stated above.

Yours sincerely



Mr. J. Maake, MP
Chairperson: Joint Standing Committee on Intelligence

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