



CYRIL RAMAPHOSA

EXHIBIT BBB 4

PRESIDENT OF
THE REPUBLIC OF SOUTH AFRICA

MATAMELA CYRIL
RAMAPHOSA

AS PRESIDENT OF THE
REPUBLIC OF SOUTH AFRICA

**ADDITIONAL INFORMATION RE:
MC RAMAPHOSA**



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

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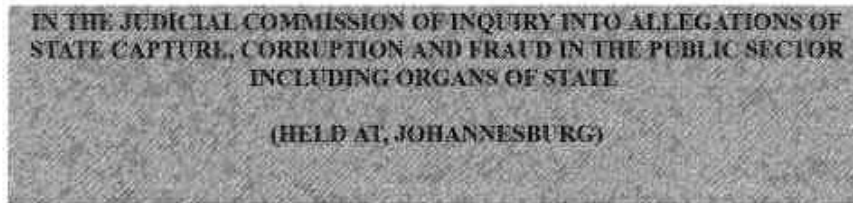
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SECTION “A”



**SUPPLEMENTARY AFFIDAVIT
OF MS. LYNETTE BROWN**

I, the undersigned,

LYNETTE BROWN

declare under oath as follows:

- 1 I am an adult person deposing to this affidavit in supplementation of my main affidavit dated 23rd January 2020. This affidavit has already been filed before the Commission.
- 2 The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are both true and correct.
- 3 My details are already embodied in my main affidavit and, for brevity, I shall not repeat them here.
- 4 After I had deposed to my above-mentioned main affidavit, the Commission's Secretariat, in a letter dated 28 January 2020, addressed to my legal team, attached hereto marked Annexure "LBSA 1", drew my attention to the fact that:
 - 4.1 When giving my oral testimony before the Commission, I will be asked questions relating to the appointment of Dr. Naithani as a director of the SAA Express Board;
 - 4.2 Mr. Zola Tsotsi, the former chairperson of Eskom had testified "... about certain interactions he had with members of the Gupta family, their associates and Ms. Brown. [I] will be given an opportunity to address these issues during my testimony before the Commission ; and
 - 4.3 I am at liberty to depose to an affidavit addressing all these issues, alternatively, I would merely be asked questions on these issues during my appearance before the Commission.
- 5 Before I could finalize this Supplementary Affidavit, I consulted with the Commission's investigation team on 23 June 2020.
- 6 To guide this consultation, the Commission availed to me a list of questions. These questions covered, among others:

- 6.1 the appointment of the 2014 Eskom Board members;
- 6.2 events around the cancellation of the Eskom Board meeting that was scheduled for 26 February 2015;
- 6.3 certain meetings I was not part of, during March 2015, relating to the suspension of certain Eskom executives, during March 2015;
- 6.4 events related to the Eskom Board meeting of 9 March 2015;
- 6.5 whether I know the Gupta brothers.
- 7 We agreed that I shall depose to an affidavit covering the essentials of this consultation.
- 8 After the interview, the Commission supplemented these questions with a further set of questions. These related to the secondment of Mr. Brian Molefe and Mr. Anoj Sing to Eskom. For completeness and ease of reference, I hereto attach a copy of these questions as annexure "LBSA 2"
- 9 I, accordingly, depose to this affidavit in response to the initial invitation from the Commission dated 28 January 2020 and to the questions flowing from the interview held on 23 June 2020.
- 10 For coherency and better flow, I shall not slavishly follow the order or content of the questions posed to me. Instead, I shall deal with related subjects together even if the issues they address arise from different questionnaires from the Commission.

RELEVANT DOCUMENTS FROM THE DEPARTMENT OF PUBLIC ENTERPRISES

- 11 I do not have an offhand recollection of most of the various issues raised by the Commission. I have, however, through my legal team, asked for the relevant documents that would assist to refresh my memory from the Department of Public Enterprises.
- 12 The Department of Public Enterprises has gracefully made some of these documents available to me. Some are still outstanding. Insofar as these documents are relevant to the topics I am requested to deal with, I shall incorporate them into this affidavit as annexures.
- 13 Both annexure "LBSA 1" and annexure "LBSA 2" (questions 2 and 3) ask that I explain the process of the December 2014 appointment of the Eskom Board.
- 14 Question 35 of annexure "LBSA 2" invites me to offer the Commission "[A]ny other information related to the above that may be of assistance in understanding the events that took place in March 2015" This invitation offers a convenient point of departure as I consider what I narrate below to be important for the understanding of events that took place not only in March 2015 but also the preceding events of 2014.

THE APPOINTMENT OF THE 2015 ESKOM BOARD IN DECEMBER 2014 **Introductory Background**

- 15 In my main affidavit, I have indicated that I was appointed as the Minister of Public Enterprises during May 2014.
- 16 At the time, Eskom was in crisis. Its Board was wracked by divisions. It was a subject of negative publicity accentuated by the factions leaking confidential Board information to the media.

- 17 Load shedding did not help, it had taken a turn for the worst. Simply put, the power demand simply exceeded what Eskom could supply.
- 18 Many factors contributed to Eskom's incapacity to meet the country's demand for power. Principal among these were Eskom's maintenance backlog and Eskom's failure or inability to increase its generating capacity caused by, among others, the delay in bringing inline such power stations as Medupi and Kusile.
- 19 Towards the end of 2014, these problems escalated exponentially. The Majuba power station experienced problems with its coal storage silos. One silo had cracked and collapsed. Shortly thereafter another silo cracked and could not be used. This choked Eskom's already struggling power generating capacity, given that Earlier that year (around March 2014) one turbine at the Duvha power station had become non-functional. Some of the hydro plants' (Palmiet and Drakensburg) water reserves were depleted.
- 20 The Gourikwa and Ankerlig gas turbines ran on diesel. This became depleted in early December 2014. Inevitably, power stations had to shut down. Various coal-powered units experienced technical faults and kept on tripping off. This necessitated unscheduled maintenance forcing Eskom to load shed.
- 21 Then the dreaded load-shedding became a daily reality and everybody in government was in panic mode. Other State-owned entities also had crises of their own, some, like SAA, teetering on the brink of collapse. This needed drastic intervention on the part of the government. And so around 11 December 2014 the then President, Mr. Jacob Zuma mandated the then Deputy President Cyril Ramaphosa to preside over the turnaround of Eskom, the South African Airways, and the South African Post Office.
- 22 This marked the creation of a so-called "War Room". Eskom's 2015 Integrated Report captures the purpose of the War Room in the following terms "***The management of the electricity and related challenges requires cooperation between a number of Government departments and Eskom, therefore Cabinet created an Inter-Ministerial War Room...***" For current purposes, It is not necessary to attach a copy of this report.
- 23 Frankly, Eskom was simply not a going concern. In December 2014, the Chief Executive informed me that Eskom did not have money to pay its employees their January 2015 salaries. It was also petitioning Treasury for a R23 billion bailout.
- 24 It is in this context that the events of late 2014 and early 2015 must be understood. As the responsible Minister, I expected and demanded more of the Eskom Board. My July 2014 address to the Eskom Board gives a sense of the gravity of the situation. I attach a copy of this address as annexure "***LBSA 3***". Here are some of the key points for current purposes:

24.1 Eskom was underperforming. Of the 33 key performance indicators it had only achieved 57, 6%;

24.2 load shedding and power outages were at unacceptable levels. In this regard, I say to the Board: "I note, in particular, the unsatisfactory performance in respect of generation plant performance and the social economic footprint, both of which are concerning"

At the last AGM, my predecessor urged the Board to

ensure that efforts to improve generation performance and reduce the level of unplanned outages were intensified. It is concerning, therefore, that even with support from my department, generation performance continues to deteriorate.”

“I am mindful of the price of the daily balancing act of keeping the lights on and maintaining appropriate electricity generation plant health. However, we need to raise our gaze above that horizon and do something extraordinary in this area.”

24.3 “... Stop the decline in generation performance. Think out of the box. Do the extraordinary. The Department and I will walk beside you on this part.”

24.4 “... Eskom has to do better. Customers have reduced consumption. The Shareholder is working hard at devising ways in which it can help. It is now up to the board to ensure that this support is rewarded with visible performance improvement by the Company.”

24.5 “Costs need to be contained, particularly if the company is to achieve its business productivity plan let me say emphatically, I am very concerned about the rate of increase in costs.”

The December 2014 Appointment of the 2015 Eskom Board

25 It is important to explain that I assumed my portfolio in May 2014. I inherited the Eskom Board and its Chairman, Mr Zola Tsotsi. In June 2014, the term of most of those directors came to an end. However, I approved a resolution to extend their terms for five months pending a review. For those who are not reappointed during December 2014, it is not as if they were abruptly uprooted during the early stages of their new three-year terms.

26 I have, on more than one occasion, explained that the appointment of Board members to state-owned entities was done through a process facilitated by the Department of Public Enterprises. I describe this process fully, in the context of the appointment of the Denel Board, in my Rule 3 application to this Commission to give evidence against the testimony of Mr. Kgathatso Thlakudi. For ease of reference, I hereto attach, annexure “LBSA 4”, a copy of this application without annexures.

27 From the relevant portions of annexure “LBSA 4”, it is apparent that as a Minister I got involved at the tail end of the process when a Decision Memorandum bearing recommendations and a shortlist reaches my desk. The December 2014 Eskom board appointments would have followed the same process.

28 So far, I have been unsuccessful in obtaining the 2014 Decision Memorandum and its supporting documents that would have been prepared by the Department of Public Enterprises specifically dealing with the December 2014 Eskom Board

appointments. I would not have deviated from the usual process.

29 Meanwhile, during August 2020, the Commission availed brought to my attention a copy of a forensic report compiled by Fundundzi Forensic Services (Pty) Ltd dated July 2019 titled **“The Department of Public Enterprises – a Final Report – Forensic Investigation into Various Allegations at the DPE – Tender Number NT 022 – 2016 – RFQ 026 – 2017”**.

30 I have grave misgivings about this report and my reference thereto should not be understood as an endorsement thereof. For current purposes, it is not necessary to vent my misgivings.

31 In paragraph 14.8.22 on page 81, this Forensic Report states that **“We further determined that Motsoai issued a memorandum dated 21 October 2014 to Minister Brown recommending the appointment of the Eskom board.”** “Motsoai” refers to Ms Orateng Motsoai who, if I remember well, was an official at the Department of Public Enterprises’ Legal Governance and Risk Unit. The usual practice was that this Memorandum would have been reviewed and commented upon by at least 5 senior officials from various units of the Department of Public Enterprises before landing at my desk. Indeed, paragraph 14.8.25 (on page 82) of the Forensic Report notes that I approved the Memorandum. Unfortunately, this Forensic Report does not include a copy of this Memorandum as an exhibit. For convenience, I attach an extract of the relevant pages from this Forensic Report as annexure **“LBSA 5.”**

32 My decision may have also been influenced by the absence of commonality of purpose and cohesion of the previous board. I have highlighted above also the shortcomings of its performance when measured against the key performance indicators. One must also bear in mind that it is possible that some of the directors may not have wished to continue with their directorship, some would have been ineligible for appointment because there would have served their maximum terms. For instance, Ms. Bejabulile Luthuli and Ms. Yasmin Masithela had already resigned before the appointment of the new board.

33 After applying my mind to the recommendations embodied in the Decision Memorandum processed by the DPE, I would have conveyed the recommendations to the ANC Deployment Committee (then chaired by the current President of the RSA) for approval.

34 As with other SOEs, this Decision Memorandum by Ms Motsoai would have marked the beginning of my involvement in the appointment process.

35 The final step, after approval by the ANC Deployment Committee would be tabling the recommendations before Cabinet for approval.

36 Offhand, I cannot recall the specific rationale for the retention of Mr. Zola Tsotsi and Ms. Chwayita Mabude on the 2015 Eskom Board. It may have been continuity considerations.

37 Once the 2015 Eskom board was in place, the process of dividing itself into Committees began. Annexure **“LBSA 1”** draws my attention to the testimony of Mr. Zola Tsotsi in this regard and invites my response.

38 Mr. Tsotsi’s relevant testimony relates to the composition of various Eskom Board Committees, after the appointment of the 2014 Eskom board. He alleges that I instructed him to implement a list I had sent him that, according to him, coincides with a list that allegedly was given to him by one Salim Essa. I now respond to this allegation.

**MY RESPONSE TO THE TESTIMONY OF MR. ZOLA TSOTSI REGARDING
THE APPOINTMENT OF ESKOM 2014 BOARD COMMITTEES**



My Stance on Mr. Tsotsi's Testimony

39 It is not the first time Mr. Tsotsi makes these allegations against me. He made similar allegations during the Parliamentary Portfolio Committee Enquiry hearings.

40 My response has not changed:

40.1 I reject Mr. Tsotsi's accusations;

40.2 in particular, I reject the accusation that I "was in collusion" with the Guptas or any other person in executing my duties as a Minister;

41 To avoid confusion, let me explain that for Eskom, there are what I can broadly describe as two categories of Board Committees. For convenience, I shall call the first category (comprised of two committees), the "Audit and Risk Committee and the Social Ethics Committee" category. The second category, I shall simply call the "Other Committees" category.

42 The process of appointing members to both categories of Committees is broadly similar.

Ad the Appointment of the Eskom Audit and Risk Committee and the Social Ethics Committee

43 Legally, I was only responsible for the appointment of members of only two Board Committees at Eskom. These are the Audit and Risk Committee and the Social Ethics Committee.

44 Again, my appointment of members to these two committees would have been guided by a process managed by the Department of Public Enterprises. This process would provide recommendations that I could adopt. The Legal and Governance Unit of the Department of Public Enterprises interrogates the proposed compositions and makes recommendations to me. I would either approve the recommendations with or without amendments or I reject them.

45 I must point out that nothing prevents the Eskom Board and its Chairman from giving me suggestions on the proposed composition of members of these two Committees. These suggestions would also be subject to the above-mentioned process. I cannot recall offhand whether this is what happened regarding the 2014 appointment to these two Committees.

46 I now explain the process of appointing the "other" Board Committees.

Ad Appointment of the "Other" Eskom Board Committees

47 These committees were selected/nominated by the Board in collaboration with the Chairman of the Board.

48 The Chairman of the Board would transmit the proposed composition of these Board Committees to the Minister through the Department of Public Enterprises. In this process, if so inclined, he/she may include proposed names for the two other committees that are appointed by the Minister.

49 The DPE would then, through its Legal and Governance Unit, interrogate the composition of these Committees giving preference for, among others, balance and appropriateness of expertise, representativity, etc.



66 Above, I have discussed the country's load-shedding woes during late 2014. These woes spilled over to 2015 and I remember distinctly that we had load shedding even on the day of the opening of Parliament in January that year.

67 I do recall having conversations with the then President, President Zuma about the dire situation of load shedding. He was concerned that the War Room was not receiving accurate information i.e. the executives were feeding the wrong or inaccurate to the war room. He was also distressed by the impact of load shedding on the country and the economy. We were facing a threat of a downgrade because of Eskom's illiquidity problems. In fact, Eskom was not a going concern at all. Already in December 2014, the Chief Executive Officer had indicated that it would not have money to pay its employees in January 2015. The then President had impressed upon me that this situation was Eskom must come to an end.

68 I do not know why this meeting was canceled. I remember that I got to know that it was no longer proceeding. I do not recall specifically having a conversation with the then President, President Zuma about the cancellation of this meeting. It may have happened I simply cannot recall.

69 I cannot imagine that the then Acting Director-General of the DPE, Ms. Matsietsi Mokholo, would misspeak about me having requested her to inform the chairperson, Mr. Zola Tsotsi, that the meeting must be canceled. This may have happened.

70 This meeting was rescheduled for and held on 11 March 2015.
I would not know the process that was followed to reschedule this meeting to 11 March 2015. Eskom is better placed to explain that process.

71 In this meeting, Board members asked me why the meeting was of 26 February 2015 was canceled. I, in turn, relayed the question to the chairman Mr. Zola Tsotsi. He replied that he had sent a Memo to me. I do not recall ever receiving such a Memo.

AD MEETINGS BETWEEN MR. ZOLA TSOTSI, MS DUDU MYENI THE THEN PRESIDENT, NICK LINELL ON ESKOM

72 Questions 10 to 11 of Annexure "LBSA 2" invite comments from me on the meeting (s) allegedly held by Ms. Dudu Myeni, Mr. Nick Linell, and then President, President Zuma in Pretoria and Durban. These meetings, I am informed, were about the suspension of Eskom executives during March 2015.

73 I was not aware of these meetings. I was not invited to these meetings. I did not participate in these meetings. I, therefore, cannot, in response to questions 10 and 11 of annexure "LBSA 2", comment one way or the other thereon.

On Whether I know Mr. Salim Essa

74 I can, however, answer questions 12 and 13 of annexure "LBSA 2". These questions ask about Mr. Essa.

75 I do not know Mr. Salim Essa. I cannot comment on how Mr. Salim Essa had allegedly introduced himself to Ms. Suzanne Daniels around 10 March 2015 and at Melrose Arch. I, certainly, have never had an adviser called Salim Essa.

76 Questions of 14 to 26 of annexure "LBSA 2" interrogate events around Eskom's Special Board Meeting of 9 March 2015, and the Eskom board meeting of 11 March 2015. I share what I know below.

77 I was not aware of this Special Board Meeting. I do not recall being invited. I probably did not attend and cannot comment thereon.

ESKOM'S BOARD MEETING OF 11 MARCH 2015

78 11 March 2015 was a Wednesday. I had attended another frustrating War Room meeting. From there my team, being the then Acting Director-General of the Department of Public Enterprises and other officials, and I dashed to the Eskom Board meeting which was already in progress.

79 I could have been invited to the meeting by the Chairperson Mr. Zola Tsotsi, probably at the behest of the Board, to speak about the thinking behind the envisaged investigation.

80 I had acceded to the invitation because of the gravity of the Eskom situation and the need for some action. Apart from this, my Department needed me to address the Board on the concerns I have discussed above. Also frustrating for the Department was the fact that even the flow of information to the Department itself was unreliable. The minutes reflected this concern

81 It was also important for me to impress upon the Board the urgency of my imperative: Eskom needed to be stable, Eskom needed to work.

82 One of the issues on the agenda related to security. It arose out of the discovery of a bug that had been discovered planted in the Eskom Boardroom. For me, it was a serious concern that a National Key Point site could have its Board's Boardroom bugged and the directorate appears to be indifferent to this breach of security.

83 Another issue was the discussion of the suspension of the executives.

84 I just wanted Eskom to stabilize, to work. What we were getting at the War room was inaccurate, sometimes misleading, and plain unreliable. The way things were going, I think there was a sense of panic within Government circles and myself about Eskom's problems and especially the possibility of a total power blackout if we do not get to understand and fix the root causes of the problems afflicting Eskom, from generation, maintenance, illiquidity, etc.

85 Strictly speaking, this was a Board issue. As I said before, all I wanted was for Eskom to stabilize, to work. Given our unpleasant experiences about the quality of the information that the executives were relaying to the War Room, it was imperative for me to see to it that something gets done. If this meant suspending executives, so be it.

86 This would enable an investigation, what I think I referred to as "a deep dive", into what was plaguing and paralyzing Eskom to unfold and conclude without interference. The investigation would focus on, among others:

86.1 the poor performance of generation plants;

86.2 delays in bringing the new generation plant on-stream;

86.3 the high cost of primary energy; and

86.4 cash flow challenges.

87 Viewed against my distress as explained above, I had no objection to seeing something concrete being done to address some of the issues that caused me and



the War Room distress.

88 I do not know how the Board identified members of the executive to be suspended. I assume they, being closer to operations than myself, were better placed to make that determination. Furthermore, I would imagine they would be guided by the problem areas that needed investigation.

89 During the meeting, I did not get the impression that the Board was against the suspensions.

90 Frankly, I did not skew my attention too much to the granular nitty-gritty of the mechanics of the suspensions. To me, that they were on full pay would eliminate or mitigate against any prejudice. Besides, the Ethics Committee of the directorate or the Legal Department would oversee the legalities.

91 My issue was that they should be an objective process. The investigation itself should be conducted by an independent and credible forensic firm that had had no prior dealings with Eskom.

92 I did not discuss the suspensions of these executives with anyone outside Eskom before that decision was taken.

93 I was not involved in the process of selecting who would be acting in the place of the suspended executives. This was a Board activity. I could therefore not discuss this issue with anyone as I was unaware who would replace these suspended executives.

94 It is convenient at this point to answer questions 32 and 33 of annexure "LBSA 2" as they relate to the fate of two of the four suspended executives.

As to Why I Did Not Keep Matona as the CEO for Eskom And Tsholofelo Molefe as the FD

95 I do not understand question 32. It seems to assume that this option was open to me. Mr. Tshediso Matona resigned during May 2015. Ms. Tsholofelo Molefe resigned around June 2015.

On the Denton's Report

96 Let me clarify this. The investigation that the Eskom Board authorised on 11 March 2015 was never about a witchhunt against any particular executive. The Denton's report is at pains to make this clear in paragraph 4, titled "Purpose of the Investigation". Of relevance, are the following paragraphs:

96.1 4.1 the institution of the Investigation took place shortly after the publicised suspension of four of Eskom's executives...."

...

96.2 4.4 the timing of the Investigation led to the speculation in certain circles that it was the conduct of the Suspended Executives that was being investigated

96.3 4.5 in our meetings with the Board and Audit & Risk Committee, it was confirmed that the investigation was not directed at the Suspended Executives and that the

Board was dealing with the suspended executives in accordance with a separate methodology.”

97 Paragraph 4.9 puts the matter beyond doubt “The TOR do not require investigation of misconduct of any specific individuals. Accordingly, no recommendations are made in respect of action to be taken to deal with misconduct by any specific individuals.” I attach relevant extracts of the Denton’s report as annexure “LBSA 7 “

98 So, the language of “wrongdoing against Matona and Tsholofelo” is plain inapposite in this context.

99 In any event, this report is dated 2 July 2015. By then, Mr. Tshediso Matona and Ms. Tsholofelo Molefe had resigned. I cannot recall whether the Denton Report eventually reached my desk.

MY EXCHANGE WITH ZOLA TSOTSI ON HIS INTERFERENCE WITH MANAGEMENT MATTERS

100 Question 6 of Annexure “SA 2” reproduces and extract attributed to Mr. Zola Tsotsi about a conversation I allegedly had with him. For ease of reference, I restate the passage:

“A day or two before the SONA of February 2015, I was summoned by Minister Brown to her office. The substance of our conversation was as follows: “Chairman, I have received complaints from management and Board members that you are interfering in management. Please refrain from doing so, because if you don’t, I shall have to find someone else to do your job!” My response was “Most Board members hardly know what I look like, let alone not having worked with me yet. As for management, if scrutinizing their behavior and decisions and calling them to account constitutes interference with management, then I will happily continue doing so. If you had acceded to my request that we 2 have regular briefing sessions, even this meeting would not have been necessary. The Minister’s verbatim response was “Chairman, you go and do what you have to do, and I will go and do what I need to do. There is no reason for you and I to talk about anything.” That is how the meeting ended”

101 The only related conversation I remember having with Mr. Zola Tsotsi related to his interference with management or operational issues (as opposed to directorate issues). In his oral testimony before the Commission, he confirms this. Referring to me, he says “... whereupon the Minister had – well in this instance she was not happy about the fact that I was said to be interfering with management...”

102 There have been complaints about Mr. Zola Tsotsi both from the executives and the directorate. What comes to mind, in particular, was that one of the executives came to see me in person, complaining about Mr. Tsotsi’s interference with operational issues, producing a letter allegedly penned by Mr. Tsotsi, to a Japanese company about buying oil or some other fuel. I decided I had to intervene.

103 This is why I invited Mr. Tsotsi, reprimanded him, and directed him to refrain from interfering with management. As to the verbatim exchange, I cannot recall. I do recall that the meeting was tense, the exchange could have been intemperate.

104 I must also say that I did not have the best of relationships with Mr. Tsotsi, we did not really get on well with each other. I let known that I abhorred his excesses. In particular, the fact that as an Executive Chairman who probably would have meetings four times year, a staff complement of eleven and a full-time driver

were unjustified excesses.

- 105 The relationship became even more rancid after he had resigned. In public platforms, especially, in the media, he would tarnish my name. In the beginning, I would respond as the media houses and radio stations would ask for comments from me. In the end, it became an exhausting and emotionally draining exercise, so I let it go and stopped commenting in the media.

REGARDING MR. ZOLA TSOTSI'S PARTING WAYS WITH ESKOM AT THE END MARCH 2015

- 106 I inherited Mr. Tsotsi as part of the previous Board that had been appointed by my predecessor. Above, I have indicated that there were complaints about Mr. Zola Tsotsi interfering with the executive, acting like he was an Executive Chairman, as it were. I think the Board also refused to acquiesce with his appointment of Mr. Nick Linell to do work for the Board without its concurrence. It came to a point where the Board initiated disciplinary proceedings against him.
- 107 If I remember correctly, the Chair or a member of the People and Governance Subcommittee of the Board, briefed me on the Board's resolution to initiate disciplinary proceedings against Mr. Zola Tsotsi.
- 108 This was a board issue and I did not interfere. I did not have any private discussions with Mr. Tsotsi about this.
- 109 I do know that eventually Mr. Tsotsi and the Board reached some understanding and settled the matter. As I understood the arrangement, he would resign so that his name does not get tarnished as a director and so can continue serving on other boards. Part of the settlement was that he should be paid a 3 month "golden handshake". I was approached to approve this arrangement and I declined: he was a non-executive director and I could not understand why he should be paid for meetings he did not attend. To my knowledge, he parted ways with Eskom without this "golden handshake."
- 110 In the normal course, a medial statement would have been issued by Eskom or the DPE or even both.
- 111 Questions 27 and 28 of annexure "LBSA 2" ask me about Mr. Ajay Gupta and Mr. Tony Gupta.

ABOUT TONY AND AJAY GUPTA

- 112 I do not know Mr. Tony Gupta.
- 113 I do know Mr. Ajay Gupta. I met him when I was MEC for Finance in the Western Cape around when the then Premier led a delegation to India. I cannot recall when did we last interact.
- 114 I do not have and never had any business or other dealings with Mr. Ajay Gupta, in particular, when executing my duties in any capacity,
- 115 Questions 29, 30, 31, and 34 of annexure "LBSA 2" deal with the secondment of Mr. Brian Molefe and Mr. Anoj Singh to Eskom. I answer these questions next.

RE: SECONDMENT OF MR. BRIAN MOLEFE AND ANOJ SINGH FROM TRANSNET TO THE ESKOM

The Decision to Second Brian Molefe and Anoj Singh to The Eskom

- 116 The Transnet and Eskom Boards negotiated discretely the transfer of Mr. Brian



Molefe and Mr. Anoj Singh to Eskom. My role as the Shareholder Representative was to approve the negotiated outcomes. If I remember correctly, from 2016, Eskom's MOI required me to be noted as a party to the appointment of a CEO. I also seem to recall that there was a query about the legality of the transfers and legal opinion was procured which legal opinion was part of the motivation to Cabinet to approve their appointments

117 I have described the dire situation in which Eskom found itself. I have also touched upon the suspension of four executives and the institution of an independent forensic investigation. Mr. Brian Molefe came highly regarded as an astute technocrat with a good understanding of the environment in which SOEs operate. I think Mr. Singh had also built up a reputation at Transnet. The thinking was that these two gentlemen would inspire confidence, post the morale of the workforce, and put Eskom on the trajectory it needed to be on.

118 Annexure "LBSA 1" asks me to comment on the appointment of Dr. Naithani to the 2015 SAA Express Board.

**AD THE APPOINTMENT OF DR NAITHANI TO THE 2015
SAA EXPRESS BOARD**

119 Above and also in my response to the evidence Mr. Kgathatso Thlakudi, I have explained that the appointment of directors to SOEs during my term was largely through a process facilitated by the Department of Public Enterprises. Board appointments to the SA Express, and in particular the appointment of Dr. Rajesh Naithani, were no exception. In this regard, I hereto attach as annexure "LBSA 8" a copy of a Decision Memorandum dated 11 May 2015, prepared by the Department of Public Enterprises. It was addressed to me in my capacity as the then Minister of Public Enterprises.

120 Of relevance, for current purposes, are paragraphs 1 and 2 thereof. Paragraph 1 gives the overall purpose of this Decision Memorandum. Paragraph 2 deals with the appointment of Non-Executive Directors to the SA Express Board. Paragraph 2.1.4, in particular, recommends that I appoint five non-Executive Directors. Dr. Rajesh Naithani was one of them. The Memorandum, as per practice, also contained the CVs of the recommended appointees. I do not consider it necessary to append these CVs to this affidavit. However, should the Commission need these documents, I will avail them.

121 As I have explained above, I became engaged at the tail end of the appointment process. The Department of Public Enterprises will have executed the preceding process of sifting nominations, checking and vetting these nominees, culminating in a recommendation to me, such as evidenced by the Decision Memorandum.

122 Above, I have indicated the role played by the ANC Deployment Committee and final endorsement by Cabinet.

123 Outside of this process, I simply have no other explanation to offer on the appointment of Dr. Rajesh Naithani to the SA Express Board or indeed any other director to the board of any State-Owned Entity during my term.

124 This is all I wish to say on these subject matters.


DEPONENT

I certify that the deponent acknowledged that she knew and understood the contents of the above declaration that I duly administered the oath as prescribed by Regulation No. R 1258 of the 21st July 1972, and that thereafter the deponent in my presence signed the

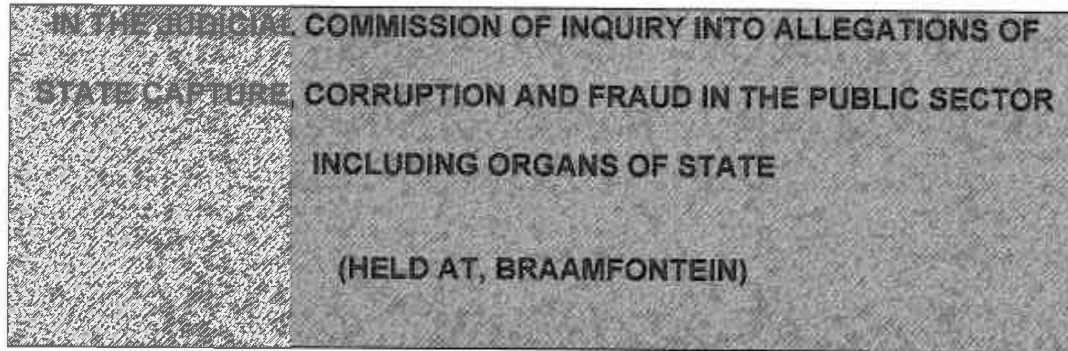
declaration at Stellenbosch on this the 19/08/2020.

WAT
COMMISSIONER OF OATHS

Full Names: W F J M T S C
Designation: CAPI
Business address:

Page 2 of 2





**THE SECOND
SUPPLEMENTARY AFFIDAVIT
OF MS. LYNETTE BROWN
COMMENTING ON THE FUNDUDZI
FORENSIC REPORT
(SEPTEMBER 2020)**

1. I, the undersigned,

LYNETTE BROWN

declare under oath as follows:

2. I am an adult person deposing to this affidavit in further supplementation of my main Affidavit dated 23 January 2020. This affidavit and my Supplementary Affidavit dated 17 August 2020 have already been filed before the Commission.
3. Unless the context indicates otherwise, the facts contained in this Affidavit, fall within my knowledge and are both true and correct.

4. I have deposed to my Main Affidavit and, at the request of the Commission, deposed to a Supplementary Affidavit.
5. My details are already embodied in my Main Affidavit and, for brevity, I shall not repeat them here.
6. During August 2020, the Commission alerted me to the existence a Forensic Report compiled by Fundudzi Forensic Services (Pty) Ltd, dated July 2019, titled **"Department of Public Enterprises – Final Report– Forensic Investigation into Various Allegations at DPE – Tender Number – NT 022 – 2016 - RFQ 026/2017."**
7. The Commission also gracefully provided me with a copy of this Forensic Report. Based on this report, the Commission consulted with me on 13 August 2020. During this consultation, I was asked to respond to certain portions of this Forensic Report by way of an affidavit. I, therefore, depose this affidavit in compliance with this request.
8. Here are the topics the Commission requested me to comment on.
 - 8.1. **The Removal of Dr. Naithani Rajesh from the SAA Board During 2014 and his Appointment to the SAA Express Board During May 2015;**
 - 8.2. **The Appointment of Mr. Giovanni Leonardi to the Eskom Board during 2015;**

- 8.3. The Appointment of Mr. Phetolo Ramosebudi to the SA Express Board during May 2015;
 - 8.4. The Appointment of the Denel Board;
 - 8.5. Ms. Kim Davids' Role in the Appointment of Directors to State-Owned Entities;
 - 8.6. The Appointment of Mr. Daniel Lungisani Mantsha as the Chairman of Denel;
 - 8.7. The Eskom Electricity War Room Assessment;
 - 8.8. The Eskom Board and Board Subcommittees;
 - 8.9. The Appointment of Mr. Treveyn Haasbroek to the Alexkor Board;
 - 8.10. The Appointment of Dr. Tufversson to the University of the Western Cape;
 - 8.11. The Appointment of Nkonki Registered Auditors, Accountants and Advisors;
 - 8.12. The Appointment of Mr. Richard Seleke as the Director-General of The Department of Public Enterprises; and
 - 8.13. Mr. Richard Seleke's Competency Assessment.
9. I shall follow the sequence outlined in paragraph 8 above.

impression that a list was merely thrust upon Ms. Botha, whereas there is a whole process that culminated in those emails.

22. Two other appointments on which the Commission requested me to comment, also flow from this Decision Memorandum dated 11 May 2015 (annexure "LB 2ND SA 2"). It is therefore convenient to comment on these appointments here. These are the appointments of Mr. Giovanni Leonardi and Mr. Phetolo Ramosebudi to the Eskom and SAA Express Boards, respectively.

THE APPOINTMENT OF MR. GIOVANNI LEONARDI TO THE ESKOM BOARD DURING 2015

[Fundundzi – Paragraph 14.9 – Page 82 to 85]

23. The same Decision Memorandum dated 11 May 2015 (annexure "LB 2ND SA 2") that recommended the appointment of Dr. Naithani Rajesh, also recommended the appointment of Mr. Giovanni Leonardi. I seem to recall that Mr. Giovanni Leonardi had a qualification in electrical engineering and that could have played a role in my decision. Besides this, I have nothing to add.
24. For the same reasons I mentioned above, I reject Fundundzi's conclusion in paragraph 14.9.19 on page 84, to wit, "The communication between Davids and infoportal1@zoho.com is a clear indication that she was communicating on behalf of Minister Brown. As indicated above, Davids could not have acted or communicated with infoportal1@zoho.com without the knowledge of Minister Brown."

25. Again, Fundudzi's ignorance of the Decision Memorandum of May of 11 May 2015 betrays a lack of both objectivity and an open mind.

THE APPOINTMENT OF MR. PHETOLO RAMOSEBUDI TO THE SA EXPRESS BOARD DURING MAY 2015.

[Fundudzi – Paragraph 14.10 – Page 86 to 88]

26. I can only refer to the Decision Memorandum of 11 May 2015 and point out, again, that Fundudzi fails to engage with this Memorandum.
27. During the consultation with the Commission, I was also requested to comment on the appointment of the Denel Board during 2015.

THE APPOINTMENT OF THE DENEL BOARD DURING 2015

[Paragraph 14.6.12 14.6.45 of the Fundudzi Report]

28. In my application to give evidence on the testimony of Mr. Kgathatso Thlakudi, I have described the appointment of the 2015 Denel Board. I have nothing to add in terms of the process.
29. I am puzzled by the insinuation in paragraph 14.6.12 on page 61 of the Fundudzi Report. It reads **"In her response, Minister Brown failed to deal with the fact that the 10 CVs were not sent to the Minister's office as they were instead sent to Davids' personal email address."** Incidentally, my response also

48. For clarity, I separated the two issues, and I commence with the issue of the appointment of the 2014 Eskom Board.

The Appointment of the 2014 Eskom Board.

49. In my Supplementary Affidavit¹, I explained the process of the appointment of boards generally and in particular the December 2014 appointment of the Eskom Board. I can only request that the Commission procure a copy of the Decision Memorandum I referred to in my Supplementary Affidavit. For convenience, may I, again, explain that Fundudzi makes only a passing reference this Decision Memorandum in paragraph 14.8.22 on page 81²: “We further determined that Motsoai issued a memorandum dated 21 October 2014 to Minister Brown recommending the appointment of the Eskom board.”

The Appointment of the Eskom Board Committees during March/April 2015

Introduction

50. Again, Fundudzi confuses the issues. The Eskom Board was appointed during December 2014. Shortly thereafter, its Board Committees would have been formed. I shall refer to this as “**The initial 2015 Eskom Board Committee**”

¹ Paragraphs 25 to 38

² Of the Fundudzi Report

Appointments.” This fact seems to have been lost to Fundudzi as the report makes no mention of this.

51. What the Fundundzi report seems to be grappling with relates to the rearrangement of **the initial 2015 Eskom Board Committee Appointments**. This was necessitated by certain developments during March/April 2015. These include:

51.1. the gaps left by the four suspended executives during March 2015;

51.2. the subsequent resignation of Mr. Zola Tsotsi and the consequent stepping in of Dr. Ben Ngubane to assist as an Acting Chairperson on 31 March 2015;

51.3. the gap left by a board member who had resigned (Mr. Baloyi); and

51.4. the appointment of Mr. Zethembe Khoza as an Acting Chief Executive Officer and very shortly thereafter, the appointment of Mr. Brian Molefe as the acting Chief Executive Officer of Eskom

52. In my Supplementary Affidavit³, when responding to the testimony of Mr. Zola Tsotsi on the appointment of Board Committees to Eskom, I explained that

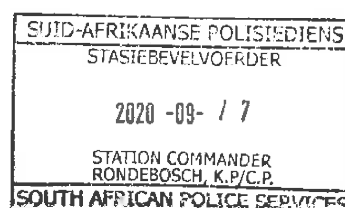
³ Paragraphs 38 to 55

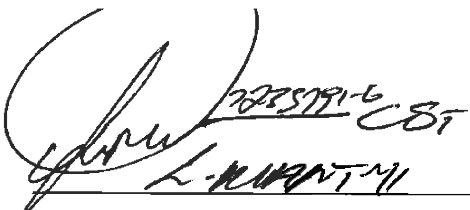
- 106.1. does not seem to comprehend that the assessment was not about “pass” or “fail.” Even if it was about that, it is not fair to judge someone who, out of five measures, did not achieve two to have “dismally” failed;
- 106.2. is not even aware of the existence of the Department of Public Service’ Directive that informs the implementation of the assessment on which it (Fundudzi) grounds its conclusions; and
- 106.3. seems to be consistently overeager to come certain conclusions without considering and engaging available evidence.
107. Finally, I have been asked to comment on the roles of different people/units in the appointment of directors to state-owned entities. I do so below, without elaboration.
108. Flowing from the above, it is patent that:
- 108.1. the DPE’s legal and Governance unit plays a crucial role in vetting and assessing the candidates and making recommendations to the political head; and
- 108.2. the political head, as Shareholders Representative plays an important role as the person empowered by law to make these appointments;

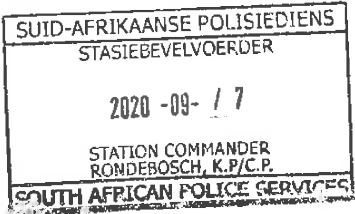
- 108.3. the Cabinet, also at as the last overseer of the process. Its Secretary also plays an important administrative liaison role in these appointments.
109. In my Supplementary Affidavit, I have explained that before the names of proposed Directors were relayed to Cabinet for approval, the ANC Deployment Committee had to give its endorsement first.
110. In conclusion, lest I be misunderstood, it will be observed that in all my affidavits I refer to a DPE process in the appointment of Directors to State-Owned Entities. I am not saying that this was the ultimate process, or that it was the best in the world or that it was impeccably flawless. Neither am I saying, perhaps with hindsight, that it was assiduously followed all the time, in terms of its minutiae at all levels. I am simply saying that I did not act arbitrarily, neither was I influenced by external actors in the execution of my duties.
111. I believe I have addressed all the issues the Commission asked me to address.


DEPONENT

I certify that the deponent acknowledged that she knew and understood the contents of the above declaration that I duly administered the oath as prescribed by Regulation No. R 1258 of the 21st July 1972, and that thereafter the deponent in my presence signed the declaration at Rondebosch on this the 2020-09-17.




COMMISSIONER OF OATHS



Full Names: *L. MANTINI*
Designation: *CONSTABLE*
Business address: *Church street*

AFFIDAVIT**DEPOSED FOR THE COMMISSION OF ENQUIRY INTO STATE CAPTURE ("THE COMMISSION")**

I the undersigned

MATSIETSI MOKHOLO

do hereby make oath and state that:

1. I am an adult female currently employed as the Deputy Director General ("DDG") in The Presidency and responsible for Corporate Management. My contact details are:
 - 1.1 Office: 012 308 4531
 - 1.2 Cell: 082 997 7755
 - 1.3 Email: Matsietsi@icloud.com
2. The facts contained herein, are within my personal knowledge and are true and correct.
3. I am a qualified lawyer and admitted attorney of the High Court. I joined the Department of Public Enterprises ("DPE") in March 2007 as Chief Director: Legal Counsel and Governance. In my capacity as such, I reported to the Deputy Director General ("DDG") Legal, who subsequently resigned and I started acting in her position, as the DDG from 12 January 2011 until the position was advertised for which I successfully applied and was appointed effective from **31 May 2011**. I remained in that position until my secondment

JC M.B. JR

seems there may have certain lines of good governance which were transgressed, in that Eskom had invited the Minister to a Board meeting in which the Board was dealing with operational issues, namely the resolution to commission an investigation into the affairs of Eskom and to suspend and/or ask executives to "step aside" while the inquiry was on going.

MOLEFE AND ANOJ'S MOVE FROM TRANSNET TO ESKOM

64. I was further requested to explain the DPE's involvement in the secondment of Brian Molefe and Anoj Singh from Transnet to Eskom. It was somewhere between March 2015 and April 2015 that I was again requested to accompany Minister Brown to Eskom for a meeting.
65. The meeting took place at the Chairman's office at Eskom and included the Acting Chairperson of Eskom Board, Dr Ben Ngubane, the Acting CEO Zethembe Khoza, and the Chairperson of Transnet Ms Linda Mabaso. I was also present together with Minister Brown. It must be noted that no minutes were taken during this meeting it was just a verbal discussion pertaining to the secondment of Mr Brian Molefe from Transnet to Eskom, which topic of discussion was introduced by the Acting Chairperson of the Eskom Board, Dr Ngubane.
66. Mr Molefe was touted by the Eskom Chairperson as an ideal candidate for the Acting CEO position albeit on a temporary basis whilst the Board will be embarking on a selection and recruitment process for a permanent CEO. The proposal was supported by the Transnet Chairperson. Both Chairpersons agreed that Mr Molefe was a perfect technocrat for the position, given his stature and gravitas in the marketplace, his relationship with the banking sector, his past experience which included National Treasury and the Public Investment Corporation. His reputation at Transnet was also an added advantage making him the ideal candidate as the CEO of Eskom.
67. The issue of who would replace Mr Molefe at Transnet was also raised, as

M.A.
JR

this was a pertinent point and it was also argued that Transnet is not in a similar position as Eskom, in that Transnet had many very competent divisional CEO's like Mr Siyabonga Gama; Mr Karl Socikwa, Mr Richard Vallihu and Mr Tau Morwe, who could take over the position of Acting Group CEO at Transnet.

68. Furthermore, the secondment of SOC Executives does not require Cabinet approval, and it is purely the Minister's prerogative and therefore in this case it was always within Minister Brown's purview to make the decision to second Mr Molefe.
69. This was done and when Mr Molefe was appointed as CEO of Eskom, he motivated that Mr Anoj Singh be seconded to Eskom given the precarious financial state of affairs at Eskom.
70. In closing, I would like to add that I was also involved in analysing the Eskom Board submission to Minister Brown requesting her approval for the package of Mr Molefe's R30 million pension pay-out. To this extent, I made a statement to the Hawks which canvassed all the relevant issues and for the sake of brevity I attach the statement as Annexure "MM6".

1. Q. Do you know and understand the contents of this statement?

yes

2. Q. Do you have any objections in taking the prescribed oath?

no

3. Q. Do you consider the prescribed oath as binding in your conscience?

yes

I believe the statement gives a fair account of the event that happened.

M.A.


M.A. [Signature]
Signature of Deponent

25/09/2020
Date

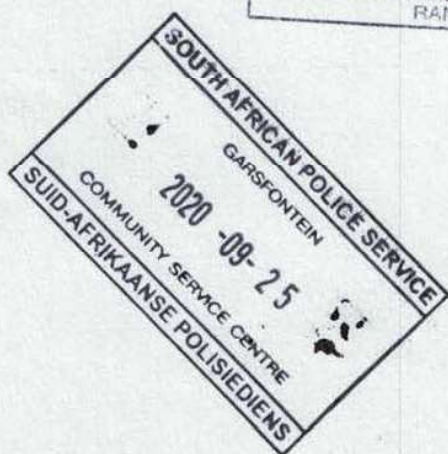
I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on the 25 day of September 2019, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Elk aanliedende dat bostaende verklaaring deur my
afgelees is en dat verklaarder erken dat
hy/zy verstaan is met die inhoud van hierdie ver-
klaring en dat verklaarder se verklaaring is
my bestaande kennis en verklarings is in my teen-
woordigheid daartoe aangelees.

I certify that the above statement was
read by me and that the deponent has acknow-
ledged that he/she knows and understands the
contents of this statement. The statement was
sworn to/affirmed before me and deponent's
signature/mark/thumbprint was placed thereon
in my presence.

op 2020/09/25 om 13:10
aan [Signature]
(HANDTEKENING) COMMISSARIS VAN EDE
(SIGNATURE) COMMISSIONER OF OATHS
Joel Ndlovu
VOLLE VOORNAME EN VAN IN DRUKSKRIF
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS
274 Johny Clauser
BESIGHEIDSAADRES (STRAATADRES)
BUSINESS ADDRESS (STREET ADDRESS)
Garsfontein
RANG/RANK
SA POLISIEDIENS
SA POLICE SERVICE



m.o.j.

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

20 OCTOBER 2020

DAY 287



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Recording & Transcriptions

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CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, ***in as far as it is audible***, the foregoing is a **VERBATIM** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

20 OCTOBER 2020

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



Gauteng Transcribers
Recording & Transcriptions

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CHAIRPERSON: Yes okay alright.

ADV SEGEELS-NCUBE: Now if we can just go to your statement because this is a very important meeting and I just want you to set out the full contents of what transpired. At paragraph 63 you say that – which is on page 46 of your statement. You say that – and this is now Mr Essa.

“He insisted that we should include his company and said that they have a lot of power.”

10 When did he say this during the meeting?

MR BESTER: It would have been at the time when I told him he does not know what he is talking about and he was now trying to tell me that I do not know what I am talking about.

ADV SEGEELS-NCUBE: And did he say who this “they” was that he was referring to?

MR BESTER: He did not go into the detail. But he said to me I must not worry about the detail or about budgets. I recall for instance he told me that they had already decided who is going to be the next CEO of Eskom. And I will clearly
20 see it when it happens that – what the power is that they have and how they make decisions if I do not believe him.

ADV SEGEELS-NCUBE: And who did he say that person would be?

MR BESTER: He said it is going to – they decided Mr Brian Molefe will be the CEO of Eskom.

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ADV SEGEELS-NCUBE: And this was all during that meeting?

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: Okay now this ...

CHAIRPERSON: I am sorry.

ADV SEGEELS-NCUBE: Sorry Chair.

CHAIRPERSON: We – we – this would have been after April 2014 you said? Did you say this meeting would have taken place after April 2014? Mr Bester.

10 **MR BESTER:** That is correct, yes.

CHAIRPERSON: Was Mr Brian Molefe not already Group CEO of Transnet at that time?

ADV SEGEELS-NCUBE: He said Eskom Chair.

CHAIRPERSON: Hm.

ADV SEGEELS-NCUBE: He said Eskom. That Mr Brian...

CHAIRPERSON: Oh Eskom.

MR BESTER: Eskom.

CHAIRPERSON: Oh he said they already knew who was going to be...

20 **MR BESTER:** Yes so at that time if I can recall Mr Brian Molefe was the CEO of Transnet.

CHAIRPERSON: At the time of the meeting?

MR BESTER: At the time of the meeting.

CHAIRPERSON: Ja but what was the remark that Mr Salim Essa said about Group CEO or something?

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MR BESTER: He was convincing me that I do not know what I am talking about and he was trying to indicate the power that they have. If I can recall at the time I could not recall the situation at Eskom. But said to me, “you will see we have already decided that Mr Brian Molefe will be the next CEO of Eskom and when it gets announced you will see the power that we have.”

CHAIRPERSON: Yes. Okay. Okay. Yes thank you.

ADV SEGEELS-NCUBE: Thank you Chair. Now the R80
10 million that he initially spoke about was that part of the SD component or would it be over and above the SD component according to your understanding?

MR BESTER: Well so his indicated was that we need to include the R80 million as part of the SD but what I – when I ask him what he is going to do for the R80 million

CHAIRPERSON: I am sorry. I am sorry.

ADV SEGEELS-NCUBE: My apologies Chair.

CHAIRPERSON: Well I have been sitting here listening to evidence from different work streams so I am just thinking
20 about this evidence that you are giving.

ADV SEGEELS-NCUBE: No problem Chair.

CHAIRPERSON: Because Mr Brian Molefe ended up being seconded to Eskom was it 2015 – 2014? Well I was hearing this evidence two weeks ago and so on. So I am just wondering Mr Essa knows sometime while Mr Brian Molefe is

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at Transnet that Mr Brian Molefe is going to end up being CEO of Eskom and he is mentioning this to you kind of in passing and just to show you that he and whoever he was talking about had a lot of power.

MR BESTER: That is correct. That is correct.

CHAIRPERSON: Had a lot of power. And we all know that ultimately Mr Molefe did end up being Group CEO of Eskom.

MR BESTER: That is correct.

CHAIRPERSON: Yes.

10 **MR BESTER**: He also mentioned to me if I can say?

CHAIRPERSON: Yes.

MR BESTER: At the meeting that with the power that they have they can do anything.

CHAIRPERSON: Yes.

MR BESTER: Because I told him that we are going to tender for this project. It is a competitive bidding process so you know each and every cent counts. And he said to me, no it is not the case. If I – or Hatch at that stage include him in our submission they can change all the prices, they will
20 make sure we get the job, they will grow the budgets and they are in control.

CHAIRPERSON: That is what he said?

MR BESTER: That is correct.

CHAIRPERSON: Yes. Yes continue.

ADV SEGEELS-NCUBE: Thank you Chair. On the R80

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

STATEMENT

I, the undersigned,

HENK BESTER

do hereby state that:

1. I am an adult male civil engineer and a citizen of the Republic of South Africa.
2. The facts contained in this statement are both true and correct, and within my personal knowledge, unless the context provides otherwise.
3. As is evident from the contents of this statement, the events that I deal with span several years and occurred many years ago. There may be aspects of the statement where I don't recall the exact dates and/or verbatim what was said at the time. In those circumstances, I give approximate dates and set out events as I remember them to the best of my ability.
4. I was requested by the Commission to attend an interview to discuss my involvement in the Manganese Expansion Project (MEP). This statement was prepared pursuant to a request by the Commission to provide a statement in

54. Prior to Transnet advertising the tenders for Phase 2, I contacted Reddy to discuss his knowledge of Transnet employees and thought it possible to arrange a meeting with Singh to discuss the outstanding invoices due to Hatch in the Transnet New Multi Product Pipeline (NMPP). Hatch had assisted Transnet on a section of the NMPP. We were having great difficulty in receiving payment of our invoices from Transnet for work done, in particular Transnet's habitual failure to pay invoices in accordance with the payment terms. If we were lucky payment would be made within 90 days but not less than that. At one point we had an amount of R20 million outstanding for many months. This created huge problems for obvious reasons especially in respect of cashflow and payment of salaries.
55. During the prior discussions with Reddy (during Phase 1) I had mentioned that we were having great difficulty with receiving payment timeously from Transnet on NMPP. Reddy asked why we did not just approach Singh who was the GCFO. Hatch had attempted to do so but we were not successful in securing a meeting with Singh to discuss these issues. I thought that perhaps Reddy would have better luck in securing a meeting for us. At the time Mr. Craig Sumption ("Sumption"), CFO of the infrastructure division at Hatch (now the CFO of Hatch Africa), had sent numerous emails to Singh requesting a meeting to discuss the outstanding invoices, without success. Reddy told me that it was possible for him to arrange the meeting as he had a very close relationship with Singh and that he will arrange the meeting.
56. Pursuant to my request to Reddy he called me and told me that Singh would meet with us but outside Transnet offices, at a restaurant in Melrose Arch. The

meeting was confirmed and Mr. Craig Simmer ("Simmer") from Hatch's infrastructure division and Sumption accompanied me to the meeting.

57. Upon my arrival at Melrose Arch, as I walked towards the restaurant, I was met by a gentleman who introduced himself as Mr. Salim Essa ("Essa"). He said that he was there to meet with us as part of the discussion with Singh and needed to see if the restaurant *"is clean"*. I asked him where Singh was and he said that he will call him when he (Essa) is ready. I asked Essa whether he, himself works for Transnet and he responded that he *"is doing a lot of things"* or something to the effect of *"I have a lot of businesses"*. He clearly had no intention of answering my question in detail. I was surprised at the time that as soon as Essa called Singh, Singh arrived a few minutes later.
58. The meeting centered around outstanding payments from Transnet to Hatch for work performed on the NMPP and what Hatch could do better to assist in expediting payments. According to the payment terms, Hatch was to be paid within 45 days of submitting invoices to Transnet but at the time there were invoices that were outstanding for more than 100 days. The meeting was very superficial in that Singh did not offer any insight into the reasons for the late payments and/or systems or communication that could potentially improve the payments. In hindsight, Singh was probably disappointed with the meeting. I had the distinct impression that he (Singh) had hoped that discussions were going to center around Hatch working with Reddy and his group rather than to resolve Hatch's issues of outstanding payments. Throughout the meeting I also got the impression that Essa was the boss and Singh was the subordinate.



59. Soon after this meeting, I received a call from Reddy informing me that Essa requested a follow up meeting with me in Melrose Arch. I informed Grey and Sumption of the call and a meeting date was set. Unfortunately, I cannot remember the date of the meeting. The meeting was held at JB's Corner in Melrose Arch and in attendance was Essa, Reddy and me.
60. At this stage, Hatch had already prepared its submission for Phase 2 as part of a joint venture called H2N Siyathuta JV, which consisted of Hatch, Aurecon, Mott McDonald and Siyathuta ("the H2N JV"). The H2N JV submitted two bids in respect of Phase 2; one for Rail and one for Port NMET.
61. It was a bizarre meeting. It appeared to me that Essa was a regular in the restaurant as everybody seemed to recognise him. He (Essa) carried several cellphones with him and during the meeting he received numerous calls, which interrupted our conversation as he continuously walked out to take calls. I became very annoyed with his behaviour.
62. Essa told me that Hatch must include his company (whose name he did not mention at the time) in our Phase 2 tender submission. I told him that we had already finalised our group including our SD partners) and that there was no way of now including his company in the submission.
63. He insisted that we should include his company and said that "*they*" have a lot of power. Having regard to my previous encounters, I understood "*they*" to be Essa and Singh but it could also have included other individuals within and outside Transnet. Essa mentioned that they (Essa and Singh) will increase the contract value after award and that we should include about R80 million (I cannot

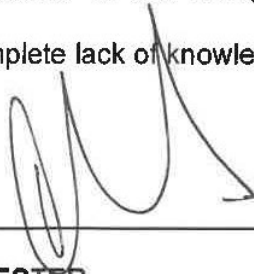
remember the exact value but it was an enormous figure) as an initial value. He further indicated that the R80 million will increase to something ridiculous in the order of R350 million or beyond. He further said that the contract value (for Phase 2) will eventually increase to over R2 billion. If I remember correctly, at the time, our submission for Rail was valued at approximately R800 million.

64. I was shocked and told him that what he was saying was ridiculous. I asked him what will he do for that money? He responded that I should not worry about this and that we could sort this out later. I explained to him that I know the budget of the project and the cash flow constraints of TFR, and that the figures he mentioned were ridiculous and that he does not know what he was talking about. But he (Essa) just laughed it off.
65. Essa further indicated that he can provide me with the submitted tender documentation from all the other bidders. He told me that "they" have already decided that the new boss of Eskom will be Molefe and that an announcement will be made in the newspapers soon. I cannot say who he was referring to when he said "they" because at the time I did not know about the Guptas. In hindsight, he must have meant the Guptas. I need to highlight that at this stage, I was not aware of who Essa was. Sumption, Grey and I only learnt who Essa was after the announcement of Molefe's appointment to Eskom was made public and the news regarding Essa and the Gupta's became public.
66. The meeting concluded with me once again telling Essa that there was no way that Hatch could include him in its submission but he nevertheless indicated he

will be in contact. I immediately went back to the Hatch offices and informed Grey and Sumption about this meeting and the nature and tone of the discussion.

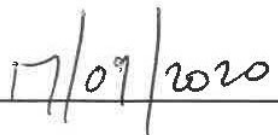
67. Reddy called me some time after this meeting and asked for an answer to Essa's proposal. I told him under no circumstances will Hatch include Essa in its bid. At the time Hatch did not know who Essa was outside of the aforementioned two meetings.
68. As previously stated, our bid for the Rail project was approximately R800 million. The bid that came second was more than R150 million more expensive than the H2N JV's bid. The H2N JV's bid for the Port project was approximately R500 million. Notwithstanding that the H2N JV's bid was the cheapest, we were informed by Transnet during the negotiation phase that they (Transnet – Singh in particular) believed that it was a risk to award both contracts to a single consultant. However, we pointed out to Transnet at the time that our consortium consisted of three major consultants, namely Hatch, Aurecon and Mott McDonald. This tender was ultimately awarded to another bidder.
69. The H2N JV included several SD partners which included Reddy and some of his employees as part of our 30% SD commitment. At the time the JV members were of the view that Reddy had some resources that could be used within the project without risking the project or the JV members. During the Phase 2 tender Hatch discussed with the other JV members the issue and events that surrounded Phase 1 regarding Reddy and his company DEC. The JV members agreed that considering the massive task of SD during the next phase (Phase 2) where SD commitments would be in the region of R250 million to R300 million,

77. Hatch had no relationship with McKinsey that I am aware of as they were seen in a very negative light. Whenever Hatch was appointed, McKinsey would also be appointed on the same project but not through a competitive bid process as far as I am aware.
78. Whenever there were formal feedback sessions with Transnet officials about the project, Hatch as the consultant would not be invited yet McKinsey, who knew nothing about the project, would attend these meetings. McKinsey would also send junior staff to meetings chaired by me for the sole purpose of asking about technical matters, which in my view they should have known. This further demonstrated the complete lack of knowledge about the project. When I raised this with Transnet personnel, they informed me that it was an aspect that Hatch had to accept because McKinsey was appointed by Singh.
79. On Phase 2, McKinsey's contract value to "oversee" the Project was in the region of R340 million, yet nobody on the Transnet management team knew what McKinsey's brief or deliverables were. Furthermore, McKinsey would ask questions in the manganese management meetings that demonstrated a complete lack of knowledge on their part.



HENK BESTER

DATE: _____



Minister Lynne Brown appoints Brian Molefe as Acting Chief Executive ... <https://www.gov.za/speeches/minister-lynne-brown-appoints-brian-molefe...>



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Minister Lynne Brown appoints Brian Molefe as Acting Chief Executive of Eskom

17 Apr 2015

On Wednesday, I briefed the nation on the current state of the grid and the reasons for the implementation of stage 3 load shedding by Eskom. I am informed that the system is still tight. However, Eskom and its engineers are doing their utmost to contain further interruptions at our power plants. With than announcement I also informed the nation that I am looking at immediate steps to stabilise leadership at Eskom both at Executive and Board level.

Eskom is a strategic asset and one of the major utilities on the continent. It is therefore critical that Eskom operates optimally and contributes to economic growth of the country.

The decision to institute an inquiry has created uncertainty on Eskom's ability to ensure security of supply and successful delivery of its build programme. I am happy to announce that the Terms of Reference for the appointment of an investigator is concluded and Dentons has been appointed to lead the enquiry. I will await a report from the Board as this process unfolds.

In order to stabilise the executive leadership and after consultations with various stakeholders including President Jacob Zuma, Deputy President Cyril Ramaphosa, the Boards of both Transnet and Eskom, I have decided to second Mr. Brian Molefe as Acting Chief Executive of Eskom.

Mr Molefe is the current Group Chief Executive of Transnet and his secondment is with immediate effect.

His experience in having turned around the Public Investment Corporation and providing stability at Transnet is a clear indication that Mr Molefe is no stranger in leading complex institutions. Given Eskom's current financial and operational position, I am confident that we will be able to draw on his experience and understanding of the financial markets.

This secondment is also considered in light of Mr Molefe's extensive understanding of the public sector and the environment in which State-Owned Companies operate. As is evident from his CV, he has been involved with entities such as Telkom, the Airports Company of

Minister Lynne Brown appoints Brian Molefe as Acting Chief Executive ... <https://www.gov.za/speeches/minister-lynne-brown-appoints-brian-molefe...>

South Africa, the National Empowerment Fund and the Export Credit Insurance Corporation amongst others.

Ladies and gentlemen, I now call on Mr Molefe to join us.

This secondment allows Mr Sinethemba Khoza to resume his role as a member of the Board. I want to take this opportunity to thank Mr Khoza for acceding to the call to step in at a critical moment when his leadership was needed.

To consolidate the leadership at Eskom, I will soon be submitting my recommendations to Cabinet on appointing additional members to strengthen and augment the required skills on the Board.

In conclusion,

I would like to thank the Transnet Board for agreeing to the secondment of Mr. Molefe and the manner they dealt with this request. I would also like to appeal to the Eskom Executives and employees to welcome Mr Molefe and provide him with all the necessary support that he would require as he steers the company.

Condensed CV of Mr Brian Molefe

Mr Molefe’s qualifications include the following: Masters of Business Leadership, University of South Africa; Post-Graduate Diploma in Economics, London University, School of Oriental and African Studies and a Bachelor of Commerce, University of South Africa. Majors: Accounting and Economics. Other training courses include: a Programme for Young Global Leaders, Kennedy School of Government, Harvard University (Cambridge, Mass. USA, 2009), Advanced Management Program, Harvard Business School (Boston 2006); and Executive Programme at Wharton Business School (Philadelphia USA, 2003).

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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Minister Brown's meeting with the Transnet Board

Date: 21 April 2015

Venue: 1st Floor, the Junction, Modderfontein Road,
Esselenpark, Kempton Park

RE: Appointment of Mr. Brian Molefe as Acting Chief Executive of Eskom

Greetings to all present,

I am advised that this is an in-committee meeting and not a formal Shareholder's meeting.

On Wednesday, 15 April 2015 I briefed the nation on the current state of the grid and the reasons for the implementation of stage 3 load shedding by Eskom.

With that announcement I also informed the nation that I am looking at immediate steps to stabilise leadership at Eskom both at Executive and Board level.

On 17 April 2015, I subsequently announced my decision to second Mr. Brian Molefe as the new Acting Chief Executive of Eskom. I alluded to consultations with various stakeholders, including President Jacob Zuma, and the Boards of both Transnet and Eskom. I believe that the statement needs to be clarified.

Due to the urgency to stabilise Eskom, I called a meeting with the Chairperson of Transnet Board, Ms. Linda Mabaso, and the Acting Chairperson of Eskom Board, prior

to making the announcement. This decision was taken within the context of challenges facing Eskom as well as the urgency with which it needed to be implemented.

I could only consult, at this opportune moment, with the full Board. At the time, I needed to contain the matter in confidence and avoid any media leaks. Because it was not pre-planned, the Chairperson of Transnet Board could not get hold of all members of the Board.

I therefore understand that the manner in which the decision was communicated may have created a level of uncertainty in the Company. However, I wish to assure you that it was an emergency intervention, in the national interest of the country, and I needed to move with speed to implement the decision.

As you are now aware, Mr. Molefe's secondment is with immediate effect and I wish to sincerely thank the Board for swiftly accommodating my decision. I am keen to hear from the Board members how they would have voted on the matter, if I were to ask the Board to support my decision, prior to taking it.

I did not intend to violate corporate governance procedures, however, the situation called for urgent action.

Being mindful of the impact of the announcement, I appreciate that the Board has responded by taking the decision to appoint Mr. Gama as Acting Group Chief Executive. Transnet is the jewel of the DPE portfolio and I am confident that the Board and Management will continue on the same sustainable path.

I believe that we must use the 3-month window of the inquiry currently being undertaken by the Eskom Board. With Mr. Molefe being seconded and Mr. Gama being appointed to act as Transnet GCE, I request both Boards to apply their collective minds to the practical arrangements of the secondment.

I have had 2 meetings so far with Mr. Molefe and already I can begin to feel confident.

Following this meeting today and in consultation with the Department, the formal contractual arrangements and other legal implications can be discussed and agreed between the 2 Companies. In light of Mr. Molefe being an Executive of Transnet, the Board is thus requested to submit a firm proposal to me thereafter.

I had indicated that it would be advisable to have Mr. Molefe secondment for a year; however, the details must still be worked out.

I thank you all for making the extra effort to be here today to allow me the opportunity to clarify matters.

/end.

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		Document Type	OCSDFM
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

**MINUTES OF THE ESKOM BOARD MEETING 02-2015/16 HELD ON 23 APRIL 2015
HORSESHOW BOARDROOM, ESKOM BELLVILLE OFFICES, CAPE TOWN FROM 09H00**

STRICTLY CONFIDENTIAL

PRESENT

Dr BS Ngubane	Acting Chairman
Ms N Carrim	Member
Mr Z W Khoza	Member
Ms V J Klein	Member
Mr R Kumalo	Member (Tele-conference)
Ms C Mabude	Member
Dr P Naidoo	Member
Ms V Naidoo	Member
Mr MV Pamensky	Member (Tele-conference)

OFFICIALS

Mr M Phukubje	Company Secretary
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IN ATTENDANCE

Mr W Venner	Committee Secretary
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1. OPENING AND WELCOME

The Acting Chairman welcomed members to the meeting.

2. APOLOGIES

There were no apologies.

3. QUORUM

A quorum being present, the Chairman declared the meeting duly constituted.

4. DECLARATIONS OF INTEREST

There were no other declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

Mr Pamensky and Ms Klein stated that they did not approve of the Agenda as it had been distributed late. Mr Khoza apologised for the late distribution and advised that it was as a result of circumstances beyond his control. The Acting CE stated further that it was a necessity for the Board to approve the Corporate Plan for submission to the Shareholder by 30 April 2015.

It was requested that 2 additional items be added to the Agenda under the In-committee session of the meeting, vis (i) Removal of a Director and (ii) the CCMA case under discussion.

7. MATTERS FOR APPROVAL AND INFORMATION

7.1. Appointment of Mr B Molefe as Interim Chief Executive

On 20 April 2015, the Minister of Public Enterprises announced the secondment of Mr Brian Molefe from Transnet SOC Ltd as Interim Chief Executive for Eskom Holdings SOC Ltd, with effect from 20 April 2015, to replace Mr Z Khoza, who had been in that position since 11 March 2015.

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Resolved that:

1. the secondment of Mr. Brian Molefe from Transnet SOC Ltd as Interim Chief Executive for Eskom Holdings SOC Ltd, is approved with effect from 20 April 2015; and
2. the Chairman of the Board is authorised to sign any and all agreements and documents to give effect to the above resolution.

7.2. Mandate to Conclude Negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station

Reference document 7.4 (a) (b) (c)

The Referral from the Board Tender Committee for approval of the mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station was tabled, details of which had been circulated to members.

It was requested that the submission should be taken off the Agenda and submitted to the Acting CE before being tabled for approval. In response to a member’s suggestion that Resolution 2.5 (around the mandate to negotiate but not to conclude with Optimum, for Eskom to take up a free carry shareholding of 10% to 15% equity and/or to engage with Optimum to facilitate the purchase of Optimum by Eskom or one of the state owned mining companies) should be revised to include a seat on the Board for Eskom as well as oversight, it was reported that this had been included in the Board Tender Committee discussion.

Resolved that:

1. the Referral from the Board Tender Committee for approval of the mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station is not approved: and
2. the mandate should be referred to the Acting Chief Executive before being tabled at Board for approval.

7.3. Approval of the 2015/16 - 2019/20Corporate Plan Approval

Reference document 7.2 (a) (b) (c) (d) (e)

The 2015/16 - 2019/20 Corporate Plan (“the Plan”) was tabled for approval to submit to the Department of Public Enterprises (“DPE”) and the National Treasury in terms of Section 52 of the PFMA and Section 29 of the National Treasury Regulations, details of which had been circulated to members.

It was reported that Exco had approved the Plan on 9 February 2015 for submission to Board. The 2015/16-2019/20 Corporate Plan (version 2.18) and 2015/16 Shareholder Compact were concluded and were to be tabled for approval at the Eskom Board meeting on 26 February 2015, the meeting was cancelled. Through the Chairman’s office, letters were sent to the Treasury and DPE ministers requesting for an extension for the submission of both the Corporate Plan and the Shareholder Compact to 1 June 2015. DPE had granted

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Eskom an extension until 30 April 2015 and required Eskom to submit an integrated and comprehensive Corporate Plan and Shareholder Compact.

The CFO reported that the Plan had been discussed individually with all members and there had been few changes and the Plan had been updated accordingly. It would be necessary to ensure that the Plan was adequately funded and management would have to remain within the Budget. It was noted that Ernst and Young had been requested to examine the Plan and provide an objective opinion.

The representatives from Ernst and Young joined the meeting for the purposes of the discussion.

The presentation from Ernst and Young was tabled for information, details of which had been distributed to members. The key findings were that the Corporate Plan & Financial Plan addressed the turnaround and integrated the specific assumptions, risk and issues included in the scope of the review. The context within which Eskom was operating was rapidly evolving. Within this context, the Corporate Plan & Financial Plan could be viewed as a base plan that needed to be implemented with the urgency of a turnaround strategy, and then developed over time.

The Summary of Review Findings was noted as follows, details of which were included in the presentation:

- Financial and corporate planning assumptions appeared to be appropriately integrated & aligned.
- The assumptions appeared reasonably aligned with the external data.
- The specific significant risks identified by Eskom appeared to be appropriately integrated into the Corporate Plan and the Financial Plan.
- The Corporate Plan and Financial Plan appeared to be aligned with the PFMA, National Treasury requirements and the Companies Act, although some gaps were identified.
- The MYPD process was addressed within the Corporate Plan and the Financial Plan, although a greater level of focus and action could be focused on improving the quality of the relationship with the Regulator.
- The Corporate Plan addressed the requirements and focus of the Government War Room.
- The link between a business objective, planned initiative to achieve the objective, and the cost to deliver the initiative could be directly identified. This potential lack of clear linkage raised a question around whether the Corporate Plan could be successfully implemented.
- It was common for the turnaround strategy to be made completely central to the business planning and execution of organizations experiencing similar challenges to Eskom. The review identified that although the turnaround strategy was included in the Corporate Plan, it was not the primary focus of the plan.

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- Eskom had experienced significant change internally and externally in the months that had followed the preparation of the Corporate Plan and Financial Plan in late 2014, and the context within which Eskom needed to execute the turnaround strategy continued to evolve rapidly. As a result, the Corporate Plan should be seen as a base plan that needed to be reviewed and updated regularly throughout the year to ensure it was increasingly focused and aligned with the current challenges that Eskom was experiencing

In response to a query as to whether the objectives and strategy were clear and the objectives achievable it was reported that all plans were linked and between the plans and the implementation there could be more clarity around whose responsibility it was to implement, especially around generation.

The Plan had been developed in consultation with the Shareholder during regular monthly meetings, at which the turnaround strategy had also been discussed. There were KPIs for every section of the Plan which would be tracked going forward.

The GE: Gx reported that the turnaround strategy for Generation was available and included in the Plan. However the strategy was not fully funded and once funding was available it would need to be ring fenced outside of normal operations.

It was agreed that the current Plan should be within the available resources. In this regard the Plan had deliberately excluded items that were not funded.

The Acting CE stated that the Plan was a high level document that touched key activities during the year and indicated targets where funding was available. In this regard the Plan was practical but it was not the turnaround strategy. He stated that the next activity for the Board would be to translate the Plan into a turnaround strategy.

In response to a query it was reported that the Plan had been canvassed with DPE and the DPE had requested a list of unfunded items which would be included in the turnaround strategy.

With respect to HR costs it was reported that the 8,5% increase for the Bargaining Unit was part of the two year agreement. It was noted that 8% was considered good for the years going forward and management would commit to controlling staff costs.

A member stated that the failure of the War Room to address the issues facing Eskom would be blamed on Eskom. In this regard it reported that key decisions had been identified that Eskom wanted the War Room to unblock. The Acting CE stated that the War Room was a separate issue and would be dealt with separately from the Plan.

The Acting CE stated that he was not satisfied with the target for fatalities in that it was assumed that Eskom was the employer for contractors. He noted that Eskom's behaviour should not be such that it creates the impression that Eskom is the employer for contractors nor create the perception that Eskom has total control of contractors. The GE: Tx reported

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that it had been debated that the targets did not include contractors. There had also been a significant improvement in Eskom fatalities but there was a deterioration in contractors. He undertook to exclude contractors from future targets but would ensure that contractors do comply with Eskom safety standards and processes. A member noted globally and legally Eskom was not responsible for contractor fatalities but morally it should hold contractors responsible. The Acting CE agreed but stated that it should not be made a matter that Eskom promised to perform with.

A member recommended that a chapter should be added to the Plan to reflect the shareholder aspirations and to show the business unusual approach and Eskom’s focus around the following issues:

- The new Build programme in terms of lock down on time to completion, cost and quality;
- Generation turnaround and the 80:10:10 strategy;
- Load shedding and actions to restrict it.

A member noted that the R23Bn injection by government was shown in the Plan but there was no indication of the spend. It was reported that R10Bn would be received in June 2015, R10Bn in December 2015 but there was no indication at present for the balance of R3Bn.

A member stated that the Plan was well constructed. However he noted that the borrowing programme included in the Plan had not yet been approved by the IFC because the IFC could not approve it without the Plan which had never been tabled at IFC. In this regard the CFO stated that the issues were the different tranches and the delegation of authority around the approvals. This would be tabled at Board in due course.

Resolved that:

1. the 2015/16 - 2019/20 Corporate Plan (“the Plan”) is approved for submission to the Department of Public Enterprises (“DPE”) and the National Treasury in terms of Section 52 of the PFMA and Section 29 of the National Treasury Regulations;
2. the turnaround strategy should be aligned with the current Memorandum of Incorporation for Eskom;
3. a separate exercise should be conducted to identify any changes required for the Memorandum of Incorporation.

7.4. War Room Update

Reference document 7.3 (a)

The update on the War Room was tabled for information, details of which had been circulated to members.

It was reported that the War Room was led by government and Eskom was a member thereof. The Acting CE and CFO were standing members of the committee. In response to concerns by members about Board representation at the War Room besides the Acting CE

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		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

and CFO, it was reported that a letter had been sent to the Chairman of the War Room to note that the War Room was not a statutory body and therefore engagements should be between management and the War Room. Furthermore the War Room was not a decision making body. It was reported that the government had set up the war Room and it had been Eskom’s decision to join it. The Acting CE stated that there was no contradiction to Board representation if only the CE and CFO were present at the War Room as they were both accountable to the Board and would ensure that a report was made to Board and any decisions were aligned with the Board decisions.

The Chairman stated that he was satisfied that the Board was adequately represented at the War Room and that feedback from the War Room should be a standing item on the Board agenda. It was agreed further that the Acting CE should clarify this point with the Shareholder as the Shareholder had stated that the Board was absent from the War Room. The Chairman requested that a letter be drafted in this regard and it should state that the Board is participating at the War Room through the executive directors.

It was requested that a tracking sheet be put in place for all information sent to the War Room for the War Room to acknowledge receipt and the information was accurate and complied with the request. It was requested further that the Terms of Reference of the War Room be tabled at Board to allow Board to confirm what expectations the War Room had of the Board.

In respect of the War Room investigation into the affairs of Eskom it was requested that the DPE request a non-disclosure agreement be signed before the work commences. It was noted further that Eskom’s engagement of Denton’s to do the inquiry was a separate exercise and the War Room had been advised accordingly.

The Chairman of the Audit and Risk Committee (“ARC”) expressed a concern as to how ARC would deal with Dentons and the War Room investigation in that should ARC see the report before it finalises the AFS as there may be a contradiction between the two reports. It was noted that the Terms of Reference should indicate the interaction between the parties. It was reported that the War Room had been requested to direct any queries around the inquiry to the DPE as Eskom could not allow the War Room inquiry to proceed until it was approved by the Minister of PE.

It was reported that the Deputy President had appointed a panel of advisors on 15 December 2014 to assist the War Room. It would be necessary to discuss how Eskom would interact with the panel as they should be requested to sign a non-disclosure agreement as well as submit their Terms of Reference to the Chairman and CE. It was recommended that this also be dealt with through the DPE and a letter should be sent to the Minister of PE around the non-disclosure and Terms of Reference.

In response to a report that the panel was already doing site visits it was stated that the Acting CE should address this issue as a non-disclosure agreement had not yet been signed. The Acting CE undertook to formally raise the issue at the War Room.

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It was reported further that sensitive information was being requested from the Office of the Deputy President and it was recommended again that the Acting CE deal with this issue formally.

The Chairman stated that any request for information by the War Room could be made to the Office of the CE but formal communications should pass through the DPE. In response to concerns that attendees at the War Room were business people who were being given deep insight into Eskom’s business, the Chairman stated that this should be left to the Acting CE to determine a plan to resolve and revert to the Board once a solution was in place. This would include rules of engagement for the entire War Room team and clarity on the various roles and responsibilities.

The Acting CE stated that Eskom’s expectation of the War Room was that it would provide a space for Eskom to do maintenance. However Eskom had to find 5000Mw as urgently as possible and still do the maintenance without load shedding. In this regard if Eskom did not have a problem then the War Room would not exist. Therefore it was incumbent upon management to do the work necessary to find the 5000MW without motivation. Consideration would be given to establishing a special group in management to find the 5000MW. Once this was found then there would be space to sort out all the other issues.

The Acting CE also undertook to ensure that all good news in Eskom was adequately communicated and published.

The Short-term focus to close Gap of 5000MW was tabled, details of which were included in the presentation. It indicated how 3875 MW could be found but there was still a shortfall of 1125MW. In response to a query it was reported that the 3875MW was equal to R24Bn. The Acting CE stated that as Generation completed maintenance the 3875MW would reduce and therefore as money was raised it should be ringfenced.

The Acting CE said consideration should be given to selling off Eskom Provident and Pension Fund to the Trade Unions.

The Eskom focus in terms of the 5 Point Plan was noted, details of which were included in the presentation. It was noted that the support by Eskom from the War Room included coal contracts licences. It was reported that the open coal mine licences issue had been tabled at government and the current holders thereof wanted to sell their licences to Eskom.

It was noted that the War Room had to be seen in terms of the IMC as the War Room reported to the IMC. In this regard there had to be clarity and alignment around the expectations of the War Room and the IMC.

Resolved that:

- 1. the update on the War Room is noted;
- 2. feedback from the War Room should be a standing item on the Board agenda;

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- 3. the Acting CE should clarify the issue of Board representation at the War Room with the Shareholder and should indicate that the Board is participating at the War Room through the executive directors;
- 4. a tracking sheet be put in place for all information sent to the War Room for the War Room to acknowledge receipt and that the information is accurate and complied with the request;
- 5. the Terms of Reference of the War Room should be tabled at Board to allow Board to confirm what expectations the War Room had of the Board;
- 6. the DPE should be engaged to request a non-disclosure agreement be signed before the work commences for the War Room investigation into the affairs of Eskom;
- 7. a letter should be sent to the Minister of PE around the non-disclosure agreement and Terms of Reference for the panel of advisors appointed by the Deputy President to assist the War Room;
- 8. the Acting CE should address the issue of the panel conducting site visit before the issues in Resolution 7 are resolved;
- 9. the request for sensitive information by the Office of the Deputy President should be dealt with formally by the Acting CE.

8. General


The Chairman stated that process to cut off non-paying municipalities was in progress but the Board should wait for the media statement from the Minister of Finance before implementation. Mr Pamensky reported that some municipalities were using electricity payments by their residents to fund other operations.

It was noted that the Board had made a decision in this regard and would continue with the implementation of that decision notwithstanding any agreements between the Minister of Finance and COPTA around the ring-fencing of municipal grants.

9. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed and the Board went into an In-committee session.

SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRMAN:  DATE: 02/07/15

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MINUTES OF THE SPECIAL BOARD OF DIRECTORS OF TRANSNET SOC LTD MEETING NO. 1-15/16FY HELD ON 20 APRIL 2015 AT 08:30 IN THE PORT MANAGER'S BOARDROOM, OCEAN TERMINAL BUILDING, PORT OF DURBAN

Resolution No/
For Attention

- 1
- 1.1
- 1.2
- 1.3
- 1.4
- 1.4.1
- 1.5
- 1.5.1
- 1.6
- 1.6.1
- 2
- 2.1
- 3
- 3.1
- 3.1.1
- 3.2
- 3.2.1
- CONSTITUTION OF MEETING AND APOLOGIES
- Present
- Ms LC Mabaso
Ms Y Forbes
Mr SI Gama
Mr GJ Mahlalela
Ms PEB Mathekga
Ms N Moola
Mr ZA Nagdee
Mr VM Nkonyane
Mr MR Seleke
Mr SD Shane
Mr A Singh
Mr PG Williams
- Chairperson
Non-Executive Director
Chief Executive Officer: Transnet Freight Rail
Non-Executive Director
Non-Executive Director
Non-Executive Director (through video-conference)
Non-Executive Director
Non-Executive Director
Non-Executive Director (through video-conference)
Non-Executive Director (through video-conference)
Group Chief Financial Officer (through video-conference)
Non-Executive Director
- In attendance
- Mr N Silinga
Ms S Qalinge
Ms NE Khumalo
Mr KL Mosia
Ms ANC Ceba
- Group Executive: Legal and Compliance (through video-conference)
General Manager: Office of the Group Chief Executive (through video-conference)
Deputy Group Company Secretary (through video-conference)
Company Secretary (through video-conference)
Group Company Secretary
- Partial attendance
- Mr M Sigonyela
- General Manager: Corporate and Public Affairs
- Apolo­gies
- Mr BG Stagman
- Non-Executive Director
- Welcome and Signing of Attendance Register
- The Chairperson welcomed all members and attendees present. Having observed a quorum, she declared the meeting duly constituted. She noted an apology from Mr Stagman who was abroad. She indicated the purpose of the Special Meeting, and the rationale for its urgency. The Attendance Register was circulated for signature.
- Adoption of Agenda
- The Agenda was adopted as tabled.
- SAFETY BRIEFING AND EVACUATION PROCEDURE
- The safety briefing and evacuation procedures of the Port Manager's Boardroom were conducted by the Port Manager.
- DIRECTORS' DECLARATION OF INTERESTS REGISTER
- Declaration of Interest for the meeting
- The Declaration of Interests Register was circulated for signature.
- Comments by Chairperson
- The Chairperson thanked the Members for availing themselves for the special meeting at short notice. She apologised for not consulting the Board appropriately on matters relating to the Secondment of the GCE to Eskom SOC Ltd on Friday 17 April 2015. She indicated that she was informed of the matter late. She attempted to arrange a teleconference with the Board, but could not participate anymore as the media briefing was commencing. She apologised for the mishap, and indicated that it was not her intention to undermine the Board. She indicated that



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the Shareholder Minister also expressed her sincere apologies, and undertook to meet with the Board to apologise. A date for the meeting will be secured through the Office of the Group Company Secretariat, and communicated accordingly to the Board.

Ms Ceba

Mr Sigonyela joined the meeting at 08:35.

- 3.2.2 He highlighted the order of proceedings for the Maritime School of Excellence Graduation Ceremony to the Board.

Mr Sigonyela was excused from the meeting at 08:40.

Mr Shane joined the meeting at 08:41.

The Board accepted the Chairperson's apology in relation to the GCE's secondment to Eskom.

4 MATTERS FOR APPROVAL/RECOMMENDATION

4.1 Secondment Agreement between *Transnet SOC Ltd* and *Eskom SOC Ltd*

- 4.1.1 Management took the Board through the submission. The submission was taken as read. The purpose of the submission was to request the Board to approve the Secondment Agreement ("the Agreement") between the Company and *Eskom SOC Ltd*, and to delegate authority to the Chairperson to sign the Agreement on behalf of the Board.

- 4.1.2 Management stated that the Agreement was circulated to the Board on 19 April 2015 for comment. Management highlighted the salient features of the Secondment Agreement to include, amongst others, the following:

- The rationale behind the secondment period of 3 months.
- The treatment of Mr Molefe's salary, and other related expenses.

- 4.1.3 Management stated that the Shareholder Minister indicated that the GCE may be seconded to *Eskom* for a period of 12 months. Mr Stagman's comments were read out to the Board for consideration. Mr Williams commended the Shareholder Minister for taking decisive action on dealing with *Eskom's* challenges. However, he was of the view that there was a process to be followed by the Board in relation to the secondment of the GCE, and in this regard, the matter could have been dealt with in another manner. He indicated, amongst others, the following from the Agreement:

- Clause 1.6 has a spelling error.
- Clause 3.1 should be cautiously managed to fulfil legitimate expectations of the parties.
- Mr Molefe's benefits should be protected during his secondment period. Further, performance management issues during the secondment period should be outlined in advance to manage Mr Molefe's other benefits.

Mr Seleke joined the meeting at 08:58.

- 4.1.4 The Chairperson apologised to Mr Seleke for the events on 17 April 2015. Mr Seleke indicated that he understood the Chairperson's circumstances prior to the media briefing, and he accepted the apology. Ms Moola requested Management to protect Mr Molefe's Short-Term and Long-Term Incentives in the Agreement. She was of the view that if the secondment period is longer than 3 months, Mr Molefe's performance management issues will need to be aligned to *Eskom's* deliverables. Management indicated that any emerging matter will be tabled to the Board for consideration at a later stage, if the secondment is extended beyond the 3 months. Mr Molefe's current benefits at the Company would stand for determining benefits during secondment. The Board will be granted an opportunity to apply its mind properly to a long term agreement, if the need arises.

- 4.1.5 The Chairperson indicated that *Eskom* would be invoiced on a monthly basis for payments made by the Company to the GCE on secondment at Eskom, including both salary and benefits. Ms Forbes was concerned that the media seemed to have more detail on the matter than the Board. She indicated she was not aware of the 3 potential candidates nominated for the acting position as per media reports. She cautioned that governance systems should be protected in the Company's activities. She sought clarity on how the Corporate Governance and Nominations Committee would address the GCE's extension of employment contract. Mr Seleke was of the

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view that it was unfair to put the Chairperson on scrutiny for decisions that occurred from the Ministry's activities. He indicated that the media is provocative, and there should be no reliance on media pronouncements. He was of the view that the Board's focus should be on the acting appointee's role and the required support to successfully execute the role. Mr Nkonyane requested Management to ensure that the Secondment Agreement should be explicit that any role beyond the 3 months period would be re-negotiated accordingly with the Board.

RESOLVED that the Board approved the following:

- The secondment of the GCE to Eskom SOC Ltd *post facto*.
- The Secondment Agreement between the Company and *Eskom SOC Ltd*, subject to incorporating inputs received from the Board.
- Delegated authority to the Chairperson to sign the Secondment Agreement on behalf of the Board.

1-15/16FY/1

5 **MATTERS FOR NOTING**

5.1 **Appointment of the Acting Group Chief Executive**

5.1.1 The Chairperson stated that the purpose was to request the Board to note the appointment of the Acting Group Chief Executive. The Chairperson gave the Board background on Mr Siyabonga Gama and indicated that he was currently appointed as the Chief Executive at Transnet Freight Rail. Mr Gama was chosen to be Acting Group Chief Executive due to his vast knowledge of the Company. The Chairperson indicated that Mr Gama was appointed acting GCE with effect from 20 April to 19 July 2015.

5.1.2 Ms Moola sought detail on the remuneration during the acting period. Management indicated that there was an Acting Policy for Management Employees that would determine Mr Gama's benefits.

Mr Gama was recused from the meeting at 09:20.

*The matter was deliberated in a Closed Session.
A separate record has been prepared.*

6 **GENERAL**


6.1 There were no matters for discussion.

7 **BOARD OF DIRECTORS MANDATE**

7.1 The Board noted the Board of Directors' Mandate as contained in the meeting pack.

8 **CLOSING**

8.1 The Chairperson thanked the Board for its participation in the special meeting, and for valuable contributions in the meeting. There being no further business to conduct, the Chairperson declared the meeting closed at 09:28.


CHAIRPERSON
DATE: 03/06/2015


GROUP COMPANY SECRETARY
DATE: 02 JUNE 2015



The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

APPOINTMENT OF CHIEF EXECUTIVE OFFICER

The above matter has reference.

At the last sitting of Eskom's People and Governance Committee on 28 May 2015, which is the subcommittee of the Board of Directors tasked with dealing with the appointment of senior executive managers within Eskom, it was resolved that the appointment of Brian Molefe to the position of Chief Executive of Eskom, be confirmed as soon as possible.

The rationale for the appointment of Mr Molefe as a permanent employee, rather than on a secondment basis, is based on the following considerations:

- i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined 63 days ago;
- ii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;
- iii) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;
- iv) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;
- ~~iv) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of [*] which was also endorsed by the Board;~~
- ~~v) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee to address the issues that have bedeviled the company for too long a time;~~
- vi) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;

- vii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and
- viii) Certainty of leadership at the top would allow for stabilising the management team internally together with allowing him to be able to attract the requisite skilled professional talent outside of Eskom to fill the vacancies that currently exist and therefore create the confidence and predictability required of Eskom at this time.

Given the fact that Eskom is the core driving force of the South African economy, we are of one mind that no other person would at this point be able to maintain the current upward trajectory that Brian has placed the company on since his secondment in April this year. It is with this in mind that the board unanimously supports his appointment as formally recorded at its meeting of [*].

Fully cognisant of the process and procedural issues that will need to be addressed in securing such an appointment in the most effective and efficient manner, the Acting Chairperson of the People and Governance Committee was tasked with obtaining the requisite legal opinion on the most optimal route to be followed to give effect to the resolution. The legal opinion indicates [*].

Based on the foregoing, and whilst we appreciate that this process may demand some time, it may be prudent to extend the duration of the secondment agreement from Transnet in order to ensure that we do not have a period where he is not contracted to either Eskom or Transnet. As a matter of course, the first prize for Eskom would be a seamless transition from Transnet to Eskom with the effective date being 1 July 2015.

I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the appointment.

Accordingly, I hereby request Minister's support and endorsement for the permanent appointment of Brian Molefe as chief executive officer of Eskom.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr Ben Ngubane
INTERIM CHAIRMAN
Date:



The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

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- ii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;
- iii) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;
- iv) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee **in the most optimal manner** to address the issues that have bedeviled the company for too long a time;
- v) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of [*] which was also endorsed by the Board;
- vi) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;

- vii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and
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Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr Ben Ngubane
INTERIM CHAIRMAN
Date:

From: Venete Klein <venete@kleininc.co.za>
Sent: Friday, 19 June 2015 13:09
To: Suzanne Daniels
Subject: Re: EO appt

hi S, final inclusion even if it feels like a repeat is how he has helped to win public confidence during this time.

Also, regarding vacancies can we make it all and any vacancies which may still arise.

Then - I have received the legal opinion which I believe we should attach.
in brief it would be preferable to have had more than 1 candidate - but given our circumstances as articulated in the proposal - this should be acceptable

Sent from my iPhone

> On 19 Jun 2015, at 12:34, "Suzanne Daniels" <DanielSM@eskom.co.za> wrote:

>

> Hi V

>

> I have restructured it a bit so that all the operational issues are together so in the version marked compare you can see the changes I have made in tracked changes.

>

> I have incorporated your suggestion in 2 places by stating that using the current Exco in optimal manner and then in viii) I have added that certainty would allow him to recruit the requisite skilled talent...

>

> See if that works. (I attach v2 in pdf and word format)

>

> Regards

> Suzanne

>

> -----Original Message-----

> From: Venete Klein [mailto:venete@kleininc.co.za]

> Sent: Friday, June 19, 2015 12:03 PM

> To: Suzanne Daniels

> Subject: RE: EO appt

>

> Hi S, I love it.

>

> Roman v) Just a thought - can we add to this that having him leading this organisation - we will be able to attract top SA talent for positions which have become vacant? Don't want to give the impression that the current team is the A Team

>

>

>

> -----Original Message-----

> From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]

> Sent: 19 June 2015 11:41 AM

> To: Venete Klein

> Subject: RE: EO appt

> Importance: High

>

> Please see attached for your consideration. In pdf and word version for easy reference.

>

> Regards
> Suzanne
>
> -----Original Message-----
> From: Venete Klein [mailto:venete@kleininc.co.za]
> Sent: Friday, June 19, 2015 9:36 AM
> To: Suzanne Daniels
> Subject: EO appt
>
> P&G resolved that the Appt of CEO - B. Molefe be confirmed, soonest.
>
> Act Chair of P&G to get legal opinion in terms of process (being received today).
>
> Reasons for the appt of B. Molefe
>
> 1) Stability he has brought to Eskom since he joined
> 2) The confidence that he has built both internal external of Eskom
> 3) Improved stakeholder relationships built in this short time
> 4) His hands on approach which has made performance in Eskom - as it relates to maintenance & load-shedding specifically - not negotiable
> 5) Raising the bar on all fronts for his executive team to follow
> 6) His no nonsense approach towards business and the media has really stood us in great stead.
>
> Given the reliance that the SA Economy places on Eskom we are of one mind that no other CEO will be able to maintain the current upward trajectory the Brian has given us.
>
> It is with this is mind that the board unanimously supports his appointment - officially.
>
> Whilst we understand that is process may require some time, it may be necessary to extend his contract on the Transnet side in order to ensure that we done have a period where he is not contracted to either ourselves or Transnet.
>
> First prize of course is to have him confirmed as CE of Eskom as soon as possible.
>
> Just some of my thoughts
>
> Pls add whatever is necessary as we carve
>
> luv
>
> Sent from my iPhone
>
> I'm part of the 49Million initiative.
> <http://www.49Million.co.za>
>
> NB: This Email and its contents are subject to the Eskom Holdings SOC Limited EMAIL LEGAL NOTICE which can be viewed at http://www.eskom.co.za/Pages/Email_Legal_Spam_Disclaimer.aspx
>
> I'm part of the 49Million initiative.
> <http://www.49Million.co.za>
>
> NB: This Email and its contents are subject to the Eskom Holdings SOC Limited EMAIL LEGAL NOTICE which can be viewed at http://www.eskom.co.za/Pages/Email_Legal_Spam_Disclaimer.aspx
> <20150619 DPEMIN Appointment of CE v1&v2 compare.pdf>
> <20150619 DPEMIN Appointment of CE v2.pdf>
> <20150619 DPEMIN Appointment of CE v2.docx>

From: Venete Klein <venete@kleininc.co.za>
Sent: Friday, 19 June 2015 14:33
To: Suzanne Daniels
Subject: Re: EO appt

this one is good to go, just in the insert on the legal opinion - there is candidates instead of candidate somewhere in that para.

Also - we need to fill in the date of the meeting now reflected as asterisk.

Can we get this to DPE this afternoon pls - know they are working on it already

Sent from my iPhone

> On 19 Jun 2015, at 14:17, "Suzanne Daniels" <DanielSM@eskom.co.za> wrote:

>

> Hi V

>

> Final draft incorporating the comments and legal opinion. The doc marked compare highlights for you what I have changed. Then the final draft sent through in pdf and word.

>

> Regards

> S

>

> -----Original Message-----

> From: Venete Klein [mailto:venete@kleininc.co.za]

> Sent: Friday, June 19, 2015 1:13 PM

> To: Suzanne Daniels

> Subject: Re: EO appt

>

> aai Sis, die siek te hou ons Ook nie AF nie,

>

> liefde

>

> Sent from my iPhone

>

>> On 19 Jun 2015, at 13:11, "Suzanne Daniels" <DanielSM@eskom.co.za> wrote:

>>

>> Ok

>>

>> Let me update.

>>

>> Regards

>> Suzanne

>>

>> -----Original Message-----

>> From: Venete Klein [mailto:venete@kleininc.co.za]

>> Sent: Friday, June 19, 2015 1:09 PM

>> To: Suzanne Daniels

>> Subject: Re: EO appt

>>

>> hi S, final inclusion even if it feels like a repeat is how he has helped to win public confidence during this time.

>>

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 19 June 2015 15:19
To: Malesela Phukubje
Subject: Re: MOLEFE-P&G MINISTER 28 MAY 2015

Is there now a board meeting on the 25th?

Regards
Suzanne Daniels

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: Malesela Phukubje
Date: 19/06/2015 10:50 (GMT+02:00)
To: Suzanne Daniels
Cc:
Subject: RE: MOLEFE-P&G MINISTER 28 MAY 2015

[Correct, because that is where the full Board will consider and hopefully approve the appointment.](#)

From: Suzanne Daniels
Sent: Friday, June 19, 2015 10:48 AM
To: Malesela Phukubje
Subject: RE: MOLEFE-P&G MINISTER 28 MAY 2015
Importance: High
[You're talking about a board meeting of 25 June 2015 and the letter is dated 18 June 2015?](#)

From: Malesela Phukubje
Sent: Friday, June 19, 2015 10:30 AM
To: Zethembe Khoza; Suzanne Daniels; 'Venete Klein'
Subject: MOLEFE-P&G MINISTER 28 MAY 2015

God day,
Please find the attached letter.
Regards,
Malesela

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 19 June 2015 15:02
To: Matsietsi Mokholo; kim.davids@dpe.gov.za
Cc: baldwin.ngubane@gmail.com; Venete Klein; Zethembe Khoza
Subject: APPOINTMENT OF CHIEF EXECUTIVE OFFICER
Attachments: 20150619 DPEMIN Appointment of CE execution copy.pdf

Importance: High
Sensitivity: Confidential

Good Afternoon Matsietsi and Kim

Please find correspondence attached for the Minister's attention.

Best regards
Suzanne

SUZANNE DANIELS

Office of the Chairman

Eskom Holdings SOC Limited

Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327

Email: daniels.suzanne@eskom.co.za





The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

APPOINTMENT OF CHIEF EXECUTIVE OFFICER

The above matter has reference.

At the last sitting of Eskom's People and Governance Committee on 28 May 2015, which is the subcommittee of the Board of Directors tasked with dealing with the appointment of senior executive managers within Eskom, it was resolved that the appointment of Brian Molefe to the position of Chief Executive of Eskom, be confirmed as soon as possible.

The rationale for the appointment of Mr Molefe as a permanent employee, rather than on a secondment basis, is based on the following considerations:

- i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined 63 days ago;
- ii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;
- iii) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;
- iv) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;
- v) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of 28 May 2015, which was also endorsed by the Board;
- vi) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;
- vii) Certainty of leadership at the top would allow for stabilising the management team internally together with allowing him to be able to attract the requisite skilled professional talent outside of Eskom to take up critical roles in Eskom which are vacant at present or may occur in the future and thereby create the confidence and predictability required of Eskom at this time;

- viii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and
- ix) Public confidence has increased exponentially in the period since the commencement of his secondment to Eskom.

Given the fact that Eskom is the core driving force of the South African economy, we are of one mind that no other person would at this point be able to maintain the current upward trajectory that Brian has placed the company on since his secondment in April this year. It is with this in mind that the board unanimously supports his appointment.

Fully cognisant of the process and procedural issues that will need to be addressed in securing such an appointment in the most effective and efficient manner, the Acting Chairperson of the People and Governance Committee was tasked with obtaining the requisite legal opinion on the most optimal route to be followed to give effect to the resolution.

The legal opinion indicates that the process to be followed in the appointment of the Chief Executive is set out in the Memorandum of Incorporation. While the Memorandum of Incorporation contemplates that the Board must identify potential candidates, it does not preclude the Board from identifying, nominating and evaluating one candidate as the Shareholder, represented by the Honourable Minister in this instance, would still have discretion on whether or not to appoint the preferred candidate. The Memorandum of Incorporation also does not have as a requirement that the candidate should be publicly invited to apply for the position.

Based on the foregoing, and whilst we appreciate that this process may demand some time, it may be prudent to extend the duration of the secondment agreement from Transnet in order to ensure that we do not have a period where he is not contracted to either Eskom or Transnet. As a matter of course, the first prize for Eskom would be a seamless transition from Transnet to Eskom with the effective date being 1 July 2015. I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the appointment.

Accordingly, I hereby request Minister's support and endorsement for the permanent appointment of Brian Molefe as chief executive officer of Eskom.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr Ben Ngubane

INTERIM CHAIRMAN

Date: 19 June 2015

Not signed as electronically submitted

From: baldwin ngubane <baldwin.ngubane@gmail.com>
Sent: Friday, 19 June 2015 15:51
To: Suzanne Daniels
Subject: Re: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

Dear Suzanne,

At this stage I am not able to recommend to the Minister as decided by the P&G as the Minister cant confirm an acting person into a permanent position unless the person has acted for six months. The last thing we want to do is to create controversy around Brian's presence at Eskom. The ridht approach as far as I am concerned is to request the Minister to accept extension for another three months.
Best,
Ben

On Fri, Jun 19, 2015 at 3:02 PM, Suzanne Daniels <DanielSM@eskom.co.za> wrote:

Good Afternoon Matsietsi and Kim

Please find correspondence attached for the Minister's attention.

Best regards

Suzanne

SUZANNE DANIELS

Office of the Chairman

Eskom Holdings SOC Limited

Phone: [+27 11 800 3091](tel:+27118003091) Mobile: [+27 82 580 7832](tel:+27825807832) Fax: [+27 86 662 7327](tel:+27866627327)

Email: daniels.suzanne@eskom.co.za



I'm part of the 49Million initiative.

<http://www.49Million.co.za>

NB: This Email and its contents are subject to the Eskom Holdings SOC Limited EMAIL LEGAL NOTICE which can be viewed at http://www.eskom.co.za/Pages/Email_Legal_Spam_Disclaimer.aspx



The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

EXTENSION OF SECONDMENT AGREEMENT OF BRIAN MOLEFE

The above matter has reference.

At the last sitting of Eskom's People and Governance Committee on 28 May 2015, which is the subcommittee of the Board of Directors tasked with dealing with the appointment of senior executive managers within Eskom, it was resolved that the appointment of Brian Molefe to the position of Chief Executive of Eskom, be confirmed as soon as possible.

Fully cognisant of the process and procedural issues that will need to be addressed in securing such an appointment in the most effective and efficient manner, the Acting Chairperson of the People and Governance Committee was tasked with obtaining the requisite legal opinion on the most optimal route to be followed to give effect to the resolution.

I have requested a more thorough examination of the public service rules as this opinion was obtained on an urgent basis, before taking it to the full board for consideration.

Based on the foregoing, and whilst we appreciate that this process may demand some time, it may be prudent to extend the duration of the secondment agreement from Transnet in order to ensure that we do not have a period where he is not contracted to either Eskom or Transnet. I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the extension.

Accordingly, I hereby request Minister's support and endorsement for the extension of the secondment of Brian Molefe as chief executive officer of Eskom for a further period to be negotiated between Eskom and Transnet.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

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

Dr Ben Ngubane
INTERIM CHAIRMAN

Date: 23/06/15



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118 Fax: 012 431 1039
Private Bag X9079, Cape Town, 8000 Tel: 021 461 6376/7 Fax: 021 465 2381/461 1741

Dr. B Ngubane
Interim Chairperson
Eskom holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com /
Daniels.suzanne@eskom.co.za

Dear Dr. Ngubane

Appointment of Chief Executive of Eskom

Your letter dated 23 June 2015 has reference.

In essence, I concur with your request to extend the period of the secondment agreement of Mr Brian Molefe.

Following the announcement of the resignation of Mr Tshediso Matona as Chief Executive, the Board is required to provide me with a report thereon, as well as expected timelines and milestones for the recruitment and appointment process of a new Chief Executive.

I am of the view is that the Eskom Board must deal expeditiously with the process, in line with the Memorandum of Incorporation, Labour Relations Act, Eskom's employment policies and procedures.

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The position of the Chief Executive is critical, hence, the attraction and retention of a candidate with a right mix of qualifications, leadership, experience and technical knowledge is vital. In consideration of the business imperatives and the need to build public confidence, I urge the Board to observe the acceptable procedure so that the recruitment process and submission is managed with integrity and transparency and is able to withstand scrutiny.

It will therefore be useful for me to have sight of the legal opinion and recommendation on the optimal route to follow. Feedback as soon as the Board has applied its mind to the issue will be appreciated.

Yours sincerely



MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES

DATE: 27/06/2015

CONFIDENTIAL

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Sunday, 13 September 2015 20:00
To: Orcilla Ruthnam
Cc: Venete Klein; baldwin.ngubane@gmail.com
Subject: CE and CFO appointments
Attachments: Letter of advice_app of CEO_19 June 2015_(6190551_1).pdf

Importance: High
Sensitivity: Confidential

Good evening Orcilla

On behalf of the Chairperson of the People and Governance Committee, in consultation with the Chairperson of the Board of Eskom, please find the replies to your request below:

1. Please find attached hereto the legal opinion obtained by the People and Governance Committee in the consideration of whether to follow the competitive recruitment process.
2. Given the performance track record of both incumbents at another SOC (Transnet), coupled with their continued performance in a new environment (Eskom) – the Board does not deem this evaluation necessary. The evaluations will not give the Board input into any areas that it has not already been able to assess during their secondments.
3. The standard DPE policies will apply here, so the Board will be comfortable with the 5 year fixed term.
4. As senior executives of the same ministry – the Board would like the salaries to remain at the same level as it was at Transnet. The Board would like to review their participation in the Long Term Incentive programme in line with the steep commitments in our turnaround plan.

Should you have any further queries, please let me know.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Sunday, September 13, 2015 2:28 PM
To: Annelize Van Wyk; Suzanne Daniels
Cc: Kim Davids
Subject: RE: Dr Ngubane's CV
Sensitivity: Confidential

Hi

It would also be appreciated if I can receive the following info:

- Is there a relevant clause in the HR policy which were considered by Eskom when making the recommendation to appoint without going through the competitive recruitment process? If so, please provide.
- Notwithstanding the right of the Board to recommend the current incumbents be appointed, there is a need for a competency assessment. Usually, the SOC would undertake a psychometric evaluation. Was this done? If so, please provide copies.
- Can we confirm that both Executives are to be appointed on a 5 year fixed term contract, subject to annual review?
- What is the remuneration package to be offered to the candidates?

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance

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 Email info@bowman.co.za
www.bowman.co.za

Our Reference: Mr Jerry Kaapu
 Direct Line: (011) 669 9519
 E-mail Address: j.kaapu@bowman.co.za

Your Reference: Ms Venete Klein
 Date: 18 June 2015

Per e-mail

ESKOM HOLDINGS (SOC) LIMITED

Attention Ms Venete Klein

E-mail address: venete@kleininc.co.za

Dear Venete,

RE: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

1. INTRODUCTION

- 1.1 We have been instructed to urgently consider and advise Eskom on the appointment process for its Chief Executive ("CE"). We are advised that Eskom wishes to take steps to appoint a new CE as expediently as possible and, in so doing, has already identified a suitable potential candidate for the position. Eskom seeks advice on whether it can consider the said candidate without engaging in a full blown recruitment process (public invitation to apply for the position) but, in so doing, complying with all of its duties and obligations.
- 1.2 We advise that due to the urgency of the requested advice, we do not set out a comprehensive overview and analysis of all legislation and documentation which may relate to the matter but confine ourselves strictly with addressing the advice sought. To this extent, we confirm that we have considered all legislation which may be applicable, including the Companies Act, No. 71 of 2008, the Eskom Conversion Act, No. 13 of 2001

Bowman Gilfillan Inc. Reg. No. 1998/021409/21 Attorneys Notaries Conveyancers

Directors RA Legh (Chairman) | PM Maduna (Deputy Chairman) | AJ Keep (Managing Partner) | AG Anderson | DP Anderson | LJ Anderson | M Angumuthoo | J Banoothai | AM Barnes-Webb | TL Belra | ARL Bertrand | F Bhayat | CM Bouwer | IL Brink | REW Burman | LD Campbell | RM Carr | PM Carter | LA Chater | RA Cohen | CN Cunningham | GH Damant | RA Davey | MEC Davids | D de Klerk | ID Dhladhla | TC Dini | CR Douglas | HD Duffey | BR du Plessis | L Dyer | JE Esterhuizen | L Fleiter | KA Fulton | BJ Garven | TM Gcabashe | DJ Geral | LHM Gerstle | D Gewer | AA Gordon | TJ Gordon-Grant | K Goss | CB Green | S Greenwood | A Hale | AS Harris | P Hart-Davies | PA Hirsch | T Jithoo | JR Kaapu | G Kekesi | CP Kennedy | KM Kern | FJ Khoza | ID Kirkman | U Kondile | IG Kruger | JP Kruger | R Labuschagne | FB Laher | JY Laher | T Laubacher | DA Lotter | KS Makapane | M Makala | A McAllister | JM McKinnell | JY Meijer | FH Modil | SNI Mokone | TL Mungae | RPA Morson | AV Munro-Smith | UEBU Naumann | HB Ngcobo | TI Nicholas | MAJ Oppenheim | AJ Pike | P Pillay | JD Prabh | MA Purchase | Y Ram | LV Raphulu | CL Reidy | JB Ripley-Evans | MS Rusa | G Rushton | JW Sahli | MY Sass | CG Schafer | JJ Schlosberg | DE Serechuk | RZ Shein | CEC Smith | CD Stein | PW Stelling | R Straughan | BGM Strydom | V Subban | CFN Todd | CE Tucker | CL van Heerden | MR van Velden | RJ van Voore | NC van Zuylen | MG Vermaak | L Verster | SHE Voigt | DS Webb | DC Wessels | RS Wessels | FE Whelan | HJ Wilkenach | SG Wilson | DD Yull | D Zussa

Consultants JWD Brand | S Esterhuysen | ND Rissik

Special Counsel Cl Valkin

Practice Partner and Head of Africa IL Lang Group COO RJ Smith CFO G Karolus

Antananarivo | Cape Town | Dar es Salaam | Durban | Gaborone | Johannesburg | Kampala | Nairobi

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and the Public Finance Management Act, No. 1 of 1999. In addition, we have considered Eskom's Memorandum of Incorporation ("the MoI"), Eskom's shareholders compact, a document entitled the Governance Oversight Role Over State-Owned Enterprises (SOE's) ("the SOE Governance Oversight document") and a document entitled the Protocol on Corporate Governance in the Public Sector (Department of Public Enterprises) ("the Protocol on Corporate Governance document").

2. THE APPLICABLE LEGISLATION

2.1 Chapter 2 of the Companies Act regulates the Formation, Administration and Dissolution of Companies. Under the part of this chapter which deals with Governance of Companies is section 66 which governs the Board, Directors and Prescribed Officers of a Company. Sections 66(1) and 66(4) provides as follows:

"1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.

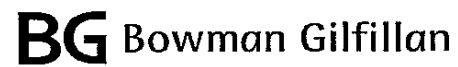
...

4) A company's Memorandum of Incorporation –

a) may provide for –

i) the direct appointment and removal of one or more directors by any person who is named in, or determined in terms of, the Memorandum of Incorporation;

ii) a person to be an ex officio director of the company as a consequence of that person holding some other office, title, designation or similar status, subject to



subsection (5)(a); or

iii) the appointment or election of one or more persons as alternate directors of the company; and

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

2.2

Section 68 further provides as follows:

"1) Subject to subsection (3), each director of a profit company, other than the first directors or a director contemplated in section 66(4)(a)(i) or (ii), must be elected by the persons entitled to exercise voting rights in such an election, to serve for an indefinite term, or for a term as set out in the Memorandum of Incorporation.

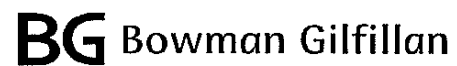
2) Unless a profit company's Memorandum of Incorporation provides otherwise, in any election of directors –

a) the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the board at that time have been filled; and

b) in each vote to fill a vacancy –

i) each voting right entitled to be exercised may be exercised once; and

ii) the vacancy is filled only if a majority of the voting rights exercised support the candidate.



3) Unless the Memorandum of Incorporation of a profit company provides otherwise, the board may appoint a person who satisfies the requirements for election as a director to fill any vacancy and serve as a director of the company on a temporary basis until the vacancy has been filled by election in terms of subsection (2), and during that period any person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other director of the company."

2.3 It is clear from the above that unless the MoI provides otherwise, the appointment by Eskom of its CE would be conducted in terms of section 68(2) of the Companies Act, as set out above. In the circumstances, it is therefore necessary to consider the provisions of the MoI.

2.4 We note that aside from section 69 which governs the "Ineligibility and Disqualification of Persons to be Director or Prescribed Officer", which we understand not to be applicable in this case, we do not consider any other provisions of the Companies Act to be applicable to the advice sought.

2.5 We confirm further that we have considered all other legislation which we thought may possibly be relevant to this instruction, including the Eskom Conversion Act and the Public Finance Management Act, and confirm that there are no provisions therein which we consider applicable to this advice sought. Accordingly, the next step is to consider what is provided in the MoI.

3. THE MEMORANDUM OF INCORPORATION

3.1 The first clause from Eskom's MoI which we consider relevant for the purposes of this advice is clause 13.1.4 which states:

"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 and this MOI."

3.2 "Shareholder" is defined in clause 1.2.42 of the MoI as "the Government" as represented by "the Minister", which is further defined in clause 1.2.27 to mean "the Minister of Public Enterprises".

3.3 Clause 13.3 of Eskom's MoI is headed "Process of appointment of the CE and FD" and states the following in respect of appointing a CE:

"13.3.1 The Board shall identify, nominate and evaluate potential candidates for appointment as the CE in accordance with the Guidelines."

13.3.2 The Shareholder shall appoint the CE from the shortlist of candidates provided by the Board, in accordance with the Guidelines."

3.4 The MoI simply provides that the Board of Eskom shall identify, nominate and evaluate potential candidates for appointment as the CE and that the Shareholder should then appoint the CE from the shortlist of candidates provided by the Board. This is however subject to "the Guidelines".

3.5 Clause 1.2.23 of the MoI defines the "Guidelines" as the "guidelines for the appointment of a Chief Executive for a State Owned Enterprise" as issued by the Minister from time to time".

3.6 We have contacted the Department of Public Enterprises and have been informed that there is no document specifically entitled "guidelines for the appointment of a Chief Executive for a State Owned Enterprise" or anything similar. However, our own research conducted revealed two documents, namely, the SOE Governance Oversight document and the Protocol on Corporate Governance document, which provide further guidelines on the



appointment of the CE. It appears that these are the documents referred to in the MoI.

- 3.7 The SOE Governance Oversight document provides an overview of Government's governance oversight over SOE's and sets out the following summary at item 2:

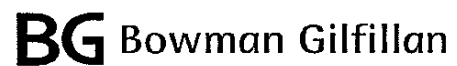
"Corporate governance embodies processes and systems by which SOE's are directed, controlled and held to account. In addition to legislative requirements based on a SOE's enabling legislation, and the Companies Act, corporate governance with regard to SOE's is applied through the precepts of the Public Finance Management Act (PFMA) and run in tandem with the Protocol on Corporate Governance, which encapsulates the principles contained in the King II Report on Corporate Governance."

- 3.8 Item 6.4 then addresses the Protocol on Corporate Governance document further and states as follows:

"The Protocol on Corporate Governance was accepted by Cabinet in 2003 and all Public Entities have been informed that they must comply with the principles contained therein. The Protocol is a code of conduct similar to the King Report on Corporate Governance and has not been legislated. It encapsulates the King II Report and aligns corporate governance principles to the PFMA, while striving to maintain the independence of SOE's."

- 3.9 Having regard to the above, it is necessary to also consider the Protocol on Corporate Governance document. Item 5.1.1.1 of this document sets out the Roles of the Board of a SOE and provides as follows:

"The board of the SOE has absolute responsibility for the performance of the SOE and is fully accountable to the shareholder for such performance. As a result, the board should give strategic direction to the SOE, and in concurrence with the Executive Authority



appoint the chief executive officer and ensure that an effective succession plan for all directors and key executives is in place and adhered to."

3.10 Item 5.1.3 of the Protocol on Corporate Governance document further states:

"Unless otherwise agreed in the shareholders agreement or shareholder compact (as the case may be) the Executive Authority should appoint the chief executive officer whose role should, preferably, be separate from that of the chairperson. The Executive Authority should consult with the board about its preferred candidate for the position of Chief Executive Officer and provide sufficient time for the board to consider the candidate and respond prior to an appointment being made. The chief executive officer's role should focus mainly on the operations of the SOE, ensuring that the SOE is run efficiently and effectively and in accordance with the strategic decisions of the board. The chief executive officer is accountable to the board".

3.11 We have had sight of Eskom's shareholders compact and confirm that it does not provide otherwise in relation to what is in the Protocol on Corporate Governance document. We deem only the above provisions from the documentation considered outside of the legislation to be applicable to the reference made to it in Eskom's MoI and for the purposes of the advice sought herein. It is therefore within the context of the above provisions that the advice sought must be considered.

4. OUR ADVICE

4.1 We have considered the various legislation, documentation and guidelines applicable to the process of Eskom appointing its CE, and having considered all the relevant provisions, we advise that the process that must be followed in appointing the CE is as set out in clauses 13.3.1 and 13.3.2 of the MoI. The legislation and guidelines (or any other documentation) have not altered this process in any manner.



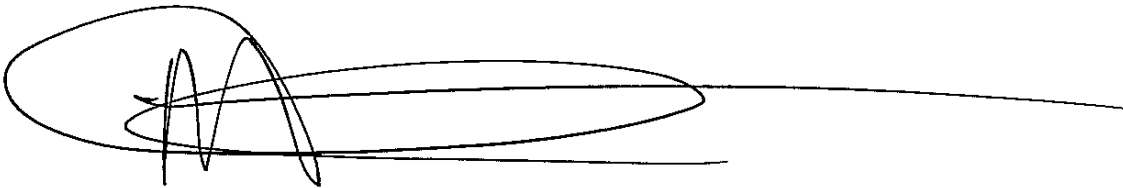
- 4.1 The process that Eskom must follow in appointing a CE essentially requires that the Board of Eskom must identify, nominate and evaluate potential candidates for appointment as the CE and that the Minister of Public Enterprises, as the Executive Authority, should then appoint the CE from the shortlist of candidates provided by the Board. There is no requirement that the candidates should be publicly invited to apply for this position.
- 4.2 Having considered the above requirements, we advise that the Board should resolve a shortlist of candidates for the position of CE. Further, the Board must in accordance with the provisions of item 5.1.3 of the Protocol on Corporate Governance indicate its preferred candidate for the position for consultation with the Minister of Public Enterprises prior to the appointment being made.
- 4.3 One of the issues of concern emanating from the reading of clauses 13.3.1 and 13.3.2 of the MoI is that the MoI suggests that a shortlist should be compiled which suggests that more than one candidate should be included on this list, thereby allowing the Minister of Public Enterprises some discretion in terms of who to appoint. Having considered this aspect, we are of the view that if a list of only one person was compiled and a recommendation made to the Minister of Public Enterprises on the appointment of such candidate, the Minister would still have discretion on whether or not to appoint the preferred candidate. Therefore, we are of the view that an argument can be sustained that a list of only one person will not be in breach of clauses 13.3.1 and 13.3.2 of the MoI.
- 4.4 However, in order to err on the side of caution in this regard, we would suggest that whilst the preferred candidate is shortlisted and nominated for appointment, a second option should, to the extent possible, be identified, evaluated and nominated as well. In the event that a second candidate cannot be identified, evaluated and nominated within the timeframe Eskom wishes to appoint the CE, a list of one person can be compiled and

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a recommendation made to the Minister of Public Enterprises for appointment.

5. We trust that the above addresses your instruction to us. Should you have any queries in regard to the above or any other queries, please do not hesitate to contact us as we remain at your service to ensure that the best interests of Eskom are achieved.

Yours faithfully

A handwritten signature in black ink, consisting of a large, loopy initial 'A' followed by a long, horizontal, slightly wavy line that tapers to the right.

Bowman Gilfillan Inc.

Jerry Kaapu / Luway Mongie

From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Sent: Monday, 14 September 2015 12:59
To: Suzanne Daniels (DanielSM@eskom.co.za)
Cc: Venete Klein
Subject: RE: Remuneration of prescribed officers
Attachments: Letter to Eskom re appointment of CEO.pdf; Guidelines for Appointment of CEO of SOC.pdf

Dear Suzanne

I was reading through the opinion and was concerned about paragraph 3.6 which indicated that the Department was contacted for a copy of the guideline referenced in the MOI. It is unfortunate that I was not approached.





For record, the guideline (attached) has been the Department's basis for advising the Minister and is therefore written into all SOC MOIs as well as the updated Protocol. In terms of the appointment of the CFO, the MOI is clearer on the process, however, the guideline also covers the appointment.

Hence, Minister's letter of July (attached) was informed by these guidelines.

Please provide me with a copy of the document entitled "SOE Governance Oversight Document".

Many thanks

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance

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Click on the following link to view directions to DPE <http://www.dpe.gov.za/home.asp?id=1053>

From: Venete Klein [mailto:venete@kleininc.co.za]
Sent: 14 September 2015 09:44 AM
To: Orcilla Ruthnam
Cc: Suzanne Daniels (DanielSM@eskom.co.za)
Subject: Re: Remuneration of prescribed officers

Thanks Orcilla, we await the feedback then.

Warm regards

Sent from my iPhone

On 14 Sep 2015, at 8:29, "Orcilla Ruthnam" <Orcilla.Ruthnam@dpe.gov.za> wrote:

FYI



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

GUIDELINES FOR THE APPOINTMENT OF A CHIEF EXECUTIVE OFFICER FOR A STATE OWNED ENTERPRISE ("SOE")

INTRODUCTION

South African company law authorizes the shareholders of a company to appoint the Board of Directors to represent the shareholders and act in the best interests of the company. The shareholders' authority includes appointing the executive directors of a company, which include the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as *ex officio* Board members. The CEO provides the critical link between management, the Board and the shareholder.

Therefore, the Minister of Public Enterprises ("the Minister") has prepared a guideline for the appointment of SOE CEOs. This guideline is intended to set out the framework governing the roles and assist the SOE Boards of Directors ("Boards") with providing a framework for succession planning and the appointment of CEOs. Where a Board believes that the guideline or part thereof does not lend itself to implementation or application to address its requirements, and seeks to depart from such application, the Board must notify the Minister in writing of any such departure, providing reasons for any such departure.

The guideline is further intended to ensure effective oversight and monitoring of SOE as strategic national instruments intended to grow and develop the SA economy. This is in recognition of the fact that a CEO is central to the performance and the ability of an enterprise to deliver on its expected performance and to provide economic value to its shareholder. The Governance and Nominations Committee of the Board (composed only of non-executive directors) shall administer and manage the selection process of the CEO on behalf of the Board and make recommendations on the top 3 candidates, in order of priority, to the shareholder.

1. SUCCESSION PLAN

- 1.1 The Board, through its Governance and Nominations Committee, must develop an ongoing process to identify, develop and/or seek a CEO candidate with the relevant skills required to meet the challenges likely to be faced by the SOE in the foreseeable future and to implement Government's strategic objectives relative to such SOE. Accordingly, the Board shall prepare and submit an annual report to the shareholder Minister on its succession planning which must include, but not be limited to, the status of the CEO's contract, the CEO's performance and exit plans.
- 1.2 The Board must, at the earliest possible stage, seek the shareholder Minister's view on whether re-appointment of an incumbent is likely to be considered. If the Board recommends that the incumbent continue, the Board must submit the

CEO's performance report for the last 3 years and the reasons for continuing with such incumbent.

- 1.3 In the event re-appointment of an incumbent is not being considered, the Board, through the Governance and Nominations Committee, shall nominate and evaluate potential successors to the CEO. The CEO shall meet periodically with the Board to submit his or her recommendations and evaluations of potential successors along with a review of any development plans recommended for such individuals. The Governance and Nominations Committee will consult the CEO regarding his/her recommendations of potential successors from internal candidates.

2. DUE PROCESS

- 2.1 The Board shall endeavor to commence and complete its recruitment and appointment process of a new CEO at least 3 months before the intended departure of the incumbent CEO. In this way the Board should avoid, as far as possible, appointing an 'acting' CEO.
- 2.2 The Board must disclose to the shareholder Minister the recruitment process to be used by the Board in identifying the candidates.
- 2.3 Prior to commencing with the recruitment process, the Board must submit a description of the key specifications of the position as well as its selection criteria that will be used to select and assess candidates to the shareholder Minister for his/her consideration. The Board shall ensure that the said key specifications are informed by the SOE specific challenges, requirements and Governments' strategic objectives. Therefore, the candidates' profiles should match those of the SOE's challenges and Government's strategic objectives.
- 2.4 During the assessment of the candidates, the Board should verify and confirm that all shortlisted candidates have no conflicts of interest and will be able to fully execute and carry out executive duties required of a CEO. Should the recommended candidate hold any non-executive directorships in other Boards, such Board directorships should be a maximum of two directorships and should not interfere with his/her executive duties at the SOE. The Board must also advise the candidate that his/her acceptance of nominations onto other Boards post his/her appointment as CEO shall be subject to the Board's approval.
- 2.5 The Board shall, through its Governance and Nominations Committee, submit a minimum of three shortlisted candidates and their preferred candidate to the shareholder Minister for further assessment and interview by the Minister if he/she deems it necessary especially if this is an external candidate.
- 2.6 The shareholder Minister may approve, disapprove and/or express an opinion on the shortlist. If the Minister approves the shortlist, s/he will submit his/ her recommendation to Cabinet for noting, prior to the Board appointing a candidate as CEO.

3. APPOINTMENT

- 3.1 The successful applicant should not commence with his/her duties until the contract of employment has been signed. The contract should include a performance agreement with the Board, which shall include the activities, performance measures and targets specified in the SOE's Shareholder Compact, Corporate Plan, as well as government's strategic intent communicated to the SOE from time-to-time.
- 3.2 The CEO of a SOE is an employee of that SOE and is accountable to its Board in terms of employment legislation. As an *ex officio* Board director, the CEO's position in this respect is governed by Company law and the Public Finance Management Act, 1 of 1999. Accordingly, to align the two offices and recognize that one arises by virtue of the other, the CEO's employment contract must ensure that the CEO's termination of employment results in the simultaneous removal as *ex officio* Board member.
- 3.3 The contract should specify the steps that the Board may take in the event of any alleged misconduct and specify the proposed measures to address the misconduct, including ensuring that the CEO will not be immune from prosecution in terms of applicable law.
- 3.4 Considering the critical and strategic role of the CEO must play in the operational success of a SOE's business, some of the key performance deliverables by the CEO, which must also form part of his/her Performance Agreement, are:
 - 3.4.1 Developing and recommending to the Board a long-term strategy and vision for the SOE to implement Government's strategic objectives, the shareholder compact and SOE corporate plan that will generate satisfactory levels of economic value;
 - 3.4.2 Developing annual business plans and budgets that support the SOE's long term strategy and prudently manages the SOE's resources within those budget guidelines according to the SOE's applicable regulatory framework and governing laws;
 - 3.4.3 Striving consistently to achieve the SOE's financial and operational goals and objectives, and ensuring that the SOE's day to day business affairs are appropriately monitored and managed;
 - 3.4.4 Ensuring continuous improvement in the quality and value of the products and services provided by the SOE, and that the SOE achieves and maintains a satisfactory competitive advantage within its industry;
 - 3.4.5 Ensuring that the SOE has an effective management team and to actively participate in the development of management and succession planning;
 - 3.4.6 Formulating and overseeing the implementation of major corporate policies, procedures and standards;
 - 3.4.7 Serving as the chief spokesperson of the SOE with a full appreciation of the necessity to protect the SOE against a loss of reputation and assuring the SOE and its mission, programmes, products and services are consistently presented in a strong and positive image to relevant stakeholders; and
 - 3.4.8 Ensuring alignment with the Minister's delivery agreement concluded with the President of the Republic of South Africa from time to time.

- 3.5 The Board should pay special attention to the right to terminate the employment contract as well as to any material changes to any declared material interests and conflicts of interest by the new CEO. There should be adequate mechanisms to address such changes and to allow the Board to terminate the contract, should the changes limit the CEO's ability to undertake and execute his or her duties in the interests of the SOE.
- 3.6 The remuneration package in the contract of employment must also be in accordance with the department's current Remuneration Guidelines for SOE. The key performance indicators in the shareholder compact should also be used to determine the CEO's remuneration and the discretionary pay.
- 3.7 The contract should also address any performance by the CEO that significantly and materially deviates from the SOE's strategic objectives and should provide for measures to address such material performance failures and deviations.
- 3.8 The notice period for termination of employment by the CEO should not be less than 6 months and should not contain an evergreen notice period.

DECEMBER 2010

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Monday, 14 September 2015 15:34
To: Jerry Kaapu
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Attachments: Guidelines for Appointment of CEO of SOC.PDF

Importance: High
Sensitivity: Confidential

Hi Jerry

Please see the attached document which the DPE provided to us. Would this impact on the letter of advice in any way?

Best regards
Suzanne

From: Jerry Kaapu [mailto:j.kaapu@bowman.co.za]
Sent: Monday, September 14, 2015 3:21 PM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: FW: Documents referenced [BG-JhbActive.FID877382]
Sensitivity: Confidential

Dear Suzanne

This is second batch of documents requested.

Kind regards

Jerry Kaapu
Partner

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa

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f +27 11 669 9001 | m +27 82 563 3300
e j.kaapu@bowman.co.za
www.bowman.co.za

From: Jerry Kaapu
Sent: 14 September 2015 3:16 PM
To: 'Suzanne Daniels'
Cc: Venete Klein; Luway Mongie
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Sensitivity: Confidential

Dear Suzanne

Please find hereto attached the referenced documents as requested.

Kind regards

Jerry Kaapu
Partner

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa

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f +27 11 669 9001 | **m** +27 82 563 3300
e j.kaapu@bowman.co.za
www.bowman.co.za

From: Suzanne Daniels [<mailto:DanielSM@eskom.co.za>]
Sent: 14 September 2015 1:43 PM
To: Jerry Kaapu
Cc: Venete Klein; Luway Mongie
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Importance: High
Sensitivity: Confidential

Thank you Jerry that will assist in answering the queries from DPE.

Best regards
Suzanne

From: Jerry Kaapu [<mailto:j.kaapu@bowman.co.za>]
Sent: Monday, September 14, 2015 1:41 PM
To: Suzanne Daniels
Cc: Venete Klein; Luway Mongie
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Sensitivity: Confidential

Dear Suzanne

We shall do so. Please confirm if you also require copies of the legislation referenced.

Kind regards

Jerry Kaapu
Partner

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa

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f +27 11 669 9001 | **m** +27 82 563 3300
e j.kaapu@bowman.co.za
www.bowman.co.za

From: Suzanne Daniels [<mailto:DanielSM@eskom.co.za>]
Sent: 14 September 2015 1:22 PM

To: Jerry Kaapu
Cc: Venete Klein
Subject: Documents referenced
Importance: High
Sensitivity: Confidential

Good afternoon Jerry

Can you please send me the documents which you referenced in the attached letter of advice.

Best regards
Suzanne

SUZANNE DANIELS

Office of the Chairman
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za



I'm part of the 49Million initiative...
<http://www.49Million.co.za>

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<http://www.49Million.co.za>

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From: Venete Klein <venete@kleininc.co.za>
Sent: Wednesday, 16 September 2015 07:09
To: danielsm@eskom.co.za
Subject: Fwd: APPOINTMENT OF CE [BG-JhbActive.FID877382]

Sent from my iPhone

Begin forwarded message:

From: Jerry Kaapu <j.kaapu@bowman.co.za>
Date: 16 September 2015 at 6:52:17 SAST
To: "Venete Klein (venete@kleininc.co.za)" <venete@kleininc.co.za>
Cc: Suzanne Daniels <DanielSM@eskom.co.za>, Keshni Pillay <k.pillay@bowman.co.za>
Subject: APPOINTMENT OF CE [BG-JhbActive.FID877382]

Dear Venete
Please find hereto attached our supplementary letter of advice.
Kind regards
Jerry Kaapu
Partner

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

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 Docex 6 Johannesburg
 Email info@bowman.co.za
www.bowman.co.za

Our Reference: Mr Jerry Kaapu
 Direct Line: (011) 669 9519
 E-mail Address: j.kaapu@bowman.co.za

Your Reference: Ms Venete Klein
 Date: 15 September 2015

Per E-mail

ESKOM HOLDINGS (SOC) LIMITED

Attention Ms Venete Klein

E-mail address: venete@kleininc.co.za

Dear Ms Klein,

RE: APPOINTMENT OF CHIEF EXECUTIVE OFFICER**1. BACKGROUND**

- 1.1 We refer to the above matter and to our previous letter of advice of 18 June 2015, wherein we were instructed to urgently consider and advise Eskom Holdings (SOC) Limited ("Eskom") on the appointment process for its Chief Executive Officer ("CEO" or "CE").
- 1.2 At the time of compiling the aforementioned letter of advice, we were advised, during our research process, that the *Guidelines for the Appointment of a Chief Executive Officer for a State Owned Enterprise* ("the Guidelines") did not exist. Consequently, our previous advice was based on that premise, as we were unaware of the existence of the Guidelines.
- 1.3 However, we were recently made aware by Eskom of the existence of the Guidelines. It appears from the Guidelines that they were issued in December 2010. In the circumstances, we have been instructed to urgently consider the Guidelines and advise whether the contents thereof impact on our previous letter of advice of 18 June 2015.

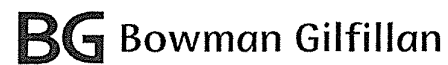
Bowman Gilfillan Inc. Reg. No. 1998/021409/21 Attorneys Notaries Conveyancers

Directors: RA Legh (Chairman) | PM Maduna (Deputy Chairman) | AJ Keep (Managing Partner) | AG Anderson | DP Anderson | LJ Anderson | M Angumuthoo | Banoobhai | AM Barnes-Webb | TL Beira | ARL Bertrand | F Bhayat | CM Bouwer | IL Brink | REW Burman | LD Campbell | RM Carr | PM Carter | LA Chater | RA Cohen | CM Cunningham | GH Damant | RA Davey | MEC Davids | D de Klerk | ID Dhladhla | TC Dini | CR Douglas | HD Duffey | BR du Plessis | L Dyer | JE Esterhuizen | L Fleiser | KA Fulton | BJ Garven | TM Gcabashe | DJ Geral | LHM Gerstle | D Gewer | AA Gordon | TJ Gordon-Grant | CB Green | S Grimwood | A Hale | AS Harris | P Hart-Davies | PA Hirsch | JR Kaapu | G Kekesi | CP Kennedy | KM Kern | FJ Khoza | ID Kirkman | U Kondile | JG Kruger | JP Kruger | R Labuschagne | FB Laher | HY Laher | T Laubscher | DA Lotter | KS Makapane | M Makola | A McAllister | JM McKinnell | JY Meijer | SNI Mokose | TL Mongae | RPM Morson | AV Munro-Smith | UEBU Naumann | HNB Ngcobo | TH Nichols | MAJ Oppenheim | AJ Pike | P Pillay | JD Prain | MA Purchase | Y Ram | LV Raphulu | CL Reidy | JB Ripley-Evans | MS Rusa | GI Rushton | JW Sahli | MY Sass | CG Schafer | JH Schlosberg | DE Serchuk | RZ Shein | CEC Smith | CD Stein | PW Stelling | R Straughan | BGM Strydom | V Subban | CFN Todd | CE Tucker | CL van Heerden | MR van Velden | RJ van Vuren | NC van Zuylen | MG Vermaak | L Verster | SHE Voigt | DS Webb | DCJ Wessels | RS Wessels | PE Whelan | HJ Wilkenach | SG Wilken

Practice Partner and Head of Africa: JL Lang **Group COO:** R Smith **CFO:** G Karolus

Antananarivo | Cape Town | Dar es Salaam | Durban | Gaborone | Johannesburg | Kampala | Nairobi

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1.4 We advise that due to the urgency of the requested advice, we do not set out a comprehensive overview and analysis of all the legislation and documentation which may relate to the matter but confine ourselves strictly to addressing the supplementary advice sought.

2. **THE GUIDELINES**

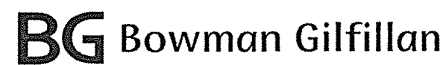
2.1 The Guidelines reiterate that South African Company Law authorizes the shareholders of a company to appoint a Board of Directors ("Board") to represent the shareholders and act in the best interests of the company.

2.2 The shareholders' authority includes appointing the executive officers of a company, which includes the Chief Executive Officer and Chief Financial Officer as *ex officio* Board members.

2.3 In terms of the Guidelines, the CEO provides a critical link between management, the Board, and the shareholder. It is for this reason that the Shareholder Minister, the Minister of Public Enterprises ("the Minister"), has prepared the Guidelines.

2.4 As set out in the introduction to the Guidelines:-

"This guideline is intended to set out the framework governing the roles and assist the SOE Boards of Directors ("Boards") with providing a framework for succession planning and the appointment of CEOs. Where a Board believes that the guideline or part thereof does not lend itself to implementation or application to address its requirements, and seeks to depart from such application, the Board must notify the Minister in writing of any such departure, providing reasons for any such departure". (own underlining)



2.5 The Guidelines further provide that:--

"The Governance and Nominations Committee of the Board (composed only of non-executives directors) shall administer and manage the selection process of the CEO on behalf of the Board and make recommendations on the top 3 candidates in order of priority, to the shareholder". (own underlining)

2.6 Paragraph 1 of the Guidelines deals with a succession plan and provides, at paragraph 1.3, that in the event re-appointment of an incumbent is not being considered:-

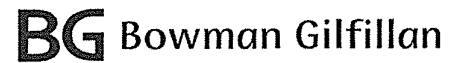
"...the Board, through the Governance and Nominations Committee shall nominate and evaluate potential successors to the CEO. The CEO shall meet periodically with the Board to submit his or her recommendations and evaluations of potential successors along with a review of any development plans recommended for such individuals. The Governance and Nominations Committee will consult the CEO regarding his/her recommendations of potential successors from internal candidates".

2.7 The Guidelines also set out, at paragraph 2, the due process to be followed by the Board of a State Owned Enterprise ("SOE") when appointing a CEO. The due process can be summarised as follows:-

2.7.1 in order to avoid as far as possible, appointing an "acting" CEO, the Board should endeavour to commence and complete its recruitment and appointment process at least three months before the departure of the incumbent CEO;

2.7.2 the Board must disclose to the Minister, the recruitment process to be used to identify the candidates;

2.7.3 the Board must submit a description of the key specifications of the position and its selection criteria to the Minister for consideration before commencing with the

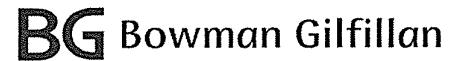


recruitment process;

- 2.7.4 the Board should verify and confirm that all shortlisted candidates have no conflicts of interests and will be able to fully execute and carry out the duties of a CEO;
- 2.7.5 the Board should submit a minimum of three (3) shortlisted candidates and their preferred candidate to the Minister for further assessment and when necessary, interview by the Minister;
- 2.7.6 the Minister may approve, disapprove and/or express an opinion on the shortlist; and
- 2.7.7 if the Minister approves he/she will submit his/her recommendations to Cabinet for noting.

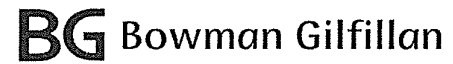
3. OUR ADVICE

- 3.1 As previously advised, the process that must be followed by Eskom in appointing a CE, is as set out in clauses 13.3.1 and 13.3.2 of Eskom's Memorandum of Incorporation ("MOI"). The MOI provides, in summary, that the Board should identify, nominate and evaluate potential candidates for the appointment as the CE and the Minister should then appoint the CE from the shortlist of candidates provided by the Board. We note and confirm that the Guidelines do not alter this process.
- 3.2 In so far as public invitation for application for the CE position is concerned, which is one of the issues that were raised with us, we are not aware of any legislative requirement that candidates should be publicly invited to apply for the position. Furthermore, the Guidelines and MOI do not provide any requirement that the candidates should be



publicly invited to apply for the position. Despite this, in terms of the Guidelines, the Board must disclose to the Minister the recruitment process to be used to identify the candidates. In the circumstances, we confirm our previous advice that Eskom can consider the identified candidate without engaging in a full blown “recruitment process” through public invitation and in so doing will not be acting contrary to any duties and obligations.

- 3.3 One of the issues of concern which was raised in our previous letter of advice, which emanates from the MOI, is that the MOI suggests that a shortlist should be compiled, which suggest that more than one candidate should be included on this list thereby allowing the Minister discretion in terms of who to appoint. Having considered the Guidelines, we note the requirement that the Board should make recommendations on the top three candidates in order of priority to the Minister. Furthermore, paragraph 2.5 provides that the Board should submit a minimum of three shortlisted candidates to the Minister.
- 3.4 As stated at paragraph 2.4 above, where a Board seeks to depart from the application of the Guidelines, the Board must notify the Minister in writing of such a departure, providing reasons for such departure. Therefore, we advise that if a second and third candidate cannot be identified, evaluated and nominated by the Board, then the Board is required in terms of the Guidelines to notify the Minister in writing of the departure, providing reasons for the departure. We note that the Guidelines merely require that the Board must *notify* the Minister and it does not appear that an onerous process of application and approval for the deviation must be followed, provided that the Board furnishes the Minister with reasons for the departure.
- 3.5 Lastly the Guidelines, at paragraph 2.3, provide that even before commencing with the recruitment process, the Board is required to submit a description of the key specifications of the position as well as its selection criteria that will be used to select and



assess candidates to the Minister for consideration. To the extent that this preliminary step has not yet been complied with, we advise that the Board should endeavour to take steps and do so. To the extent that it is not possible to do so, thereby deviating from the Guidelines, we advise that the Board should notify the Minister of the deviation in writing, providing reasons for the deviation.

4. We trust that the above addresses your instruction to us. Should you have any further queries in regard to the above or any other queries, please do not hesitate to contact us as we remain at your service to ensure that the best interests of Eskom are achieved.

Yours faithfully

P.P.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a final flourish.

Bowman Gilfillan Inc.

Jerry Kaapu/ Keshni Pillay

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Wednesday, 16 September 2015 09:47
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Attachments: Letter of Advice_Appointment of Chief Executive Officer.pdf

Importance: High

Morning Orcilla

Please find the Bowman's supplementary opinion.

In the interim, we have noted the contents of items 3.4 and 3.5 and have actioned them. You can expect the responses during the course of today.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Tuesday, September 15, 2015 11:36 AM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers

Noted, thanks Suzanne

I had a chat with Jerry this morning and he indicated that there would be a supplementary opinion coming to you to by tomorrow. This is merely to strengthen the current opinion and would deal with the DPE guidelines as well as the mandate of the Board and Minister to consider the options available to them on the recruitment of an ideal candidate.

Please call should you wish to discuss further.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance

+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 342 4146



public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

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Click on the following link to view directions to DPE <http://www.dpe.gov.za/home.asp?id=1053>

From: Suzanne Daniels [<mailto:DanielSM@eskom.co.za>]
Sent: 14 September 2015 04:36 PM
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)



The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

NOTIFICATION OF DEPARTURE FROM THE APPLICATION OF THE GUIDELINES IN THE APPOINTMENT OF CHIEF EXECUTIVE OFFICER

This correspondence serves to notify the Honourable Minister of the departure from the application of the Guidelines and the reasons for this departure.

The rationale for the appointment of Mr Molefe as an employee, was based on the following considerations:

- i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined five months ago;
- ii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;
- iii) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;
- iv) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;
- v) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of 22 July 2015, which was endorsed by the Board;
- vi) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;
- vii) Certainty of leadership at the top would allow for stabilising the management team internally together with allowing him to be able to attract the requisite skilled professional talent outside of Eskom to take up critical roles in Eskom which are vacant at present or may occur in the future and thereby create the confidence and predictability required of Eskom at this time;
- viii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and
- ix) Public confidence has increased exponentially in the period since the commencement of his secondment to Eskom.

A handwritten signature in black ink, appearing to be a stylized 'S' or 'D'.

Given the fact that Eskom is the core driving force of the South African economy, we are of one mind that no other person would at this point be able to maintain the current upward trajectory that Brian has placed the company on since his secondment in April this year. It is with this in mind that the board unanimously supports his appointment.

Fully cognisant of the process and procedural issues that will need to be addressed in securing such an appointment in the most effective and efficient manner, the Chairperson of the People and Governance Committee was tasked with obtaining the requisite legal opinion on the most optimal route to be followed to give effect to the resolution.

The legal opinion indicates that the process to be followed in the appointment of the Chief Executive is set out in the Memorandum of Incorporation. While the Memorandum of Incorporation contemplates that the Board must identify potential candidates, it does not preclude the Board from identifying, nominating and evaluating one candidate as the Shareholder, represented by the Honourable Minister in this instance, would still have discretion on whether or not to appoint the preferred candidate. The Memorandum of Incorporation also does not have as a requirement that the candidate should be publicly invited to apply for the position.

We also provided the Guidelines to our lawyers and it was recommended that we notify Honourable Minister, as we hereby do, of the departure from the Guidelines and the reasons therefor.

Accordingly, I hereby request Minister's support and endorsement for the permanent appointment of Brian Molefe as chief executive officer of Eskom.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely



Mrs. V Klein

CHAIRPERSON (PEOPLE AND GOVERNANCE COMMITTEE)

Date: 9 September 2015

"Am 9"



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Halfeld, 0028 Tel: 012 431 1118/1150 Fax: 012 431 1039
Private Bag X9078, Cape Town, 8000 Tel: 021 461 6376/7469 Fax: 021 465 2881/461 1741

Dr. B Ngubane
Interim Chairperson
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com /
DanielSM@eskom.co.za
venete@kleininc.co.za

Dear Dr. Ngubane

Re: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Your letters regarding the above-mentioned matter, dated 11 September 2015, have reference.

Subsequent to receiving Cabinet's endorsement, I approve the appointments of Mr Brian Molefe as the Chief Executive Officer and Mr Anoj Singh as Chief Financial Officer of Eskom and ex-officio Directors of the Eskom Board of Directors. Please extend my congratulations to Mr Molefe and Mr Singh on their appointments.

I have enclosed herewith, letters to Mr Molefe and Mr Singh confirming their appointments. Kindly ensure that it is delivered to and signed after finalising their appointments to Eskom.

The Board must ensure that the employment and performance contract is aligned to meet strategic objectives within, but not limited to, the following stipulations:

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OK

- Their appointment as ex officio to the Board shall, irrespective of any other term stipulated in any other agreement, terminate with immediate effect upon date of notice of termination of employment, notice of resignation or notice of suspension, in line with the provisions of the MOI.
- As ex officio to the Board, the Executives shall not be entitled to any additional remuneration, other than that provided for in the contract of employment.

In drafting the contracts, kindly liaise with the Department in the finalisation of the employment and performance contract of the CEO and provide me with a copy within three (3) months of the date of my letter.

In terms of remuneration, in line with the DPE Remuneration Guidelines, I approve a guaranteed remuneration of R7, 032,000.00 for Mr Molefe and a guaranteed remuneration R4, 607,000.00 for Mr Singh.

I trust that these appointments will add to the much needed leadership stability at Eskom and further encourage the Board and CEO designate to finalise, amongst other immediate priorities, the filling of vacancies at Executive level.

Yours sincerely



MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 02/10/2015



Did not receive this letter.

"Am 10"

02-10-2015



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118/1150 Fax: 012 431 1039
Private Bag X9079, Cape Town, 8000 Tel: 021 461 6376/7469 Fax: 021 465 2381/451 1741

Mr Brian Molefe
Chief Executive Officer
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808

Fax: 011 800 4938

Email: b.molefe@eskom.co.za
b.molefe@eskom.co.za

Dear Mr Molefe

Appointment as Chief Executive Officer and *Ex Officio* Member of the Eskom Board of Directors

I am pleased to inform you of your appointment to Eskom as Chief Executive Officer and *ex officio* member of the Board of Directors.

Your appointment to the Eskom Board is *ex officio* and therefore the following stipulations apply:

- Your appointment to the Board shall, irrespective of any other term stipulated in any other agreement, terminate with immediate effect upon the date of notice of termination of employment or notice of resignation or notice of suspension;
- You shall not be entitled to any additional remuneration, other than that provided for in your contract of employment as Chief Executive Officer of Eskom; and
- All Board activities you perform, including but not limited to preparing for Board meetings, travelling time to and from Board meetings, and participation in Board activities/responsibilities, whether within or outside normal working

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[Handwritten signature]

hours, are regarded as official duties and do not require you to take leave to attend to them.

I have requested the Chairperson to facilitate, in consultation with you, the alignment of your contract of employment in accordance with the above stipulations. I have no doubt that you will make a real contribution to the future success of Eskom.

Please confirm your acceptance as *ex officio* to the Board by signing the attached statement and returning a copy to myself.

Yours sincerely



MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 02/10/2015

CC: Dr Ngubane, Interim Chairperson of the Eskom Board



2


From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Sent: Thursday, 08 October 2015 11:09
To: Suzanne Daniels; Masenya Selatswa; baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Lawrence Nevondo; Keromamang Mhlongo; Jumarie Botha
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Hi Suzanne

Just to confirm, in view of the Minister's approval of a 5 year contract, subject to annual performance review, the appointment dates will be from 1 October 2015 to 30 September 2020.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance

+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 342 4146



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Click on the following link to view directions to DPE <http://www.dpe.gov.za/home.asp?id=1053>

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 08 October 2015 09:19 AM
To: Orcilla Ruthnam; Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Lawrence Nevondo; Keromamang Mhlongo; Jumarie Botha
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High

Dear Orcilla

The effective date of the appointment at Eskom for the Group Chief Executive and Group Chief Financial Officer is 1 October 2015.

Best regards
Suzanne

SUZANNE DANIELS
Company Secretary
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za



From: Orcilla Ruthnam [<mailto:Orcilla.Ruthnam@dpe.gov.za>]
Sent: Thursday, October 8, 2015 8:41 AM
To: Suzanne Daniels; Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Lawrence Nevondo; Keromamang Mhlongo; Jumarie Botha
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Dear Suzanne

For purposes of record kindly confirm the effect date of appointment at Eskom for both the CEO and CFO.

The information is required before 10h00 today. Hence, just a response with the effective date will suffice for now.

Your prompt response will be highly appreciated.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance

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Click on the following link to view directions to DPE <http://www.dpe.gov.za/home.asp?id=1053>

From: Suzanne Daniels [<mailto:DanielSM@eskom.co.za>]
Sent: 02 October 2015 03:22 PM
To: Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Orcilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High

Good afternoon

Receipt is hereby confirmed.

Regards
Suzanne

SUZANNE DANIELS

Senior Manager
Office of the Group Executive, Technology and Commercial
Eskom Holdings SOC Limited
Megawatt Park A3E35
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za





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 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.

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).

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.

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.

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.

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

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 Mabotha 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;
- 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.

Statement on the Cabinet meeting of 10 December 2014 | Government ... <https://www.gcis.gov.za/content/newsroom/media-releases/cab-statement...>

- 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.

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6/7/2021

Hansard | NA: Questions for Oral Reply; Deputy President; Cluster 2: Social Services | PMG



Hansard: NA: Questions for Oral Reply; Deputy President; Cluster 2: Social Services

House: National Assembly

Date of Meeting: 18 Mar 2015

Summary

No summary available.

Minutes

_____ UNREVISED HANSARD

NATIONAL ASSEMBLY

Wednesday, 18 March 2015

Take: 106

WEDNESDAY, 18 MARCH 2015

PROCEEDINGS OF THE NATIONAL ASSEMBLY

The House met at 15:01.

The Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.

QUESTIONS FOR ORAL REPLY – DEPUTY PRESIDENT

START OF DAY

UNREVISED HANSARD

NATIONAL ASSEMBLY

Wednesday, 18 March 2015

Take: 106

6/7/2021

Hansard | NA: Questions for Oral Reply; Deputy President; Cluster 2: Social Services | PMG

QUESTIONS FOR ORAL REPLY

The Deputy President

The SPEAKER: Order! Hon members, the first item on the Order Paper is questions addressed to the Deputy President. The first question has been asked by the hon Singh and is addressed to the hon Deputy President. [Interjections.]

Mr M Q NDLOZI: Hon Speaker, may I please address you?

The SPEAKER: Yes, please proceed.

Mr M Q NDLOZI: Hon Speaker, we have written correspondence to you or your office, requesting an opportunity for the hon Sonti to ... [Interjections.]

The SPEAKER: Order! We received it and we have been in touch with her, hon member.

Mr M Q NDLOZI: Yes, according to our correspondence you have agreed. That is why I was worried that you are continuing before ... [Interjections.]

The SPEAKER: No, hon member, we have an agreement with her and she knows what is going to happen. [Interjections.]

Mr J S MALEMA: Hon Speaker...

The SPEAKER: Yes, hon Malema, proceed.

Mr J S MALEMA: May I also address you on the remarks you made yesterday about the courts? I asked you to consider withdrawing and apologising for those remarks. I do not know if that is going to be done now or tomorrow. [Interjections.]

The SPEAKER: No, hon Malema, can you please take your seat and let us proceed with questions to the Deputy President.

Mr J S MALEMA: So you are not going to withdraw those remarks?

The SPEAKER: No.

Mr J S MALEMA: Oh, okay. [Interjections.]

The SPEAKER: Hon Deputy President, please proceed.

QUESTION 5

6/7/2021

Hansard | NA: Questions for Oral Reply; Deputy President; Cluster 2: Social Services | PMG

UNREVISED HANSARD**NATIONAL ASSEMBLY****Wednesday, 18 March 2015****Take: 106**

The SPEAKER

Question 5:

The DEPUTY PRESIDENT: Hon Speaker, regarding the Ministerial Advisory Council on Energy, I have been informed that the process of appointments has been finalised and the Minister of Energy will soon announce the names of council members. So, that is work in progress.

Regarding the question of the current electricity supply constraints, Eskom is implementing load shedding. They are doing it as a last resort when peak demand exceeds the supply of electricity. Eskom's supply is currently constrained, as many of us know, due to the high number of breakdowns and partial load losses due to its maintenance backlog. Eskom is now committed to carrying out all the required planned preventive maintenance to ensure that the condition of generating plants keeps on improving. This maintenance work naturally involves taking plants offline and, as they do that, it reduces the supply of energy.

In addition to Eskom's maintenance work, government is pursuing all the other feasible ways of increasing the supply of electricity and reducing demand. This includes, for instance, cogeneration with the private sector and entering into contracts with independent power producers. That process is under way and a number of negotiations are currently being held. Government has already opened up electricity supply in the country to independent private power producers. Private sector power producers are currently providing approximately 800 MW of power to Eskom through short-term cogeneration contracts.

The Department of Energy will also be initiating a process of procuring longer-term cogeneration at the end of March. Those discussions are under way and some have been concluded. The Department has entered into contracts with independent power producers to provide peaking plant power of 1 000 MW. It has also issued a request for proposals from the private sector for a new coal power station of 2 500 MW. The Department of Energy has now managed four procurement processes for renewable energy projects. This is going to involve the private sector quite extensively.

Working together with Eskom and a number of other stakeholders, we are taking decisive action to reduce the need for load shedding and secure our energy supply into the future. A number of measures that are being taken both in the War Room and outside the War Room will pay dividends as we move on. I have been given this responsibility and I have appointed an advisory panel that consists of six South Africans. Their names are Ms Dolly Mokgatle, who is well versed with the workings of Eskom and has worked at Eskom for a number of years but is no longer there; Mr Smunda Mokoena, an electrical engineer; Ms Sy Gourah, an electrical engineer; Mr Bobby Godsell, a businessman who was once the chairman of Eskom; and Prof Anton Eberhard, a professor at UCT in electricity. We are going to get a representative from labour.

On Friday we will be taking other measures in terms of meeting the business sector. Business Leadership SA and Business Unity SA will be meeting with us to discuss a number of proposals that they want to put on the table. Therefore, the War Room is at work and we are doing a number of things to address the challenges that Eskom is facing. Thank you.

6/7/2021

Hansard | NA: Questions for Oral Reply; Deputy President; Cluster 2: Social Services | PMG

Mr N SINGH

The DEPUTY PRESIDENT

UNREVISED HANSARD**NATIONAL ASSEMBLY****Wednesday, 18 March 2015****Take: 106**

Mr N SINGH: Hon Speaker, Hon Deputy President, it is quite disconcerting to learn that the Minister has not yet appointed the advisory council because now more than ever before do we need different stakeholders to come together in order to deal with the electricity problem in our country. Having said that, hon Speaker, I want to agree with what billionaire businessman Mr Patrice Motsepe had to say recently. This is what he said, "Eskom is letting South Africa down very badly." I am sure that all of us in this House can associate ourselves with that remark.

We know, hon Deputy President, that you have been handed the poisoned chalice of dealing with what is happening in Eskom through the advisory council. We do not know what the abilities and capabilities are of the people you have just mentioned who must come up with tangible solutions to deal with this electricity crisis. However, hon Speaker, four top executives of Eskom have been suspended, with the chairperson of the Eskom board, Zola Tsotsi - and I do not know about the surname - yet to supply the terms of reference for the three-month probe. Now, how can this happen and the terms of reference have still not been put on the table?

Minister Lynne Brown recently reportedly said that she has been frustrated about not getting information from Eskom on its plans. The question is, hon Deputy President, through you, hon Speaker, since you have this poisoned chalice, is there going to be any light at the end of the tunnel for South Africans and for economic development in South Africa?

The DEPUTY PRESIDENT: Yes, we can say there will be light at the end of the tunnel. As we all know, Eskom faces challenges but these challenges are being addressed. They are being addressed, notwithstanding the fact that the four executives have been put on leave of absence for three months. It is a leave of absence just for three months, as the inquiry takes off and as it happens. It will be done within three months and thereafter a much clearer executive future will be determined. I believe that the problem at the leadership level will be addressed. At the generation level, we are doing as much as we can in the War Room. We are taking a number of measures. A good thing is that the business community, including labour, has asked to meet us as part of the War Room process to put forward a number of proposals that they have. They have indicated that they have practical proposals that can help to a large extent to address this problem. We are not sitting on our laurels but we are going to grab this opportunity that business and labour has put forward to meet with them and to hear what their suggestions are. At the same time we are stabilising the whole system and making sure that load shedding is reduced more and more.

The cogeneration proposals that have been put forward and a number of other initiatives that are being made are going to contribute to addressing the problem. Is there light at the end of the tunnel? Yes, there is light at the end of the tunnel. Thank you. [Applause.]

Rev K R J MESHOE

6/7/2021

Hansard | NA: Questions for Oral Reply; Deputy President; Cluster 2: Social Services | PMG

UNREVISED HANSARD**NATIONAL ASSEMBLY****Wednesday, 18 March 2015****Take: 106**

The DEPUTY PRESIDENT

Rev K R J MESHOE: Deputy President and Speaker, the engineer and energy expert Andrew Kenny wrote a very informative article titled "The rise and fall of Eskom and how to fix it now". His advice is that Eskom must return to what it was before: an independent engineering company whose sole duty is to provide sufficient and reliable electricity and cover its costs. He further said that it must concentrate on its core function and appoint its managers, engineers and technicians purely on qualifications and experience and not on skin colour or political affiliation.

We are aware that Eskom has issued denials of race-based retrenchments in order to meet quotas, but the National Union of Mineworkers has confirmed that there is what they call "backroom retrenchments" taking place. Now, I want to know, Deputy President, what government is going to do to ensure and assure the public that the retrenchment of experienced engineers is not taking place. And when executives who have an important role to play at this stage are being suspended, how can the public be assured that that is not going to seriously affect the provision of electricity and that the existing maintenance backlog will still be met on time? Thank you.

The DEPUTY PRESIDENT: Hon Meshoe, you will remember that the Eskom of the past that you are talking about was the Eskom that generated electricity largely for white people in this country. The majority of our people did not enjoy electricity and that was the work of the Eskom of the past. The task of the Eskom of the democratic dispensation is to make sure that electricity is reticulated to the majority of our people - and that is the difference. We are now talking about the Eskom of today; the Eskom of the democratic dispensation that we have. [Applause.]

Now, when it comes to the issue of retrenchments, there was a process of asking people to take voluntary retrenchment. That has since been stopped. It has been stopped because we want to retain as many skilled people as we possibly can. A number of people, obviously, would have wanted to leave for whatever reason and we have said that retrenchments of a voluntary nature must now stop. I am not aware of any backroom or backyard retrenchments taking place. The fact of the matter is that we need all the skilled people in Eskom. We must admit that we have lost quite a number of skilled people in Eskom. The race is now on to attract as many more skilled people as possible within Eskom and, yes, to go on merit and not on skin colour. However, at the same time Eskom has a task to make sure that as many of the young black people as possible who can come into Eskom and who have the qualifications and skills should be brought into Eskom so that Eskom begins to reflect the demographic nature of our society. Eskom has a duty to do so. We are not advocating wholesale retrenchment; we want to retain skills and we want to retain the best skills that will take Eskom forward. [Applause.]

The LEADER OF THE OPPOSITION

UNREVISED HANSARD**NATIONAL ASSEMBLY****Wednesday, 18 March 2015****Take: 106**

The DEPUTY PRESIDENT

6/7/2021

Hansard | NA: Questions for Oral Reply; Deputy President; Cluster 2: Social Services | PMG

The LEADER OF THE OPPOSITION: Hon Deputy President, madume [greetings]. If we were willing to be honest, I think all of us in this House would agree that the crisis at Eskom is indeed a crisis and not just a challenge. South Africans are losing work all the time as we continue to see so much load shedding taking place. I wonder if the light at the end of the tunnel will come on between two and three in the afternoon and six and seven at night.

Deputy President, my question relates to the fact that I want to confirm whether the provincial war rooms have in any way been performing emergency drills in anticipation of a national power grid failure in its entirety. Are we as South Africans facing this as an imminent prospect? Are the provincial war rooms and the national War Room in fact performing any drills relating to an imminent national grid failure? We have heard information about Cabinet - escape plans, etc. We would really and sincerely like to know if this prospect does in fact exist and if we are having these drills taking place at provincial war rooms? Thank you very much.

The DEPUTY PRESIDENT: I am not aware of any provincial war rooms that are conducting drills in case of system failure. If that was happening, I am sure the national War Room would have been aware of such activities. If the hon member has evidence and proof of this, maybe he will favour us with the information because I am not aware of it.

What I am aware of is that a number of cities are beginning to embark on technological initiatives to deal with reducing the energy demand; to deal with how load shedding can be managed better. A number of them are coming up with innovative ideas regarding the reduction of energy consumption, as well as using a number of innovative measures and initiatives to manage load shedding. So, that is what I am aware of. I am not aware of the other bit. If there is information, then the hon member can put it forward.

The SPEAKER

UNREVISED HANSARD

NATIONAL ASSEMBLY

Wednesday, 18 March 2015

Take: 106

The DEPUTY PRESIDENT

The SPEAKER: Hon Van der Merwe, please continue.

Mr J A ESTERHUIZEN: Madam Speaker, I mistakenly pressed the hon Van der Merwe's button, but I pressed mine straight afterwards. With your permission, may I ask the Deputy President a question?

The SPEAKER: Proceed, hon member.

Mr J A ESTERHUIZEN: Hon Deputy President, in 1994 access to electricity was 34%. Since then the Integrated National Electrification Programme, INEP, has made it possible to electrify 5 977 000 million households, which is nationwide electrification of about 88%. This must be commended and that is the Eskom of today, as you mentioned. My concern is that the current sustainability of today's Eskom is based on the financial support of the South African government. Would you not agree that that is not a healthy situation? Also, in December 2011 Nersa, which chairs the SA Grid Code Advisory Committee, allocated 3 725 MW of energy capacity to independent power producers, or IPPs. You rightly mentioned that 800 MW is currently from IPP. How is it that Eskom is still unable to connect IPPs to the grid in most cases, especially now when energy or electricity is of the utmost importance in this country? Thank you.

6/7/2021

Hansard | NA: Questions for Oral Reply; Deputy President; Cluster 2: Social Services | PMG

The DEPUTY PRESIDENT: Clearly Eskom's financial situation is a matter of great concern and it is being addressed. The inability of Eskom to connect the power that is being generated by IPPs is a matter that is being resolved as we speak. IPP power that has been generated in the power station near Durban and the one in Coega is about to be connected to the grid and we are going to see more and more of this happening. A matter that is being discussed in the War Room is that as IPPs are beginning to generate more and more power, that power then needs to be connected to the grid. So, we are working diligently with Eskom's management to make sure that we do not drop any of the balls but make sure that power that is generated is connected to the grid because it is needed in the grid.

The initiatives that are taking place, like cogeneration by IPPs, are all going to help a great deal to enhance our grid as Eskom begins to get on top of its maintenance backlog and as more and more of the power stations resolve their problems. A number of them are undergoing repairs. These are repairs that are going to stand our grid in good stead because many of the power stations, as much as they are old, are now being properly repaired and properly maintained. At the War Room level, we are meeting with the original equipment manufacturers and getting to understand what their real challenges are. Those challenges are also being addressed. We have embarked on a wholesale programme of addressing the many challenges that Eskom faces and we are confident that all this will yield good results as we move on. Thank you very much.

QUESTION 6

QUESTION 5

UNREVISED HANSARD**NATIONAL ASSEMBLY****Wednesday, 18 March 2015****Take: 107**

Question 6:

The DEPUTY PRESIDENT: Hon Speaker, over the last two decades South Africa has had to increase rapidly the number of health providers in our country in order to respond to the burden of disease that many South Africans are still exposed to. Given that the needs are quite diverse, provincial departments have adopted different approaches to address gaps in their skills. In some cases, health workers are contracted directly from other sources by the state, and in others NGOs are funded to contract mainly community health workers.

It is also important to highlight that many of our people themselves have volunteered in various capacities and are provided stipends to support their contribution to the national effort of keeping our people healthy.

The provincial departments of health currently have a large number of community health workers assisting with community-based health-related activities. Some are on the department's payroll, such as in Kwazulu-Natal, while others are employed by NGOs that are active throughout the country, which are in turn contracted by the provincial department, as it happens here in the Western Cape.

As part of re-engineering primary health care, the department is in the process of rolling out primary health care outreach teams. These teams will include community health workers, nurses, environmental health practitioners and health promoters, depending on local health needs.



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Deputy President Cyril Ramaphosa announces names of Eskom Advisory Council

19 Mar 2015

Deputy President Cyril Ramaphosa today, Wednesday 18 March 2015, announced in the National Assembly, the names of the advisory panel he has appointed to advise him on matters regarding the turn-around of Eskom.

Members of the Advisory Panel include Professor Anton Eberhard, Ms Dolly Mokgatle, Mr Bobby Godsell, Ms Sy Gourah, Mr Smunda Mokoena and a sixth person with organised labour background will be joining the panel soon.

The Advisory Panel has been working with the technical teams working in the government's War Room.

Deputy President Ramaphosa was responding to questions in the National Assembly which focussed among others, on steps that government is undertaking to address the electricity challenges facing the country.

In this context, Deputy President Ramaphosa informed the National Assembly that various interventions are being implemented to address the electricity supply constraints including the prioritisation of maintenance of all power stations.

To assist the Deputy President lead the turn-around process, he has appointed this Advisory Panel to provide an independent view on the effectiveness of the measures proposed to turn around Eskom.

Deputy President Cyril Ramaphosa announces names of Eskom Advisor... <https://www.gov.za/speeches/deputy-president-ramaphosa-announces-ap...>

The Deputy President believes that there is no short-cut to the challenges facing Eskom, hence the need to develop short, medium and long-term solutions that are independently verifiable by people with expert knowledge of the energy sector.

The Advisory panel appointed by the Deputy President on Eskom is different from the Ministerial Council on Energy whose members will be announced soon by the Ministry of Energy.

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Presidency Budget speech & responses by ANC, DA and IFP

Briefing

26 May 2015

President Jacob Zuma gave his budget vote speech on the 26 May 2015

Honourable Speaker,
Honourable Deputy President, Deputy Speaker,
Ministers and Deputy Ministers,
Honourable Members,
Esteemed special guests,

Fellow Africans,

Sanibonani, good day, molweni, dumelang!

I thank you Honourable Speaker for the opportunity to present the Presidency Budget Vote.

Yesterday, the 25th of May, marked the 52nd anniversary of the establishment of the Organisation of African Unity (OAU).

Celebrations of Africa Day have taken place in various parts of our country with one message – We are Africans and we are one people.

As leaders in this House, we are also one people. We have a responsibility to unite our people as we move forward in building a better South Africa.

Honourable Speaker

One of the founding fathers of the OAU, President Kwame Nkrumah of Ghana reminded Africa in May 1963 that the real struggle only begins after the dawn of freedom or independence.

He said:

“On this continent, it has not taken us long to discover that the struggle against colonialism does not end with the attainment of national independence.

“Independence is only the prelude to a new and more involved struggle, for the right to conduct our own economic and social affairs; to construct our society according to our aspirations, unhampered by crushing and humiliating neo-colonialist controls and interference”.

Indeed, 21 years after the dawn of freedom, South Africa continues the struggle of building a better society and an improved quality of life for all, especially the poor and the working class.

We continue to make steady progress in consolidating democracy and in expanding access to important social services such as water, sanitation, quality education, quality health care, housing, science and technology, food security, social security and various others.

Progress is also being made in the fight against crime and in promoting inclusive economic growth and job creation.

In the past weeks, Ministries have outlined the progress made by the country in the respective areas during their budget votes.

The Presidency has continued to play its supervisory role over the performance of government.

We have also been coordinating the work of the three spheres of government in order to promote synergy between national, provincial and local government.

This is done through the President's Coordinating Council in which the President meets with Premiers and organized local government.

We are guided in our work by the National Development Plan, which has now been translated into an action plan, the five year Medium Term Strategic Framework.

We thank the outgoing members of the National Planning Commission, who produced the acclaimed National Development Plan (NDP).

The work of government and the country has been enriched by the existence of the NDP. We know where we want to be in 2030 and we also have a clear roadmap of how to get there.

This declaration by the delegates to the Congress of the People captures the essential responsibility that we all have at this moment in our history.

It underpins our commitment to a fundamentally different economy - one in which all South Africans share and from which all South Africans benefit.

The Freedom Charter envisages a developmental state that plays a leading role in promoting growth and ensuring economic access to those previously denied economic opportunity.

This is the state that we are working to build.

It is a state that is capable, efficient and responsive.

It is a state that through its various public entities has the means to make a meaningful impact on the economy.

The Office of the Deputy President has accordingly been assigned responsibility to lead efforts to strengthen state-owned enterprises in line with the recommendations of the Presidential Review Commission on SOEs.

Our priority is to improve governance, stabilise finances, increase productivity and ensure state-owned entities effectively perform the functions for which they were established.

These enterprises command significant resources and hold great potential for employment creation, infrastructure growth, technology development and small enterprise promotion.

Together, they constitute a vital pillar of a vibrant mixed economy.

They must stimulate, support and enhance private investment and expansion.

In a provocative and challenging article in the Business Day newspaper yesterday, columnist Mark Barnes argues that the provision of social goods could be delivered more effectively and efficiently if the public and private sectors pooled their resources and capabilities.

He says that South Africa has an abundance of the technical competence, management skills and financial resources needed to build a better life for all. It's just not all in one place.

It therefore makes sense for the efforts of state-owned enterprises and private businesses to intersect in a partnership for economic and social development.

There is precedence for this sort of intersection between public and private in, for example, the cogeneration of electricity by private companies and the renewable energy independent power producer programme.

Barnes goes on to say:

"Imagine the sort of skills and education programmes that could emerge were SOEs to regain their positions of strength in economic society."

Imagine, I would add, the contribution they could make to reindustrialisation and radical economic transformation.

One of those that will regain its strength in our economy is Eskom.

As the supplier of around 95% of the country's electricity, Eskom is critical to our economic growth and sustainability.

As we are all acutely aware, the company has been experiencing severe generation constraints, exacerbated by significant operational and financial challenges.

With the support of the war room located in the Presidency, progress has been made in the implementation of government's five-point implementation plan.

The progress to date has been detailed in the budget votes of the departments of energy and public enterprises.

Governance and leadership challenges at Eskom are being addressed. We welcome in particular the appointment of Mr Brian Molefe as acting CEO.

Honourable Members,

The hard work to turn around the performance of our national carrier, South African Airways, has begun to bear fruit.

The going concern status of the airline has been restored, costs have been reduced and operational efficiency is improving.

We have confidence that the newly developed long term turnaround strategy will ensure that SAA continues to play a crucial role in facilitating commerce and tourism within our country and abroad.

We are also encouraged by progress at the South African Post Office, where the strategic turnaround plan has been finalised for submission to Cabinet.

The administrator appointed by Minister Siyabonga Cwele last year has undertaken a thorough diagnostic review of the challenges at the Post Office and a business model that is better suited to the changing postal services environment has been developed.

Honourable Members,

This year, six decades after the Congress of the People, we are poised to realise the Freedom Charter's call for a national minimum wage.

As directed by President Jacob Zuma in the State of the Nation Address of 17 June last year, we are leading a social dialogue under the auspices of NEDLAC to address wage inequality and labour instability.

The work is currently being undertaken by technical task teams overseen by a Committee of Principals, which includes government ministers and leaders from the business, labour and community constituencies.

Drawing on both international and local experience, this work promises to significantly improve the livelihoods of millions of South African workers.

It has the potential to reduce poverty and inequality and contribute to faster economic growth.

Let me commend the National Assembly's Labour Portfolio Committee, led by the Honourable Lumka Yengeni, for organising a public consultation process on a national minimum wage.

This has raised the prominence of the national minimum wage in public discourse and elicited valuable insights and perspectives.

Honourable Members,

As we work to improve the lives of workers, we are also pursuing measures to address the circumstances of the unemployed.

In addition to the programmes government is implementing to stimulate job creation, the Presidency, through an inter-ministerial committee, is overseeing the coordination of public employment programmes.

Public employment programmes not only provide job opportunities.

They also provide the means to lift households out of poverty.

The budget vote of the Department of Public Works has provided detail on this work.

Beyond the opportunities identified in infrastructure and in the social, environmental and cultural sectors, we are also focused on areas such as the Jobs Fund, micro enterprises, and co-operatives to improve the impact of these programmes.

Honourable Members,

The Freedom Charter made a call that: "The doors of learning and culture shall be opened."

If we are to successfully transform our economy, we need educated and skilled South Africans.

Speaking at the UN General Assembly on 26 October 1976, ANC President Oliver Tambo said:

	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	221-209
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**MINUTES OF THE ESKOM BOARD MEETING B15-2014/15 HELD ON 11 MARCH 2015 AT
THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 09H00**

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Board Chairman
Mr NT Baloyi	Member
Ms N Carrim	Member
Mr Z W Khoza	Member
Ms V J Klein	Member
Mr R Kumalo	Member
Ms C Mabude	Member
Mr T Matona	Chief Executive
Ms T Molefe	Finance Director
Dr P Naidoo	Member
Ms V Naidoo	Member
Dr BS Ngubane	Member
Mr MV Pamensky	Member

APOLOGIES

Mr D Marokane	Group Executive: Group Capital
Ms A Noah	Group Executive: Distribution (GE: DX)
Mr M Ntsokolo	Group Executive; Generation
Mr M Rossouw	Specialist Consultant: Energy

BY INVITATION

Mr T Govender	Group Executive: Transmission and Customer Services
Mr M Koko	Group Executive: Technology & Commercial
Dr S J Lennon	Group Executive: Sustainability Group (GE: SD)
Mr F Ndou	Acting Divisional Executive: Office of the Chairman
Ms E Pule	Acting Group Executive: Human Resources

IN ATTENDANCE

Mr L Dlamini	Senior General Manager: Office of the Chairman
Mr M Phukubje	Company Secretary
Mr N Tsholanku	Senior General Manager: Regulation & Legal
Mr W Venner	Committee Secretary

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1. OPENING AND WELCOME

The Chairman welcomed members to the meeting.

2. APOLOGIES

Apologies as indicated above were noted and it was noted that Ms Carrim would be arriving late.

3. QUORUM

A quorum being present, the Acting Chairman declared the meeting duly constituted.

4. DECLARATIONS OF INTEREST

There were no declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

The agenda was approved. It was agreed that the shareholder business would be dealt with first and any other items not dealt with would be held over to the next meeting. It was noted that the meeting would adjourn when the Minister of Public Enterprises ("Minister of PE") arrived to engage with the Board.

It was agreed that members should hand their cell phones over to the Secretariat for safe keeping during the meeting and for information security reasons.

7. CHAIRMAN'S REPORT

The Chairman stated that he had some concerns around governance housekeeping and requested that all members' concerns and queries should be given to the Company Secretary. Furthermore all communications by Board members to executives should also be communicated to the CE.

He noted that the Minister of PE would consult with the Board meeting later that morning.

He reported that the World Association of Nuclear Operators ("WANO") conducted regular visits to Koeberg and that the nuclear industry was highly regulated. During their last visit they had interviewed the Chairman as well.

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The GE: SD reported that the last visit had included a Corporate Review and a peer review on nuclear safety. In this regard they looked at the relationship between nuclear and the corporate function in terms of governance, sustainability and finance as well as the roles of Exco, SESC, NMC and all resources associated with nuclear. He reported that they had recommended some areas for improvement ("AFI") as follows:

- HR and HR interventions without considering nuclear safety, including overtime.
- Major projects such as steam generator replacement and nuclear fuel.
- Management oversight and standards of processes.
- Teamwork and alignment in terms of nuclear generation.

The Chairman undertook to share the final report with members for information. Ms Klein reported that she had not been interviewed which she felt should have been done in her capacity as Chairman of the SESC and pointed out that that was an opportunity lost. The Chairman and GE: SD stated that they were not aware of this and would address it going forward.

The Chairman noted that there had been some challenges around the Secretariat and the timeous delivery of packs and noted that this was a result of staffing shortages and was being addressed. Also, intermittent meetings did cause challenges as well.

In response to members' concerns that they were not receiving responses to their queries, it was noted that this would be actively addressed and followed up.

Resolved that:

1. the Chairman's verbal report is noted;
2. the final report from the World Association of Nuclear Operators ("WANO") should be distributed to members for information;
3. it should be ensured that the Chairman of the Social, Ethics and Sustainability Committee is also interviewed during the WANO review in future; and
4. members' queries submitted to the Office of the Chairman should be responded to.

8. CHIEF EXECUTIVE'S REPORT
Reference document 8.1 (a) (b)

The CE's report was tabled for information, details of which had been included in the Board meeting pack for the 26 February 2015 (which was not held), and was taken as read.

The CE drew members' attention to some of the key items in the report.

He stated that the major concern within Eskom at the moment was the instability in the executive as a result of some top executives resigning and retiring and others were still in acting positions. In this regard Mr Marokane had been appointed as GE: GC and Mr Koko as GE: T&C. Ms Pule was still in the Acting GE: HR role. Mr Mongezi Ntsokolo had been transferred to become GE: Gx and Mr Govender had been transferred to become GE: Tx and GE: CS.

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The CE had developed a turnaround plan which was being updated and put onto a firm foundation. The initial presentation had been used at the Board induction and presented to the Deputy President.

The CE was in the process of engaging Labour and the Trade Unions. Staff morale was a serious challenge that was being explored.

He stated that the turnaround strategy considered all initiatives and tabled them at the War Room for consideration. At the last War Room meeting with the Deputy President, Eskom had advised that they had responded to all requests for information from the War Room and had requested that management be advised of any gaps.

At this point the Chairman was excused from the meeting to meet with the Minister of PE. Ms Klein took over as Acting Chairman.

In response to members' concerns that they were not receiving feedback from the War Room, it was reported that this was part of the Agenda.

The CE reported that it was unlikely that savings targets would be met as a result of serious leakages in primary energy costs.

It was noted that the voluntary separation package initiative had been suspended for the time being, details of which were in the CE report. The CE reported on the success of the recent bond issue.

With regard to Group Capital and the build programme, it was noted that the Board had visited Medupi. It was reported that Medupi Unit 6 had been synchronised which was a significant event in Eskom's history and was the first time such an event had taken place in the last 20 years. It was noted that in future the Minister of PE wanted to be included in successful events like this.

In response to a query it was noted that capex generally did not include HR costs but HR costs related to resources associated with a project would be capitalised.

It was reported that Eskom preferred to keep a liquidity buffer of R20Bn but this had slipped to around R4.9Bn because two expected loan amounts had not yet been received. The Financial industry wanted to review Eskom's going concern status and liquidity.

In response to a request that an analysis of primary energy costs in respect of diesel and coal be made available to members, the GE: T&C reported that the information was readily available and would be distributed to members for information. The FD reported that these were 2 issues that the War Room was focusing on.

Dr Ngubane noted that as Chairman of the Board Tender Committee ("BTC"), he was concerned about the various different centres for decision making and that some decisions

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were made low down in the governance process without the Board being aware thereof. The Acting Chairman stated that this was an issue for discussion with a view to reviewing what decisions were made at which committees. She stated further that all deep dive analyses should be co-ordinated and aligned. It was agreed that this should be considered for the Board Breakaway.

In response to a concern that Board members were having challenges aligning with the Eskom calendar, the Company Secretary reported that members had been requested to advise on their availability for the meetings. Some changes could be effected to accommodate members but generally the meeting dates were aligned with regulatory deadlines. It was requested that this also be considered for inclusion at the Board Breakaway. A member recommended that consideration be given to only holding the Board Breakaway for 2 days instead of 3.

Resolved that:

- 1. the Chief Executive’s report for February 2015 is noted;
- 2. an analysis of primary energy costs in respect of diesel and coal should be distributed to members for information;
- 3. consideration should be given to discussing Board committee’s roles and responsibilities at the Board Breakaway, with a view to reviewing what decisions were made at which committees;
- 4. consideration should be given to tabling all deep dive analyses at the Board Breakaway; and
- 5. consideration should be reviewing the Eskom Calendar at the Board Breakaway; and
- 6. consider holding the Board Breakaway only over two days.

9. MATTERS FOR APPROVAL

9.1 ESKOM DEBT STRATEGY

Reference document 9.3 (a)

The Eskom: Strategy for Municipal Arrear Debt and Residential Customers was tabled for approval, details of which had been included in the Board meeting pack for the 26 February 2015 (which was not held), and were taken as read.

It was reported that all parties had realised that the Municipal Debt situation was untenable and the various structures and interventions that had been put in place in the provinces had so far been unsuccessful in reducing the municipal debt owed to Eskom. The municipal debt was spiralling out of control and would impact Eskom’s investment rating and ability to remain sustainable. Eskom had no choice but to pursue stringent strategies to fulfill its fiduciary duty and mitigate the final risk to the organisation. Eskom was to be more assertive in dealing with non-paying municipalities and interventions were to be

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implemented to persuade politicians, provincial and municipal leadership to be accountable and take the necessary actions to rectify the arrear debt situation.

The strategy that Eskom would apply would be to implement the interventions noted below (as approved at the inter-ministerial ‘War Room’ meeting on 5 February 2015) in all provinces:

- Management of Notified Maximum Demand (“NMD”) had been exceeded.
- Prioritise load shedding to the targeted defaulting municipalities when emergencies were declared and small loads were required on Stage 1.
- Implement additional load shedding during daily evening peak periods to avoid incurring the cost of using gas turbines whilst limiting the growth of the unpaid debt.
- Limit the supply to the targeted municipalities in line with what they were currently paying on a monthly basis.
- Placing of municipality’s bulk accounts on a Prepayment option.

It was reported that this strategy could result in litigation from the municipality or the municipal customers. It could also have a negative impact on relations with various stakeholders and continuous active support and involvement from the Eskom Board, Eskom management and National Government, specifically the Minister of PE, was required to influence the Provincial leadership to support the implementation of these interventions and manage the various stakeholders. Consideration needed to be given by the Board as to whether to inform the Minister of PE in regard to Eskom being more assertive in dealing with defaulting municipalities and taking the necessary steps in protecting Eskom’s revenue risk.

A member reported that he had been advised that some municipalities were using electricity payments to pay for rates and taxes and other expenses.

Members unanimously agreed with the strategy as tabled and that all non-paying municipalities should be disconnected. The GE: Tx and GCS advised that any disconnection would be done through Eskom’s normal process. He stated that a separate strategy would be tabled in due course for Soweto.

A member stated that municipalities forced their customers to pay their accounts which gave rise to the perception that the cost of electricity was too high and this ultimately affected Eskom’s collection processes. In this regard Eskom should engage the relevant municipalities legally as to whether it was right and proper that they use electricity payments to fund other municipal opex.

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The CE was of the opinion that although the Board had made the correct decision, that the Board should be aligned around this issue. It was reported that a letter to the Minister of PE had been prepared stating that the Board had a fiduciary duty towards Eskom and that Eskom was running out of cash and cannot get more funds and therefore needed to collect its debts. It was unanimously agreed that this position would be presented to the Minister of PE during the meeting that day as some members were of the opinion that the letter itself was not sending a strong enough message.

Resolved that:

1. Eskom is to be more assertive in dealing with non-paying municipalities and interventions are to be implemented to encourage politicians, provincial and municipal leadership to be accountable and take the necessary actions to rectify the arrear debt situation;
2. Eskom will implement the interventions below (as approved at the inter-ministerial 'war room' meeting on 5 February 2015) in all provinces:
 - 3.1 Management of Notified Maximum Demand ("NMD") by disconnecting if NMD has been exceeded;
 - 3.2 prioritise load shedding to the targeted defaulting municipalities when emergencies are declared and small loads are required on Stage 1;
 - 3.3 implement additional load shedding during daily evening peak periods to avoid incurring the cost of using gas turbines whilst limiting the growth of the unpaid debt;
 - 3.4 limit the supply to the targeted municipalities in line with what they are currently paying on a monthly basis;
 - 3.5 placing of municipality's bulk accounts on a Prepayment option; and
- 4 all non-paying municipalities should be disconnected in accordance with Eskom's revenue management procedure.

At this point the Minister of PE arrived and the Board went into an In-committee session. All executives and non-members were excused from the meeting, except for the Company Secretary.

10. MINISTERS MEETING (Recorded Separately)

11. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed at 14:00.

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Signed by Dr. Ngubane for purposes of noting the meeting’s proceedings

CHAIRMAN:  DATE: 18/11/16



Mr Tshediso TJ Matona
Chief Executive
Eskom Holdings SOC LTD
P.O. Box 1091
Johannesburg
2000

Date:
11 March 2015

Enquiries:

Dear Mr Matona

NOTICE OF SUSPENSION AS ESKOM CHIEF EXECUTIVE

1. I refer to the meeting of today, 11th March 2015, wherein we discussed the company's concerns regarding the serious state of the company and the Board resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised by either intentional or negligent conduct. Due to the nature of this enquiry and the importance of it being free of any influence from leadership in the organisation, pending the completion of an investigation into these matters, you should be placed on suspension without any loss of benefits and pay.
2. I confirm that you were advised of the nature and extent of the enquiry and that you were afforded an opportunity to make representations to the Board subcommittee why you should not be suspended pending the outcome of the enquiry.
3. You were advised that the Board subcommittee was considering placing you on precautionary suspension because of concerns that might pose a risk to the influence-free requirement of the enquiry.
4. These concerns have been discussed with you.
5. I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly.
6. We have concluded that, in view of the serious nature of the above and after having considered your representations, the company regrets to inform you that it has decided to suspend you on full pay without any loss of benefits to be calculated from today pending completion of the enquiry.

Head Office
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za

Eskom Holdings SOC Ltd Reg. No 2002/015527/30

In the event that the employee refuses to sign:
Declaration of witness: I confirm that I have witnessed that this letter has been handed and explained to the above named employee.

Signed _____ Position _____ Date _____

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

SECOND SUPPLEMENTARY AFFIDAVIT

I, the undersigned

TSHOLOFELO BEAUTITUDE LETTIE MOLEFE

Do hereby state under oath in English:

1. I am an adult female, a South African citizen, with ID number 681104 0566 089. I am currently employed by Telkom SOC United ("Telkom"), as Group Chief Financial Officer, with offices situated at address 61 Oak Avenue, Highveld, Centurion, employed.
2. I depose to this affidavit in my personal capacity and confirm that the contents thereof are within my personal knowledge and are both true and correct.
3. My contact details are:
 - 3.1. Office: +27 12 311 6230
 - 3.2. Cell: +27 82 889 4531
 - 3.3. E-mail: tblmolefe@gmail.com
4. The facts herein contained are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.



5. I have already deposed to an affidavit ("main affidavit") and a supplementary affidavit to this Commission into allegations of State Capture on 22 July 2020 and 02 October 2020 respectively. I now wish to further address a number of issues contained in the supplementary affidavit of Ms Lynette Brown ("Ms Brown"), former Minister of Public Enterprises, to the Commission regarding the suspension of Eskom's four executives in March 2015. In her affidavit, Ms Brown makes, *inter alia*, the following allegations:
 - 5.1 She alleges that the former President Jacob Zuma complained to her that the Eskom executives "*were feeding the wrong or inaccurate information to the war room*". This averment is repeated in paragraphs 84 and 85, in which Ms Brown alleges that the War Room was *receiving inaccurate, sometimes misleading, and plain unreliable information and that "it was imperative to make sure that something gets done, if this meant suspending the executives, so be it"*;
 - 5.2 She also alleges that the flow of information to her department was unreliable.
 - 5.3 She alleges that there were cash flow challenges paralyzing Eskom, which led to the decision to suspend the Group Financial Director; She further alleges in paragraph 67 of her affidavit that Eskom was not a going concern at all.
 - 5.4 She alleges that the cancelled board meeting of the 26 February 2015, which was intended to approve the Corporate Plan, financial plan and borrowing programme before submitting to the Shareholder and National Treasury for consideration, was rescheduled for the 11 March 2015.
6. I set out the facts on these issues in turn below.

Handwritten signature and a large handwritten 'C' or similar mark.

INFORMATION RELAYED TO THE WAR ROOM AND TO THE DEPARTMENT

7. On 11 December 2014 Cabinet announced a Government War Room for the implementation of a five-point plan, which was to “address the strain our electricity system faces”. The war room met weekly at the Union Buildings in Pretoria. Eskom was represented by the Group CE, Mr Matona, and I as the Group FD, supported by two Executives (Ms Marion Hughes and Mr Louis Maleka) who assisted in co-ordinating presentations by Eskom to the war room. Various Group Executives of Eskom also attended from time to time to make presentations on their areas to the War Room depending on what was on the agenda for the week.
8. Eskom made its first presentation to the Inter-Ministerial Committee (IMC) of the War Room, that was led by the former Deputy President Cyril Ramaphosa, on 28 February 2015. I was not present at the first meeting due to business travel.
9. A second presentation to the IMC was made on 3 March 2015. This presentation was led by Mr Matona and I. Before the main meeting, Mr Matona was requested to meet with the Deputy President to take him through the Eskom challenges and presentation. Mr Matona was accompanied by myself, Mr Matshela Koko, Mr Dan Marokane and two other Eskom executives. Ms Lynne Brown was not at this meeting. She arrived a few minutes after the main meeting with the Deputy President and some Ministers had started, as we understood she had been out of the country.
10. Prior to the IMC meeting, I shared with the Eskom Board the presentation that would be made to Government on Eskom’s challenges, to ensure that the Board was fully sighted before presenting to Government. I attach hereto a copy of the document, marked “SA1”.
11. Mr Matona and I tried for several weeks to have a meeting with Minister Brown to

A handwritten signature in black ink, appearing to be 'TAL' with a large flourish underneath.

take her through Eskom's presentation prior to the meeting on 3 March 2015, but all to no avail.

12. At the meeting on 3 March 2015, where we made a presentation to the IMC, there were issues raised about the misalignment regarding information among various Government departments and between Eskom and the DOE. However, this in no way meant Eskom's information was "incorrect and/or misleading". Nor were we asked to clarify our information.
13. Ms Brown also alleges in paragraph 78 of her affidavit that there was a War Room meeting on 11 March 2015, "another frustrating meeting". I was not aware of such meeting taking place on 11 March 2015. If such a meeting took place, Eskom was not represented. Both Mr Matona and I were at the Eskom Board meeting on the day and none of the Executives supporting us on War Room matters were invited to that meeting.
14. A cabinet memo detailing the actions from the War Room was discussed at the IMC meeting. I attach a copy of that memo hereto marked "SA2". The purpose of the memo was meant to be recommended for presentation to Cabinet. Ms Brown did not support this, stating that the War Room does not stand in place of Government departments and indicating that she needs to first interrogate the figures from Eskom.
15. Ms Brown never raised the concerns she mentions in her affidavit either with Mr Matona or myself. If she did raise these issues with the Board, the Board never informed us either. I was not aware before my suspension on 11 March 2015 that there had been concerns regarding the quality and reliability of information presented to the Government war room by Eskom. I only found out about this during the testimonies of Dr Ngubane and Mrs Klein to this Commission in September 2020.
16. During my discussion with the Eskom Board on 11 March 2015, regarding my



suspension, I was merely informed of the Board's resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised and that the relevant Executives are being asked to "step aside" so that the investigators could gain "unfettered access" to all information required for the investigation. The Board had made it categorically clear that our suspensions had nothing to do with any allegations of misconduct or wrongdoing. I am perturbed to learn of the allegations that the suspended Executives were providing incorrect and misleading information to the Government war room. This contradicts the reasons we were given for our suspensions.

17. I attach hereto a copy of the minutes of the meeting of the Government war room held on 6 February 2015, marked "SA3". There is nothing contained in the minutes that suggests that the War Room complained about receiving incorrect and/or misleading information from Eskom.
18. Ms Brown also alleges that the flow of information into her department was unreliable and that the minutes reflected this concern. Neither Ms Brown nor her Department ever raised this concern with me or the Group CE, Mr Matona. The only matter that I recall I had to deal with was from the National Treasury, where they were concerned about the change in our liquidity position from the Corporate Plan of 2014 to the Corporate Plan of 2015. We responded to that query and I attach marked "SA4", a copy of that Eskom's response, which provided detailed reasons for the differences. This is in no way a reflection of unreliable and/or misleading information.



MS LYNNE BROWN'S TESTIMONY REGARDING ESKOM'S LIQUIDITY PROBLEMS AND CASH FLOW CHALLENGES

19. I indicated to the Board during its meeting with me for my suspension that Eskom's liquidity and cash flow challenges were not new and that Mr Tsotsi, Ms Mabude and the shareholder should be familiar with these issues, as these had been presented to the previous Board, the National Treasury and the Department of Public Enterprises on many occasions.
20. It is correct that the financial health of the organisation had deteriorated, and the reasons thereof are outlined in the financial section of the Integrated Report for the year ended 31 March 2015 as follows;
- Revenue shortfall as a result of an 8% tariff determination by NERSA (The National Electricity Regulator of South Africa) instead of the 16% that was applied for.
 - Additional costs incurred to balance the constrained electricity supply-and-demand equation by using the expensive OCGT (Open Cycle Gas Turbines) power stations and Independent Power Producers (IPPs) significantly more than anticipated
 - Mounting Soweto and Municipality customers debt, which required Government's intervention.
21. In June 2014, Mr Tsotsi as then Chairman of the Eskom Board, established an Emergency Task Team of the Board to address a number of Eskom challenges which included, among others, the financial challenges. The recommendations of the Emergency Task Team were presented to Ms Lynne Brown as Minister of Public Enterprises, as well as to the former Minister of Finance, Mr Nhlanhla. This culminated in Government providing financial support to Eskom to the value of R23 billion, with a number of conditions to be met. This Government support was announced at the Medium-Term Budget Speech of the Minister of Finance in

October 2014. Eskom should have the document that provides a summary of the historical issues regarding Eskom's financial challenges dating back to before my appointment as Eskom's Financial Director in January 2014, which were presented to both the Minister of Finance and the Minister of Public Enterprises.

22. Although the outlook on liquidity in the Annual Financial Statements (AFS) for the period 31 March 2015 (available on the internet) indicates that Eskom will be operating below the R20 billion liquidity buffer over the next 12 months, the new Board makes the following statements in their **Statements of directors' responsibility and approval** in the said AFS, signed by Dr Ben Ngubane as Acting Chairman of the Board and Mr MV Pamensky as Non-Executive Director;

- *"the directors have made an assessment of the ability of Eskom and the group to continue as a going concern in the foreseeable future. The directors reviewed Eskom's and the group's performance for the year ended 31 March 2015 and the cash flow forecast for the Multi-Year Price Determination (MYPD) 3 period ending 31 March 2018,*
- *the directors are satisfied that Eskom and the group have access to adequate resources and facilities to be able to continue its operations for the foreseeable future. Accordingly, the board continued to adopt the going-concern basis in preparing the financial statements."*

This attestation by the Board is further supported by the Going Concern assertion in a report by the Audit and Risk Committee contained on page 3 of the AFS for 31 March 2015, signed by Ms C Mabude.

23. The "old" Board also makes a similar assertion in the Condensed Interim Financial statements for the six months ended 30 September 2014, on Going Concern assumption, indicating that;
- *"...The directors have made an assessment of the ability of Eskom and the group to continue as a going concern in the foreseeable future. The directors reviewed the group's performance for the period ended 30 September 2014*



and the cash flow forecast for the Multi-Year Price Determination (MYPD) 3 period ending 31 March 2018.....”

- *“Based on the above, the directors are satisfied that Eskom and the group have access to adequate resources and facilities to be able to continue its operations for the foreseeable future. Accordingly, the board has continued to adopt the going-concern basis in preparing the interim financial statements.*
24. Therefore, Ms Brown’s allegation contained on paragraph 67 of her affidavit that “Eskom was not a going concern at all” contradicts the assertions made by both the “old” Board and “new” Board in Eskom’s audited and published financial statements.

CANCELLATION OF THE FIRST BOARD MEETING OF 26 FEBRUARY 2015

25. Ms Brown mentions in her affidavit that the cancelled meeting of 26 February 2015 was rescheduled to 11 March 2015. Although I had not been informed of the reasons why that scheduled meeting was cancelled, I had specifically asked the Company Secretary, Mr Malesela Phukubje, if he was aware when this meeting would be rescheduled to as I was anxious that the Board needed to approve the Corporate Plan, Financial Plan and Borrowing Programme before submission to Government. The Company Secretary could not give me a date.
26. At the meeting of 9 March 2015, the Board raised concerns regarding the cancellation of the Board meeting of 26 February 2015, which was intended to fulfil the statutory requirements of the PFMA regarding approval of the Corporate Plan. It was emphasised that despite a letter written to Minister Lynne Brown to flag this concern, no response had been received yet. The Chairman of the Board (Mr Tsotsi) assured the Board that he was trying to get a meeting with the Minister to register this concern. Therefore, the Board was still unclear at the meeting of the 9th March 2015 when the cancelled meeting of the 26th February 2015 would be rescheduled to.




27. The reasons for my concern regarding the cancellation of the meeting, as stated in my main affidavit, was that this was a crucial meeting in the Corporate calendar of Eskom, as the Board had to approve the Corporate Plan, Financial Plan and Borrowing programme so that it could be submitted to the Shareholder representative and the National Treasury, as required by section 52 of the Public Finance Management Act (PFMA). The meeting of 11 March 2015 was not a rescheduled meeting of the 26 February 2015 meeting. The reason the meeting of 11 March 2015 was convened was so that the Minister could address the Board on their concerns regarding the memo that had been tabled by Mr Tsotsi at the meeting of 9 March 2015. The Corporate Plan, Financial Plan and Borrowing Programme, which were on the agenda for the meeting scheduled for 26 February 2015 that never took place, were neither considered nor approved by the Board at the meeting of 11 March 2015.
28. I also wish to confirm Mr Matona's statement in paragraph 9 of his supplementary affidavit. I confirm that I gave him a copy of an email to the Board dated 13 March 2015 sent by Mr Leo Dlamini on behalf of the Chairman, Mr Tsotsi. My laptop was only confiscated two to three days after my suspension and I continued to receive emails to the Board before my laptop was confiscated. I made a copy of the email and gave it to Mr Matona when I met him. He confirmed that his Eskom email was blocked immediately after his suspension and he had not receive the email I shared with him.
29. After completion of the statement, the following questions were put to the deponent and his answers were recorded accordingly:
1. Q. Do you know and understand the contents of this statement?
YES
 2. Q. Do you have any objections in taking the prescribed oath?
NO



3. Q. Do you consider the prescribed oath as binding in your conscience?
____YES____

I believe the statement gives a fair account of the event that happened.

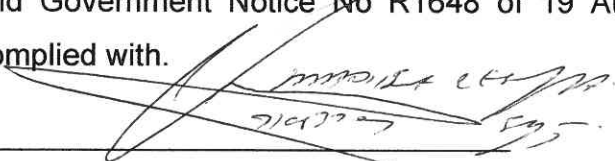


Signature of Deponent

06/11/2020

Date

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at SADOTONE on the 06th day of NOVEMBER 2020, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS





Hansard: NA: Unrevised hansard

House: National Assembly

Date of Meeting: 10 Jun 2015

Summary

No summary available.

Minutes

WEDNESDAY, 10 JUNE 2015

PROCEEDINGS OF THE NATIONAL ASSEMBLY

The House met at 15:03.

The Speaker took the Chair and requested members to observe a moment of silence for prayer or meditation.

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS – see col 000.

QUESTIONS FOR ORAL REPLY

THE DEPUTY PRESIDENT:

Measures to ensure prioritising and fast-tracking of Adult Education and Training

9. Mrs Y N Phosa (ANC) asked the Deputy President:

As Chairperson of the Human Resource Development Council of South Africa, what measures are in place to ensure that Adult Education and Training is (a) prioritised and (b) fast-tracked for people who are currently employed in the formal and informal sectors and who have never had the opportunity of an education? NO2387E

The DEPUTY PRESIDENT: Hon Speaker, as hon members will know education is critical if we are to build a fair, equitable and prosperous South Africa. Adult education is an important component of that education process.

As we reported in the Presidency Budget Vote debate, notable progress has been made in turning around Eskom, and I did say that the appointment of the acting chief executive officer has been a really good shot in the arm of Eskom. SA Airways, SAA, and the SA Post Office are also being turned around. With the support of the war room located in the Presidency, progress has been made in the implementation of government's five-point plan on electricity, particularly, as well as the elements of the government support package. Governance and leadership challenges at Eskom are being addressed as we speak. In addition, government has tabled the Bills for the appropriation of the R23 billion equity injection it committed to provide to Eskom and the amending of the Bill for the conversion to equity of the subordinated loan. Both of these interventions will strengthen Eskom's financial position. Government is firmly on track with the sale of the assets to fund the allocation to Eskom which will ensure that there is no impact on the budget deficit. Other examples of progress made include improvements in performance at Majuba and Duvha power stations and the extension of the independent power producer contracts.

The going concern status of SAA has been restored through the 90-day action plan, and there have been cost savings of up to R1,2 billion. The long-term turnaround strategy is being refined and has been encapsulated into the company's corporate plan. Under the leadership of the administrator, a strategic turnaround plan has been developed for the Post Office. A thorough diagnostic review was undertaken, and a business model that is better suited to the changing postal services environment has been developed.

There are a number of reasons why some state-owned enterprises underperform. Some of them are the high operating costs, poor operational performance, unclear policy frameworks, and the governance processes. In December 2014, the Cabinet lekgotla established a task team to develop common principles to make sure that we address all these problems. We must dispel the myth that the people who run parastatals are ill equipped to do so ...

HON MEMBERS: They are!

The DEPUTY PRESIDENT: ... because there is quite a number of people who hold that view. Many of those people are good professionals, and what they need is to be supported and assisted in the work they are doing. An honest assessment of leadership in our parastatals will prove that this is not true. Many of our parastatals are operating extremely well, and we can name them. Transnet, the SA Special Risk Insurance Association, Sasria, and many others are doing extremely well, and we have good professionals in many of these parastatals. Let us support them in doing their work. Thank you. [Interjections.]

Mr L R MBINDA: Speaker, I am fine. The problem that I have, Deputy President, is that even this current government is injecting billions and billions in trying to bail out some of these parastatals. On the other hand, you are saying they are doing well and that they are contributing to the economy of the country. I understand the infrastructure development, but, at the same time, also the capital injection that you are providing some of these parastatals. A person like me is sitting ...

The SPEAKER: Do you have a question, hon member? Your minute has almost run out. [Interjections.] Do you have a follow-up question?

Mr L R MBINDA: I do. [Interjections.] Can you give me another minute to ask the question? [Interjections.]

The SPEAKER: No, hon member. Deputy President, I don't think there is a question for you to answer, but you can comment on what the hon member has said.

The DEPUTY PRESIDENT: I am able to comment on the comment and say that I took heart and a great deal of comfort from his opening statement that he does not have a real problem with what I was saying. Let me also say that, yes, it may well appear like we are pumping billions and billions and, in fact, it is true, but that is how the economy functions. [Interjections.] Sometimes, even in a normal company, there are times when shareholders are expected to pump money into a company so that they shore it up for better days to come.

Let's look at one of yesterday's headlines. A company that we used to own almost wholly and now own partially, Telkom, declared a wonderful dividend of 245c per share, and that is a dividend that is going to flow to the fiscus. Yes, you can look at a number of other companies as well. If you look at the Sasri's of this world, they have declared R15 billion to the fiscus, and some of the companies go through challenges, and so it goes with economic performance or business performance of companies. They go through ups and downs, and it does not mean that when they go through their downs, you have to jettison them and throw them away. It means that you have to refocus, and that is what happens with companies. You will not find a single company on the stock exchange that is forever making profits year in and year out. [Interjections.] They do go through slumps, and sometimes they go to their own shareholders with rights offers and say that they would like them, as shareholders, to pump money.

Now, what we are saying here is that we are now focusing attention on these state-owned enterprises through Treasury and the various other structures the President has set up. We are going to turn them around. That is a reality. They are going to be turned around. Thank you. [Applause.]

Mr S N SWART: Speaker, through you to the Deputy President: Arising from your response, there are indeed success stories, and Telkom is a good example of that. However, we now see that the Petroleum, Oil and Gas Corporation of South Africa, PetroSA, is expecting to announce a massive loss of between R9 billion and R14,9 billion, which is estimated to be the largest ever loss incurred by a state-owned company.

This situation highlights what you have mentioned about issues about governance where we see there is a boardroom drama in which the Minister of Energy has asked three executives to take extended leave. Two of the three, significantly the chief executive officer and the chief financial officer, have refused to vacate their offices. Hon Deputy President, is this not yet another example of poor appointments by a board, of issues of governance that you pointed out, a possible lack of oversight, and is this not resulting in another parastatal that will require a turnaround strategy? Here we see a significant loss from a company that was doing very well. I appreciate this might not be mentioned, and that this might not be a direct follow-up question, but the principle, I think, needs to apply as we look at this, and will this task team possibly look at this company which is facing this severe loss? Thank you, Deputy President.

The DEPUTY PRESIDENT: Speaker, many companies that are involved in the oil sector have faced many challenges, and many are facing losses of huge proportions. As the follow-up question is not really related to this but to the process, let me address that.

The process clearly is that one has to look at governance. The Presidential Review Committee on State-owned Enterprises has come up with a number of good recommendations in this regard, and those will be implemented as well. They will also touch on companies like the one that you have just referred to. So, it is going to be broader and more comprehensive, and it will address itself to the key principles of governance, yes, good appointments, and making sure that, through the governance process, we are able to identify problems and challenges at an early stage.

When it comes to the economics of the company itself, clearly you have to rely on those who are in the governance structures to identify risky business deals and risky decisions that have been taken. So, we will be focusing on all of those as part of going through the recommendations of the Presidential Review Committee on State-owned Enterprises.

Ms N W A MAZZONE: Speaker and Deputy President, unfortunately, Eskom has just announced that Stage 2 load shedding is about to happen, so I hope we have enough time with the lights on so that I can finish my question.

Eskom also yesterday very patronisingly advised South Africans that we should wear warm clothes and make fires and that that will solve our electricity crisis during the winter months. I find that kind of statement unacceptable. I think many South Africans, Deputy President, are now in the very similar situation where we are wondering whether this war room is anything more than a simple public relations exercise that, unfortunately, has gone quite wrong. We stand here today not knowing what the situation with Medupi and Kusile is. All that we know is that the deadline keeps getting moved further and further away. We know that our economy is suffering disastrous effects from this constant load shedding that we are being faced with.

We haven't had a parliamentary briefing, not to the Portfolio Committee on Energy, not to the Portfolio Committee on Public Enterprises, as to what the actual role of the war room is, and we would like to know from you, Deputy President, when are you going to give South Africans the kind of surety they so crave, and when are we going to have some kind of surety that we can give to our investors, both foreign and local, so that, in some way, our economy can grow and we can bypass this disastrous curve that we now find ourselves on? Not only do we shed electricity every day, we shed jobs at an alarming rate. [Applause.] Something has to be done, Deputy President, and when you announced your war room, you will know that the DA and I welcomed this because we look to you as a beacon of light – if you will pardon the pun – in a very dark time. So far, you haven't given us much to be hopeful about, and Minister Radebe announced the five-point plan. I would like to know from you how far we are with this five-point plan. Have we actually achieved anything of the five-point plan, and what can we expect going forward for the next six months, at the very least?

The DEPUTY PRESIDENT: Speaker, the issues that the hon member had raised had been canvassed quite extensively in this Parliament. Not only the Minister of Public Enterprises but the Minister of Energy and, indeed, the President himself have stood at this podium, addressed this issue and said that this is a challenge that we all face, as South Africans, and we are not sleeping on the job. [Interjections.] We are working on it.

Now you raise the issue of the five-point plan. One of the things we have done in regard to the five-point plan is to look at the challenge of maintenance. So you know, this time we found that, with regard to maintenance, there had been a bit of slack, but the war room started focusing on that. [Interjections.] In the end, it was decided that the technical people and the managers must now go to the power stations and work there. The acting chief executive officer has made it his job to go to each power station, or one power station after another, every Friday. So, he is there, focused on the job, meaning that the task of maintenance of our power stations is being looked at. Remember that many of our power stations are 30 years and older, and they therefore need quite a lot of maintenance. The original equipment manufacturers also have been roped in quite extensively to work with Eskom to make sure that we maintain our power plants, our power stations, and this is being done on a programmatic basis.

One of the things that has been looked at is the liquidity of Eskom. Let's face it: Eskom has faced financial challenges, and the liquidity challenge has been addressed ad nauseam by Treasury. The Minister of Finance has stood here and has piloted a Bill, as I was saying earlier. We have had to look at the demand side. The demand side is something that is being looked at actively. How do we manage the demand side equation? One of the other key and important things is to see how we bring in other independent power producers. We have signed agreements with those independent power producers. We are now going to rope them in so that they continue feeding the grid with the power that they produce.

We are also focusing on cogenerators. Cogeneration means that we are relying on other role players – it could be companies and what have you – to come to the party, to help us generate more energy. At the same time, we are looking at Medupi, at Duvha, and at Kusile, and progress is being made on an ongoing basis. Yes, there have been roll-outs in terms of time where we were not ready as we were meant to be, and there are quite a number of reasons for that. Part of that is that we lost some skills. Some of the people left the company. [Interjections.] Therefore, we have had to plug that hole.

Let me give you the assurance that, yes, much as we are going through load shedding, that is going to be a problem that stays with us for the next year, 18 months to two years. That is something that we will not be able to run away from. Beyond that, South Africa will have sufficient energy. You have to travel around the world and find that we are not the only country that is facing an energy crisis. [Interjections.] I promise you, we are not. You can go to the great United States of America, you can go to Europe, you can go to Southeast Asia and find that many countries have gone through the challenges that we are going through. The good thing with us is that we are not sitting on our backsides. We are addressing these problems. [Interjections.] This we are to continue doing. [Interjections.] [Applause.]

Mr N SINGH: Speaker, I note that the hon Deputy President is in quite an aggressive mood this afternoon. I don't know what prompted it. Maybe he got up on the wrong side of the bed. [Interjections.]

Having said that, hon Deputy President, we agree that, yes, there are good professionals in SOEs, but they are few and far between. This is evident from the number of suspensions that we have seen, the number of resignations that we have seen. You are fully aware

of what happened at Eskom when the former chairperson of the board suspended four senior officials of Eskom, including the chief executive officer. What is the outcome of that inquiry? Nothing will happen. In fact, the former chief executive officer has been given a golden handshake.

Deputy President, this does not gel well with the public of South Africa and with us as Members of Parliament when there is prima facie evidence for an inquiry, for people to be suspended, and then things are swept under the carpet, and people are given golden handshakes. What is your view on this kind of practice that is taking place?

Further, Deputy President, the whole issue of appointing people to these boards, if one has to look at the SOEs and the number of people that are appointed to these boards, a number of individuals are appointed on multiple boards. [Interjections.] How can they do justice to serving on these boards when they are appointed on multiple boards? Something needs to be done about the appointment of board members and the appointment of managers because it is not only about the R23 billion that you are going to give Eskom or any more money that is going to be thrown into SOEs, but it is about poor management in many of these SOEs. Thank you.

The DEPUTY PRESIDENT: Speaker, on the first issue of skills, let me just say that since his appointment, the acting chief executive officer of Eskom has gone ahead and done something quite unique. As soon as he was appointed, he combed the whole of Eskom for skills, and he found a number of young people with rare skills, including engineering and environmental skills, that he has now put in a forum – a chief executive officer's forum. These are young people of all colours that he is now working with in a very focused way. As he goes to each power station, he goes with these young people, and they are coming up with new, fresh ideas.

They have just recently qualified. Some of them have maybe three to five years experience. Those who left had 20 years experience and so forth. Yes, we have lost those skills for a number of reasons, but he is focusing on restoring the capability of Eskom when it comes to technical and engineering capability of the electricity type. That is being focused on, and that is why I said that the appointment of that type of chief executive officer has been a shot in the arm of Eskom. So, we are going to see some good things coming out of Eskom. That I promise you because I have seen, and many of us have seen, how he works and how he functions.

You talk about golden handshakes. Yes, the laws in our country dictate that when you have to get rid of people, there are certain laws and processes that you have to follow. It may well appear like we are giving people golden handshakes, and it is expensive. Yes, that may well be the case, but we have to follow due process and the laws that we have. We think that, in the end, when you are trying to secure a better future for the company, at times it may well be worth going down this route.

Yes, there are people who sit on multiple boards, and that we have become aware of because, in terms of the Presidential Review Committee on State-owned Enterprises, we are reviewing the quality of board members that we would like to have in these state-owned enterprises. We are going to become more focused, we are going to become choosier, and we are going to look more introspectively at the skills base of those people so that we choose the best of breed. [Interjections.] The best of breed must be people who will come into these boards and make a real, meaningful contribution. They must not just bring their pretty faces, but they must bring the skills that they can bring to bear on these state-owned enterprises.

So, I welcome your suggestion in this regard, and it is something that we will continue to focus on to make sure that our boards get better for these state-owned enterprises.

The SPEAKER: That concludes questions to the Deputy President, and I thank the hon the Deputy President for his hard work this afternoon. [Applause.]

Mr M Q NDLOZI: Hon Speaker, you forgot one more question because it is supposed to be four.

The SPEAKER: No, we've done all the supplementaries; I can list the people: the person who had asked the question originally was given an opportunity, hon Swart, hon Mazzone, and hon Singh.

Mr M Q NDLOZI: I was under the impression that the follow-up question was not a question. Even the Deputy President admitted that.



The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

ESKOM's PARTICIPATION IN THE WAR ROOM

The above matter has reference.

The Board engaged with the Acting Chief Executive and his executive management at a strategic breakaway over two days. We examined a number of key strategies that the team has put together and encapsulated in a turnaround plan for Eskom which will soon be sent to Minister. The Board has fully endorsed this plan and supports its execution.

The turnaround plan focuses on key areas, namely liquidity, maintenance with minimal load shedding, reviewing Eskom's long term strategy and operating model, reviewing the organisational structure and engaging the wide range of stakeholders. Honourable Minister, you will appreciate that this plan is underpinned by a number of operational strategies which will require disciplined and focused execution on the part of the executive management team.

As a result of the renewed focus required of executive management, the Board has carefully considered Eskom's continued participation in the War Room. The multitude of requests for information and continued attendance at meetings are an undue dissipation of executive attention. While the interventions are premised on ensuring that Eskom creates the space to improve plant reliability, the interventions identified by the War Room coincide with the core operational functions of Eskom.

Accordingly, the Board has resolved to suspend Eskom's participation in the War Room. This will mean that the Chief Executive will be requested not to respond to the requests for information and attendance at the meetings but focus on the management of Eskom and its turnaround. This decision will be implemented forthwith.

I trust that Minister will find this in order.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'B. Ngubane'.

Dr BS Ngubane
INTERIM CHAIRMAN

Date: 10/09/15



Hansard: NA - Unrevised Hansard

House: National Assembly

Date of Meeting: 07 Mar 2019

Summary

No summary available.

Minutes

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THURSDAY, 7 MARCH 2019

PROCEEDINGS OF THE NATIONAL ASSEMBLY

The House met at 14:04.

The Speaker took the Chair and requested members to observe a moment of silence for prayer or meditation.

The SPEAKER: Hon members, I wish to acknowledge the presence in the gallery of teachers and learners, some of whom are attending Parliament's Language Services Section's career development programme. You are welcome. [Applause.] We hope one day you'll be sitting here.
Welcome.

Hon members, I think the President will recognise his guests, himself; we just noted that there's someone walking with him. But, we leave it to him to do that at the right time.

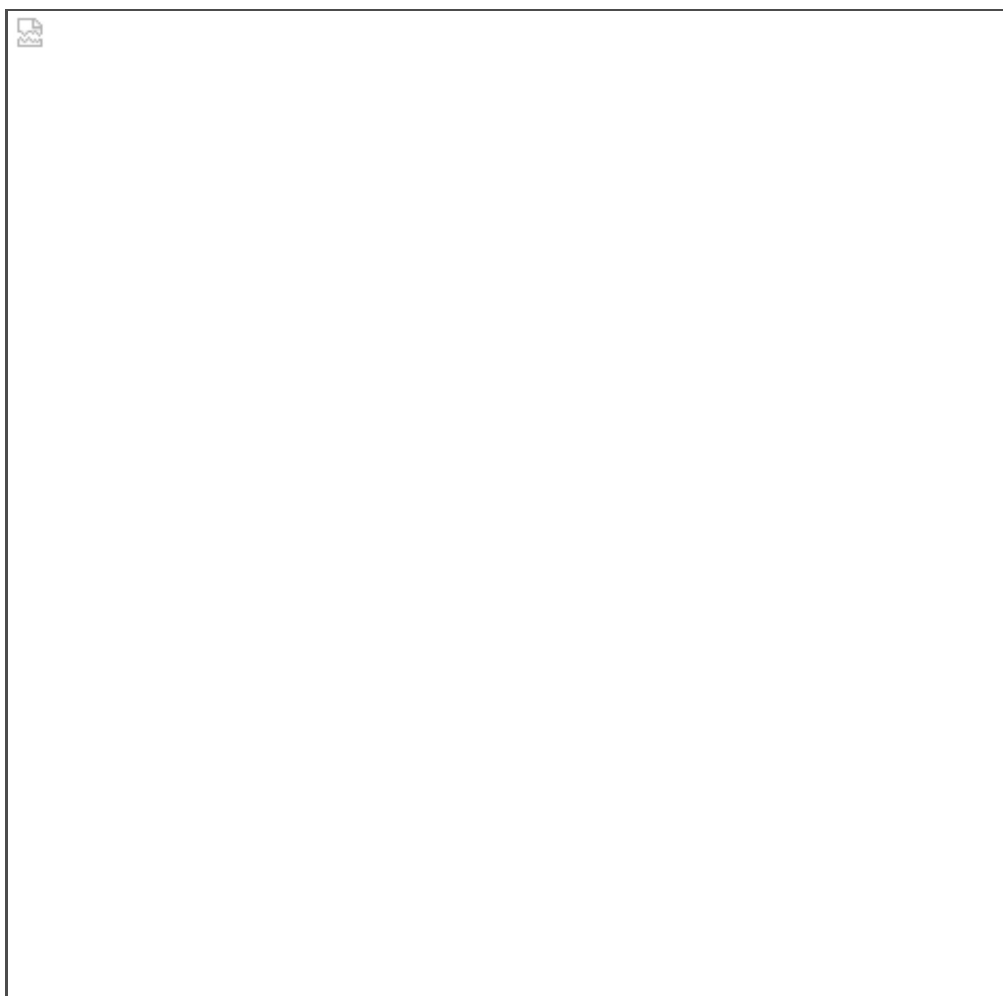
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The only item on today's Order Paper is questions addressed to the President. Members may press the talk button on their desks if they wish to ask a supplementary question. And I wish to remind the hon members that the names of members requesting supplementary questions will be cleared as the soon as the hon President starts answering the fourth supplementary question, after each question.

Question 1:

The PRESIDENT OF THE REPUBLIC: Hon Speaker, hon members [Interjection.] and you too as well. Hon Speaker, it's a real joy and pleasure to welcome Trevor Noah amongst us, over there. [Applause.] Trevor, I never get this type of applause, so I'm jealous. [Laughter.] We welcome Trevor; he's come for an assignment, but he's come home as well, whilst he's on a break in the United States, US, for a while, and I had a moment to chat to him about his work; but I was particularly impressed about the foundation that he has set up, to work on education, which is run by one of his colleagues, Sharleen. So, we applaud him for ploughing back to the country, once again. [Applause.]



The PRESIDENT OF THE REPUBLIC:

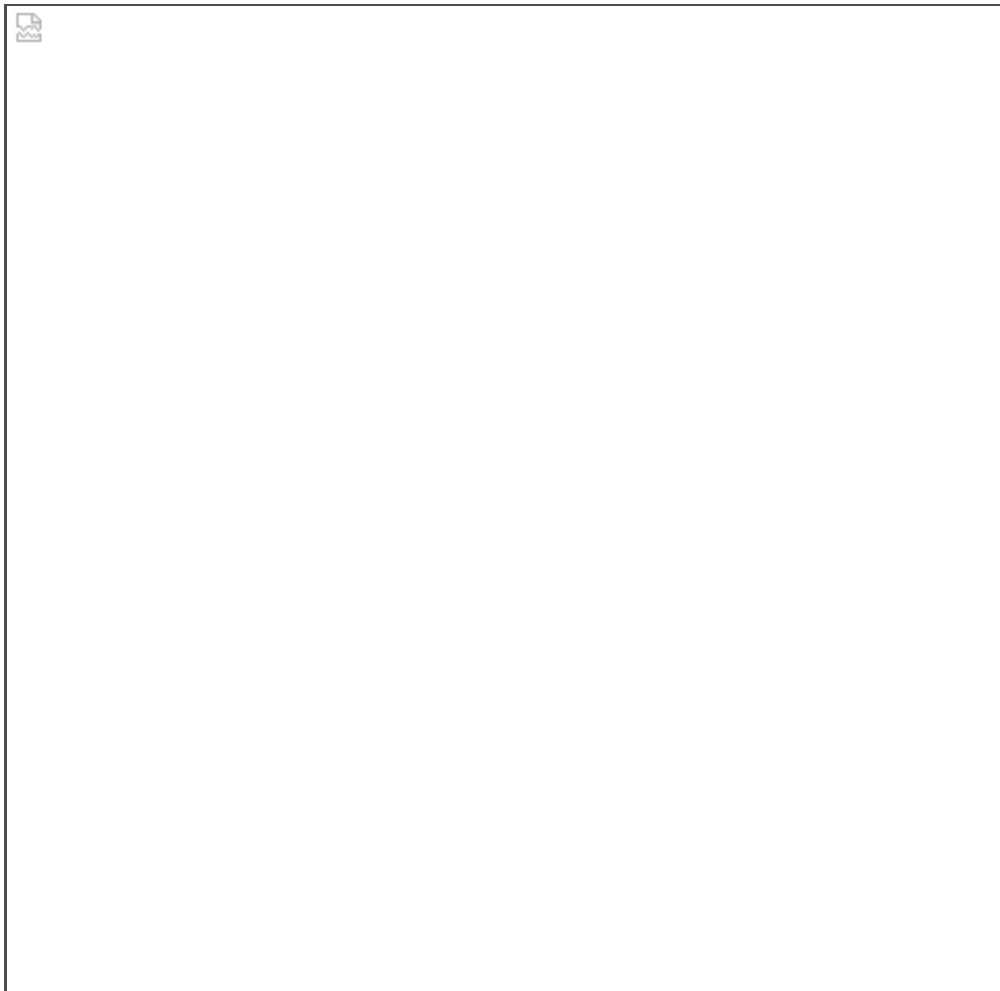
On the issues of how we look after our communities, particularly where there are leaks, we can say that this is a matter of continuous concern to us so that we secure the safety of our people. Even at Eskom level - that is what we have said, that they should ensure that our people are not exposed to any form of danger. With regard to any contract that would have been signed by former President Jacob Zuma on nuclear, I would say no - that has never been brought to my attention. I think the former Minister of Finance, Nene explained the issues around that. They have become public knowledge. So, I am saying no, I am not aware of any contracts that have been signed with regard to nuclear. Thank you.

Mr P J GROENEWALD: Speaker, through you to the hon President, we have just heard that Nersa has approved about 20% increase in tariffs over the next three years. In 2014, our former President Mr Zuma appointed you as the Deputy President to head the task team, specifically to ensure that South Africa will never have load shedding again. So, you were the head. Now I must ask you, what

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did you do as the head of that task team? In fact, at one stage it was even referred to as the war room against load shedding.



Afrikaans:

Ek is gewoon as jy 'n oorlogskamer het, wen jy. Dit is egter duidelik u het verloor. Wat het u gedoen om te voorkom dat die verbruiker weer moet opdok vir die skandes van Eskom? Dankie?

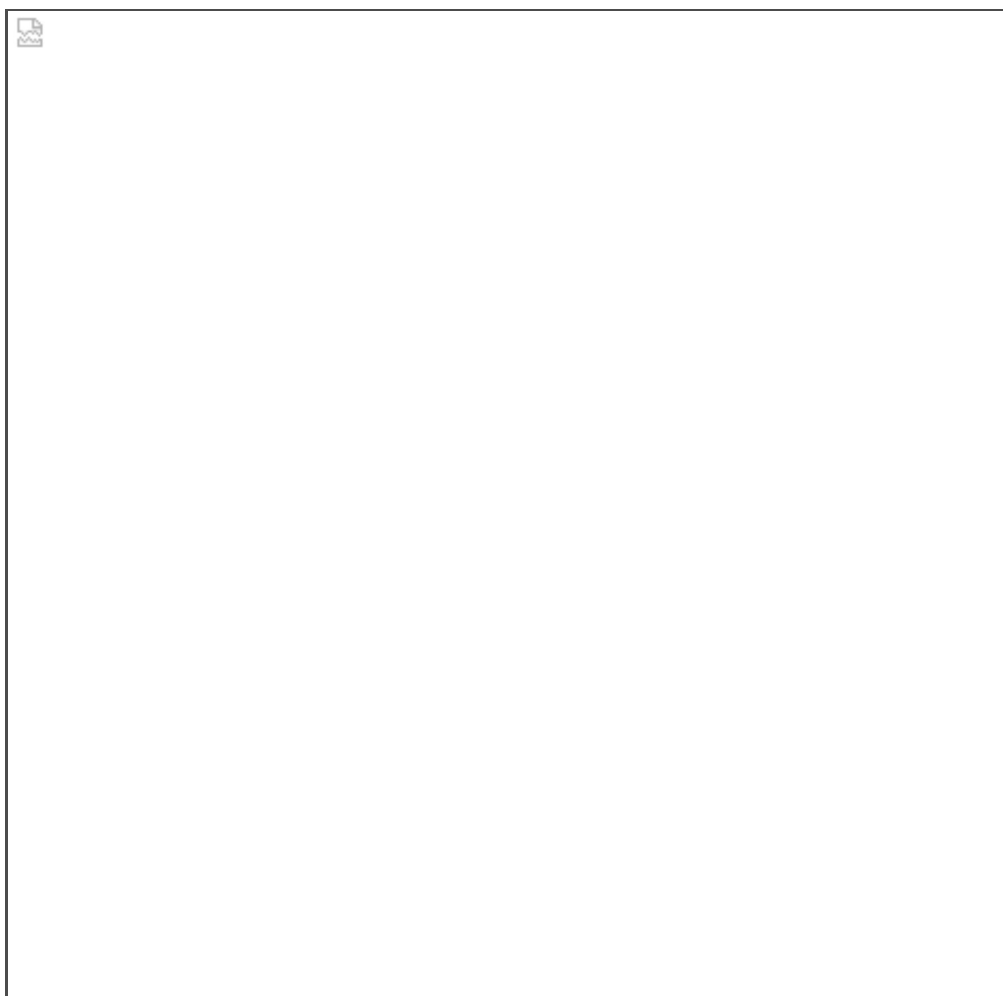
Die PRESIDENT VAN DIE REPUBLIEK: Speaker, nee, ek dink nie ek het verloor nie. Dit het nie mooi gewerk nie.

English:

This is what we did in the war room. The war room period was actually quite a seminal moment if you like, in the history of Eskom in our country, because it got us to fully understand the challenges that Eskom faces. We got very close to seeing how the electricity grid operates and how the power stations were functioning and malfunctioning, their age, the maintenance backlog and the various costs that were being incurred. What the war

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room never really got close to was

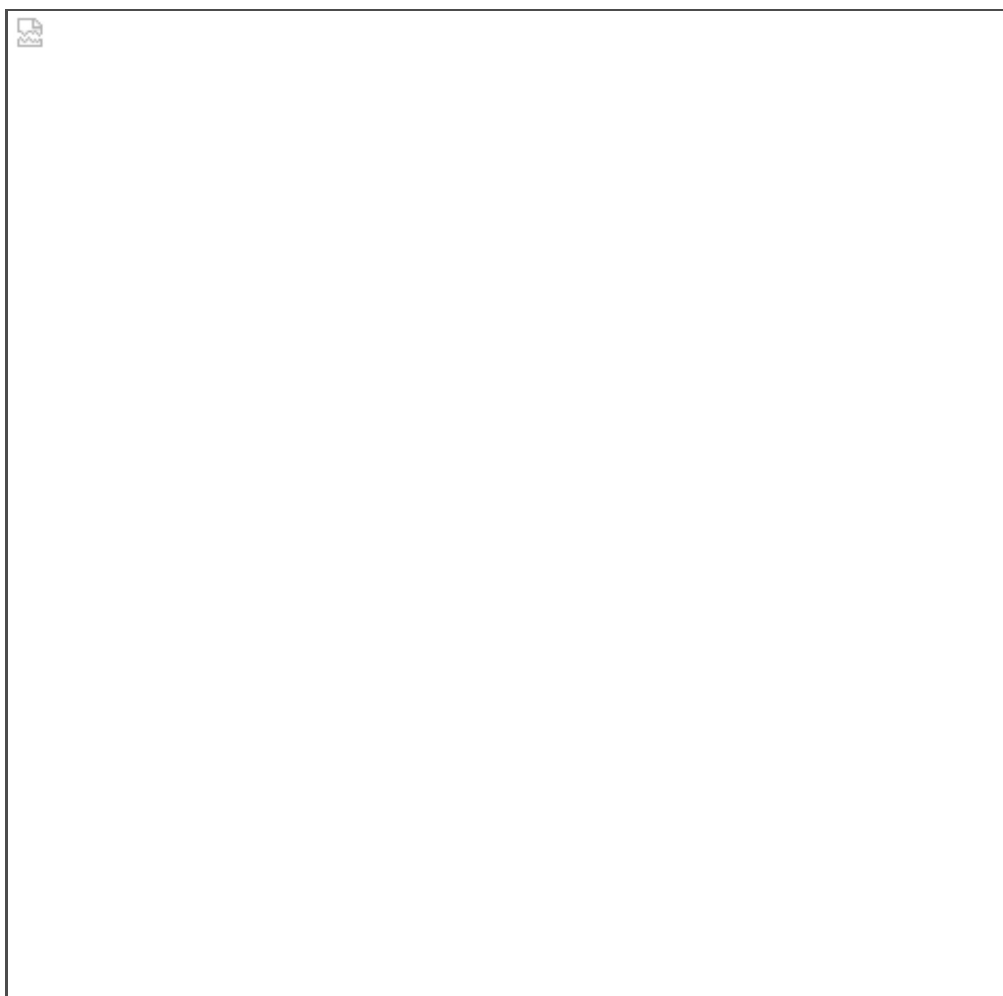
the financial machinations that were happening at the corporate level of Eskom. We were looking more closely at making sure that we keep the lights on and in the end the decision we took is that I went to the former President and said that I would like to have the war room closed because the challenge we were facing was that there were too many entry points into Eskom.

I had been appointed to head the war room but at the same time I told him I realise that I am not able to wrap my arms around Eskom properly - to be able to take effective decisions because at every point there was another entry of another idea of other people and so forth, and I suggested that we should close it. I suggested that we appoint a CEO, a CEO who would now be answerable to him as President and to the board and be able to make sure that we address all these challenges.

So, it was my proposal to have the war room closed, and it was closed. The CEO that was appointed was then Brian Molefe who then got in and ran Eskom. [Interjections.]

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Soon thereafter, load shedding

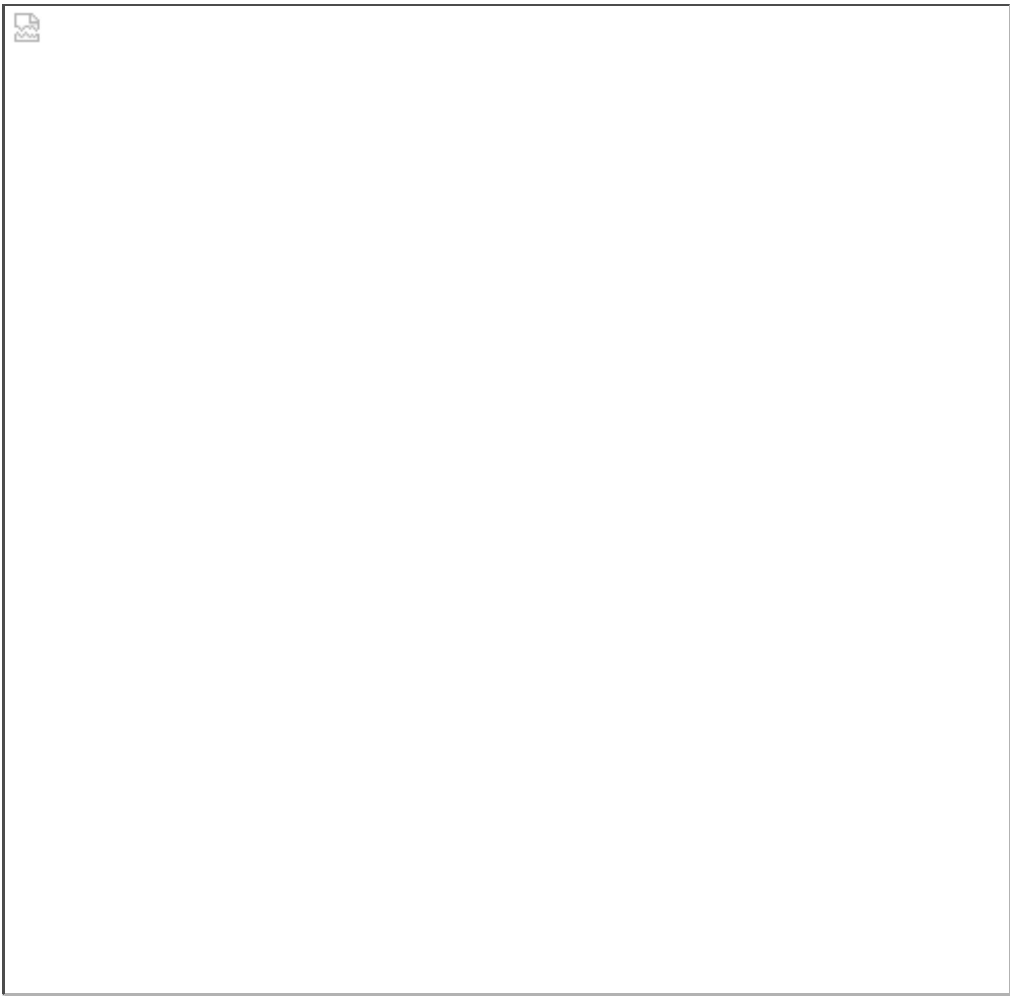
stopped - truth be told. Yes, load shedding stopped and they were able to do whatever but because Eskom's challenges are a bit on the long-term side, the problem persisted and it lingered on. Right now we are reaping precisely that lingering on process because we had on the other hand state capture which did not loom its head at the time we were in the war room.

We then had the cost overruns. When we were in the war room, the cost overruns were quite evident. We were now getting into the type of cost overruns on Medupi and Kusile. What was also not evident at the time was the problem with the design of the power stations, particularly Medupi and Kusile. The design challenges that Minister Gordhan has spoken about were not evident. What we also dealt with, that we had to countenance was the age of our power stations and all those. The war room dealt with those issues and before it could dig its teeth right deep in, we suggested that we should close it and get a CEO in place, and the rest is history. Thank you very much. [Interjections.]

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Mr P J GROENEWALD: Can I say, Speaker ... [Interjections.] ... it is not correct ... [Interjections.]



The SPEAKER: No, hon Groenewald

... [Interjections.] ... you asked your question ...

Mr P J GROENEWALD: Okay. So, you did not win the war, you surrender. I understand. [Interjections.]

The SPEAKER: Hon Carter?

Ms D CARTER: Thank you, Speaker. President, recently Minister Gordhan said that former Eskom engineers who are now working abroad should be recalled to South Africa to help solve the crisis. In the same week a report quoted Eskom's own affirmative action plan which outlined that by March 2020 there should be 1 308 fewer qualified employees in its service of which 336 are engineers. On Sunday 24 February, a report quoted the Director-General of Labour as stating that the employment equity plan at

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Eskom was suspended but the suspension was requested by the CEO of Eskom.

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

STATEMENT BY BRIAN MOLEFE

15.01.2021

1. Chairperson, during the testimony of Dr. Ben Ngubane,¹ you asked a pertinent question, which, in my opinion, if answered, will put into context and clarify the events that took place at Eskom during my tenure there in 2015 and 2016.
2. You referred to a question that needs to be put to Optimum Coal Mine along the lines of *“how did you allow whoever signed on your behalf ... to sign a contract that the price would be the same for ten years or more? Were they sleeping or what was – how could you have signed such a contract? Nobody signs such a contract.”*²
3. Unfortunately, Chairperson, these questions were not put to OCM. But the answers to these questions are at the heart of how and why we find ourselves where we are today. While they were not asked, nor had they directly answered these questions, Glencore did shed some light as to how they had put themselves in that precarious situation out of which they were demanding to be rescued by Eskom.

¹ <https://www.statecapture.org.za/site/hearings/date/2020/12/8> (Date of use 13.01.2021).

² Commission of Inquiry into state capture Transcript of 08 December 2020 –Day 320 page48 (hereinafter Day 320 Transcript).

4. Glencore did not sign the contract that you refer to Chairperson. Glencore bought the contract together with the company that had signed this contract. This is in the evidence of Mr Ephron before this commission.³
5. Although Mr Ephron is a Chartered Accountant,⁴ he admitted that Glencore did not conduct a due diligence on Optimum prior to the acquisition of the company and the contract, nor had they bothered to acquaint themselves with how the coal supply agreement (CSA) worked⁵.
6. Instead of conducting due diligence and understanding how the coal supply agreement worked, they sold 9.64% of the shares in the newly acquired company to Mr Cyril Ramaphosa,⁶ a political heavy weight, and made him Chairman of the newly acquired company. That was a strategic decision to use the former Secretary General of the African National Congress, former Secretary General of the National Union of Mineworkers and a member of the ANC's National Executive Committee at the time. They knew that the profitability of the company could only come from a successful renegotiation of the coal price and ignoring by Eskom of the penalties that were accumulating at the time. Mr Ramaphosa was their bet.
7. The profitability of Optimum was therefore dependent on the peddling of (political) influence and the extent to which Glencore would be able to exert pressure on the Eskom directors and management, and not on the fundamentals of the company that they had acquired.

³ <https://www.statecapture.org.za/site/hearings/date/2019/2/27> (Date of use 13.01.2021).

⁴ Commission of Inquiry into state capture Transcript of 27 February 2019 –Day 57 page 8 (hereinafter Transcript of 27.02.2019).

⁵ Statement of Martin Clinton Ephron to the State Capture Commission (undated) Page 3 paragraph 14 (<https://www.statecapture.org.za/site/hearings/date/2019/2/27>. Date of use 13.01.2021. (hereafter Statement of Mr Ephron)

⁶ Statement of Mr Ephron

8. This, in my opinion was the source of Glencore's problems. They had made their bed, and needed to lie on it. It was unfair and arrogant of them to demand, as they were doing, that Eskom should (effectively) pay for the irresponsible manner in which they had tied themselves into the proverbial knot.
9. You observed chairperson, that on my arrival at Eskom, there was "*a complete change of attitude on the part of Eskom on the deal that had been proposed and had been supported by various levels of management.*"⁷ You were referring to the deal that had been entered into by Eskom management and Glencore to save Glencore's skin from the consequences of purchasing a company having not conducted a due diligence. Eskom management and Glencore were in the process of subverting section 38(1)(c)(i) of the PFMA.⁸
10. On the 8th of December 2020 during the course of these hearings, the Evidence Leader, Advocate Seleka, was at pains to explain how Glencore had fallen into hardship because the export price of coal had taken a nose dive.⁹
11. Dr Ngubane tried to explain to the Commission that when the international coal price was high, and Optimum enjoyed super profits, they had not shared their spoils with Eskom.¹⁰
12. What was unfortunately lost in this exchange, is the fact that Optimum was a cost plus mine.¹¹ It had been built with Eskom's capital and had been given a 40 year contract. Eskom had responsibility for the mining costs and in return, Optimum

⁷ Commission of Inquiry into state capture Transcript of 07 December 2020 5 (hereinafter Transcript of 07.12.2020).

⁸ Public Finance Management Act 1 of 1999.

⁹ <https://www.statecapture.org.za/site/hearings/date/2020/12/8> (Date of use 13.01.2021).

¹⁰ <https://www.statecapture.org.za/site/hearings/date/2020/12/8> (Date of use 13.01.2021).

¹¹ Evidence of Mr Clinton Ephron <https://www.statecapture.org.za/site/hearings/date/2019/2/27> (Date of use 13.01.2021.)

received a fixed margin.¹² Eskom was, (unfairly), excluded in participating in the super profits of the mine when times were good, and yet, it was expected to fork out more capital, forgo its legitimate price expectations and subsidise rich international corporations, when the times were bad.

13. You correctly pointed out Chairperson, that Eskom had a legitimate contract with Optimum. In terms of that contract Eskom was supposed to get from them coal at a price of R150 per tonne. In addition, they had accumulated penalties, in terms of that contract to the value of R2bn.
14. They demanded that the price of coal be increased to R530 per tonne and that the penalties of R2bn should be written off. An increase from R150 to R530 per tonne would have meant a transfer of R6bn to Glencore over a period of three years (2015-2018). Add to this the R2bn write off of the penalties. The amount that Glencore wanted Eskom to pay for their original mistake of not doing due diligence was R8bn.
15. R8bn! Chairperson.
16. Your observation that there was *“a complete change of attitude on the part of Eskom on the deal that had been proposed and had been supported by various levels of management”* when I arrived at Eskom, is absolutely correct. I am not ashamed of this change of attitude that occurred when I arrived. I was having Eskom’s interests and those of the country at heart. What was happening was wrong on many fronts and was literally going to, (financially), ruin Eskom.
17. But there was an added issue to this. The Glencore position would have seen an inequitable situation. The poor and most vulnerable in the country would subsidise the dealings of the rich There was no way that I could, with a clean

¹² Transcript of 27.02.2019 page 12.

conscience, attend public meetings and shout from the roof tops that Soweto residents needed to pay their debt to Eskom when I was allowing international corporates to disadvantage Eskom on many fronts..

18. Moreover, I could not face Eskom employees and unions to tell them that their bonuses will not be paid, (as was nearly the case in 2015), and that we had no funds to fix the apartheid wage gap between black and white employees of Eskom, while rich international corporations were (unduly) exploiting Eskom. As I have stated, the payments to Glencore would have sunk Eskom.
 19. You will recall Chairperson that this was at a time when load shedding was becoming the norm. I could not, Chairperson, say to South Africans that load shedding will continue because we do not have enough money to conduct planned backlog maintenance on our electricity generating fleet, and still allowed R8bn to be unjustly transferred to Glencore.
 20. When I arrived at Eskom, a *de facto* board of the company had been established outside of the company in the form of a war room in the Presidency. Management had to report to the war room. Then Deputy President Cyril Ramaphosa chaired it. This effectively made him the *de facto* chairperson of Eskom and put him in a powerful position to pursue Glencor's agenda at Eskom. Its membership included people like Prof Eberhard from UCT, who has never uttered an intelligent academic or sane word about electricity or corporate strategy in my presence.
 21. I quickly came to realise that the war room was not about load shedding and turning Eskom around. Something else was happening. Eskom senior managers were being distracted from fighting load shedding by being made to attend endless meetings at which they were supposed to give unending and meaningless reports. I was uncomfortable with the war room and stopped attending its
-

meetings. If the war room had done its work diligently, it would have solved the load-shedding crisis before I arrived at Eskom.

22. I was relieved when president Zuma closed it down in favour of giving management a fair chance at fighting load shedding and turning the company around. Under my leadership, the leadership of Mr Koko, all the engineers at Eskom and the guardians, (Eskom staff), we defeated load shedding in August 2015 and never had load shedding again for three years after I had left Eskom. Load shedding came back to Eskom after Mr Cyril Ramaphosa, following the R1bn Nasrec conference, was appointed President of the country, and he in turn appointed the smooth talking and dictatorial Pravin Gordhan as his Minister of Public Enterprises. The less I say about Pravin Gordhan the better. As you see Chairperson, despite his smooth talking, Public Enterprises are failing and it appears that they are on course to be sold to private interests. I suspect that like the javelin, they will be thrown over the fence to be caught at a later stage.
23. To put it mildly, Chairperson, the situation made me sick. I found the behaviour of Glencore and that of Mr Cyril Ramaphosa to be revolting.
24. Mr Ramaphosa must have known about what Glencore sought to achieve. He was the chairperson of the company that was bought without a due diligence. He was chairperson, when the penalties were imposed. He was still chairperson of Optimum when the unlawful agreement that sought to increase the price of coal from R150 and set aside the penalties was negotiated with certain members of Eskom staff in 2014. He knew that he was being used for his political standing and hoped to influence matters to Glencore's favour. He is not naïve and he has been dealing with these corporates which gave him his riches.
25. Mr Matshela Koko, who I interrogated at length about this agreement, told me that the board had not sanctioned it. He also told me that the official who had
-

signed it had no authority to do so. But this is hearsay evidence which I shall not burden you with. I hope that Mr Koko will shed more light on this aspect when the commission ends its fascination with the suspensions of the executives in the hearing of his evidence.

26. Dr Ben Ngubane and members of his board understood the situation perfectly well. From them I received a blessing to do what was right, and for that I am thankful.

27. It is a pity, that this Commission on State Capture missed an opportunity to investigate the nature of the cost plus mines and 40 year contracts and what is currently collapsing Eskom. It is truly an injustice to the entire country. If this were to be investigated properly, we will all see the real problem from which we are being diverted, I believe, with the blessing of Mr Cyril Ramaphosa and Pravin Gordhan.

28. I find it to be strange that the focus is on Tegeta, given the fact that the Tegeta supplied less than 4% of Eskom coal, while in 2015 four other white rich companies supplied more than 80% of Eskom coal to the value in excess of R40bn per annum (with 40 year contracts).

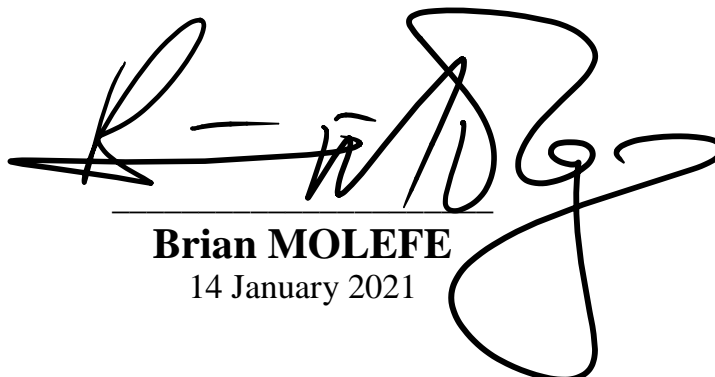
29. While some of us did not have the privilege of explaining our side of the story in an interview with the office of the former Public Protector with respect to optimum coal mine, it is clear that Glencore had unfettered access to her and were able to impress on her what their beef with Eskom was.¹³ She did not bother to interview me for my side of the story as is required by the Public Protector Act.¹⁴

¹³ Transcript of 27.02.2019 page 7.

¹⁴ Sect 7(9) of the Public Protector Act 23 of 1994.

30. She proceeded in unprecedented haste to write and label as “*final*” a report which has been used by the media to lynch certain people, (including myself), which gave rise to this commission.
31. Glencore is a multi-billion rand company. Their BEE partner, Mr Ramaphosa, subsequently rose to become the Deputy President, and then President of the country. It is rumoured that his campaign to become President of the ANC was financed to the tune of R1bn. This was unprecedented in the African National Congress. I daresay that it was not in line with the culture, values and ethos of the ANC that I had come to know and which I continue to be a member of.
32. Mere mortals like myself simply do not stand a chance when when we pit ourselves against these powerful forces who were trying to unjustly get R8bn from a state owned entity, (Eskom). Constitutional bodies wrote powerful reports about us, and no one dared to question their procedural fairness, their disrespect for natural justice, or even the unlawfulness in the manner in which the Public Protector’s office under Thuli Madonsela had conducted itself.
33. Nevertheless, I continue to have faith in our Constitution, the principle of transformative constitutionalism and the rule of law.
34. I am aware, Chairperson, that even as I make this statement, law enforcement agencies may be ready to pounce and charge me with criminal acts.
35. This I know, because the spokesperson of the SIU, Mr Kganyago, said during a television interview about the pending civil case relating to Eskom against myself and others, that they had not concluded their investigations, that they had not interviewed me and that the civil court process against myself and others is part of their investigation of myself.
-

36. The abuse of law enforcement and constitutional bodies is not a myth. But no amount of manipulation of State institutions and agencies and intimidation will deter me. It is unfortunate that the Courts appear to have also fallen to the narrative of the so-called State Capture.
37. I appear before you and state that my conscience is clear.
38. When this nightmare is over, our country will return to normalcy. I hope that after this nightmare some amongst us will desist from political lynching and purges and rather focus on the sacred task of rebuilding our country.
39. I will assist the Commission as best as I can. That is why I have been seeking to come and present my side of the story, a natural justice right that the former Public Protector denied me.
40. My heart is at ease. I am ready to face the consequences of following the dictates of my conscience.
41. I thank you.



Brian MOLEFE
14 January 2021

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

**BRIAN MOLEFE'S AFFIDAVIT
RELATING TO VARIOUS ESKOM MATTERS**

I, the undersigned,

BRIAN MOLEFE

do hereby make oath and say that:

1. I was the Acting Chief Executive Officer of Eskom from April 2015 to September 2015. I was the Chief Executive Officer from October 2015 to December 2016. The facts set out in this affidavit are within my personal knowledge unless otherwise stated, and are to the best of my belief true and correct.
2. This affidavit is in response to an e mail from the commission's¹ Mr Pather dated 24 December 2019. In it, Mr Pather listed a number of issues where the commission required clarification from myself.

¹ The Judicial Commission of Enquiry Into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State (hereafter the Commission)



75. I found it difficult to reconcile Eskom's inaction on this matter with our demand that the residents of Soweto should pay their debts to Eskom.

Glencore Coal Supply Negotiations

76. Eskom and Optimum Coal Mine, (OCM), Proprietary were parties to a coal supply agreement relating to Hendrina Power Station which agreement was to expire in 2018. This coal supply agreement was entered into in 1993.
77. In terms of the agreement, OCM was obligated to supply coal with a CV of 23.5MJ/.kg to the Hendrina Power station at a price of R154 per tonne.
78. In July 2013, OCM issued a hardship notice and initiated a hardship claim against Eskom in February 2013. This was despite the fact that at the time, Eskom was going through its own hardships and was experiencing load-shedding.
79. At the time of the request to increase the price at which OCM was supplying coal to Hendrina power station from R154 to R442 per tonne, the shareholders of OCM were, amongst others, Purito BV, (owned by Glencore group), with a



shareholding of 67.58%, and Lexshell 849 (Pty) Ltd (owned by Mr Cyril Ramaphosa), with a shareholding of 9.64%.⁴⁷

80. Mr Ramaphosa was Chairman of Optimum at the time of the initiation of the hardship claim.⁴⁸
81. The competition Commission approved the sale of Lexshell 849 (Pty) Ltd by Mr Ramaphosa's Shanduka Group (Pty) Ltd to Pembani Group (Pty) Ltd on the 19th of August 2015.⁴⁹
82. This notice and hardship claim were preceded by another amendment to the contract in April 2011 following arbitration.
83. In his submission to the commission, Mr Ephron claims that; "*Glencore was not able to undertake a comprehensive due diligence exercise*" at the time of acquiring Optimum.⁵⁰ Furthermore, he states that "*Glencore did not, for example, know how any price-adjustment mechanisms in the CSA worked.*"

⁴⁷ Lourens C "Shanduka raises stake in Glencore coal project" 15.12.2011 <https://www.iol.co.za/business-report/economy/shanduka-raises-stake-in-glencore-coal-project-1199008> Date of use 20.02.2020.

⁴⁸ Imaralu D "Glencore, Ramaphosa acquire 70% stake of optimum coal" 25.06.2012 <http://venturesafrica.com/glencore-ramaphosa-acquire-70-stake-of-optimum-coal/> Date of use 20.02.2020.

⁴⁹ *Pembani Group Proprietary v Shanduka Group Proprietary Limited* (LM041Jun15) [2015] ZACT 126 (18 September 2015) (Annexure BM17).

⁵⁰ Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 13.



Glencore discovered that they are unhappy about the price of coal after conducting a "*post acquisition review*" in July 2013.⁵¹

84. OCM had also taken a gamble on the export price of coal. It is when this bet went sour, when the price of coal collapsed in 2012, that the hardship was concretised.⁵² It is worth noting that Eskom would not have participated in their good fortune had the export price of coal gone the other way.

85. On the 4th of May 2015, Mr Bester (of Eskom), wrote a memo⁵³ to his superior, Mr Mboweni, recommending that Eskom should agree to the proposed price increase from R154 to R442 per tonne.⁵⁴ In his memo, Mr Bester intimates that;

"As a result of continued low international coal prices Optimum, without the prospect of a recovery in the next two years, at the end of January 2015 Optimum made the decision to close their export operations and began a section 189 for the opencast section of the mine"

86. It is therefore apparent that their "*hardship claim*" was a result of their own negligence and failure to conduct proper due diligence at acquisition for which they now wanted Eskom to pay.⁵⁵ Furthermore, they had gambled in the

⁵¹ Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 15.

⁵² Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 21.

⁵³ Memo from Bester to Mboweni dated 04 May 2015 Annexure BM15.

⁵⁴ Annexure BM15 para 3.

⁵⁵ Annexure BM18 para 17.



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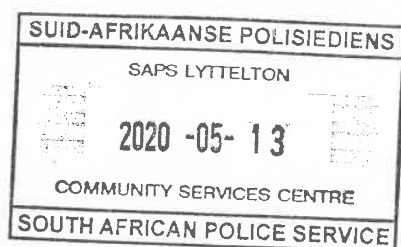
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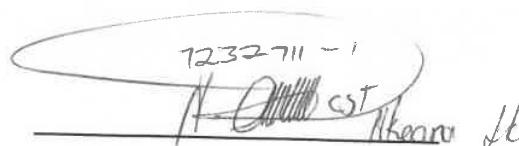
E mail from Sahara Loans

131. The commission has forwarded to me an email from Sahara loans dated 27 June 2017. Apparently the email was sent to my Eskom email address. I was no longer at Eskom on the 27th of June 2017. I therefore did not receive the email.
132. Until it was sent to me by the commission, I was not aware of the existence of this email.
133. I have no idea as to who Sahara Loans is.


BRIAN MOLEFE 13.05.20

I certify that the deponent knows and understands the contents of the foregoing Affidavit which was signed and attested to at the undermentioned address on this day of **FEBRUARY 2020**.



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H. Ooms CST

COMMISSIONER OF OATHS

OPTIMUM COAL HOLDINGS LIMITED

(Incorporated in the Republic of South Africa)

(Registration number 2006/007799/06)

Share code: OPT ISIN code: ZAE000144663

("Optimum Coal" or "the Company")

CHANGES TO BOARD OF DIRECTORS

In compliance with the JSE Limited Listings Requirements, the following information is disclosed:

The following independent non-executive directors and non-executive directors have resigned from the board of Optimum Coal with immediate effect:

Mr RM Godsell as the Chairman and a non-executive director*;

Mr TI Borman as a non-executive director;

Mr DSC Dhlomo as a non-executive director*;

Mr PK Gain as a non-executive director;

Mr EO Monkoe as a non-executive director;

Dr M Kwini as a non-executive director; and

Ms LL Letlape as a non-executive director*.

*independent

Mr C Ramaphosa has been appointed as a non-executive director and Chairman of the Company and Messrs C Ephron and R Cohen were appointed as non-executive directors with immediate effect. Mr P Nkuna has been appointed as the lead independent director and remains the deputy Chairman.

Additionally the board committees have been reconstituted as follows, also with immediate effect:

Audit and Risk Management Committee

Mr CL Smit*

Mr P Nkuna

Ms N Mnxasana

Remuneration and Nomination Committee

Ms N Mnxasana*

Mr P Nkuna

Mr C Ephron

Transformation, Social, Ethics and Sustainability Committee

Mr P Nkuna*

Ms N Mnxasana

Mr C Ephron

Safety, Health and Environmental Committee

Mr P Nkuna*

Ms N Mnxasana

Mr M Teke

*Chairpersons

Johannesburg

26 March 2012

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3/3/2021

Ramaphosa appointed Optimum chairman



BUSINESS REPORT / COMPANIES

01/07/2011. Shanduka Black Umbrellas Chairman, Cyril Ramaphosa with DRA Managing Director for Mineral Projects, Angus Fynes-Clinton during the launch of the Pretoria Incubator for SMMEs held at the Burgers Park Hotel Picture: Sizwe Ndingane

Ramaphosa appointed Optimum chairman

By Mar 27, 2012



Mining and mineral explorer Optimum Coal says it has appointed businessman Cyril Ramaphosa as chairman and non-executive director of the company.

Ramaphosa will take up the roles with immediate effect, following the resignation from the position by outgoing chairman Michael "Bobby" Godsell. - I-Net Bridge

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3/3/2021

Ramaphosa appointed Optimum chair - Miningmx

Ramaphosa appointed Optimum chair

By **Staff Writer** - March 27, 2012




[miningmx.com] — Optimum Coal said on Tuesday it has appointed businessman Cyril Ramaphosa as chairperson and non-executive director of the company.


Ramaphosa will take up the roles with immediate effect, following the resignation from the position by outgoing chairperson Bobby Godsell.

Ramaphosa heads up a consortium which is busy taking control of Optimum Coal.


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Au 1735.18 \$/oz


R/\$ = 14.93
Pt 1203.50 \$/oz

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Glencore acquires controlling stake in Optimum Coal

27TH MARCH 2012

BY: HENRY LAZENBY
CREAMER MEDIA DEPUTY EDITOR:
NORTH AMERICA

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JOHANNESBURG (miningweekly.com) – Commodities trader Glencore International said on Tuesday it had acquired a further 36.56% interest in Optimum Coal, following unconditional approval by the South African competition authorities.

The consortium now holds directly and indirectly, together with its black economic-empowerment partner **Cyril Ramaphosa**, 67.77% of the issued share capital of Optimum Coal.

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3/3/2021

Glencore acquires controlling stake in Optimum Coal

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owned or controlled by the consortium.

The consortium will offer the remaining Optimum Coal shareholders R38 a share in cash.

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“Optimum will add to our presence in South Africa and will be complimentary to our Shanduka Coal joint venture and our investment in Umcebo,” Glencore director of the coal/coke commodity department **Tor Peterson** said.

Optimum is South Africa’s sixth-largest coal producer and fourth-largest exporter of the commodity. It owns two operating mining complexes, both located in the Mpumalanga province.

“South Africa is an important producer to supply the growing Chinese and Indian markets, so we are delighted to add to our business in the country, with Ramaphosa as our partner,” Peterson added.

Glencore is also currently undertaking a \$36-billion takeover of miner Xstrata, as well as Canada's largest grain handler Viterro in a cash deal valued at C\$6.1-billion.

Meanwhile, Optimum appointed Ramaphosa as nonexecutive director and chairperson of the board, succeeding **Bobby Godsell**, who resigned on Monday.



EDITED BY: MARIAAN WEBB
CREAMER MEDIA DEPUTY EDITOR ONLINE

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SECOND STATEMENT OF CLINTON MARTIN EPHRON

for the purpose of the

**JUDICIAL COMMISSION OF ENQUIRY TO ENQUIRE INTO ALLEGATIONS
OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR,
INCLUDING ORGANS OF STATE ("*Commission*")**

1. This statement is supplementary to the statement that I submitted to the Commission during February 2019 ("**First Statement**"). This supplementary statement addresses certain specific topics that have arisen in evidence that has been provided to the Commission by Mr Brian Molefe (in a statement dated 14 January 2021 and during his evidence on 15 January 2021) and since the date of delivery of my First Statement.
2. This statement sets out my current recollection and understanding of events at the time they occurred.
3. Terms defined in my First Statement shall bear the same meanings when used herein.

The acquisition of OCH by Glencore

4. As I stated in my First Statement, in the period June 2011 to March 2012, Piruto BV (an entity within the Glencore group) and Lexshell 849 Proprietary Limited ("**Lexshell**") (an entity then owned by Mr. Cyril Ramaphosa) acquired Optimum Coal Holdings Proprietary Limited ("**OCH**"), which held the shares in Optimum Coal Mine Propriety Limited ("**OCM**"), through a series of transactions resulting in Piruto BV (Glencore) holding a 67.58% effective interest in OCH and Lexshell holding a 9.64% effective interest in OCH. This transaction closed during March 2012 and OCH was delisted in July 2012.
5. At the time of the OCH acquisition, Mr Ramaphosa was, through



Shanduka Resources, Glencore's black economic empowerment partner in one of its other investments in South Africa, Shanduka Coal, which was established by Glencore and Shanduka Resources in 2005. Glencore therefore had a long-standing relationship with Mr. Ramaphosa in relation to the coal industry. It was for this reason that Glencore approached Mr. Ramaphosa to form a consortium to acquire a controlling interest in OCH. Glencore did not on its own acquire an interest in OCH and thereafter dispose of that interest to Mr Ramaphosa rather Lexshell was included from the outset.

6. The opportunity to acquire OCH arose in H1 2011. Prior to the consortium's acquisition, OCH had been listed on the Johannesburg Stock Exchange in March 2010. There was therefore a reasonable amount of recent publicly available information regarding OCH and OCM. The consortium was concerned that if it approached the OCH Board to request the Board to conduct a due diligence, that would have compelled OCH as a listed company to publish a cautionary announcement to the market which may have resulted in an increase in the share price of OCH. The consortium also understood that it was competing with various other potential purchasers to acquire control of OCH and therefore took the strategic decision to rely on publicly available information and effect its acquisition through a series of transactions with OCH shareholders on the stock exchange without the involvement of OCH.
7. Accordingly, while the consortium did comprehensively consider the then publicly available information, the consortium was not able to undertake a comprehensive due diligence exercise on all aspects of OCH's business as it did not have access to information from OCH and OCM. In particular, Glencore only had publicly available information regarding the CSA and, accordingly, it only knew the duration, volume to be supplied and price per tonne provided by the CSA. Glencore did not, for



example, know how any price-adjustment mechanisms in the CSA worked. It was only after the consortium acquired control of OCH that it became aware of the various hardship provisions which were included in the CSA.

Involvement of Mr. Ramaphosa in the business of OCH and OCM in the period 2012 to 2014

8. Mr. Ramaphosa had no direct involvement in the day-to-day operations of OCH or OCM in the period 2012 to 2014. Mr. Ramaphosa was never appointed Chairman of OCH or OCM. Mr. Ramaphosa nominated various professionals from Shanduka Resources to represent him on the OCH Board.
9. I never asked Mr. Ramaphosa to intervene on behalf of OCH or OCM in any matters relating to Eskom or the CSA, and, to the best of my knowledge and recollection, he never did so.
10. Mr Ramaphosa divested his entire interest in OCH on 22 May 2014 prior to him taking office as the Deputy President and prior to his involvement with the Eskom War Room. Mr. Ramaphosa therefore had no interest in OCH following the conclusion of the Co-operation Agreement and during the period when OCM/OCH were negotiating with Eskom regarding potential amendments to the CSA and an extension to the CSA.
11. The suggestion that Glencore involved Mr Ramaphosa in the acquisition of OCH with a view to, or with the expectation of, leveraging Mr. Ramaphosa's influence to achieve amendments to the CSA, is false and baseless.

Negotiations regarding the amendment to the CSA

12. The CSA between Eskom and OCM included a "Hardship clause" which specifically provided that:



"In entering into this agreement the parties declare it to be their intention that this agreement shall operate between them with fairness and without undue hardship to any party"

13. This provision recognised that in a long-term contract of the nature of the CSA, circumstances can change over time which could potentially render the contract unfair to a particular party. As a result, the CSA contained a Hardship clause and set out a mechanism to address such unfairness. The decision to issue the Hardship notice to Eskom was a reasonable and legitimate exercise by OCM of its contractual rights against Eskom. It was as a result of the Hardship Arbitration that Eskom approached OCH in order to determine whether a reasonable solution could be found and formed the basis of the process established in the Co-operation Agreement.

Eskom's alleged R2 billion penalty

14. At the time of negotiation of the amendments to the CSA, Eskom had never informed OCH that it believed that OCM had incurred a penalty in the amount of R2 billion. The R2 billion penalty was raised for the first time on 16 July 2015, when OCM received a letter from attorneys Cliffe Dekker Hofmeyr, representing Eskom, demanding payment of (alleged) penalties in an aggregate amount of approximately R2 billion in respect of alleged sizing and quality issues. As I noted in my First Statement, this letter came as a complete shock to OCM and I felt that the decision by Eskom to impose the penalties was completely unreasonable because, while there was a purported contractual basis for these penalties, Glencore, OCM and Eskom had been discussing the basis for the penalties with Eskom for a number of years and Eskom was aware that OCM did not believe that it was liable for penalties.
15. OCM engaged in good faith negotiations with Eskom regarding the



amendments to the CSA and sought to propose a resolution which would have been beneficial for all parties, particularly since it would have (i) ensured security of coal supply to Hendrina beyond 31 December 2018, (ii) enabled OCM to sell coal to Eskom at a more sustainable price, (iii) ensured the continued operation of the Mine and (iv) settled the claims between OCM and Eskom.

Signed at SOUTH AFRICA on 11 FEB 2021

A handwritten signature in blue ink, appearing to read 'Clinton Martin Ephron', is written over a horizontal line.

CLINTON MARTIN EPHRON

THIRD STATEMENT OF CLINTON MARTIN EPHRON
for the purpose of the
**JUDICIAL COMMISSION OF ENQUIRY TO ENQUIRE INTO ALLEGATIONS
OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECOND,
INCLUDING ORGANS OF STATE ("Commission")**

- 1 This statement is supplementary to the statement that I submitted to the Commission during February 2019 ("**First Statement**") and during February 2021 ("**Second Statement**").
- 2 Terms defined in my First Statement and Second Statement shall bear the same meanings when used herein.
- 3 This supplementary statement sets out the dates regarding Mr Cyril Ramaphosa's appointment and subsequent resignation as a director of Optimum Coal Holdings Proprietary Limited ("**OCH**").
- 4 I resigned as a director of, and left the employ of, Glencore during 2017 and I have no historical records of OCH.
- 5 At the time of the preparation of the Second Statement, I could not recall whether Mr Ramaphosa had been Chairman of OCH and, if so, for what period.
- 6 I therefore asked representatives of Glencore to review the relevant records to confirm the position.
- 7 The representatives of Glencore informed me that the records did not reflect that Mr Ramaphosa had been a Chairman of OCH which information was thereafter incorporated into my statement.
- 8 After having heard Mr Molefe's further testimony to the Commission on 2 March 2021, I asked Glencore to recheck its underlying records. Glencore did so and determined that the records of the Companies and Intellectual Property Commission that were accessed through Windeed by the Glencore representatives at the time of preparation of my statement, were incorrect and Mr Ramaphosa was in fact the Chairman and a non-executive director of OCH for the period from 26 March 2012 to 6 June 2013.
- 9 As indicated in paragraph 16 of my First Witness Statement, the declaration of Hardship by OCM occurred in July 2013.



CLINTON MARTIN EPHRON

Date: 14/04/2021

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

03 DECEMBER 2020

DAY 317



Gauteng Transcribers
Recording & Transcriptions

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Irene Woods, Centurion
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info@gautengtranscribers.co.za

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I can't remember whether it was a Saturday or Sunday and I was driving from Pretoria and I just joined N1 from Pretoria. I got a call from the then Acting Deputy Director General in the Department of Public Enterprises, Ms Magola, and she said to me – she used to work for me, and she went to work for DPE and then she says to Mr Koko we haven't talked for a very long time, I said yes I am on suspension so I avoid talking to you guys in case I put you into disrepute, so it is safer that I keep away from you and
10 in case you call me and it is official I suggest we don't proceed because we don't know where it will end up. She says no, no Mr Koko I called you out of respect and out of courtesy because I know you. I said okay, she says – and it was around five, it was towards five, she says the Deputy President is going to issue a media statement dismissing you. I said oh, the Deputy President is going to issue a media statement dismissing me, how can I be dismissed by the Deputy President. What reason is he going to give, what reason am I being dismissed for. She
20 says the new board will find a reason to dismiss you, will have to find a reason to dismiss you but the instruction is that you must be dismissed.

She says listen I cannot talk long, I thought it is respectful that I give you the call but the Deputy Minister who is sitting with me wants to talk to you. And then she

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gave the number to call to the Deputy Minister, then Deputy Minister Ben Martin. Deputy Minister Martin spoke in Tswana and then he says – and I am going to translate – he says Mr Koko let us not discuss this thing, we thought that you don't hear from the media, this was just a respectful call, we thought we owe you the decency that this statement is going to come out and that is what it is. I said okay thank you and then I drove – before I could even get home, between Centurian and Johannesburg headline
10 news, Eskom new board appointed and Mr Koko asked to resign.

We ended up at the Labour Court and the Labour Court was very emphatic that the decision by the Deputy President then was unlawful. I say this Chair because part of what you have been focusing on is on interference and regulation, and I am saying to you the Deputy President interfered in the affairs of Eskom, in ...[indistinct], the Board that has not even met says to the – this is a new board, it has not met, but dismiss Mr Koko, go find reason
20 to dismiss Mr Koko. I deal with that in detail in my affidavit.

What is more important Chair, and this is why I am saying I get a feeling that the investigators are not following the evidence, because this is an unlawful instruction and I will lead it later on to Optimum, because

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the Chairman of Optimum in 2012 and 2014 was the same Deputy President when Eskom was not paid what was due to it at the tune of R1.4billion. I will make the submission on the 11th to say Optimum is lying when it says they spent over a billion Rands to buy Optimum Mine without doing a due diligence. Glencore is a very sophisticated business to spend over a billion Rand to buy Optimum without a due diligence. They did that, the Chairman was then was Mr Ramaphosa. They owed Eskom penalties of R1.4billion, 10 they never paid Eskom and there is no reason to explain why the R1.5billion was not paid to Eskom, it was due to Eskom. They queried the tariff of the coal price. The coal price that was a consequence of an arbitration in 2011, they refused to go to arbitration.

When it became unreasonable and unpalatable to continue not to pay Eskom in 2014 they then concocted the famous cooperation agreement which I argue is unlawful, and your investigators are not saying what is the legal, what is the authority that was relied on to sign this 20 cooperation bargaining. In my letter of last night I say to you Optimum when they bought – OCH when they – Glencore when they bought Optimum they had an Ace up their sleeve and the Ace up their sleeve was the political connectivity of the current Head of State and that is why you cannot explain why Glencore did not pay Eskom the

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CHAIRPERSON: Yes.

MR KOKO: If you go to page 10, if you go to page 10, this is the work that was done by CSIR, it shows load shedding since 2007, you will see that in 2015 we had very bad load shedding, again in 2016 and 2017 we had no load shedding and then I got that famous letter, a call, famous call that says you will be dismissed and I heard from the news that I will be dismissed, and look at what load shedding did afterwards. The consequences of that call is
10 the load shedding of 2018, 2019, 2020 and at the bottom there you will see there is an amount of R87,50 is the cost what you call the cost of load shedding per megawatt hours, the cost of ...[indistinct] image. I want to make a submission to you and this is the painful truth, and because they assuming a particular line, the difficulty you are going to be faced with that I am submitting to you, the consequences of the statement by Mr Ramaphosa in January 2020/21 was load shedding on 2017, 2018, 2019 and the cost as worked out by CSIR IS 266 billion rands to the
20 economy. That is the cost of the call that I received in January 2020/21.

Finally, finally I have, it has been alleged that I gave my daughter a billion rands contract out of Eskom. It is also being alleged that I lied on national television. One of the things I had expected is that the people who says that, come



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.

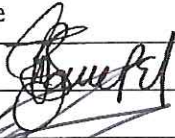






















MEMORANDUM FROM ESKOM SENIOR MANAGEMENT

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, which ever 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

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	CORPORATE SPECIALIST, STRATEGY	
Murenda Khomola	Shared Services	
Marig Bower	Snr Mgr	
Chris Gross	Corp Specialist	
Mam Bantjoleh	Corp Sp.	
Nico Kiegnhans	Snr Mgr	
Clint Fisher	Snr Mgr	
ALGIE KIEWITZ	GM: Cust. Serv	
Lawrence Podachi	Snr Mgr	
Rajan John	Snr Mgr	
MARK SIMS	Snr Mgr	
BOB SOKRAJIT	Snr Mgr	
Segunolu Shippa	GM (TX)	
THABAU GURU	Snr Mgr	
Sibusiso Muthala	Snr Mgr	
PROF SANESHAN GONDA	CORPORATE SPECIALIST	
MAUREEN MOKONE	Snr Mgr BPM	
GROSSWEL MABANDI	Snr Mgr	
Stephane Marais	Snr Specialist	
Pawan Moddy	Snr Mgr	
Louis FERNANDEZ	Snr Mgr	
Andrea Fortune	Snr Mgr GII	
Dika Modize	Snr Mgr GII	

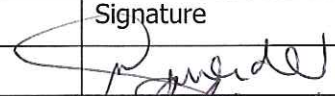
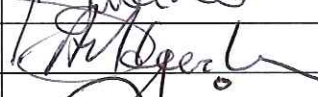


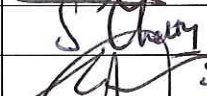

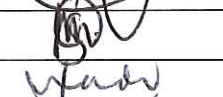
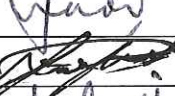
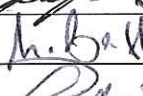


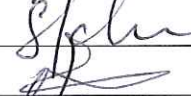
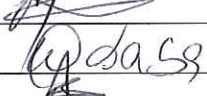

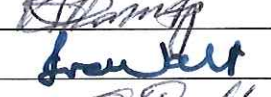
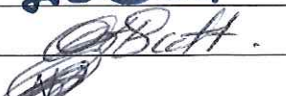







MEMORANDUM FROM CONCERNED EMPLOYEES

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Name	Position	Signature
Janale Mendi	Snr Mgr	
Francois Venter	Treasury	
SANJIV KALICHARAN	Snr Manager Cond	
GODFREY PHUCKFAU	Sr. MGR.	
Eric Shunngum	Snr. Mgr	
Thys Moller	CS	
Ravi Nacker	ERAR	
Mandla Mavola	Snr Manager	
Gertrude Mokoane	Corp. Professional	
Vincent MAICIVUTHA	Snr Manager	
Kurtel Mollerhorst	Finance	
Marvin Nourse	Finance	
Makgwana Maringa	Snr Manager	
Rachelle Chetty	Snr Manager	
Gabriel Kgabo	Snr Mgr	
TOM SKINNER	SNE MGR	
Callie FABRICIUS	CM	
Thandi Mazibuko	CS	
Motshebi Molegalla	Snr Manager	
CHARLES MAHONY	CORP. SPECIALIST	
Lloyd Molegatho	Snr Manager	
KEVIN VON BERG	CORP. SPECIALIST	
MONDE BAWA	GM. KZIFOU	

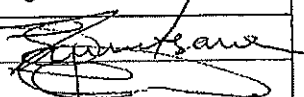
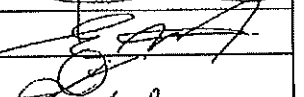
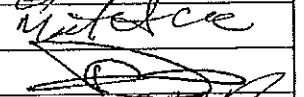
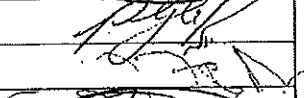
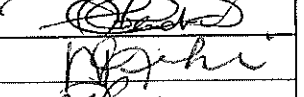

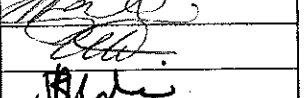
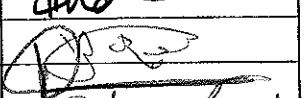
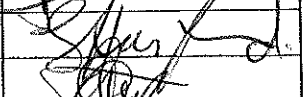
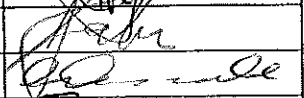
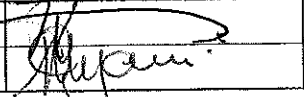




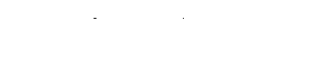
MEMORANDUM FROM CONCERNED EMPLOYEES

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Name	Position	Signature
NANDHA GOVENDER	GM	
André van Heerden	Snr Manager	
Khulu Phasiwe	Spokesperson	
Antonie Mamme	Snr Mgr	
SNEHAL NARAYAN	Snr Mgr	
Sagie Chetty	Senior Manager	
Vincent Ncube	GM (Acting)	
CEPH FUMFUMU	Sr Manager	
John MAMABOLO	GM (Acting)	
Jayshree Naidoo	Senior Manager	
SANJITH KANAPATH	Snr Manager	
Mike BASHA	E&C Mgr	
Sumaya Nassiep	Act GM	
Fikile Segole	Senior Mgr	
Nyandi Mbulizi	Senior Mgr	
Andrew Johnson	GM E&C	
Phiso Mokohe	Snr Mgr	
Thembeka Ndaba	Senior Mgr	
A Mamba	GM	
Phineas Rhatliff	Technology	
Albert vd Walt	Snr Manager	
Atha Scott	Snr Manager	
Ngoako Huma	GM	

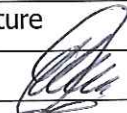

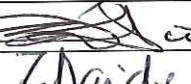
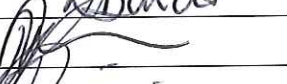
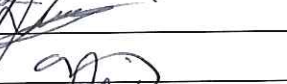

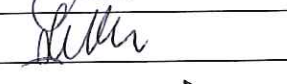


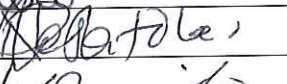
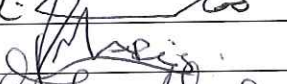


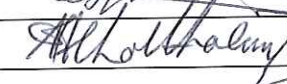






MEMORANDUM FROM CONCERNED EMPLOYEES

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Name	Position	Signature
EZEKIEL THANTANE	PTSCM	
NDLBIZODWA MOWATHE	Px SCM	
E.D Mchizama	P & SCM	
H. LANGENHOVEN	Pt SCM	
Manasse Mbethebaetse	Bar Mgr	
A.T. Dlamini	SR Mgr	
Peter le Roux	P & SCM	
Mphahlele Mphahlele	PTSCM	
C.D. HENDRICKS	SUB MANAGER PTSCM	
MUSA MABULU	DX	
John Ruskus	GM	
Robert Ustong	EEG	
BALIN NAIKOR	EEG	
WILLIAM UP WESTMILLER	PEIC	
Beke mdoi	EEG	
VIKESH Rajpaul	FEF	
Alex Stramwood.	OHS.	
GAV MURFORD	NCM	
T. Gangi	EUL	
Stanley Lokea	EAL	
Charlotte Gumed	DA	
Philip Mashyo	Sr ERM	
M. Mupfema	EEG	

MEMORANDUM FROM CONCERNED EMPLOYEES

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Name	Position	Signature
Deon Conradie	SNR MGR: PRICING	
Shirley Salvoldi	CORP SPECIALIST	
Keseré Paterson	GM - SS.	
Manhi Strauss	SM SS	
Lureka Davids	Corp. Professional	
Dean Joubert	Corp. Spec.	
Martin Bays	Financial Reporting	
Stefaan Cronje	FINANCE	
Aziz LAHER	COMPLIANCE/KRAA	
Ragini Ramkumar	Finance	
Sureta Moolana	Finance	
Carl Meeuwse	FINANCE	
Bernice Trawanics	FINANCE	
Deleka Mangcipu	Finance	
Peky Maslatola	HR	
Leslie Naidoo	Tx	
Ronald Marcus	Tx	
JACOB MACHINJIKI	Tx	
JOITH MALINHA	Tx	
Wendy Poulton	Strategy	
Cathy Laing	strategy	
Hasha Thothalemaje	Regulation	

MEMORANDUM FROM CONCERNED EMPLOYEES

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Name	Position	Signature
SINCEDILE SHWENI	CORPORATE SPECIALIST	
Judy RAPHUEL	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. PARIE	A&F	
G. Loodis	A&F	
N. SITHOLE	Business Development	
M. Ramkharos	Sustainability & Risk	
V. Raj Kumar	Corporate Specialist	
F. Dharanga	Gen Quality	
L. Angisa Magwenzhu	S.A.E.	
J. SARKAR	Commercial	
L. VAJETH	GENERATION	
E. THUNTSANE	Procurement	
M. MLIHO	Strategy Support	
G. DAWOES	Corp Specialist	
NARESH SINGH	GM: S&E	

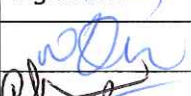
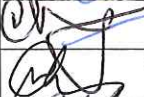








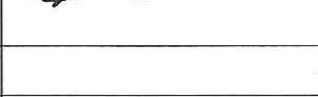
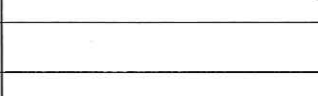
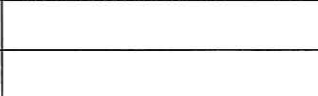
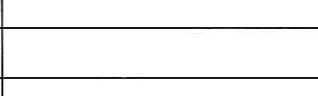
MEMORANDUM FROM CONCERNED EMPLOYEES

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	M. Richardson
N. Moyo	SNR Manager	N. Moyo
M. Skosana	SNR Manager	M. Skosana
H. Lentsink	SNR Manager	H. Lentsink
S. VAKAZ	SNR Manager	S. VAKAZ
B. Ntshangase	SNR Manager	B. Ntshangase
M. Doko	SNR Manager	M. Doko
V. Pather	SNR Manager	V. Pather
Vusi Sibuya	Senior Manager	Vusi Sibuya
Rehile Kago	SNR Asst	Rehile Kago
Bongekile Mthembi	SNR Mgr NNB	Bongekile Mthembi
Nosipho Maphumulo	SNR Mgr CS	Nosipho Maphumulo
Confort Masike	SNR Manager	Confort Masike
Praneshia Padayachy	SNR Manager	Praneshia Padayachy
BANDILE JACK	GENERAL MANAGER	BANDILE JACK
DAVE GORRILE	COMMERCIAL	DAVE GORRILE
Louise Tlhaboshe	SNR MGR GEN	Louise Tlhaboshe
Olwa Tole	SNR Mgr GVT	Olwa Tole
Mosebo Dikgale	SNR Manager	Mosebo Dikgale

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 Chego	SD	
UREKA RANGABANY	ACT	
Sylvia Mamorane	GM	
Bertumelo Genabaza	E-BRAND	
Khayakazi Dioka	SSG	
Sidwell Mtetwa	SSG	
Ronnie Scheepers	SSG	
Ivut Wilks	EAC Strategy	
Tebatso Mogale	RTD	
Mojabeng Mashao	RTAD	
Danwe Deloller	CULO	
Karabo Ratgolela	Acary Snt Pre	
Den Mashigo	GM - EEI	

MEMORANDUM FROM CONCERNED EMPLOYEES

Signatories to memorandum to Eskom Shareholder Representative, Eskom Board and Eskom Executive Committee dated 19 January 2018

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Signatories to memorandum to Eskom Shareholder Representative, Eskom Board and Eskom Executive Committee dated 19 January 2018

[illegible]

-1-

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

HELD AT JOHANNESBURG

SUPPLEMENTARY AFFIDAVIT: M M KOKO

I, the undersigned,

MATSHELA MOSES KOKO

hereby state that:

1. I have in response to directives issued by the Chairman of the Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State ("the Commission") previously delivered five affidavits to the Commission. The first is dated 1 September 2020, the second is dated 22 September 2020, the third is dated 1 December 2020, the fourth is dated 2 December 2020 and the fifth is dated 20 December 2020.
2. I dealt with the conclusion of my career with Eskom in paragraphs 44 – 57 of my main affidavit. In paragraph 44 of my main affidavit, I made mention of the of the media statement of 21 January 2018 by the Presidency announcing a new Board for Eskom.

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3. In the same statement Presidency directed the new Board, which was not yet in office, to,

“immediately remove all Eskom executives who are facing allegations of serious corruption and other acts of impropriety, including Mr. Matshela Koko...”

4. I was not facing “allegations of serious corruption and other acts of impropriety”. Allegations of conflict of interest relating to my stepdaughter’s shareholding in Impulse International (Pty) Limited had been made against me. I had met disciplinary charges in relation to it and had been vindicated.
5. In its statement of 20 January 2018, the Presidency was directing the Board of Eskom as newly constituted to find reasons to dismiss me. The Presidency was overreaching. Its directive to the new Board of Eskom was unlawful and unconstitutional.
6. The Labour Court issued an interim order on 26 January 2018 interdicting and restraining Eskom from unlawfully terminating my contract of employment based on the directive issued by the Presidency in terms of the statement that the Government put out on Sunday, 20 January 2018.
7. The interim order was made final on 21 February 2018 by Justice GN Moshwana of the Labour Court and he concluded that¹:

“On the evidence before me, it is clear that the respondent [Eskom] is intent and actually is pressured to dismiss the applicant. Should the outcome of the current process not yield the desired results, there is a great possibility of the respondent pulling the ace up the sleeve. Legal advice has already been sought and dispensed with that the steps taken are justified in law. That being so, there is nothing that would prevent the respondent to flag the steps already interdicted to justify the termination once the interdict is gone. Therefore, the fear of the applicant is reasonable and ought to be entertained by this Court”

¹ Koko vs Eskom Labour Court 2018-J200-18 Par [32]

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8. In terms of the of the final order of the Labour Court, Eskom was interdicted and restrained from unlawfully terminating my contract of employment on the basis of a directive issued to it by the Government of the Republic of South Africa in terms of a statement that the government put out on Sunday, 20 January 2018.
9. At the outset of the Commissions proceedings on Thursday, 3 December 2020 I made mention that Mr. Cyril Ramaphosa interfered in the affairs of Eskom by directing the Board of Eskom as newly constituted to find reasons to dismiss me. The new Board of Eskom had not even had its first meeting. I have since learned through the testimony of former Minister Lynne Brown at the Commission that three of the new Board members were not even vetted.
10. I was alerted by the then acting Director-General of Public Enterprises, Ms. Makgola Makololo and by the then Deputy Minister, Ben Martin of my impending dismissal by the then-Deputy President Ramaphosa and the new board. I received a call from Ms. Makgola Makololo about 30 minutes before the Presidency issued the statement to dismiss me.
11. Ms. Makgola Makololo told me that Mr. Ramaphosa is about to issue the statement directing the new Board of Eskom to dismiss me. I asked her what would be the reasons for my dismissal? She said Mr. Ramaphosa has directed the new Board to find the reasons to dismiss me. She then gave her phone to Mr. Ben Martin who confirmed same.
12. I resigned my employment with Eskom on 16 February 2018. I did so because it was clearly apparent that the then newly appointed Eskom Board was determined to act in accordance with Government's directive to dismiss me. I

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was faced with powers that had been arraigned against me that I did not have the means to fight.

13. No-load shedding had occurred under my watch from 8 August 2015 until I resigned in February 2018. Load shedding came back in June 2018 four months after my resignation. CSIR has determined that R266-billion was lost to the economy between 2018 and 2020 because of load shedding after I left Eskom.
14. In a video recording at the University of Stellenbosch, Mr. Bonang Mohale who was then CEO of Business Leadership South Africa (BLSA) said that it was them who demanded that Mr. Ramaphosa dismiss the Board of Eskom and its Executives. If Mr. Mohale is to be believed, then Mr. Ramaphosa took illegal instructions from people who were outside of government and implemented them. This is nothing else but the capture of the state. The video recording of Mr. Bonang Mohale is attached² with this affidavit.
15. The World Bank, African Development Bank, European Investment Bank and KFW also demanded that the Eskom Board be dismissed. This they did in the attached letter dated 27 November 2017. They demanded from Government an Eskom Board that is constituted by "individuals who do not have conflict of interest".
16. Mr. Ramaphosa appointed Mr. Jabu Mabuza to be the new Chairman of Eskom and according to Mr. Bonang Mohale, Mr. Mabuza was one of the 5 names given to Ms. Lynne Brown by Business Leadership South Africa to be on the Board of Eskom.

² I also attach a similar video by Mr Paul Mashatile at the mining indaba suggesting that Government was taking instructions from external parties.

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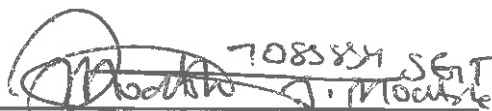
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17. It was the Board of Eskom led by Mr. Mabuza that was directed to dismiss me by Mr. Ramaphosa who was executing the demands of BLSA, World Bank, African Development Bank, European Investment Bank and KFW and none of them were in government.
18. Mr. Mabuza was not free of conflict of interest and I can not rule out that he was one of the three board members who were not vetted³. He was an executive chairman of a company that owned a company that had a contract to maintain a third of Eskom boilers. He also had interests in Eskom coal business through his son.



DEPONENT

SIGNED AND SWORN TO BEFORE ME ON THIS 13 DAY OF ^{April} ~~DECEMBER~~ 2020, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND THAT HE CONSIDERS THE OATH TO BE BINDING ON HIS CONSCIENCE.



COMMISSIONER OF OATHS

FULL NAMES: Jennifer Moatshe

ADDRESS: 40 Topas & Douglas Drive
Douglasdale

DESIGNATION: Sergeant



³ Ms. Lynne Brown testified at the Commission that she was given names to be on the Eskom board and three of those names were not vetted.

mmk



To: Minister Lynne Brown
Ministry of Public Enterprises
Private Bag X15
Hatfield
Pretoria, 0028

CC: Minister Mafua Gigaba
Ministry of Finance
Private Bag X115
Pretoria, 0001

Pretoria, 27 November 2017

Honourable Minister,

We write to express our position on corporate governance and compliance at Eskom.

As Development Finance Institutions, we are making significant contributions to help finance Eskom's capital expenditure (CAPEX) plan.

We are however extremely concerned about the rising number of governance and compliance issues that have been reported in the media and through various independently-commissioned reports, such as the State of Capture and Denton Report. The governance issues include severe allegations of wrongdoing against members of Eskom management as well as compromised internal controls and procurement processes. They are in parts subject to various investigations of different institutions, including the ongoing Parliamentary Inquiry.

We are further concerned about the high rate of turnover of senior management at the company. We strongly feel that this continues to perpetuate the non-compliance to internal controls and good corporate governance. We have already communicated the same concerns to Eskom through a letter dated 8 June 2017 and now approach the Government noting that some of the required actions are beyond Eskom control and generally new reports have continued to emerge despite assurances to the contrary received from the utility.

We believe that the following steps should be implemented without delay in order restore good corporate governance at Eskom and provide a measure of comfort to the lenders:

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1. Establishment of a permanent and competent Board of Directors for Eskom. The members of the Board would be individuals who do not have conflicts of interest.
2. Substantively filling the posts of Group Chief Executive and Chief Financial Officer with competent and experienced individuals with no conflict of interest, no implication in reports of mis-procurement, misuse of funds or any allegation of fraud or corruption.
3. In relation to the FY 17 audit qualification, implementing the actions as agreed jointly or separately between Eskom and the DFIs, including:
 - a. submitting a report by Eskom's external auditor indicating whether any of the irregular expenditures reported in note 52 of the annual financial statements for the year ending 31 March 2017 relates to contracts financed by them;
 - b. reporting on the nature, root cause and actions to be taken to address such irregular expenditures, followed by regular updates on progress;
 - c. sharing a progress report on the implementation of actions to rectify key control weaknesses leading to incomplete reporting of irregular expenditures, as identified in the FY 17 audit report; and
 - d. sharing the EY report, consolidating findings from completed governance related investigations and the action plan in response thereto, followed by an independent progress report on implementation of the action plan.
4. Until the situation improves, facilitate regular engagements between the Department of Public Enterprises and the Development Finance Institutions through quarterly meetings to provide feedback on the measures taken to improve Eskom governance and compliance, and on the progress achieved. In addition, we request an update on the status of your Department's investigations (as initiated or conducted by the Department) into specific allegations. We propose that the first of these meetings occur as soon as possible at a date convenient to all parties.

Honourable Minister, we believe that these steps are critical in ensuring that Eskom continues to create value for South Africa and that these are essential for the continued partnership between Eskom and the Development Finance Institutions.

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Yours sincerely

Josephine Nguire
Deputy Director General
African Development Bank

Martha Stein-Sochas
Regional Director
Agence Française de Développement

Babette Stein von Kameniski
Head of Division
KfW

Sandra Freudenberg
Senior Project Manager
KfW

Maria Shaw-Barragan
Director
European Investment Bank

Christian Elias
Head of Unit
European Investment Bank

Paul Nounba Um
Country Director
The World Bank.

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Presidency on measure to strengthen governance at Eskom

20 Jan 2018

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

4/6/2021

Presidency on measure to strengthen governance at Eskom | South African Government

company, improving its financial position and restoring its operational performance.

The appointment of new board members:

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
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,

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Presidency on measure to strengthen governance at Eskom | South African Government

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

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SECTION “B”

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

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THE PURPOSE OF THIS STATEMENT

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

PERSONAL HISTORY

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



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

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

STRUCTURE OF OWNERSHIP AND CONTROL OF SOEs

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

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

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

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

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

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

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

TRANSNET

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ESKOM

63 During a robust Eskom Board breakaway session on 28 October 2009, Mr Jacob Maroga, the CEO of Eskom, offered to resign and left the room so that the Board could discuss the matter. At that point, Mr Bobby Godsell, the Chairperson of Eskom, said that he too offered his resignation and left the room for the Board to consider both offers of resignation.

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

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

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

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

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

80 The following day, 9 November 2009, President Zuma phoned me to say that he had given Mr Maroga permission to return to Eskom as the CEO and that Mr Maroga would then proceed to write out his version of events, as discussed before. President Zuma and I had a heated argument on the matter. On the same day, 9 September 2009, Mr Maroga arrived at Eskom, accompanied by Jimmy Manyi and a few others, and went upstairs to his office.

81 Mr Maroga then proceeded to send a letter, dated 9 November 2009, addressed to me, the Board, EXCO and the Chairperson of the Portfolio Committee in Parliament, which is attached hereto marked **Annexure "N"**, announcing that he remained the CEO and Director of Eskom and that the shareholder at the highest level had confirmed that all decisions regarding his status must be formally requested from and granted by the shareholder, and all unauthorized actions taken by the Board since 28 October 2009 were rescinded.

82 Mr Godongwana and I were so shocked that we were both of a mind to resign. I was going to ask for a special slot in Parliament to make an announcement about the matter and prepared to leave for Cape Town, as Ministers are accountable to Parliament. Mr Godongwana took the letter to Luthuli House in an absolute fury and a little while later, the President phoned Mr Maroga and instructed him to immediately vacate his office at Eskom, leave the building and return only once I had given him permission to do so.

83 On the following day, I requested Yunis Shaik (at that time the labour advisor to DPE) and the Acting Chairperson of Eskom, Mr Mpho Makawana, to meet with Mr Maroga to negotiate his terms of departure. They reached a stalemate and, finally, Mr Maroga left Eskom with no package.

84 On 12 November 2009, I made an announcement in Parliament that Mr Maroga was no longer CEO of Eskom and Eskom did likewise.

85 Yunis Shaik informed me that the President had requested that I ask Mr Godsell to return as Chairperson of the Board, which I did. Later, however, the President phoned me and asked me to tell Mr Godsell that he will not return as Chairperson of the Board. Gwede Mantashe made a similar demand, although during this entire episode he had made it quite clear to me that he did not support what the President was doing.

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

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

SAFCOL

88 The South African Forestry Company Ltd (SAFCOL) was due to have its Annual General Meeting on 28 September 2010. In preparation therefor, I submitted a Cabinet Memorandum (7/2010) dated 26 August 2009 for the appointment of Non-Executive Directors, including the Chairperson, to the Board of SAFCOL, retaining some Board members and appointing new ones, including the Chairperson.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VYTJIE MENTOR

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

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

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

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

CONCLUSION

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

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

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

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

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

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


BARBARA HOGAN

TNA

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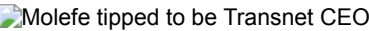
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Dec 7 2010 10:10AM

★★★★★

Molefe tipped to be Transnet CEO



Brian Molefe is likely to be announced as the new CEO of state-owned Transnet. Picture: AFP

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Xolani Mbanjwa and **Thokozani Mtshali**

Former Public Investment Corporation (PIC) chief executive officer Brian Molefe is set to take over as Transnet boss.

Molefe resigned as CEO of the PIC in March this year after a seven-year stint at the state-owned investment arm, the largest financial management company in the country, responsible for the management of about R850bn.

The Department of Public Enterprises is expected to announce the Transnet board tomorrow. Those expected to be appointed to the board include Mafika Mkhwanazi, a member of the state-owned enterprises review committee and Don Mkhwanazi, a staunch ally of President Jacob Zuma.

Others are Ellen Tshabalala, Zuma's advisor on black economic empowerment and Mike Fannuchi, an economic consultant.

The New Age has it on good authority that Molefe will beappointed CEO by the board. Molefe was among the first of former Finance Minster Trevor Manuel's recruits to Treasury in 1996 as deputy director-general of liability management. At the time, he was working for First National Bank.

Molefe was not a favourite to some within the tripartite alliance as he was perceived to be too close to former president Thabo Mbeki.

Molefe's departure from the PIC was welcomed by some in the South African Communist Party, Cosatu and the ANC. His detractors had accused him of funding BEE deals which involved people in Mbeki's inner circle, a charge he denied.

One of the deals which were questioned by his opponents was the Elephant consortium and Telkom empowerment deal which involved former ruling party member Smuts Ngonyama, now a Cope leader.

While some had written Molefe off after President Jacob Zuma was inaugurated last year, others said Molefe, with his experience, still had a lot to offer.

Public Enterprises spokesperson Ayanda Shezi said it was too early to speculate on the Transnet boss. "We are in the process of appointing a board and chairperson for Transnet. This will be finalised soon and the necessary announcements will be made," said Shezi.

"The Board would then undertake the recruitment process for a CEO, and make the necessary recommendations to the minister. It's therefore premature at this stage to be speculating on the candidate for CEO," said Shezi.

Contacted for comment, Molefe said: "I haven't been informed. I don't know anything about it".



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- b. Conducting background research on each of the potential external candidates and sourcing brief public relations profiles on each of them.
- c. Requirement for full disclosure of all business interests for each candidate, including all Board appointments and all shareholder equity interests.
- d. Based on the approved specification, the following sectors were researched:

o The JSE listed entities in the Industrial and Construction sectors – Group level;

o Non listed large entities in the Industrial and Construction sectors with revenue greater than R2 billion;

o All state owned enterprises and large Divisions within these state owned entities, with a revenue of more than R2 billion;

o All other large manufacturing and telecommunication organisations, and large Divisions within large manufacturing and telecommunication organisations, in South Africa, with a revenue of greater than R2 billion.
- e. The Committee considered all the reports submitted by the Executive Search Company and agreed on a list of candidates to be interviewed for the position.
- f. Interviews of all proposed candidates (internal and external) took place on 29 January 2011, and further on 8 February 2011.

2.2 Selection Criteria

The Committee met on 07 January 2011 to develop and approve a job specification for the position. The job specification is transmitted herewith Annexure "A".

The Committee has ensured that the job specification encapsulates the commercial objectives of the Company as well as the role that the Company has to play in a developmental state. To this end, we have introduced elements of the New Growth Plan as key strategic challenges for the position.

2.3 Process Documentation

A questionnaire for the interview process has been developed and the Committee is satisfied that the questionnaire is adequately structured to ensure that the Board is in a position to identify and recommend the best candidate for the position. For ease of reference, we transmit the questionnaire herewith marked Annexure "B".

2.4 RESEARCH PROCESS

The research process through which potential candidates were identified consisted of the following components:

• Nominations from Board Members;

• Targeted search by Leaders Unlimited (head-hunting); and

• External advertising for applications.

2.4.1 Nominations From Board Members

After the Leaders Unlimited was appointed, and upon further deliberation, it was deemed appropriate that all Board Members should be given an opportunity to submit nominations of individuals whom they considered to be potentially suitable candidates for the position. To this end, an invitation of nominations was sent to Board Members on 13 January 2011, requesting them to submit nominations of potential candidates directly to Leaders Unlimited.

2.4.2 Leaders Unlimited's Search Process

Leaders Unlimited's search consisted of a rigorous research process, using the following channels:

- Database interrogation;
- Tapping into market networks;
- Consultation with industry sources; and
- Targeting of relevant organisations and institutions.

A diverse group of companies and organisations were identified with senior executives who would bring the preferred set of skills and behaviour to the role of GCE. The search process focused on identifying candidates with the appropriate qualifications, skills and traits as stipulated in the attached position profile.

The Committee met on 20 January 2011 to review all candidates that had been nominated by Board Members as well as those that had been identified by Leaders Unlimited's search process. At this meeting, the Committee considered and reviewed profiles of a total of 33 search and nominated potential candidates.

Each Committee member was requested to identify their choice of up to 10 individuals from the list of 33 profiles. The selected names were then submitted to Leaders Unlimited by the Committee members. On 23 January 2011, the Committee met with Leaders Unlimited to review the names submitted as outlined above, and to agree on the common potential candidates from the submitted lists, with the view to prioritise the targeting / pursuing of these individuals.

The analysis of the Committee members' submissions had produced a total of 18 selected names. Out of these selected names, the Committee then identified an initial list of 6 top names to be prioritised for targeting. In addition, the Committee also identified a further list of 6 individuals who would be on the next batch of priority for pursuing.

2.4.3 External Advertising for Applications

At the same meeting of 23 January 2011, the Committee explored the need to open the process up by giving the public an opportunity to express interest in the position through an external advertisement. After much deliberation, the Committee concluded that it was prudent to advertise the position immediately, with the view to close for responses on the following Friday. Leaders Unlimited was then instructed to prepare and post advertisements in the Business Day, The New Age and The Star. However, it subsequently became evident that the earliest date on which these advertisements could be published necessitated that a sensible closing date be on Tuesday of the following week. Consequently, the advertisements appeared in the Business Day, The Business Report section of The Star and The New Age on Wednesday 26 January 2011 with a closing date for responses being Tuesday 1 February 2011 (see attached Annexure "C").

3 DATA ANALYSIS

3.1 Summary of Results

Nominations from Board Members
A total of 13 candidates were nominated by Board members. A matrix of names and profiles (where available) of nominated candidates is attached in **Annexure "D"**.

Leaders Unlimited's Search Process
Leaders Unlimited identified 20 potential candidates drawn from a wide range of organisations and backgrounds. A matrix of names and profiles (where available) of search candidates is attached in **Annexure "E"**.

External Advertising for Applications
A total of 30 candidates responded to the advertisements. A list of all names of applicants is attached in **Annexure "F"**.

4 CANDIDATES SHORTLISTED

Out of the 2 interview processes that were conducted in January and February 2011 respectively, the following candidates were shortlisted for the position of the Group Chief Executive of Transnet:

NAME	EMPLOYER	RANK/POSITION
Gamede C	K2S Consulting	Managing Director
Gantsho M	Africa Rising Capital (Pty) Ltd t/a Nova Capital Africa	Chief Executive Officer
Khena N	South African Transport Services	Independent Consultant
Molefe B	Karibu Holdings	Managing Director
Morwe T	Transnet Freight Rail	Acting Chief Executive Officer
Silinga P	Coega Industrial Development Corporation	Chief Executive Officer
Kalawe M	Compass Group SA	Country Managing Director
Gama S	Not stated	
Nxedlana I	Richards Bay Industrial Development Corporation	Chief Executive Officer

4.1 SUMMARY OF RATINGS BY INTERVIEWING PANEL FOR GCE OF TRANSNET – FIRST SHORTLIST INTERVIEW SESSION HELD ON SATURDAY 29 JANUARY 2011
NB: All ratings are on a scale of 1 – 10 where 1=poor, 5=average and 10=excellent

Candidate	Panel Member 1	Panel Member 2	Panel Member 3	Panel Member 4	Average Rating
Gamede C	6.0	6.2	6.2	3.5	5.5
Gantsho M	8.1	8.3	7.9	5.2	7.4
Khena N	6.5	5.6	4.5	3.9	5.1
Molefe B	8.5	8.4	6.8	7.3	7.8
Morwe T	6.6	6.8	6.2	4.8	6.1

4.2 SUMMARY OF RATINGS BY INTERVIEWING PANEL FOR GCE OF TRANSNET – SECOND SHORTLIST INTERVIEW SESSION HELD ON TUESDAY 8 FEBRUARY 2011
NB: All ratings are on a scale of 1 – 10 where 1=poor, 5=average and 10=excellent

Candidate	Panel Member 1	Panel Member 2	Panel Member 3	Panel Member 4	Average Rating
Silinga P	7.2	7.0	5.9	6.0	6.5
Kalawe M	5.5	5.6	5.5	5.2	5.5
Gama S	7.0	6.8	6.2	3.9	5.8
Nxedlana I	5.8	5.6	5.2	5.6	5.6

4.3 CONSOLIDATED SUMMARY OF RATINGS AND RANKING OF ALL CANDIDATES INTERVIEWED FOR GCE OF TRANSNET

Candidate	Panel Member 1	Panel Member 2	Panel Member 3	Panel Member 4	Average Rating	Overall Ranking
Gamede C	6.0	6.2	6.2	3.5	5.5	7
Gantsho M	8.1	8.3	7.9	5.2	7.4	2
Khena N	6.5	5.6	4.5	3.9	5.1	8
Molefe B	8.5	8.4	6.8	7.3	7.8	1
Morwe T	6.6	6.8	6.2	4.8	6.1	4
Silinga P	7.2	7.0	5.9	6.0	6.5	3
Kalawe M	5.5	5.6	5.5	5.2	5.5	7
Gama S	7.0	6.8	6.2	3.9	5.8	5

4.4

Nxedlana I	5.8	5.6	5.2	5.6	5.6	6
------------	-----	-----	-----	-----	-----	---

At the Board meeting of 11 February 2011, the Board was of the view that there may have been an issue of "potential conflict" emanating from the fact that some of the Committee members, who were responsible for short listing and interviewing the candidates, had also nominated candidates for consideration for the GCE selection process. To this effect, the scores of 1 panel member were withdrawn from consideration.

4.5 CONSOLIDATED SUMMARY OF RATINGS AND RANKING OF ALL CANDIDATES INTERVIEWED FOR GCE OF TRANSNET, AFTER WITHDRAWAL OF SCORES OF 1 PANELIST

Candidate	Panel Member 1	Panel Member 2	Panel Member 3	Average Rating	Overall Ranking
Gamede C	6.0	6.2	6.2	6.13	6
Gantsho M	8.1	8.3	7.9	8.10	1
Khena N	6.5	5.6	4.5	5.53	7
Molefe B	8.5	8.4	6.8	7.90	2
Morwe T	6.6	6.8	6.2	6.53	5
Silinga P	7.2	7.0	5.9	6.70	3
Kalawe M	5.5	5.6	5.5	5.53	7
Gama S	7.0	6.8	6.2	6.67	4
Nxedlana I	5.8	5.6	5.2	5.53	7

5. RECOMMENDATION

The Committee conducted interviews of the shortlisted candidates and have identified 3 recommended candidates who could fill the position, Dr Mandla Gantsho (external candidate), Mr Brian Molefe (external candidate) and Mr Mzinawe "Pepi" Silinga (external candidate).

While the overall ratings by the panel members indicate the highest score for Dr. Mandla Gantsho followed by Mr. Brian Molefe and then Mr. Mzinawe "Pepi" Silinga, the Committee believes that all 3 of these candidates are highly suitable for appointment as GCE of Transnet, and recommends the appointment of any of the 3 individuals.

5.1 Recommended candidates' resume

We attached, marked as Annexure "G1", "G2" and "G3", curriculum vitae of the 3 recommended candidates for information purposes.

6. IMPLEMENTATION PLAN

6.1 A five year contract is to be concluded with any of the 3 recommended candidates.

10

7 ORGANISATIONAL AND PERSONNEL IMPLICATIONS

- 7.1 The relevant post exists. The appointee will fill the position vacated by Ms Ramos.
- 7.2 Quality, holistic feedback will be provided to all internal applicants with opportunities for their personal development and recommendations regarding their future career development in the organisation will be discussed.

8 FINANCIAL IMPLICATIONS

A total cost to company remuneration package that is in line with current Executive remuneration levels at Transnet will be offered.

9 COMMUNICATION IMPLICATIONS

- 9.1 The Chairman of the Board will inform the candidate of his appointment, once the Shareholder approval is obtained.
- 9.2 The Chairman of the Board will also inform the internal candidates of the outcome of the recruitment process once the Shareholder process has been finalised.
- 9.3 The other external candidates will be informed by the Executive Search Company, Leaders Unlimited.
- 9.4 All the candidates will be given quality feedback.
- 9.5 Once all the requisite internal announcements have been made, a press release will be issued by Transnet.

10 CONSTITUTIONAL IMPLICATIONS

There are no constitutional implications.

11 IMPLICATIONS FOR VULNERABLE GROUPS

There are no implications for vulnerable groups.

12 SECURITY IMPLICATIONS

All of the recommended candidates will require security clearances.

12.1 REFERENCE CHECKS

At this stage, verification of academic qualifications has been conducted on all top 3 candidates. In addition, it is presumed that for the appointment of the GCE of a key State-Owned-Enterprise like Transnet, a State Security Clearance will be conducted.

13 **RECOMMENDATIONS**

It is recommended that the Shareholder Representative approves the appointment of any of the 3 recommended candidates to the position of Group Chief Executive of Transnet with effect from a date to be agreed with the successful candidate.

Further, due to the critical nature of the position, it is recommended that the matter be concluded on urgent basis.

The matter has been recommended by the Transnet Board of Directors.

Kind regards

Mafika Mkwanazi
Chairman
Date:

TRANSNET-07-990

BB24-MKNG-738



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

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Mr Matika Mkwana
Chairperson: Transnet
P. O Box 72501
Parkview
2122

Tel: (011) 308 2309
Fax: (011) 308 2315

Dear Mr Mkwana

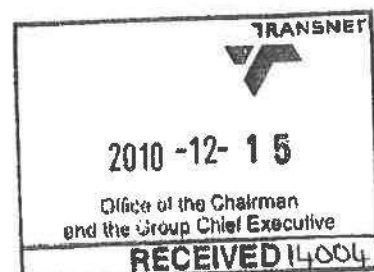
Guidelines for the Appointment of a Chief Executive Officer for a State Owned Enterprise ("SOE")

The above matter has reference.

As you may be aware, the South African company law authorizes the shareholders of a company to appoint the Board of Directors ("Board") to represent the shareholders and act in the best interests of the company. In addition, the shareholders' authority includes appointing the executive directors of a company, which include the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as *ex officio* Board members. The CEO provides the critical link between management, the Board and the shareholder.

Therefore, the Minister of Public Enterprises has prepared a guideline for the appointment of SOE CEOs. This guideline is intended to set out the framework governing the roles and assisting the SOE Boards with providing a framework for succession planning and the appointment of CEOs.

The guideline is further intended to enhance effective oversight and monitoring of SOE as strategic national instruments intended to grow and develop the South African economy. This is in recognition of the fact that a CEO is central to the performance and the ability of an enterprise to deliver on its expected performance and to provide economic value to its shareholder.



TRANSNET-07-991

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To this end, SOE within the Public Enterprises Portfolio are now expected with immediate effect; to have due regard to the Guidelines for the Appointment of CEOs. In this way there will be consistency in approach across all SOE. SOE should also amend their Articles of Associations to incorporate with the Guidelines.

I trust that you will find this in order.

Yours sincerely



Malusi Gigaba, MP
Minister of Public Enterprises

Date: 2010/12/14



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

GUIDELINES FOR THE APPOINTMENT OF A CHIEF EXECUTIVE OFFICER FOR A STATE OWNED ENTERPRISE ("SOE")

INTRODUCTION

South African company law authorizes the shareholders of a company to appoint the Board of Directors to represent the shareholders and act in the best interests of the company. The shareholders' authority includes appointing the executive directors of a company, which include the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as *ex officio* Board members. The CEO provides the critical link between management, the Board and the shareholder.

Therefore, the Minister of Public Enterprises ("the Minister") has prepared a guideline for the appointment of SOE CEOs. This guideline is intended to set out the framework governing the roles and assist the SOE Boards of Directors ("Boards") with providing a framework for succession planning and the appointment of CEOs. Where a Board believes that the guideline or part thereof does not lend itself to implementation or application to address its requirements, and seeks to depart from such application, the Board must notify the Minister in writing of any such departure, providing reasons for any such departure.

The guideline is further intended to ensure effective oversight and monitoring of SOE as strategic national instruments intended to grow and develop the SA economy. This is in recognition of the fact that a CEO is central to the performance and the ability of an enterprise to deliver on its expected performance and to provide economic value to its shareholder. The Governance and Nominations Committee of the Board (composed only of non-executive directors) shall administer and manage the selection process of the CEO on behalf of the Board and make recommendations on the top 3 candidates, in order of priority, to the shareholder.

1. SUCCESSION PLAN

- 1.1 The Board, through its Governance and Nominations Committee, must develop an ongoing process to identify, develop and/or seek a CEO candidate with the relevant skills required to meet the challenges likely to be faced by the SOE in the foreseeable future and to implement Government's strategic objectives relative to such SOE. Accordingly, the Board shall prepare and submit an annual report to the shareholder Minister on its succession planning which must include, but not be limited to, the status of the CEO's contract, the CEO's performance and exit plans.
- 1.2 The Board must, at the earliest possible stage, seek the shareholder Minister's view on whether re-appointment of an incumbent is likely to be considered. If the Board recommends that the incumbent continue, the Board must submit the

CEO's performance report for the last 3 years and the reasons for continuing with such incumbent.

- 1.3 In the event re-appointment of an incumbent is not being considered, the Board, through the Governance and Nominations Committee, shall nominate and evaluate potential successors to the CEO. The CEO shall meet periodically with the Board to submit his or her recommendations and evaluations of potential successors along with a review of any development plans recommended for such individuals. The Governance and Nominations Committee will consult the CEO regarding his/her recommendations of potential successors from internal candidates.

2. DUE PROCESS

- 2.1 The Board shall endeavor to commence and complete its recruitment and appointment process of a new CEO at least 3 months before the intended departure of the incumbent CEO. In this way the Board should avoid, as far as possible, appointing an 'acting' CEO.
- 2.2 The Board must disclose to the shareholder Minister the recruitment process to be used by the Board in identifying the candidates.
- 2.3 Prior to commencing with the recruitment process, the Board must submit a description of the key specifications of the position as well as its selection criteria that will be used to select and assess candidates to the shareholder Minister for his/her consideration. The Board shall ensure that the said key specifications are informed by the SOE specific challenges, requirements and Governments' strategic objectives. Therefore, the candidates' profiles should match those of the SOE's challenges and Government's strategic objectives.
- 2.4 During the assessment of the candidates, the Board should verify and confirm that all shortlisted candidates have no conflicts of interest and will be able to fully execute and carry out executive duties required of a CEO. Should the recommended candidate hold any non-executive directorships in other Boards, such Board directorships should be a maximum of two directorships and should not interfere with his/her executive duties at the SOE. The Board must also advise the candidate that his/her acceptance of nominations onto other Boards post his/her appointment as CEO shall be subject to the Board's approval.
- 2.5 The Board shall, through its Governance and Nominations Committee, submit a minimum of three shortlisted candidates and their preferred candidate to the shareholder Minister for further assessment and interview by the Minister if he/she deems it necessary especially if this is an external candidate.
- 2.6 The shareholder Minister may approve, disapprove and/or express an opinion on the shortlist. If the Minister approves the shortlist, s/he will submit his/ her recommendation to Cabinet for noting, prior to the Board appointing a candidate as CEO.

3. APPOINTMENT

- 3.1 The successful applicant should not commence with his/her duties until the contract of employment has been signed. The contract should include a performance agreement with the Board, which shall include the activities, performance measures and targets specified in the SOE's Shareholder Compact, Corporate Plan, as well as government's strategic intent communicated to the SOE from time-to-time.
- 3.2 The CEO of a SOE is an employee of that SOE and is accountable to its Board in terms of employment legislation. As an *ex officio* Board director, the CEO's position in this respect is governed by Company law and the Public Finance Management Act, 1 of 1999. Accordingly, to align the two offices and recognize that one arises by virtue of the other, the CEO's employment contract must ensure that the CEO's termination of employment results in the simultaneous removal as *ex officio* Board member.
- 3.3 The contract should specify the steps that the Board may take in the event of any alleged misconduct and specify the proposed measures to address the misconduct, including ensuring that the CEO will not be immune from prosecution in terms of applicable law.
- 3.4 Considering the critical and strategic role of the CEO must play in the operational success of a SOE's business, some of the key performance deliverables by the CEO, which must also form part of his/her Performance Agreement, are:
 - 3.4.1 Developing and recommending to the Board a long-term strategy and vision for the SOE to implement Government's strategic objectives, the shareholder compact and SOE corporate plan that will generate satisfactory levels of economic value;
 - 3.4.2 Developing annual business plans and budgets that support the SOE's long term strategy and prudently manages the SOE's resources within those budget guidelines according to the SOE's applicable regulatory framework and governing laws;
 - 3.4.3 Striving consistently to achieve the SOE's financial and operational goals and objectives, and ensuring that the SOE's day to day business affairs are appropriately monitored and managed;
 - 3.4.4 Ensuring continuous improvement in the quality and value of the products and services provided by the SOE, and that the SOE achieves and maintains a satisfactory competitive advantage within its industry;
 - 3.4.5 Ensuring that the SOE has an effective management team and to actively participate in the development of management and succession planning;
 - 3.4.6 Formulating and overseeing the implementation of major corporate policies, procedures and standards;
 - 3.4.7 Serving as the chief spokesperson of the SOE with a full appreciation of the necessity to protect the SOE against a loss of reputation and assuring the SOE and its mission, programmes, products and services are consistently presented in a strong and positive image to relevant stakeholders; and
 - 3.4.8 Ensuring alignment with the Minister's delivery agreement concluded with the President of the Republic of South Africa from time to time.

- 3.5 The Board should pay special attention to the right to terminate the employment contract as well as to any material changes to any declared material interests and conflicts of interest by the new CEO. There should be adequate mechanisms to address such changes and to allow the Board to terminate the contract, should the changes limit the CEO's ability to undertake and execute his or her duties in the interests of the SOE.
- 3.6 The remuneration package in the contract of employment must also be in accordance with the department's current Remuneration Guidelines for SOE. The key performance indicators in the shareholder compact should also be used to determine the CEO's remuneration and the discretionary pay.
- 3.7 The contract should also address any performance by the CEO that significantly and materially deviates from the SOE's strategic objectives and should provide for measures to address such material performance failures and deviations.
- 3.8 The notice period for termination of employment by the CEO should not be less than 6 months and should not contain an evergreen notice period.

DECEMBER 2010

TRANSNET-07-928

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"MG32"

SECRET



MINISTRY OF PUBLIC ENTERPRISES

CABINET MEMORANDUM NO : 2 of 2011
DATE : 14 February 2011
FILE NUMBER : 2/2/1

1 SUBJECT

The appointment of Mr Brian Molefe as the Group Chief Executive of Transnet.

2 PURPOSE

For Cabinet to note the appointment of Mr Brian Molefe as the Group Chief Executive of Transnet and as the *ex officio* member of the Transnet Board of Directors.

3 SUMMARY

The Transnet Board undertook a process to fill the current vacancy of Transnet Group Chief Executive. Consequently, Dr Mandla Gantsho, Mr Brian Molefe and Mr Mninawe Silinga were identified as suitable candidates for the position. The Board recommended any of the three candidates for appointment. Cabinet is requested to note the appointment of Mr Brian Molefe as the most suitable candidate for the position of Group Chief Executive of Transnet. Mr Brian Molefe has extensive senior management experience and experience in asset management (Curriculum Vitae attached as **Annexure A**).

SECRET

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K.M.W.

SECRET

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4 STRATEGIC FOCUS OF THE MEMORANDUM

Transnet is a critical State Owned Enterprise and thus requires a Group Chief Executive with the requisite skills, experience and expertise.

5 DISCUSSION

- 5.1 In view of the position of the Group Chief Executive of Transnet being vacant, the Transnet Board commenced the process of appointment of a new Group Chief Executive. The Board ensured that the job specification included the commercial objectives of Transnet and the role that Transnet has to play in a developmental state.
- 5.2 The position was advertised and Transnet appointed an Executive Search Company to assist with the search for a suitable candidate. It was also decided that an internal and external search be conducted simultaneously. The Board members were also given an opportunity to nominate individuals that they considered to be suitable for the position. A total of 63 candidates were considered for the position, after which the Board shortlisted 9 candidates for interviews.
- 5.3 A comprehensive interview process was undertaken which resulted in the Board identifying three recommended candidates who could fill the position of Group Chief Executive of Transnet. The candidates are Dr Mandla Gantsho, Mr Brian Molefe and Mr Mninawe Silinga. The Board indicated that any of the three candidates are highly suitable for the appointment as Group Chief Executive of Transnet.
- 5.4 Cabinet is requested to note the appointment of Mr Brian Molefe as the Group Chief Executive of Transnet.

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SECRET

3

NAME	GENDER	RACE	CURRENT POSITION	SKILLS
Brian Molefe	Male	Black	Managing Director: Karibu Holdings	Executive Management, Strategy and Asset Management

- 5.5 Mr Brian Molefe is the current Managing Director of Karibu Holdings and has been in the position since August 2010. He was the Chief Executive Officer of the Public Investment Corporation (PIC) for seven years and was previously a Deputy Director General of Asset and Liability Management unit in the National Treasury. Mr Molefe holds a Masters of Business Leadership from the University of South Africa (Curriculum Vitae attached as **Annexure A**).
- 5.6 In consideration of the strategic challenges confronting Transnet, Mr Molefe's expertise in asset management gained during his tenure at the PIC, and his understanding of capital markets is considered valuable in assisting Transnet to deal with the funding challenges.
- 5.7 With the appointment of Mr Brian Molefe as the *ex officio* member of the Transnet Board, the profile of the Board (excluding international candidates) will comprise of 67 % African, 13% White, 20% Indian and 0% coloured with 67 % male and 33 % female.

6 **IMPLEMENTATION PLAN**

Following notification to Cabinet, the Minister of Public Enterprises will proceed with the appointment of Mr Brian Molefe as Transnet's Group Chief Executive. The appointment shall be made subject to the conclusion of a five year formal contract of employment between Mr Brian Molefe and the Transnet Board of Directors.

7 **ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

None

SECRET

4

8 **FINANCIAL IMPLICATIONS**

None. The financial obligation with respect to the appointment will be to the cost of Transnet.

9 **COMMUNICATION IMPLICATIONS**

The Minister of Public Enterprises will communicate the appointment of the new Group Chief Executive to the Transnet Board and other relevant stakeholders.

10 **CONSTITUTIONAL IMPLICATIONS**

None

11 **IMPLICATIONS FOR VULNERABLE GROUPS**

None

12 **SECURITY IMPLICATIONS**

None

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

- 13.1 The Department of Public Enterprises.
- 13.2 The memorandum was not finalised in consultation with the Cluster as the CEO appointment process is the prerogative of the Minister of Public Enterprises and the Board of Directors of Transnet.

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5

14 RECOMMENDATIONS

It is recommended that Cabinet

- 14.1 note the appointment of Mr Brian Molefe as the Group Chief Executive of Transnet.

15 OFFICIAL RESPONSIBLE FOR THE MEMORANDUM

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

Name: Ms Raisibe Lepule

Designation: Acting Deputy Director General

Telephone: 012 431 1009

Cellular: 0828857109

16 HEAD OF DEPARTMENT

Mr Tshediso Matona, Director General

Department of Public Enterprises

Telephone: 012 431 1000

17 AUTHORISATION FOR PROCESSING THE MEMORANDUM


MR MALUSI GIGABA, MP
MINISTER

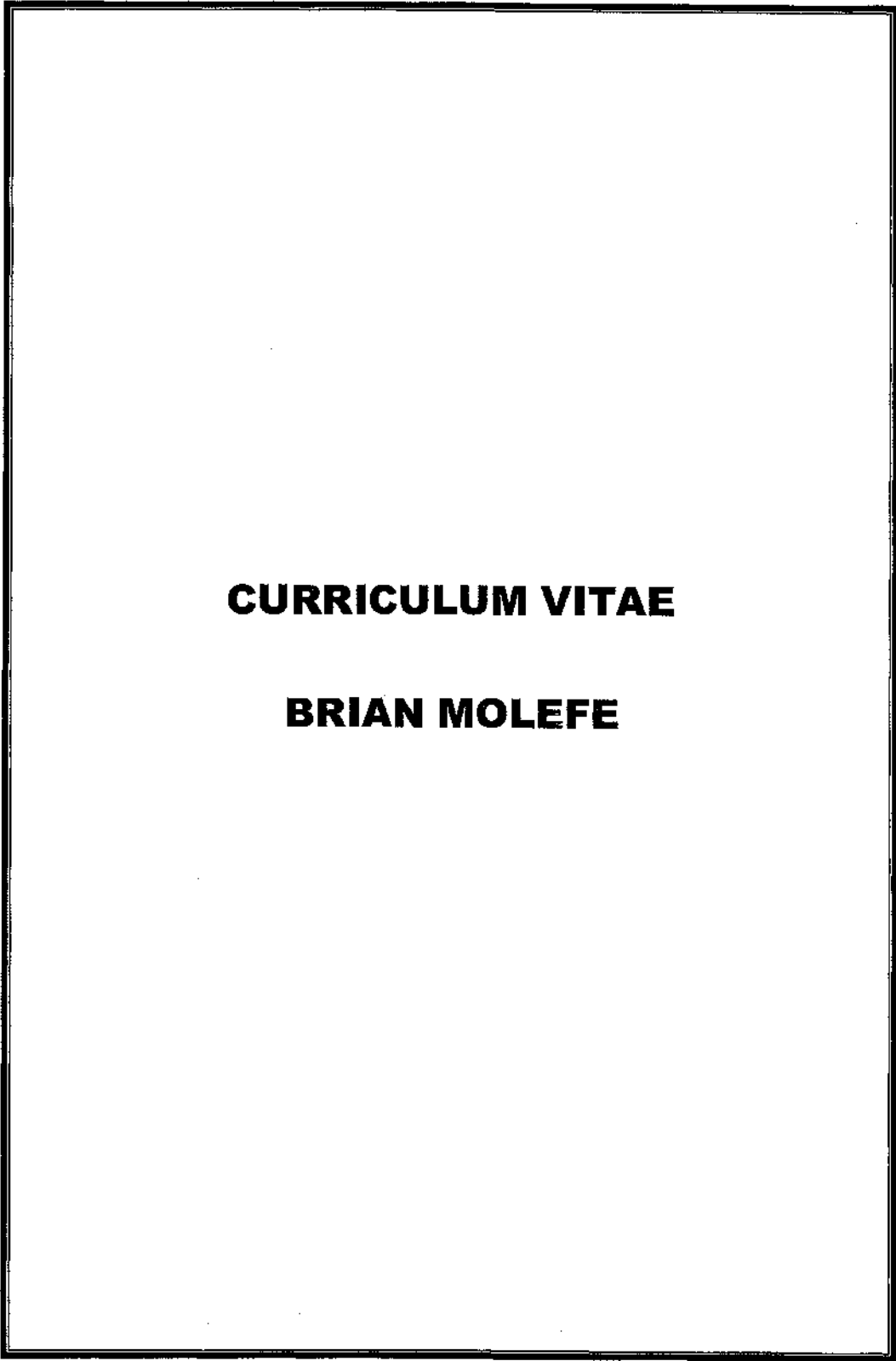
14 February 2011.

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

SECRET

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KMW



MM
KWW

PERSONAL DETAILS

Name	Brian
Surname	Molefe
ID Number	661228 5778 08 6
Marital Status	Divorced (08 October 2010)
Home Address	759 Camelford Road Cornwall Hill Estate Irene, PRETORIA
Postal Address	P O Box 18 Cornwall Hill 0178 South Africa
e-mail	mbm1@mweb.co.za

QUALIFICATIONS

- Master of Business Leadership, University of South Africa.
- Post Graduate Diploma in Economics, London University, School of Oriental and African Studies.
- Bachelor of Commerce, University of South Africa. Majors: Accounting and Economics.

OTHER TRAINING

- Programme for Young Global Leaders, Kennedy School of Government, Harvard University, Cambridge, Mass., USA, 2009.
- Advanced management Program, Harvard Business School, Boston, Mass., USA, 2006
- Executive Program, Wharton Business School, Philadelphia, Pennsylvania, USA, 2003.
- Study Tour to Calpers, Sacramento, California, USA, 2003.

3

- Sovereign Debt Management, UBS Warburg, London, 2000.
- Sovereign Cash Management, United States Treasury, Washington DC, 1999.
- Privatisation, Regulatory Reform and Corporate Governance, Kennedy School of Government, Harvard University, Cambridge Mass., U.S.A., 1999.
- International Experience in Privatisations, Warburg Dillon Read, London, 1999.
- Intergovernmental Fiscal Relations, Australia Department of Finance, Canberra, 1988.
- Marketing and Selling of Treasury Products, First National Bank of SA, Johannesburg, 1994
- Central Banking, Bank of England, Rustenburg, 1993.
- Macroeconomic Management, World Bank in Cape Town, 1992.
- Southern African Economic Development Issues, ANC, Windhoek, Namibia, 1991.

BOARD MEMBERSHIPS

- Public Investments Corporation (Executive Director, resigned 2010)
- Harith Fund Managers (Managers of the PAIDF, resigned 2009)
- Pan African Infrastructure Development Fund (Initial Trustee until October 2007)
- Telkom SA. (resigned 2010)
- Airports Company of South Africa (resigned 2008)
- ADRIASA (resigned 2008)
- National Empowerment Fund (resigned December 2004)
- Commission for Public Deposits (until June 2003).
- Export Credit Insurance Corporation (until June 2003).
- Pareto Properties (until June 2004).



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- South African Special Risks Insurance Association (SASRIA) (until July 2003).
- Trans Caledon Tunnel Authority (TCTA) (until July 2003).
- B & PPJ Trust (Trustee)
- Karibu Holdings (Pty) Ltd.
- Karibu Capital (Pty) Ltd
- Karibu Real Estate Investments (Pty) Ltd
- Lion of Africa Fund Managers

WORK EXPERIENCE**AUGUST 2010 TO PRESENT MANAGING DIRECTOR
KARIBU HOLDINGS**

KARIBU Holdings is an investment company that is wholly owned by the Family Trust. It has subsidiaries which focus on asset management, property and private equity investments

**JUNE 2003 TO JULY 2010 CHIEF EXECUTIVE OFFICER
PUBLIC INVESTMENT CORPORATION****MAIN RESPONSIBILITIES**

- Responsible for the overall management of the Public Investment Corporation which manage assets in excess of R800 billion (mainly Government Employees Pension Fund.)

HIGHLIGHTS

- The introduction of the Public Investments Corporation Bill of 2004 to Parliament.
- Growth in assets under management from R308bn in 2003 to R800bn in 2010 (est.)
- Establishment of the Pan African Infrastructure Development Fund with a first closing of US\$625m



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- Publication of the PIC Corporate Governance and proxy voting principles, policies and practical application.

**JANUARY 2001 TO MAY 2003 DEPUTY DIRECTOR GENERAL
ASSET & LIABILITY MANAGEMENT
NATIONAL TREASURY OF THE RSA**

MAIN RESPONSIBILITIES

- To finance the budget deficit at the lowest possible cost of finance and acceptable levels of risk in both the domestic and foreign capital markets.
- To manage the debt portfolio as well as contingent liabilities of Government.
- To manage the cash and liquidity requirements of Government.
- To facilitate the restructuring of state owned enterprises.
- To ensure that state owned enterprises comply with the requirements of the Public Finance Management Act.
- To manage the risks associated with the debt and liquidity requirements of Government.
- To ensure that all transactions related to liability management, cash management and the restructuring of state owned assets are recorded and accounted for accurately.

HIGHLIGHTS

- Samurai Bond Deal of the Year (IFR) 2001.
- Restructuring of the sovereign domestic bond portfolio
- Sale of 20% shareholding in Transnet to Swiss Air, 2002.
- Sale of 309 million ordinary shares in MCell to Ice BV.
- Restructuring of SASRIA Limited and the declaration of a special dividend of R10,5 billion to the Government of the Republic of South Africa.
- Telkom Initial Public Offering, 2002.
- Issued USD 1 billion 7,375% 10 year Global Bond, 2002.
- Issue of Euro 500 million 7% 10 year notes.



- Issue of 10 year Euro 1,25 billion Global Bond, 2003.

**1998 -2001 CHIEF DIRECTOR
ASSET MANAGEMENT
NATIONAL TREASURY OF THE RSA**

MAIN RESPONSIBILITIES

- Cash management, i.e., the management of Government's cash balances on a day to day basis as well as the investment of surplus funds in tax and loans accounts in conjunction with the SA Reserve Bank.
- Restructuring of state owned enterprises and management of state guarantees pertaining to public enterprises.

HIGHLIGHTS

- Instrumental in negotiating the successful passage of the Conversion of SASRIA Act.
- Participated in the negotiation teams for the privatization of SAA, SAFCOL, Aventura, Connex, Transwerk and other corporations (including the resolution of the Transnet Pension Fund problem)
- Member of the bid evaluation committee for the appointment of the global coordinator for the Telkom IPO.
- Member of the restructuring committees for Portnet, Spoornet, Denel, Electricity Supply Industry and other major state owned entities.
- Advised the North West Provincial Government on the placing of the North West Development Corporation under judicial management.
- Leading a project to make Government's cash management systems electronic as well as the improvement of intergovernmental coordination through the use of the Commission for Public Deposits.
- Member of the Government's Oversight Committee, which reports to the Cabinet Sub Committee on the Restructuring of State Assets.
- Appointed by the President of the RSA to the Board of the National Empowerment Fund as well as the National Empowerment Ventures Trust.

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- Member of the Government delegation to the Annual World Bank and IMF meetings in Prague, Czech Republic, 2000.

**1997-1998 *DIRECTOR: INTERGOVERNMENTAL RELATIONS*
NATIONAL TREASURY OF THE RSA**

MAIN RESPONSIBILITIES

- Responsible for the analysis of the nine Provincial Governments' budgets.
- Responsible for the monitoring of the expenditure of the nine Provinces.

HIGHLIGHTS

- Participated in the negotiation and drafting of conditions for intervention by the national government in the Eastern Cape and KwaZulu-Natal Provinces in terms of Section 100 of the Constitution.
- Part of the Budget Office team that introduced the medium term expenditure framework in the Government.
- Part of a team that introduced cost containment measures during 1997/98 to contain provincial over-expenditure.
- Led the team that drafted Chapter 5 of the Public Finances Management Act (Act No 1 of 1999), which represents significant reform in the public financial management in South Africa.
- Member of the Intergovernmental Technical Committee on Finance as well as part of the delegation of officials to the Budget Council.
- Provided secretarial services to the Ministers' Committee on the Budget (Mincombud)

**1995-1997 CHIEF DIRECTOR: STRATEGIC PLANNING
OFFICE OF THE PREMIER OF LIMPOPO**

MAIN RESPONSIBILITIES

- Coordination of development planning for the Limpopo.
- The Reconstruction and Development Programme projects of the Province.
- Responsible for the Premier's Development Fund (R25 million).

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- Advisor to the Premier on matters of economic development pertaining to Southern Africa as a whole.
- Oversight of the work of the gender and youth commissions in the Premier's Office.

HIGHLIGHTS

- Led a team that drafted the Provincial Growth and Development Strategy.
- Accompanied the Premier to Botswana, Zimbabwe and Mozambique on official visits to discuss economic development strategies and initiate the trans-frontier parks.
- Chaired the Mpumalanga/Limpopo Committee on the Maputo Development Corridor.
- Part of the official delegation to the meetings of the President's Intergovernmental Forum.
- Contributed to the writing of the Premier's political speeches.

**1994-1995 INSTITUTIONAL SPECIALIST
DEVELOPMENT BANK OF SA**

MAIN RESPONSIBILITIES

- The institutional appraisal of Development Bank projects in the Mpumalanga and Limpopo Provinces.

HIGHLIGHTS

- Specialist in Bank's technical assistance programme for the capacity building of rural local governments.
- Seconded to the RDP office of the Limpopo Province for two days a week.

**1994 TRAINEE FOREX DEALER
FIRST NATIONAL BANK OF SA**

**1992-1993 DIRECTOR NORTHERN TRANSVAAL REGIONAL
DEVELOPMENT FORUM**

**1991-1992 ADMINISTRATOR AFRICAN NATIONAL CONGRESS,
NORTHERN TRANSVAAL**

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AWARDS

- 2003** *Association of Black Securities and Investment Professionals (ABSIP),*
Financial services achiever of the year
- 2004** *Black Business Quarterly (BBQ),* Investment specialist of the year.
- 2005** *Business Map Foundation, Business Report,* Anglo American Award for
BEE leader of the year.

World Economic Forum, Invited to join the Forum of Young Global
Leaders
- 2006** *ABSIP,* Newsmaker of the year.
- 2007** *Wits Business School/Barloworld* Empowerment Awards, Empowerment
Leadership Award.
- 2008** *Africa Investor Investments Awards,* Institutional Investor of the Year.

COMMUNITY INVOLVEMENT

- Chairman of the Bitou Municipality's Audit Committee
- Member of the SANDF's Reserve Force
 - Force No: **96661376BV**
 - Rank: Colonel
 - Unit: Army Headquarters, Inspector General.

OTHER INTERESTS

- Student Pilot Licence, South African Civil Aviation Authority.
 - Licence No: **0272356890**
 - Restricted Radiotelephony Licence
- Skipper's Licence, South African Deep Sea Angling Association
 - Certificate of Competence No: **5778**



Handwritten signature, possibly reading 'Kam'.

REFEREES

Mr Lesetja KGANYAGO
Director General
National Treasury
Tel 012 315 5904

Lt Gen Solly SHOKE
Chief of the SA Army
South African National Defence Force
Tel 012 355 1000



K. M. KHAN

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

20 OCTOBER 2020

DAY 287



Gauteng Transcribers
Recording & Transcriptions

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I can remember exactly where the meeting was set up. It was also in Melrose Arch at the restaurant. If I can recall the restaurant's name was JB's corner I think.

ADV SEGEELS-NCUBE: Okay. I just want to focus on trying to pin down an approximate date of this meeting. If you go – you say that soon after this meeting which was the initial meeting and the initial meeting you said happened before Transnet advertised the phase 2 tender. And if you look at page 43 at paragraph 53 we see that Transnet
10 advertised the tender on the 24 April 2014. Now would this meeting have been after the advertisement?

MR BESTER: From what I recall definitely this meeting was after the tender was advertised yes.

ADV SEGEELS-NCUBE: Okay so it would have been after April 2015?

MR BESTER: Yes.

ADV SEGEELS-NCUBE: Okay continue.

MR BESTER: So this meeting was set up at – and by the way I got notice of this meeting or request for this meeting
20 through Mr Dave Reddy who phoned me and said that Mr Salim Essa would like to see me as a follow up. And it was at a certain time and date was set and I went to this meeting at – at this location in Melrose Arch where I meet – I was met by Mr Dave Reddy and Mr Salim Essa.

ADV SEGEELS-NCUBE: Was there anybody else in

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attendance?

MR BESTER: No. Again it was just a little bit of a funny setup. It is – I went into the restaurant and everybody knew Mr Salim Essa. You know he was like a celebrity. Everybody greeting him. There was a table set out for us on the stage if I can recall. So it was only the three of us.

ADV SEGEELS-NCUBE: Okay and what transpired at that meeting? What was being discussed?

MR BESTER: It – it was again a very irritating meeting for
10 me personally because Mr Essa had a lot of cell phones with him that was ringing the whole time and he was talking and standing up and walking around and I was sitting there very irritated I remember. But when he was sitting down he told me that I – that we need to include him in our phase 2 tender for the manganese and he was talking about I recall asking him and what are you going to do? And he – I remember recalling he told me I must not worry about that I must just include his company he will give me the name. And if I – from what I can recall he also told me that I need to include
20 him for R80 million to which I laughed or told him something to – that he is – it is ridiculous. I told him about – it is a competitive process. I know exactly what the budgets and affordability of the project is you know how tight the budgets are – the business case that we have done and you know there is no error – room for errors to be made in the money.

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And he just laughed at me he said, do not worry you include me for R80 million and I will grow that to something ridiculous I can recall over R300 million. And he was loosely talking to me about money. I – also when I spoke to him about the budget for the project he said to me I do not know what I am talking about. He knows what – he know what the budget is and he will decide what the budget is going to be and where the project will end up. And I basically know nothing.

10 **CHAIRPERSON:** This was Mr Essa saying this?

MR BESTER: That is correct.

CHAIRPERSON: Now when he talked about you including his company was he talking about his company separate from Mr Reddy's company and Mr...

MR BESTER: Yes.

CHAIRPERSON: Mr Padayachee's company?

MR BESTER: Yes.

CHAIRPERSON: Was it a different entity?

20 **MR BESTER:** Yes it was – he made it clear to me that it is his company. He will give me the name. There is various companies to choose from and I must not worry about what they are going to do. I must just invoice.

CHAIRPERSON: Oh okay. And Mr Reddy was there?

MR BESTER: Mr Reddy was there he did not say a word he was just listening.

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CHAIRPERSON: Yes okay alright.

ADV SEGEELS-NCUBE: Now if we can just go to your statement because this is a very important meeting and I just want you to set out the full contents of what transpired. At paragraph 63 you say that – which is on page 46 of your statement. You say that – and this is now Mr Essa.

“He insisted that we should include his company and said that they have a lot of power.”

10 When did he say this during the meeting?

MR BESTER: It would have been at the time when I told him he does not know what he is talking about and he was now trying to tell me that I do not know what I am talking about.

ADV SEGEELS-NCUBE: And did he say who this “they” was that he was referring to?

MR BESTER: He did not go into the detail. But he said to me I must not worry about the detail or about budgets. I recall for instance he told me that they had already decided who is going to be the next CEO of Eskom. And I will clearly
20 see it when it happens that – what the power is that they have and how they make decisions if I do not believe him.

ADV SEGEELS-NCUBE: And who did he say that person would be?

MR BESTER: He said it is going to – they decided Mr Brian Molefe will be the CEO of Eskom.

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ADV SEGEELS-NCUBE: And this was all during that meeting?

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: Okay now this ...

CHAIRPERSON: I am sorry.

ADV SEGEELS-NCUBE: Sorry Chair.

CHAIRPERSON: We – we – this would have been after April 2014 you said? Did you say this meeting would have taken place after April 2014? Mr Bester.

10 **MR BESTER:** That is correct, yes.

CHAIRPERSON: Was Mr Brian Molefe not already Group CEO of Transnet at that time?

ADV SEGEELS-NCUBE: He said Eskom Chair.

CHAIRPERSON: Hm.

ADV SEGEELS-NCUBE: He said Eskom. That Mr Brian...

CHAIRPERSON: Oh Eskom.

MR BESTER: Eskom.

CHAIRPERSON: Oh he said they already knew who was going to be...

20 **MR BESTER:** Yes so at that time if I can recall Mr Brian Molefe was the CEO of Transnet.

CHAIRPERSON: At the time of the meeting?

MR BESTER: At the time of the meeting.

CHAIRPERSON: Ja but what was the remark that Mr Salim Essa said about Group CEO or something?

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MR BESTER: He was convincing me that I do not know what I am talking about and he was trying to indicate the power that they have. If I can recall at the time I could not recall the situation at Eskom. But said to me, “you will see we have already decided that Mr Brian Molefe will be the next CEO of Eskom and when it gets announced you will see the power that we have.”

CHAIRPERSON: Yes. Okay. Okay. Yes thank you.

ADV SEGEELS-NCUBE: Thank you Chair. Now the R80
10 million that he initially spoke about was that part of the SD component or would it be over and above the SD component according to your understanding?

MR BESTER: Well so his indicated was that we need to include the R80 million as part of the SD but what I – when I ask him what he is going to do for the R80 million

CHAIRPERSON: I am sorry. I am sorry.

ADV SEGEELS-NCUBE: My apologies Chair.

CHAIRPERSON: Well I have been sitting here listening to evidence from different work streams so I am just thinking
20 about this evidence that you are giving.

ADV SEGEELS-NCUBE: No problem Chair.

CHAIRPERSON: Because Mr Brian Molefe ended up being seconded to Eskom was it 2015 – 2014? Well I was hearing this evidence two weeks ago and so on. So I am just wondering Mr Essa knows sometime while Mr Brian Molefe is

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at Transnet that Mr Brian Molefe is going to end up being CEO of Eskom and he is mentioning this to you kind of in passing and just to show you that he and whoever he was talking about had a lot of power.

MR BESTER: That is correct. That is correct.

CHAIRPERSON: Had a lot of power. And we all know that ultimately Mr Molefe did end up being Group CEO of Eskom.

MR BESTER: That is correct.

CHAIRPERSON: Yes.

10 **MR BESTER**: He also mentioned to me if I can say?

CHAIRPERSON: Yes.

MR BESTER: At the meeting that with the power that they have they can do anything.

CHAIRPERSON: Yes.

MR BESTER: Because I told him that we are going to tender for this project. It is a competitive bidding process so you know each and every cent counts. And he said to me, no it is not the case. If I – or Hatch at that stage include him in our submission they can change all the prices, they will
20 make sure we get the job, they will grow the budgets and they are in control.

CHAIRPERSON: That is what he said?

MR BESTER: That is correct.

CHAIRPERSON: Yes. Yes continue.

ADV SEGEELS-NCUBE: Thank you Chair. On the R80

"MG31"



public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM

DEPARTMENT OF PUBLIC ENTERPRISES REPUBLIC OF SOUTH AFRICA
2011-05-15
131244
MR. MALUSI GIGABA

TO : MR. MALUSI GIGABA
MINISTER

FROM : RAISIBE LEPULE
ACTING DEPUTY DIRECTOR-GENERAL: TRANSPORT

FILE REF : 16/1/3/1

IDMS REF : 131244

SUBJECT : RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-
EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

DATE : 26 MAY 2011

1. PURPOSE

- 1.1 To advise the Minister on the proposed appointment of new non-executive directors to the board of directors of Transnet ("Transnet Board") and to provide the Minister with the proposed appointees' names and profiles; and
- 1.2 To request the Minister to sign the Cabinet Memorandum attached hereto as Annexure "A", seeking Cabinet's approval on the appointment of Ms Yasmin Forbes, Mr Nishi Choubey, Mr Almir De Sousa, Ms Maphefo Mohuba as non-executive directors of the Transnet Board; and Mr Iqbal Sharma as chairperson and non-executive director of the Transnet Board, if the Minister is in agreement with the contents thereof.

2. SUMMARY

- 2.1 The Department recommends the appointment of Ms Yasmin Forbes, Mr Nishi Choubey, Mr

Lefapha la Dikgwabo Isa Puso • Lefapha la Dikgwabo Isa Mmuso • UMnyango wezinkampani zikaHulumeni • Mthetho wa Mabindu a Muvhuso • Departement van Openbare Ondernemings • Kgoro ya Dikgwabo Isa Sefahaba • Ndzawulo ya MabiliniDzu ya Mfemo • LiTiko la Tematshuzinisi aHulumende • ISobho lazaMashishini oMbuso

- Confidential -

03 JUN 2011

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RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

Almir De Sousa and Ms Maphefo Mohuba as non-executive directors of the Transnet Board and the appointment of Mr Iqbal Sharma as chairperson and non-executive director of the Transnet Board.

- 2.2 The Department also recommends the retirements of Mr Mafika Mkwana (the current chairperson and Mr Don Mkhwanazi from the Transnet Board with effect from 24 June 2011 (scheduled date for Transnet Annual General Meeting).
- 2.3 With these new appointments and retirements, the new Transnet Board will comprise sixteen (16) non-executive directors and two (2) executive directors (a total of eighteen (18) directors).
- 2.4 It is recommended that the Minister approves the appointment of the proposed candidates as well as the retirement of three of the current non-executive directors of the Transnet Board, and signs the attached Cabinet Memorandum seeking Cabinet's approval for the appointment of the new chairperson and non-executive directors of the Transnet Board.

3. DISCUSSION, ANALYSIS AND FINDINGS

- 3.1. As stated in the memorandum dated 08 March 2011 (attached hereto as **Annexure "B"**), there are two vacant non-executive director positions in the Transnet Board. The first position was left vacant and reserved for a rail specialist, while the second vacant position became vacant as a result of Professor Jurgen Schrempp's resignation from the Transnet Board in February 2011.
- 3.2. Subsequent to the resignation of Professor Schrempp from the Transnet Board, the DPE Transnet team ("team") conducted a skills gap analysis and identified a skills gap in the areas of rail, risk management and pipes or ports sectors. In this regard, please refer to **Annexure "B"** attached hereto for the Transnet Board skills matrix.
- 3.3. A further gap was identified by Transnet in the current risk and audit committees of the Transnet Board. In this regard, the strengthening of the risk and audit committee through a person with skills in sourcing and purchasing of Information and Communications Technology ("ICT") hardware and software is proposed by the Transnet company secretary. The Department is however, of the view that given the challenges that Transnet is facing, a

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RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

board member with skills in ports management would be more valuable to the business. Furthermore, ICT is not the core business of Transnet.

- 3.4. The effectiveness of a board of directors depends very much on the calibre of its directors and the Transnet Board should have an adequate mix of skills and experience and diversity in demographics (i.e. race and gender) to maximise the effectiveness of the Transnet Board in fulfilling the company's mandate.
- 3.5. It must also be noted that the Transnet Board is required to conduct an independent board evaluation annually. The board evaluation report contains the performance of the Transnet Board and is a useful tool in assessing which directors are performing and which ones are not performing. The evaluation report should then be used as a basis for deciding which board members should be retired and which ones should continue in the Board. At the time of preparing this memorandum, the Department had not received the board evaluation report.
- 3.6. Notwithstanding the Department's view that a candidate with port management experience would be a more suitable appointment, the appointment of a rail specialist provides the Department with some level of comfort that the board will be capacitated to deal with challenges in the key area of the business. Loss of market share, low levels of volume growth over long periods and planned capex investments in this area require greater oversight at board level. Admittedly, the challenges in the ports are being managed but are not that significant. On this basis, the Department will accept the appointment of an ICT expert although ICT has not been identified as a strategic and core area of the Transnet business. It is recommended that the two vacant non-executive director positions be filled by Mr Nishi Choubey and Ms Yasmin Forbes (as proposed by Transnet), who possess rail industry knowledge and ICT sales and marketing, respectively. Mr Nishi Choubey will bring a wealth of rail, warehousing and multi-modal logistics skills to the Transnet Board.
- 3.7. In addition to the proposed appointments, it is proposed that:
 - a. Mr Don Mkhwanazi, who is a non-executive director of Transnet, retire at the annual general meeting to be held on 24 June 2011 ("AGM") and not be re-appointed, and that he instead be replaced by Ms Maphefo Mohuba as a non-executive director of the Transnet Board;


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RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

- b. Mr Mafika Mkwanazi, the current chairperson of the Transnet Board, be replaced by Mr Iqbal Sharma (who is a current member of the Transnet Board) as a chairperson and non-executive director of the Transnet Board at the AGM; and
 - c. Mr Almir De Sousa be appointed as an additional non-executive director of the Transnet Board.
- 3.8. The reasons for the retirement of the two non-executive directors and the chairperson of the Transnet Board are as follows:
- 3.8.1 despite the fact that Mr Mkwanazi has demonstrated exemplary leadership capability in his role as chairperson of the Transnet Board, he should not be re-appointed to the Transnet Board as he was the executive chairperson of the Transnet Board for a limited period following his appointment but has not absolved himself from executive activities since the appointment of the new Group Chief Executive ("GCE") and continues to be intimately involved in the management of the company. The Department's view is that there should be a clear division of responsibilities between the GCE and Chairperson, ensuring a balance of power and authority as well as proper corporate governance. The Department is further of the view that Mr Mkwanazi's skills can be better utilised in another state-owned enterprise.
- 3.8.2 Mr Don Mkhwanazi serves as a director and/or trustee of various entities. Moreover, his skills are not scarce as most Transnet Board members are in possession thereof. Accordingly, notwithstanding the fact that he is an African male (for demographics purposes), it is recommended that he is not re-appointed due to the abundance of the skill that he possesses in the Transnet Board.
- 3.9 In terms of the new proposed appointments, Mr Almir De Sousa is a Project Lawyer at Aurecon Angola/Mozambique. His skills are legal, international trade, public private partnership and project finance. Ms Maphefo Mohuba is the owner and Managing Director of Moreteng Investments and brings strong business, operational and executive experience to the Transnet Board.
- 3.10 The new Transnet Board will comprise of sixteen (16) non-executive directors and two (2) executive directors (a total of 18 directors). In this regard, it must be noted that the Articles of Association of Transnet provide for a minimum of ten (10) and a maximum of eighteen (18) directors.


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RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

3.11 The table below indicates the proposed full composition of the Transnet Board:

	NAME	POSITION	GENDER	RACE
1.	Mr Iqbal Meer Sharma	Non-executive director and chairperson	Male	Indian
2.	Mr Brian Molefe	Executive director: chief executive officer	Male	African
3.	Mr Peter Malungani	Non-executive director	Male	African
4.	Mr Israel Skosana	Non-executive director	Male	African
5.	Ms Nazmeera Moola	Non-executive director	Female	Indian
6.	Mr Michele "Mike" Fanucchi	Non-executive director	Male	White
7.	Ms Doris Tshepe	Non-executive director	Female	African
8.	Ms Thembakazi Mnyaka	Non-executive director	Female	African
9.	Ms Maphelo Mohuba	Non-executive director	Female	African
10.	Ms Ellen Tshabalala	Non-executive director	Female	African
11.	Mr Almir De Sousa	Non-executive director	Male	Indian
12.	Mr Harry Gazendam	Non-executive director	Male	White
13.	Mr Peter Moyo	Non-executive director	Male	African
14.	Ms Nolwazi Gcaba	Non-executive director	Female	African
15.	Ms Nunu Ntshingila	Non-executive director	Female	African

RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

16.	Mr Nishi Kant Choubey	Non-executive director	Male	International candidate: Indian
17.	Ms Yasmin Forbes	Non-executive director	Female	Coloured
18.	Mr Anoj Singh	Executive director: (acting) chief financial officer	Male	Indian

3.12 Paragraph B (Chapter 4) of *The Handbook for the appointment of persons to boards of state and state controlled institutions* which deals with Cabinet approval/consultation with regard to appointment of directors, requires that the Executive Authority (Minister) responsible for the state or state controlled institution recommends the appointments to Cabinet for approval.

3.13 Accordingly, a Cabinet memorandum has been prepared to request Cabinet's approval for the appointment of the proposed list of potential appointees to the Transnet Board. The Cabinet memorandum is attached hereto as Annexure "A".

3.14 It is recommended that the Minister approves the appointments of the five (5) nominees and supports the submission of the cabinet memorandum (attached hereto as Annexure "A") to Cabinet.

4. FINANCIAL IMPLICATIONS

There are no financial implications emanating from this memorandum. The directors' fees / emoluments shall be borne by Transnet.

5. CONSULTATION/PROJECT TEAM

Siyabonga Mahlangu (Special counsel to the Minister)

6. RECOMMENDATION

It is recommended that the Minister:

- 6.1 notes the contents of this memorandum and its annexures;


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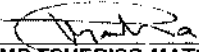
RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

- 6.2 approves the nomination for the appointment of Ms Yasmin Forbes, Mr Nishi Choubey, Mr Almir De Sousa and Ms Maphefo Mohuba as non-executive directors of the Transnet Board, and the appointment of Mr Iqbal Sharma as a chairperson and non-executive director of the Transnet Board; and
- 6.3 signs the attached Cabinet memorandum seeking Cabinet's approval for the proposed new appointment and approves the submission thereof to Cabinet.



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RECOMMENDATION FOR THE APPOINTMENT OF NEW NON-EXECUTIVE DIRECTORS TO THE BOARD OF TRANSNET

Memorandum prepared by: <div> VONGANI MASONDO DIRECTOR: LEGAL DATE: 2011/05/26</div>	
REVIEWED AND SUPPORTED: <div><div> RAISIBE LEPULE ACTING DDG: TRANSPORT DATE: 30/5/2011</div><div> ADV. MELANCHTON MAKOBE CD: LEGAL DATE: 28/5/2011</div></div>	
<div> MR. TSHEDISO MATONA DIRECTOR GENERAL DATE: 14/6/2011</div>	RECOMMENDED / NOT RECOMMENDED / COMMENTS <div><hr/><hr/><hr/><hr/></div>
<div>MR. MALUSI GIGABA, MP MINISTER DATE:</div>	APPROVED / NOT APPROVED / COMMENTS <div><hr/><hr/><hr/><hr/></div>

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MINISTRY: PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA
Private Bag X15, Midrand, Pretoria, 2028

CABINET MEMORANDUM NO : of 2011
DATE : 23 May 2011
FILE NUMBER : 2/2/1

1 SUBJECT

The appointment of four (4) Non-Executive Directors to the Transnet Limited ("Transnet") Board of Directors ("Transnet Board").

2 PURPOSE

- 2.1 To obtain Cabinet's approval for the appointment of four (4) new Non-Executive Directors to the Transnet Board.
- 2.2 Further, for Cabinet to concur with the appointment of Mr Iqbal Sharma as Chairperson and Non-Executive Director of the Transnet Board.

3 SUMMARY

- 3.1 Transnet's Articles of Association provide for a maximum of eighteen (18) Directors. There are currently sixteen (16) Directors on the Transnet Board, of which fourteen (14) are Non-Executive Directors and two (2) are Executive Directors, namely, Mr Brian Molefe (Chief Executive Officer) and Mr Anoj Singh (Acting Chief Financial Officer), who are *ex officio* members of the Transnet Board. Accordingly, there are two (2) vacant Non-Executive Directors positions on the Transnet Board. It is recommended that two (2)

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- nominees be considered for appointment as Non-Executive Directors to fill these two (2) vacant positions on the Transnet Board.
- 3.2 In addition, it is recommended that two (2) Non-Executive Directors of the Transnet Board not be re-appointed at the Annual General Meeting of Transnet to be held on 24 June 2011 ("AGM"). In their place, two (2) nominees are recommended to be considered for appointment to the Transnet Board as Non-Executive Directors. Furthermore, it is recommended that Mr Iqbal Sharma, a current member of the Transnet Board, be appointed as the Chairperson and Non-Executive Director of the Transnet Board to replace Mr Mafika Mkwana, the current Chairperson of the Transnet Board.

4 STRATEGIC FOCUS OF THE MEMORANDUM

Transnet is a critical and strategic state-owned enterprise which requires a complement of board directors with the requisite competencies (skills, experience, expertise and knowledge) and qualifications to enable the company to effectively deliver on its mandate. In light of the extensive capital expansion programme currently underway at Transnet and operational challenges facing the business, it is crucial that the Transnet Board is at its full strength.

5 DISCUSSION

- 5.1 Transnet's Articles of Association provide for a maximum of eighteen (18) directors on the Transnet Board. The selection of the board of directors is the responsibility of the Shareholder at the AGM. Therefore, the vacancies on the Transnet Board provide the Shareholding Minister with an opportunity to appoint individuals with the skills and attributes that suit Transnet's requirements.
- 5.2 The current Transnet Board (attached hereto as **Annexure A**) consists of sixteen (16) board members including two (2) Executive Directors. Accordingly, there are vacancies for two Non-Executive Directors on the Transnet Board.

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- 5.3 In light of the current vacancies on the Transnet Board, the Department of Public Enterprises ("Department") conducted a skills gap analysis and identified some gaps on the Transnet Board. To address the skills gap, the Department recommends that the Transnet Board must be strengthened in the areas of Information and Communications Technology (ICT) and Rail.
- 5.4 Consequently, Mr Nishi Choubey and Ms. Yasmin Forbes, have been identified as having the appropriate skills and experience in the areas mentioned above and are proposed for appointment as new Non-Executive Directors to the Transnet Board. Mr Nishi Choubey is Managing Director – Projects, Hind Terminals Pvt. Ltd. This appointment will bring a wealth of rail, warehousing and multi-modal logistics skills to the Transnet Board. Ms Yasmin Forbes is a National Sales Manager - CMUT, Oracle SA and her skills are Information and Communications Technology (ICT) sales, business development and brand creation and sustainability.
- 5.5 The Department believes that the profiles of the two (2) candidates address the skills gap that currently exists on the Transnet Board, and their appointment will strengthen Transnet Board's capacity in fulfilling Transnet's mandate and implementing the company's business strategy. Their curriculum vitae are attached hereto as **Annexure B**.
- 5.6 The current Non-Executive Directors of Transnet were appointed for a three year term, subject to annual confirmation by the Minister of Public Enterprises. The Department has determined that Mr Mafika Mkwanaazi and Mr Don Mkhwanazi should retire at the AGM and recommends that these directors should not be re-appointed. The changes to the Transnet Board will reinforce the Transnet Board's capacity to deal with the challenges currently facing the business.
- 5.7 It is proposed that Mr Mafika Mkwanaazi and Mr Don Mkhwanazi be replaced by Mr Almir De Sousa and Ms Maphefo Mohuba (their curriculum vitae are attached as **Annexure B**).

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- 5.8 Mr Almir De Sousa is a Project Lawyer at Aurecon Angola/ Mozambique. His skills are legal, international trade, public private partnership and project finance. Ms Mohuba is the owner and Managing Director of Moreteng Investments with strong business, operational and executive experience.
- 5.9 It is also proposed that Mr Iqbal Sharma, a current Non-Executive Director of the Transnet Board, replaces Mr Mafika Mkwana as the Chairperson of the Transnet Board. Mr Iqbal Sharma worked as a Deputy Director-General for the Department of Trade and Industry and brings a wealth of leadership skills and exceptional executive experience in the trade and investment field to the Transnet Board.
- 5.10 With these appointments, the Transnet Board will consist of a full complement of eighteen (18) Directors comprising of sixteen (16) Non-Executive Directors and two (2) Executive Directors.
- 5.11 The demographics for the new Transnet Board will comprise of twelve (11) males (61%) and seven (7)-females (39%). Apart from the proposed rail specialist, Mr Nishi Choubey, who is an international candidate, eleven (11) Africans, one (1) White, five (4) Indians and one (1) Coloured. The proposed new Transnet Board is attached hereto as **Annexure C**.

6 **IMPLEMENTATION PLAN**

Following Cabinet's approval, the Minister of Public Enterprises will appoint the new Non-Executive Directors to the Transnet Board for a term of three (3) years, subject to annual review at Transnet's Annual General Meeting.

7 **ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

None

8 **FINANCIAL IMPLICATIONS**

There are no financial implications emanating from this memorandum for the Department. The financial obligation with respect to the new appointments will be borne by Transnet.

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9 **COMMUNICATION IMPLICATIONS**

Subsequent to obtaining Cabinet's approval for the appointment of the four (4) nominees, the Minister of Public Enterprises will communicate the appointment of the new Directors to the Transnet Board.

10 **CONSTITUTIONAL IMPLICATIONS**

None

11 **IMPLICATIONS FOR VULNERABLE GROUPS**

None

12 **SECURITY IMPLICATIONS**

None

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

- 13.1 Department of Public Enterprises.
- 13.2 The memorandum was not finalised in consultation with the Directors-General Cluster.

14 **RECOMMENDATIONS**

It is recommended that Cabinet:

- 14.1 approves the appointment of Ms Yasmin Forbes, Mr Nishi Choubey, Mr Aimir De Sousa and Ms Maphefo Mohuba as Non-Executive Directors of the Transnet Board for a term of three (3) years, subject to annual review by the Minister of Public Enterprises.
- 14.2 concurs with the appointment of Mr Iqbal Shama as the Chairperson and Non-Executive Director of the Transnet Board for a term of three (3) years, subject to annual review by the Minister of Public Enterprises.

15 **OFFICIAL RESPONSIBLE FOR THE MEMORANDUM**

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

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Name: Ms Raisibe Lepule
Designation: Acting Deputy Director General
Telephone: 011 431 1099
Cellular: 082 885 7109

16 **HEAD OF DEPARTMENT**

Name: Mr Tshediso Matona
Designation: Director General
Telephone: 011 431 1173

17 **AUTHORISATION FOR PROCESSING THE MEMORANDUM**

MALUSI GIGABA, MP
MINISTER

_____ May 2011

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

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Annexure A

CURRENT TRANSNET BOARD

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
1. Mr Mafika Mkwana	Non-Executive Director and Chairperson	Male	African	B.Sc. in Mathematics and Applied Mathematics; B Sc. in Electrical Engineering	Engineering; corporate governance; strategy
2. Mr Brian Molefe	Executive Director: Chief Executive Officer	Male	African	Master of Business; Post Graduate Diploma in Economics; Bachelor of Commerce	Finance; management; leadership
3. Anoj Singh	Executive Director: Acting Chief Financial Officer	Male	Indian	BAcc and CA(SA)	Finance
4. Mr Peter Malungani	Non-Executive Director	Male	African	BCom degree; Advanced Management Programme; Leadership Development Programme	Entrepreneurship; business strategy; corporate governance; investment banking
5. Mr Israel Skosana	Non-Executive Director	Male	African	B.Comm; Hons B.Compt; CA(SA); Certificate in the Theory of Accountancy; Advanced Management Programme – Harvard	Leadership; Finance.


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Annexure A

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
6. Ms Nazmeera Moola	Non-Executive Director	Female	Indian	Bachelor of Business Science; CFA Charterholder	Economics; strategy
7. Mr Michele "Mike" Fanuochi	Non-Executive Director	Male	White	MSc Engineering Management; BSc Engineering (Mech) Industrial	Logistics; Supply Chain Management; business management
8. Ms Doris Tshepe	Non-Executive Director	Female	African	LLM; LLB; BProc	Legal
9. Mr Donald Mkhwanazi	Non-Executive Director	Male	African	Bachelor of Administration; Post-graduate diploma in marketing; Programme for Management Development; Graduate Diploma in Company Direction; Certificate in Managing Finance and Strategic Management; MBA	Business; finance
10. Ms Tembakazi Mnyaka	Non-Executive Director	Female	African	Bachelor of Social Science; Masters in Town and Regional Planning Diploma in Project Management ; Project	Business; consulting.


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Annexure A

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
				Management and Project Leadership certificate	
11. Ms Ellen Tshabalala	Non-Executive Director	Female	African	International Licentiate Diploma of Banking; Bachelor of Commerce Degree; Post Graduate Diploma in Labour Relations	Business; strategy
12. Mr Iqbal Meer Sharma	Non-Executive Director	Male	Indian	BSc - Bachelor of Science (Honours)	Strategy; business; international trade; management; global economics
13. Mr Harry Gazendam	Non-Executive Director	Male	White	BA; B Proc; Dip Labour Relations; AEDP; EDP; BA; B Proc & Dipl LR; EDP; AEDP	Labour Relations; HR Management; Remuneration; Corporate Governance
14. Mr Peter Moyo	Non-Executive Director	Male	African	BAcc; BAcc (Hons) (Unisa); CA(SA); CA Zimbabwe; Higher Diploma in Tax Law; Advanced	Finance; Business

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Annexure A

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
				Management Programme	
15. Ms Nolwazi Gcaba	Non-Executive Director	Female	African	B. Juris; LLB	Legal
16. Ms Nunu Ntshingila	Non-Executive Director	Female	African	BA; MBA; Diploma in Advertising	Marketing
17. Vacant	Non-Executive Director				
18. Vacant	Non-Executive Director				


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Yasmin Forbes

Contact 0832570887

Email: yasmin.forbes@gmail.com


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Executive Summary Yasmin Forbes - Biography



Yasmin works closely with various levels of the National Government across key initiatives such as Improving service delivery, skills development and broadening digital inclusion with a key focus on building and strengthening multi-stakeholder partnerships. This aligns strongly with her passion and the use of technology as an enabler of broad scale community development reinstating the symbiotic relationship between technology and human knowledge.

Yasmin brings a wealth of experience in Sales, Business Development and Brand Creation & Sustainability. Her achievements span Continents, with both strong fiscal success and trust relationships with Customers and Internal Staff alike.

- Her Achievements Include:
- 1997** Development of Parastatal Business for QData Networks
 - 1998 - 2003** She designed, built and drove the establishment of Govt and Telco Business for CCH/MGX, which AL Indigo bought over. She was the Strategic Account Director for MTN and building Africa Business Model
 - MTN Sales Yr 1 = R 20 mill, Yr 2 = R 30 mill and Year 3 = R 40 mill
 - Exceeded quota each year \$ 2m, \$ 3m and \$ 4 m
 - 2003 - 2006** Hewlett Packard – She doubled quota every year
 - Created strong relationships with Govt, Education and turned ailing Branches around
 - 2007 - 2008** Consulted to NGO's on Scientific Research
 - 2008 - 2009** Microsoft SA – National Technology Officer
 - Objective was to operate at the most Senior Level to enable Business Units and Sales, she created the research & development operation for Executive Leadership and Govt to work together on National Impact Projects
 - 2009 - 2010** Creation of SMME Innovation with Corporate and Govt to empower the R 1.3 billion potential in SMME market

Above all, Yasmin brings integrity, truth and results to any organization that will appoint her. Her skill is to bring Customer perspective and to drive positive operational and financial results within the business.

Executive Overview

With a proven track record over 25 years in the information communications and technology industry, an accomplished Strategist, and Sales Executive with a proven success record working with SA Fortune 500 companies and Public Sector Officials. Recognized for strengths in managing teams, building new businesses, public speaking, executive relations and cross-cultural & Indigenous insight.

Exceptionally successful at leading virtual teams across multiple divisions/geographies, closing complex deals, consultative sales and inculcating cross-team collaboration.

Highly Motivated Self-Starter.

Experience

Sales Manager, CMUT, Oracle SA 2010 – present

Report to VP Communications, Media, Utilities and Transport Sector. Working in designated Named Accounts within the CMUT industry in Southern Africa leading a team of Technology Sales Representatives. Work towards an allocated license sales revenue and a first year Support target within named accounts.

Responsibilities:

- Maintaining an understanding of the designated market in order to identify and prioritise the key opportunities in that market
- Defining and driving multi-channel engagements to win business.
- Creating and maintaining compelling Value Propositions for Oracle Applications in the Public Sector
- Developing and maintaining relationships with specialised Partners.
- Develop a strong Pipeline in the PS Applications arena
- Managing a team of focused individuals, providing direction, leadership and motivation.
- Providing accurate and timely management information and revenue forecasts.
- Ensuring high levels of customer and partner satisfaction within the territory.

CEO : 2009 - 2010

SMME Innovation

Consultant for local NGO SMME Innovation initiative engaging with local SMME's (Small Micro Medium Enterprises). This covers the raising of funds and the building of a technology platform needed to spur innovation and entrepreneurship, increase productivity and efficiency of business operations, provide relevant business development services, facilitate linkages to local, regional and international markets and enable access to new technologies and sources of finance to local SMME's.

E-Skills Initiative- Multi Stakeholder Partnerships

Consultant for Government's E-Skills Initiative engaging with Academia, Civil Society, Corporate and Government- Scientific. This covers the building of a cohort of influential people in South Africa who are aware of the attributes of the coming Information Society, the major issues associated with various aspects of its arrival, and Implementation approaches within their job and sphere of influence.

National Technology Officer, Microsoft SA 2008- 2009

Articulating Microsoft's technology vision, strategy and capabilities and the positive impact these have on citizens, society and the business of government. Demonstrating the economic value of the commercial software and partner ecosystem, and the role of R&D Investments, Innovation and Intellectual property. Advocating for the needs of our public sector customers to the senior leadership team .Influencing Microsoft's strategy and platform decisions to ensure widest market adoption and avoidance of negative policy impacts

Responsibilities Include:

- External outreach and engagement with technology policy elites, leading academics and government decision makers
- Develop an engagement strategy addressing existing and emergent technology policy issues
- Promote procurement neutrality
- Create market opportunity and grow revenue
- Establish Microsoft though leadership in national economic development strategy

Achievements:

- Collaboration on E-Gov Framework with Dept of Public Services and Administration with GITOC Secretariat)
- XML Technical Workshop with DST
- IPR Portfolio Committee participation and contribution to IPR Bill
- Collaboration agreements signed with Dept of Science and Technology
- MOU signed with PALAMA (Public Administration, Leadership and Management Academy) regarding of the School of Government
- MOU signed with University of Fort Hare regarding Liberation Archive POC
- Dept of Science and Technology member of the Microsoft Interop Executive Council
- Member of the South African Bureau of Standards E-Govt working group
- Member of the South African Bureau of Standards SC71L working group
- Member of the South African Bureau of Standards ELearning working group

- Member of the South African Bureau of Standards E-Skills Working Group

Chief Executive Officer, YF & Associates 2007-2008

Consultant for Government- Scientific Research and with education focused NGO's. This covered developing strategies in areas such as frameworks encouraging multi-national companies to increase value and contribution to the country, and governance and partnerships in biomedical informatics research. (government, academia and agencies)

Branch Manager, Hewlett Packard 2003-2006

Exceeded quota YOY, Quota was doubled every year - \$4m, \$8m, \$16m

Branch Manager leading a team of 30, a combination of direct sales, partner sales, pre-sales and services. Developed the business framework, resourcing structure, and execution plan and partner eco-system. Covered strategic planning within government and education, and implementation of regional plans. This included troubleshooting for challenges facing the region addressing relationships with customer and partners, sales and services. Liaise between local and international teams within organizations in order to ensure strategy was supported and execution plan agreed. Developed strong partnerships with stakeholders within government, government agencies, education, academic research and blue chip companies. Developed extensive network and the rebuilding of a positive company reputation within the local market across all sectors.

Responsibilities:

- Branch Manager with an office of 30 (sales/services)
- Establish relationship at executive level with customers
- Establish relationships at executive and sales level with partners
- Account Manager with a focus Public Sector (region) and Education (national)
- Business Development for High Performance Computing - research and life sciences

Achievements:

- Created strong relationships with Local Municipalities & Provincial Government of Western Cape, Higher Education Institutions and partners in Public Sector, Education & Research/Life Sciences space
- Developed key accounts - City of Cape Town, Provincial Administration of the Western Cape, Parliament of South Africa and key universities.
- Achieved budgets
- Established successful relationships with partners focusing on key accounts
- Parliament of South Africa selected HP as a platform of choice (desktop, printers and enterprise)

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- University for Cape Town selected HP as the platform of choice (desktop, printers and enterprise)
- City of Cape Town selected HP as platform of choice (desktop, printers and enterprise)
- CSIR Meraka selected HP as platform of choice for High Performance Computing test bed – Project C4
- Collaborated with Intel and key driver for Biomedical Informatics donation to CHPC communities including skills transfer with international partner
- Exceeded quota YOY, Quota was doubled every year – \$4m, \$8m, \$16m
- Direct Sales generated \$30m excluding indirect sales via the distribution channels of non-enterprise products (Pc, printers)

Customers:

Managed high visibility executive engagements at CFO and CEO level. **(Direct):** City of Cape Town, Parliament, Provincial Government of Western Cape, Academia: All major HEI, Council for Scientific and Industrial Research **(Team):** Financial, Telecommunications, Manufacturing **(Government relations):** Department of Science & Technology, Dept of Communications, Dept of Education

Business Development Manager/Strategic Account Director, CCH/MGX 1998-2003
Exceeded quota YOY, - \$2m, \$3m, \$4m

Development of a new division within the telecommunications sector in the local market and SADC region. Lead a team in embracing due diligence and implementing of solutions in areas such as asset management, service management, hardware and services. This lead to expansion in to new unchartered regions for the group and the establishment of the African arm of the business. Liaise between IT Industry vendors represented in South Africa as well as European/USA counterparts in order to ensure strategy was supported and execution plan agreed.

Developed strong partnerships with stakeholders within government, government agencies, education, academic research and blue chip companies. Developed extensive network and the rebuilding of a positive company reputation within the local market across all sectors. Managed high visibility executive engagements at CFO and CEO level

Responsibilities include:

- Sales consultant with a focus on government and telecom sector
- Business development for new Telecom division – responsible as part of a small team to create awareness, build relationships with Network Element Providers (NEP) and established key accounts

- Established relationships at executive level
- Strategic Account Director (MTN) sales target Year 1 R20m Year 2 R30m and Year 3 R40m
- Business Development – Africa Sales – developed MGX Africa business model

Achievements:

- Created strong relationships with NEP and partner sin Telco space (Ericsson, Lucent, Nokia, Siemens, Logica, Cramer, Xacct, Lightbridge, GlenAyre, network Appliance)
- Developed key account (MTN – became the fulfillment partner)
- First Sun Telecom reseller of Sun Microsystems
- Achieved budgets
- Area of focus in GSM, Prepaid, Billing SMS, Voice Mail, Mobile Banking, IP Core Network management, Network Control Centre, TMOS, Revenue Assurance, Business architecture using Aris Tool set.
- Established successful projects within MTN SA with support teams (technical & project management)

Africa Business

- Developed business model and applied the following products entering into market: *Peregrine, Sun Microsystems, Sun Microsystems-Education, BMC, Content Management*
- Establish and developed reseller/partners in areas: *Nigeria, Rwanda, Uganda, Cameroon, Kenya, Ethiopia*
- Identify and appoint partners with a focus on skills, competence and relationship with local markets. (product dependant)
- Initiatives focused in Educational, Government, Telco's, Financial

Africa Achievements:

- Peregrine business model completed, two partners appointed in Nigeria securing initial sales of R8m with consistent projected increase
- Sun Microsystems Education, received preferred reseller status, awarded Nigerian Education Data Centre deal of \$1m

Customers:

MTN SA & Africa: Focus on both Network and Back-Office division. Worked closely with Ericsson and MTN service providers in both the local and African market. Major Sun Microsystems supplier to both MTN and Ericsson.

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- Sales Director, Qdata Networks1997

Assign to develop sales team and strategy with a focus on government services.

Responsibilities include:
 - Lured to Gauteng to take the role of Sales Director within a BEE venture branded as Intoto technology Solutions
 - Due to disagreement pertaining to Economic empowerment, entire Intoto team left the Group
- Founder/Shareholder/Director, Innov-X, Keodirelang Group, YF & Associates1994

Marketing and selling of training and development services within the high transactional retail space. Focus on IT transformation and establishing of black economic empowered (BEE) organisations and BEE deals.

Responsibilities include:
 - Focus on IT transformation
 - Establishing BEE organizations
 - Providing training (transformation) into larger corporate environments
- Regional Manager, WordPerfect/Novell1990-1994

Established and maintained a dealer channel and created new markets in government, retail, oil and petroleum and insurance sectors within region. Special interest and drive was focused on K12 and higher education. Responsible for software and services revenues, business strategy, joint innovation and customer satisfaction within the Western Cape, Eastern Cape and Namibia. Achieved YoY target quota.

Responsibilities include:
 - Focus on establishing and managing a Dealer channel
 - Penetrated major accounts at Executive level
 - Successfully closed large software deals
 - Promoted to Regional Manager (Western and Eastern Cape)
 - Attended a skills transfer program in Provo, Utah

- Assisted with marketing Communications
- HNR became WordPerfect SA and my focus was Strategic Account Management
- Became an evangelist for WordPerfect products

Business Development, Computer Networks 1994 - 1995

Sales and development of a training division serving an existing customer base, and the developing of new business across sectors.

Sales Executive, Canon 1987-1990

Sales executive with a focus on typewriters, dedicated word processors and the introduction of PC's targeting all sectors - Legal, Publishing, Retail, Government. Exceeded quota YoY.

Computer Operator, Gabriel Shock absorbers 1982-1984

Engaged in the computerization of manual sales and production systems within a manufacturing plant. Addressed monthly reports and running of the system.

Research Technician, University of Cape Town 1979- 1982

Worked with Master and PhD students in the computerization of research projects.

Education

Bond University **2001-2002**

Master In Business Administration

Damelin College- Cape Town **1998**

Diploma in Marketing Management – First Class

Damelin College- Randburg **1996**

Public Relations Practitioner

Courses attended:

- Business Presentation Skills
- Strathorn Bryce Major Account Management
- SUN, HP product training
- Franklin Time Management
- Nokia GSM Fundamentals
- Health and Safety
- First Aid – Level One
- HP Standards of Business Conduct
- HP Information Security Policies & Standards
- HP Data Privacy Course
- HP Customer Experience Standards Course
- HP Standards of Excellence
- Introduction to Grid Computing

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Curriculum Vitae

Name:	Ajmir Jose Ribeiro De Sousa
Date of Birth:	01 September 1965
ID Number:	6501092656082
SA Passport No:	458956199
Profession:	Projects Lawyer/Consultant Project Management Business Development
Years experience:	17
Nationality:	South African and Portuguese
Membership of Professional Societies	Admitted Advocate

KEY QUALIFICATIONS

Ajmir De Sousa is a qualified lawyer who combines business development skills, international best practice, specialist legal services and years of experience in doing business in various African countries. His years of consulting to private sector clients and government agencies on the African continent, therefore, allows him to offer clients' uniquely tailored and creative business and legal solutions with a focus on meeting clients' business transaction objectives. His key areas of expertise are:

- business development, negotiation and facilitation;
- mining and mineral resources and general natural resources concessions;
- International trade, contracts and business transactions;
- regulatory compliance, permitting and due diligence reviews for M&A type work;
- banking institutions and finance;
- New business venture start-up in country
- privatization and restructuring, institutional reform and frameworks;
- utilities and infrastructure projects;
- public private partnerships;
- tender work preparation and administration, procurement documentation;
- project finance;
- land development and land concessions and real estate development;
- feasibility studies; and
- corporate/commercial legal services and preparation of contracts and legal documents.

Ajmir is completely fluent in English and Portuguese, and as such, is able to conduct business and prepare documentation in both these languages. Ajmir's methods of doing business in Africa are people driven and focus on understanding and taking into account the specific political, cultural, legal and business environments of each African market within which he operates. His primary markets in Sub-Saharan Africa are South Africa, Mozambique and Angola wherein Ajmir retains an extensive network of professional, public sector contacts and business contacts. With regard to Angola and Mozambique in particular he has an excellent

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working knowledge of the political, land, legal, regulatory and business investment frameworks prevailing in these respective countries.

SELECTION OF MAJOR PROJECTS

- Retained by Banco Espírito Santo Angola (BESA) to act as facilitator in securing a cooperation agreement between BESA and Standard Bank of South Africa vis-à-vis the markets of Angola and South Africa.
 - Position: Consultant
 - Client: Banco Espírito Santo Angola (President of Board of BESA – Dr. Alvaro Sobrinho)
 - Entities Interfaced with: BESA, Standard Bank of South Africa (Sim Tshabalala – Deputy Chief Executive)
 - Level of Engagement: CEO and President of Board level
- Ongoing business development consultant and legal services in relation to identifying and securing international foreign investors for various projects in Angola and Mozambique. In this regard, inter alia, acting as facilitator and negotiator for a large South Africa property investment fund which is interested in investing in mixed use developments in Angola – 2009-2011
 - Position: Consultant
 - Clients: Solida Ocean Drive (Angolan), HBW Group (South African) – CEO Tony Vassilopoulos, Aurecon Lda (Angolan), Samsung (South Africa), Aurecon Lda (Mozambique), Vale (Brasil)
 - Entities Interfaced with: Ministry of Public Works, Ministry of Finance, Private Investment Agency in Angola, National Bank of Angola (BNA)
 - Level of Engagement: National Director level, Minister Engagement Level
- Consultant to Aurecon Group of Companies in Angola and Mozambique – providing legal and business development inputs to various infrastructure projects in Angola including roads projects, social housing projects, property developments – 2006-2011
 - Position: Consultant
 - Client/Projects: Aurecon (Mozambique and Angola) – Various infrastructure projects including water, roads and bridges projects
 - Entities Interfaced with: INEA (Institute of Roads of Angola), Ministry of Public Works, Ministry of Environment
 - Level of Engagement: Minister Level, National Director Level, Reporting to Regional Director, Reporting to CEO and Board of Aurecon South Africa and Angola
- Consultant to ANGOLA LNG – Chevron via project consultants Parsons - Houston/Africon - South Africa on implementation of gas refinery LNG/LPG in Soyo in Zaire Province, Angola. This project known as "ANGOLA LNG" is currently the largest project in Africa estimated at US\$4-7 billion. WORK DONE: Set-up permitting and Licensing matrix for Angola LNG Project, Legal risks review, Project Management - Special Projects Group (Soyo Road Network, Aviation Study and other projects. In 2009 appointed Project Coordinator for Residential Housing Project for Angola LNG Gas Refinery Project. Housing project estimated at US\$295 million. - 2006-2009 Ongoing
 - Position: Projector Coordinator
 - Client: Chevron – Angola LNG

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- o Entities Interfaced with: Various Ministries of the Angolan State including Ministry of Petroleum, Ministry of Environment, Ministry of Housing, Ministry of Interior, Sonagol
 - o Level of Engagement: National and Local Government Level, Ministers Office Level, Local Government Administrators Level, National Director Level
- Ongoing business development and legal services in relation to identifying and securing international foreign investors for various projects in Angola and Mozambique, including mining concessions, property development and land concessions, other resource concessions, fishing concessions, public sector projects, utility projects, large scale real estate/property development projects, including the development of a multimillion dollar commercial/industrial/hotel/conference centre park in Luanda – 2005-2009 - Ongoing.
 - o Position: Legal Advisor and Negotiator - Consultant
 - o Clients: Adastra Mineral Resources (Canada/UK), Endiama (Diamond Company of Angola), ceAfricon Angola (Engineering Company), Parsons Engineering (USA), Freshpack (France), Uniprev (Angola),
 - o Entities Interfaced with: Various Ministries within Angola and Mozambique
 - o Level of Engagement: Minister Office Level, and National Directors, from client side dealt with CEOs, CFOs, COOs, President of Board, Project Managers
- Transaction advisor to Greater Sekhukhune District Municipality ("Municipality") for large project finance PPP water utility project estimated at R 400 million. Prepare report and advise on all legal aspects pertaining to section 78 Process – 2004-2005.
 - o Position: Senior Legal Advisor/Transaction Advisor– Deloitte
 - o Client: Municipality
 - o Entities Interfaced with: Municipal Advisors and Counselors
 - o Level of Engagement: Senior Members of Project
- Transaction Advisor to Rustenburg Water Project ("Project") – R240 million water utility project financed by ABSA Bank South Africa. Lead legal transaction advisor for Rustenburg Municipal Council ("Council"). Functions included assessing the risk profile assumed by the Council in respect of the project finance model and legal documentation designed for the Project by ABSA in order to ensure the bankability of the Project as per the guidelines laid out by the PPP Unit for Public-Private Partnerships Project in South Africa; secure the legal interests and position of the Council in all meetings vis-à-vis the Project; generally protect the interest of the Council and risk profile of the Project - 2004.
 - o Position: Senior Legal Advisor/Transaction Advisor– Deloitte
 - o Client: Municipality
 - o Entities Interfaced with: Municipal Advisors and Counselors
 - o Level of Engagement: Senior Members of Project
- Project manager and privatization specialist to Department of Transport in South Africa on establishment of a Ports Regulator for South Africa – 2004-2005.
 - o Position: Senior Legal Advisor/Transaction Advisor– Deloitte
 - o Client: Department of Transport of South Africa
 - o Entities Interfaced with: Municipal Advisors and Counselors
 - o Level of Engagement: Senior Members of Project
- Consulting to Ministry of Public Works and Housing of Angola on housing project being developed in Luanda, Angola, "Projecto Nova Vida" estimated at USD 300 million – 2003-2004.
 - o Position: Transaction Advisor

- o Client: ceAfricon Lda (Angolan Company – Engineering Sector)
 - o Entities Interfaced with: Minister Office Level, and National Directors, from client side dealt with CEOs, CFOs, COOs, President of Board, Project Managers
 - o Level of Engagement: Senior Members of Project
- Lead Consultant on behalf of KPMG Mozambique involved in the legal and management restructuring of the CFM (the Rail and Port Authority of Mozambique) as part of the privatisation of the railway and port network of Mozambique. This was a project financed by the World Bank - 2002-2003.
 - o Position: Unit Manager for Foreign Investments – KPMG Mozambique
 - o Client: CFM (Railway Company of Mozambique)
 - o Entities Interfaced with: Minister Office, and National Directors, from client side dealt with CEO of CFM and Project Managers
 - o Level of Engagement: Senior Level, Ministry Office Level
- Part of consultant team at KPMG Mozambique reviewing project finance documentation and legal opinions for Mozal I Project in Mozambique – Aluminium Smelter Plant – Project Finance – 2000-2001.
 - o Position: Unit Manager for Foreign Investments – KPMG Mozambique
 - o Clients included: CFM, World Bank, Sasol, Indigo Bay, Concor, BHP, Nedbank, Aguas de Portugal, BP, Angan Group
 - o Entities Interfaced with: Minister Office, and National Directors, from client side dealt with CEO of CFM and Project Managers
 - o Level of Engagement: Senior Level, Ministry Office Level
- Legal Consultant, negotiator and strategist on the Maputo Development Corridor - N4 Toll-Road Project, privatization specialist and project finance – 1999-2000.
 - o Position: Senior Legal Advisor/Transaction Advisor– Africon Mozambique
 - o Client: Department of Transport of Mozambique
 - o Entities Interfaced with: Municipal Advisors and Counselors
 - o Level of Engagement: Senior Members of Project
- Legal Consultant to Trans African Concessions (Pty) Ltd (“TRAC”) the concessionaire of the Witbank-Maputo Toll Road – 2001-2003.
 - o Position: Legal Advisor/Transaction Advisor– Deloitte
 - o Client: TRAC
 - o Level of Engagement: Reported directly to CEO –Trevor Jackson
- Part of consultant team involved with the restructuring of the National Directorate of Civil Aviation in Mozambique (DNAC) - A World Bank project – 1999.
 - o Position: Legal Advisor/Transaction Advisor
 - o Client: Africon South Africa
 - o Level of Engagement: Reported directly to Regional Manager

EDUCATION

- 1990 Bachelor of Laws - LLB - Rhodes University, South Africa
Majors: Conflicts of Laws & Constitutional Law (both with distinction)
- 1988 Bachelor of Arts - BA - Rhodes University, South Africa
Majors: Political Science & Legal Theory
Advanced Studies:



1991 Special Diploma in International Trade Law - University Institute of European Studies
Turin, Italy - Short dissertation on "Legal aspects of Contract Negotiations" (with distinction)

EMPLOYMENT RECORD

16 years of progressive experience:

2004-2009	Projects Lawyer/Business Development/Project Management/Project Coordination
2003 -2004	Senior Manager – Deloitte & Touche Legal
2000-2002	Legal / Business Development Consultant
1998-2000	KPMG – Consultant / Manager of Legal & Investment Departments
1996 -1997	International Legal & Business Consultant
1995	Legal Adviser/Private Banker - Investec Merchant Bank Limited
1993 - 1994	Practising Advocate of the High Court of South Africa
1992 - 1993	Webber Wentzel Bowens Attorneys

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LANGUAGE PROFICIENCY			
Language	Speaking	Reading	Writing
English	Excellent	Excellent	Excellent
Portuguese	Excellent	Excellent	Excellent
Spanish	Fair	Fair	Fair

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BIO-DATA

Name	N.K. CHOUBEY, IRTS (Retd)
Date of Birth	10.06.1948
Contact details	Address: 817, Lavy Pinto Block, Asiad Village New Delhi-110049 Tel: 91-11-26493908 Mbl 9818336699 E-mail choubeyn@gmail.com
Educational Qualification	M.A in Economics, Diploma in Inter-Modal Management (Cardiff)
Area of Specialisation	Warehousing and Multi-Modal Logistics

Wide experience and clear insight of the functioning of Government, Public Sector and private sector. Joined **IRTS (Indian Railway Traffic Service)** in 1971 and worked in Government for about 23 years and in very senior positions in Public Sector and private sector for about 16 years. The area of expertise is logistics, warehousing, planning and project management.

Experience	Present working as Managing Director – Projects, Hind Terminals Pvt. Ltd (HTPL) from April 2010 . HTPL is one of the the largest private container train and terminal operator in India. Chairman & Managing Director, Central Warehousing Corporation (CWC) (1998-2008) Was longest ever CEO of this Schedule 'A' Mini-Ratna PSU. This PSU is one of the largest Public Sector Warehousing Company in the world. Chairman, National Multi Commodity Exchange of India Ltd. (2003 to 2008)
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This was the first online Commodity Futures Company in India. This was promoted as a joint venture by CWC along with private partners.

**Chairman, Central Rallside Warehouse Company Ltd.
(2007 to 2008)**

A specialized rail based logistic company which was formed as a subsidiary of CWC in 2007.

Director, Food Corporation of India (FCI) (1998 to 2008)

Was Government nominee on the Board of this Schedule 'A' PSU for 10 years.

Executive Director, Container Corporation of India (CONCOR) (1992 to 1998).

One of the blue chip Schedule 'A' Mini Ratna PSUs, which is the biggest multi-modal logistic company in India.

Director/Executive Director, Railway Board, Ministry of Railway (1984-1992)

Dealt with policy matters concerning terminals and user amenities.



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Profile of Maphefo Mohuba



I am self made business woman with a Bachelor of Arts degree from the University of the North - now University of Limpopo. While completing my Honours Degree in Philosophy, I became a student lecturer at the university and after completion of my Honours degree I became a full time lecturer of Philosophy and Logic, teaching students from first year level through to honours level. In 1996 I left my career in

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academies to pursue a career in business. My first venture was a clothing business in Polokwane, which was very successful and catered to the upper echelons of society. My 14 year business career since then includes experience in the Panel Beating, Hospitality and Construction industries. I am now solely focused on the construction industry and run a business I founded in 2003 called Moreteng Investments ("Moreteng"). Moreteng is a provider of specialized housing and construction solutions and has CIDB grading of 8 for General Building and 7 Civil Engineering. These grades put our business on par with the likes of Mvelaphanda Construction and Sea Kay Engineering Services in terms of contract eligibility and capacity.

The current socio-economic landscape has created extraordinary opportunities for women in business. Being a black woman in construction affords me exciting prospects in a primarily male dominated industry, and its challenges continue to mold me into a more astute business person. My Curriculum Vitae has been attached for your perusal and goes into greater detail, but I would like to focus your attention on my skills as listed below.

- I have succeeded as a black woman in business for over a decade having worked in various male dominated industries.
- I am able to come up with innovative business ideas and develop them into deliverable business products and services.
- I have a passion for people, having worked closely with people at all different levels from site labourers to government officials. My good communication and inter personal skills allow me to work well with all stakeholders.
- Having started all my own businesses from the ground I have become determined to succeed and work tirelessly to achieve the required end result.
- I have good analytical and problem solving skills and am able to work well in physically and mentally demanding environments.

I appreciate you considering me to work with your organization. I would be delighted to meet with you and I am happy to provide any additional information you may require about me and my career.

CONTACT AND PERSONAL DETAILS

CONTACT DETAILS	: 083 690 7152
HOME ADDRESS	: No. 34 Manhattan, Umkomaas Street East, Paulshof
POSTAL ADDRESS	: P.O. Box 783637, Sandton, Johannesburg, 2146
EMAIL ADDRESS	: naphefo@molebogeng.co.za
DATE OF BIRTH	: 20 February 1956
ID NUMBER	: 5602200250080
NATIONALITY	: South African
DRIVER'S LICENSE	: Code 8
LANGUAGES	: English, Afrikaans, Sepedi, Ndebele

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Education

INSTITUTE	:	UNIVERSITY OF THE NORTH
	:	Honours in Philosophy
DATE OBTAINED	:	Effective 1985
INSTITUTE	:	UNIVERSITY OF THE NORTH
	:	Bachelor of Arts
DATE OBTAINED	:	Effective 1984

Experience

02 March 2004 – Current | Owner and Managing Director
Moreteng Investments | Johannesburg

Key responsibilities:

- Provide the overall direction and management of the organisation
- Ensure the strategic plan and business plan are set in place and constantly monitored
- Ensure realistic goals are set for the organisation, and that these goals are met
- Ensure the organisation complies with company law, construction industry requirements and other relevant legislation
- Monitor financial performance and ensure the organisation remains profitable
- Manage risks to the organisation and ensure that risk and procedures are followed
- Consult with management staff on issues
- Provide leadership and motivation for employees or members
- Act as a bridge between the organisation and external stakeholders
- Identifying strategic partners with diverse expertise to pool resources for project execution
- Preparing and presenting proposals and joint venture agreements, giving presentations and facilitating the necessary due diligence processes.
- Represent the organisation at conferences and official occasions
- Negotiations with local authorities, developers and non-governmental organizations in terms of contracts
- Ensure overall delivery on all projects undertaken



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Entrepreneurial experience (2003 - 2004) - Capricorn Panel Beaters (Pty) Ltd, Polokwane

Entrepreneurial experience (2003 - 2004) - Capricorn Panel Beaters (Pty) Ltd, Polokwane

- Achieve sales level as per the budget
- Continuous increase of new Business/Projects
- Year on year increase in Revenues
- Maintained Gross Profit objectives as set for each project
- Gained a thorough understanding of the Construction Industry's objectives including their Return On Investment (ROI) objectives.
- Travelled Extensively throughout South Africa, an opportunity which further enhanced my general knowledge of social and economic developments.

1996 - 2003 - Owner and managing director
Capricorn Panel Beaters | Polokwane

Key responsibilities:

- To manage and coordinate all panel beating activities
- To make sure the quality of the work is kept at an optimal standard
- Develop and monitor strategic and business plan
- Consult with management on staff issues
- Liaise with various insurers

Entrepreneurial experience (2003 - 2004) - Ruma Tropical Dealers (Pty) Ltd, Polokwane

- Listed on all insurance lists of approved panel beaters - only black owned and managed company to achieve this at the time (Afrikaans dominated)
- Had a scrap yard from which we were able to reconstruct written off vehicles
- Trained women to participate in professional spray painting

1996 - 2003 - Owner and manager
Ruma Tropical Dealers | Polokwane

Key responsibilities:

- To plan, organize and develop the food and beverage services of organizations, academic institutions and businesses, whilst meeting customer expectations, food and hygiene standards and financial targets
- As this was a very small operation, I had a more 'hands on' role and was highly involved in the day-to-day running of the operation
- recruiting and training permanent and casual staff;
- organizing, leading and motivating the catering team,
- planning menus in consultation with chefs;
- ensuring health and safety regulations are strictly observed;
- budgeting and establishing financial targets and forecasts;
- monitoring the quality of the product and service provided;

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- keeping financial and administrative records;
- managing the payroll and monitoring spending levels;
- maintaining stock levels and ordering new supplies as required;
- interacting with customers if involved with 'front of house' work;
- liaising with suppliers and clients;
- negotiating contracts with customers (in contract catering);
- monitoring quality standards;
- overseeing the management of facilities

1996 – 2003 : Owner and manager
Phelly's Styles | Polokwane

Key responsibilities:

- determine what will appeal to their customers and the apparels salability, based on the competition, style and cost
- know what merchandise to order months ahead of time and remain within a certain budget
- receiving the merchandise for their store, pricing and displaying the clothing in a pleasant, appealing manner
- Hiring, managing, scheduling and supervising staff.
- Training staff as to customer service protocols and how to manage cash and credit card transaction, use the register or computer terminal, deal with returns and refunds and handle customer complaints.
- Purchasing the clothing or accessories that are to be sold in the clothing store.
- Planning a budget or financial statement for the clothing store and operating within this budget
- Planning advertising campaigns, seasonal sales, staffing for Christmas shopping and managing the maintenance and up-keep of the store.
- Contracting with various outside vendors and suppliers for cleaning, bookkeeping, tax preparation and repair services as needed.

Achievements:

- Developed in house designers who put together own ranges

1985 – 1996 : Lecturer
University of the North | Polokwane

Key responsibilities:




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- course development and innovation, lecturing, conducting seminars and supervising undergraduate and/or graduate students
- writing lecture material and handouts and presenting information in lectures;
- seminars and tutorials;
- marking student papers;
- may be member of departmental planning team to determine teaching programme for the academic year;
- takes feedback from students to improve teaching methodologies and content within the department/faculty; for example, will make changes to course material;
- changing and adapting course material following research;
- providing guidance and advice to students e.g. career advice
- mentoring and guiding the work and research of postgraduate students.

Report on Extraordinary Work Results and Performance – not available upon request the end




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BIO-DATA

Name	N.K. CHOUBEY, IRTS (Retd)
Date of Birth	10.06.1948
Contact details	Address: 817, Lavy Pinto Block, Asiad Village New Delhi-110049 Tel: 91-11-26493908 Mbl 9818336699 E-mail choubeyn@gmail.com
Educational Qualification	M.A in Economics, Diploma in Inter-Model Management (Cardiff)
Area of Specialisation	Warehousing and Multi-Modal Logistics
	Wide experience and clear insight of the functioning of Government, Public Sector and private sector. Joined IRTS (Indian Railway Traffic Service) in 1971 and worked in Government for about 23 years and in very senior positions in Public Sector and private sector for about 16 years. The area of expertise is logistics, warehousing, planning and project management.
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Was Government nominee on the Board of this Schedule 'A' PSU for 10 years.

Executive Director, Container Corporation of India (CONCOR) (1992 to 1998).

One of the blue chip Schedule 'A' Mini Ratna PSUs, which is the biggest multi-model logistic company in India.

Director/Executive Director, Railway Board, Ministry of Railway (1984-1992)

Dealt with policy matters concerning terminals and user amenities.



Iqbal Meer Sharma is a Businessman and one of the partners of Blackstone Resources, a mining company focused on commodities with a view toward beneficiation. He is the former Deputy Director-General/CEO of Trade and Investment South Africa (TISA), in South Africa's Department of Trade & Industry (DTI). He was responsible for leading the development and implementation of trade and Investment policies and strategies. He had previously headed up the Trade Policy division, overseeing SA's global economic strategies, managing South Africa's bilateral trade relations and negotiations. He has been with the dti since 2001.

Before joining the DTI, he worked for large multinationals such as PepsiCo and the Bank of America. But, an entrepreneur at heart, he left to set up and run his own companies, including South Africa's first computer education franchise and a software firm. He has been hailed as "*one of South Africa's most remarkable entrepreneurs*" (*SA Success Magazine* 4/98).

An activist committed to the upliftment of rural and poor communities, he has worked with NGO's and published many articles and papers on social, political and economic issues.

Growing up outside South Africa, he studied in many countries before he graduated from the University of Wisconsin with a degree in Economics.

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1. PERSONAL DETAILS

Surname	:	Sharma
First Name	:	Iqbal Meer
Physical Address	:	6 Sherwood Gate 110 Rivonia Road Sandton 2196
Telephone Number	:	(082) 410 3001 / (011) 784 4805
E-mail	:	iqbalsharma3@gmail.com
Identity Number	:	6703215788087
Date of Birth	:	21 March 1967
Languages	:	
[Read/Write/Speak]	:	English French Hindi Urdu
Sex	:	Male
Marital Status	:	Married
Nationality	:	South African
State of Health	:	Excellent
Interest and Hobbies	:	The Future, Philosophy, Sport, Music, Art, Travelling, Reading, Golf


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2. EDUCATION

Schooling

1971-1973	:	Goa House Primary England
1974-1976	:	Hampton Court, India
1977-1978	:	Fordsburg Primary, Johannesburg
1979-1981	:	Waterford/Kamhlaba, Swaziland
1981-1981	:	George Dixon School, England
1982-1983	:	Cerritos High School, USA
1984-1986	:	Aitchison College, Pakistan

Tertiary Education

1987-1988	:	Santa Monica College, USA
1988-1991	:	University of Wisconsin, Oshkosh USA

Degrees Obtained	:	BSc - Bachelor of Science [Honours] University of Wisconsin, Oshkosh USA
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Majors	:	Economics and Business Administration
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3. HONOURS/ACTIVITIES

- * Graduated with Outstanding Senior Award Honours - Wisconsin
- * Deans List - Santa Monica College
- * Vice President: Economics Students Association
- * Member of Segregated Fees Committee: University of Wisconsin
- * Oshkosh Students Association Representative
- * Chairman of Residence Halls Social Committee
- * State/High School Colours for Soccer, Water Polo, Basketball, Athletics
- * Member of US National Award winning Model United Nations Team
- * University: Soccer
- * Active in "Big Brother Community Programme"
- * United Way Volunteer
- * City of Brea - Volunteer Youth Basketball League Coach
- * Chairperson of Campus Debating Society

4. SPECIALISED TRAINING

- * PepsiCo - Los Angeles (California) - Impact Management Training Course - 1992
- * Subway Management Training Course - Connecticut (USA) - 1997

Computer Skills

- | | | |
|------------|---|----------------------------------------------------------------------------------|
| * Language | - | Basic |
| * Software | - | High level of literacy in a range of business enterprise and management software |

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5. EMPLOYMENT HISTORY

5.1 Blackstone Resources Ltd [November 2010 – Current]
Pretoria, South Africa

Position : Director

Activities: Identify and develop mining assets with a view to developing a vertically integrated mining house focused on beneficiation, in line with the transformational agenda in South Africa.

Responsibilities Include:

- Develop global business strategy
- Source financial partners globally
- Develop strategic alliances with off take and development partners

5.2 Department of Trade & Industry [March 2007 – October 2010]
Sandton, South Africa

Position : Deputy Director-General/CEO
Trade & Investment South Africa

Activities: Direct the activities of the division to increase South Africa's capability and capacity to promote exports into targeted markets Increase and retain the level of foreign and domestic direct investment flow. Additionally, manage the Department's network of foreign offices; Contribute towards the effectiveness of TISA through encouraging strategic alignment, oversight and leadership.

Responsibilities Include:

- Leading and managing the development of divisional business plans
- Leading and managing the development of SA investment and export strategies
- Lead small exporter development program
- Manage global network of foreign offices
- Act as lead client interface division for Business into the dti
- Lead and co-ordinate business participation in State Visits, trade missions including Joint Ministerial Commissions, Bi-National Commissions
- Manage SA National Pavilions around the world
- Provide support and advice to the President, Deputy President, Ministers and Dep. Ministers
- Participate in projects as assigned to by the DG or Minister
- Oversee the integration of the dti's trade and investment work with other government departments


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- Build a world class organisation in TISA
- Lead recruitment process to strengthen divisional capacity
- Develop management and technology processes for operations
- Participate in the dti EXBO, clusters and boards / councils

5.3 Department of Trade & Industry [May 2005 – March 2007]
Pretoria, South Africa

Position : Deputy Director-General (Acting)
Int'l Trade & Economic Development

Activities: Direct the activities of the division, which oversees, designs and develops SA trade policy. This requires providing strategic oversight and guidance to the various business units covering bilateral trade relations globally, multilateral trade relations, African economic development / NEPAD and the Non-Proliferation and Space Affairs Unit. Provide leadership to trade negotiations and agreements on a bilateral and multilateral basis. Lead processes and substance in respect of trade policy formulation and implementation. Drive relations strategically with key countries toward increased and preferential market access for SA products and services. Develop and implement projects and programmes that compliment and contribute to South Africa's global economic strategy through enhanced consultation with all stakeholders. Participate in cluster meetings and other inter-departmental forums.

Responsibilities include:

- Leading and managing the development of divisional business plans
- Leading and managing the development of SA trade policy
- Lead participation in JMC's, BNC's and other bilateral co-operation mechanisms and multilateral areas like the WTO
- Manage team responsible for to co-ordinating the trade negotiation agenda
- Provide support and advice to the Minister, Dep. Minister and DG
- Participate in projects as assigned to by the DG or Minister
- Oversee the integration of the dti's international work with other government departments
- Build a world class organisation in ITED
- Lead recruitment process to strengthen divisional capacity
- Develop management and technology processes for operations
- Participate in the dti EXBO, clusters and boards / councils

5.4 Department of Trade & Industry [Feb 2003 – May 2005 / 2007]
Pretoria, South Africa

Position : Chief Director
Int'l Trade & Economic Development

Activities: Direct the activities of the bilateral trade business unit with the world outside Africa in the International Trade & Economic Development division. Manage processes and substance in respect of


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trade policy formulation and implementation. Drive bilateral relations with key countries toward increased and preferential market access for SA products and services. Develop and implement projects and programmes that compliment and contribute to South Africa's global economic strategy through enhanced consultation with all stakeholders.

Responsibilities Included:

- Guiding and managing the development of country strategies, position papers, briefings, reports, and speeches
- Guiding and managing the development of projects to promote bi-lateral trade
- Manage JMC's, BNC's and other bilateral co-operation mechanisms
- Manage a team to co-ordinate regional and global work program
- Participate in projects as assigned to by the DDG, DG or Minister
- Oversee the integration of the dti's work with other government departments
- Build a world class organisation in ITED
- Act on behalf of the Deputy Director-General as needed
- Assist in multilateral engagement of WSSD, FID, SACU
- Assist in recruitment process to strengthen divisional capacity
- Develop management and technology processes for operations

5.5 Department of Trade & Industry [July 2001 – Feb 2003]
Pretoria, South Africa

Position : Director
Int'l Trade & Economic Development

Activities: Direct the activities of the Asia bilaterals in the International Trade & Economic Development division. Develop and implement projects and programmes that compliment and contribute to South Africa's global economic strategy in consultation with stakeholders

Responsibilities included:

- Developing country strategies, briefings, reports, speeches
- Developing and implementing projects to promote bi-lateral trade
- Manage JMC's, BNC's and other bilateral co-operation mechanisms
- Manage a team to co-ordinate regional work program
- Participate in projects as assigned to by the DDG, DG or Minister
- Integrate the work of the dti with other government departments
- Assist in building a world class organisation in ITED

5.6 Institute for Black Research [May 1999 – June 2001]
Durban, South Africa

Position : Consultant / Researcher

Activities: Khanya Skills Training Project - Project Manager
Urban Housing Research Prog. - Analysis of Data and Report Formulation


Kwesi

	<div>Publishing Programme - Edit and prepare manuscripts for publication</div> <div>Economic Growth Programme - Project Manager</div>	
5.5	<div>Meer Sharma and Associates</div> <div>Durban, South Africa</div>	<div>[December 1994 -- July 2000]</div> <div>Position : Founder/Managing Director</div> <div>Activities: Marketing and Management Strategists for public and private sector clients. Founded the COMPUKIDS Franchise. Performed HR, Financial and General Management functions. Trained and developed franchisees as Business Managers. Designed and Implemented strategic intent of the company.</div> <div>Detailed description of duties at Meer Sharma & Associates / Compukids</div> <div>Responsibilities included:</div> <div><ul style="list-style-type: none">• Understanding and practicing consultative ROI-driven sale process.• Motivating and leading a team. Manage and support staff.• Establishing standards for the Industry to follow.• Prospecting and new account development.• Design and implement company franchise strategy.• Opening new doors and nurture sales cycles at senior levels.• Leading the company's project management group once large complex client engagements have been secured.• Led recruiting, planning, and management of sales and support staff.• Conducted market research, and designed strategies accordingly.• Networked at the highest executive level in order to secure business opportunities for the company.• Oversee product development, marketing support, and day-to-day sales and customer service operations.• Establish and maintain operational standards with respect to response rate and conversion.• Responsible for timely and effective communications with Internal groups, such as technical, marketing and sales.• Manage customer and employee issue escalations.• Establish individual performance goals, review performance against goals, Plan, approve, and implement programs for development and progress of individuals.</div>
5.6	<div>S & P Marketing International</div> <div>Durban, South Africa</div>	<div>[August 1993 - November 1994]</div> <div>Position : Director Sales and Marketing</div> <div>Activities: Co-Founder. Established new business and staff goals. Conceptualised and implemented market penetration strategy to build brand. Produced all marketing/advertising concepts. Co-ordinated public events and public relations activities.</div>


Kumar

Detailed description of duties at S&P Marketing Int'l

- Responsibilities included:
- Managing and developing territories.
 - Hire, train and motivate a national sales team.
 - Provide regular feedback on forecasts, competitive information and field intelligence.
 - Define and build a presence in vertical and horizontal market segments.
 - Define product strategy and establish marketing goals necessary to reach sales and profitability objectives.
 - Developed, budgets and managed a range of marketing communications functions including public relations, advertising, direct marketing, events and seminars, web site development and content management, collateral and field sales support.
 - Worked with Product Development on strategic planning of product lines.
 - Established company strategy and goals, and oversaw marketing and promotion budget.

5.7

PepsiCo
Irvine CA, USA

[May 1992 - March 1993]

Position

Associate General Manager

Activities: Supervised staff of 29 to achieve sales goals. Maintained high customer service standards through Management Training. Responsible for marketing restaurant units, achieving new sales in the commercial sector. Implemented the strategic intent of PepsiCo as directed. Trained managers on marketing and financial systems

Detailed description of duties at PepsiCo

- Responsibilities included:
- Define product strategy and establish marketing goals necessary to reach sales and profitability objectives.
 - Developed, budgets and managed a range of marketing communications functions including public relations, advertising, direct marketing, events management, sales support.
 - Worked with Product Development on strategy of product lines.
 - Implemented company strategy and goals.
 - Prospecting and new account development.
 - Leading the division's project management group.
 - Led the recruiting, planning, management of sales and support staff.
 - Conducted market research, and designed strategies accordingly.
 - Establish and maintain operational standards.
 - Manage customer and employee issue escalations.
 - Establish individual performance goals, review performance against goals. Plan, approve, and implement programs for development and progress of individuals.

Reason for Leaving: Returned to South Africa

[Handwritten signature]
Kend

- 5.8

Sygma Computing Solutions [Aug 91 – May 92]
Los Angeles CA / Chicago IL, USA

Position

:

Marketing Manager

Activities:

Recruit new business for a customised document management system on an off shore basis. Designed and managed the US rollout for the software developed in India. For its time, it was cutting edge technology in the USA, and document management is now a big industry.

Detailed description of duties at Sygma Computing Solutions

Responsibilities included:

- Define product strategy and establish marketing goals necessary to reach sales and profitability objectives.
 - Conducted market research, and designed strategies accordingly.
 - Worked with Product Development on strategic planning of product lines.
 - Implemented company strategy and goals.
 - Prospecting and new account development.
 - Developed, budgets and managed a range of marketing communications functions including public relations, advertising, direct marketing, events management, sales support.
 - Provide regular feedback on forecasts, competitive information and field intelligence.
- 5.9

Valley Bank of Oshkosh [July 90 – June 91]
Oshkosh WI, USA

Position

:

Customer Service Manager

Activities:

Managed Customer Service functions for the bank, while overseeing that the strategic intent of customer delivery and service standards is maintained. Resolved disputes between the bank and customers. Designed the flow through concept of customer mobility for ease of movement in the bank while minimising crowding and security risks.

Detailed description of duties at Valley Bank

- Prospecting and new account development.
 - Manage customer and employee issue escalations.
 - Maintain cross-sell ratios with respect to response rate and conversion.
 - Oversaw marketing support, and day-to-day sales and customer service operations.
 - Managed customer call centre.
 - Conducted market research, and designed strategies.
 - Ensured compliance with policies and procedures.
- 5.10

Univ. of Wisconsin Dept of Residence Life [Aug 89 – July 90]
Oshkosh WI, USA

[Handwritten signature]
Kau

Position : Payroll & Personnel Manager

Activities: Oversaw the payroll and personnel functions for 12 departments that fell under the Dept of Residence Life. Supervised a staff of 12 in managing the Human Resources function for over 500 employees. Ensured departmental compliance with policies and procedures. Recruited staff to ensure diversity of ideas and intellect.

Detailed description of duties at Univ. Wisconsin – Dept. of Residence Life

- Responsibilities included:
- Managing HR requirements in various departments.
 - Performed weekly audit of payroll from departments.
 - Ensured timely delivery of payroll.
 - Establish individual performance goals, review performance against goals. Plan, approve, and implement programs for development and progress of individuals.
 - Ensure compliance with State and Federal Statutes.
 - Ensure compliance with Affirmative Action policies.
 - Ensure compliance with Fair Labour Practices.
 - Recruit and fill vacancies in the departments.

5.11 Security Pacific Natl Bank (Now Bank of America) [Dec 86 – Aug 89]
Los Angeles CA, USA

Position : Accounts & Loans Officer

Activities: Open new accounts and loans, while promoting and cross-selling complementary products. Ensured high customer service standards while ensuring bank profitability. Gained experience in most retail branch operations including foreign exchange, commercial wires and transfers, tax work. Received commendations for outstanding and innovative work.

Detailed description of duties at Security Pacific National Bank

- Responsibilities included:
- Prospecting and new account development.
 - Opening new doors and nurture sales cycles at senior levels.
 - Leading the branch's project management group in retail sales.
 - Conducted market research, and designed strategies.
 - Oversaw marketing support, and customer service operations.
 - Establish and maintain cross-sell ratios with respect to response rate and conversion.
 - Manage customer and employee issue escalations.
 - Define product strategy and establish marketing goals necessary to reach sales and profitability objectives.
 - Established branch performance goals, and designed a pioneering program for fee retrievals on inter-branch customers. The program was called Customer Profitability Management (CPM).

Handwritten signature/initials.

6. MEMBERSHIPS ON BOARDS / COUNCILS

Non-Proliferation Council	(2006-2009)
SA Space Affairs Council	(2004-2006)
Export Credit Insurance Corporation of SA	(2006-current)
Immigration Advisory Board	(2009 – current)
International Marketing Council	(2006-2009)
Proudly South African	(2007 – current)

7. PUBLICATIONS / PAPERS PRESENTED

- "Freedom - the Great Divide", *Published in*, Towards Democracy, Journal of the Institute for Multi-Party Democracy, Volume 7, Number 1. 1998
- Poverty and Inequality 2000- An analysis on a way forward – Presented to Human Rights Commission – Durban
- 21st Century Education is the Key to a Healthy Democracy, *Published in*, Towards Democracy, Journal of the Institute for Multi-Party Democracy, Volume 8, Issue 1, June 2000
- Keynote Speaker: KZN Information System in Schools [ISIS 2000] Conference, "The Advancement of Information Technology in the school curriculum and in schooling", July 2000
- Speech quoted in "Creative Financing for Sustainable Development", a publication by the World Bank, IMF and United Nations, June 2002

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Kaul

- * Contributor to "Value to Values", a publication on Sustainable Development by UNEP, Feb 2004
- * Keynote Speaker, American Bankers Association 86th AGM

8. REFERENCES

Available upon request


Karl

Annexure C

NEW TRANSNET BOARD

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
1. Mr Iqbal Meer Sharma	Non-Executive Director and Chairperson	Male	Indian	BSc - Bachelor of Science (Honours)	Strategy; business; international trade; management; global economics
2. Mr Brian Molefe	Executive Director: Chief Executive Officer	Male	African	Master of Business; Post Graduate Diploma in Economics; Bachelor of Commerce	Finance; management; leadership
3. Anoj Singh	Executive Director: Acting Chief Financial Officer	Male	Indian	BAcc and CA(SA)	Finance
4. Mr Peter Malungani	Non-Executive Director	Male	African	B.Com; Advanced Management Programme; Leadership Development Programme	Entrepreneurship; business strategy; corporate governance; investment banking
5. Mr Israel Skosana	Non-Executive Director	Male	African	B.Com; Hons B.Compt; CA(SA); Certificate in the Theory of Accountancy; Advanced Management Programme -- Harvard	Leadership; Finance.


Kunal

Annexure C

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
6. Ms Nazmeera Moola	Non-Executive Director	Female	Indian	Bachelor of Business Science; CFA Charterholder	Economics; strategy
7. Mr Michele "Mike" Fanucchi	Non-Executive Director	Male	White	MSc Engineering Management; BSc Engineering (Mech) Industrial	Logistics; Supply Chain Management; business management
8. Ms Doris Tshepe	Non-Executive Director	Female	African	LLM; LLB; B.Proc	Legal
9. Ms Tembakazi Mnyaka	Non-Executive Director	Female	African	Bachelor of Social Science; Masters in Town and Regional Planning Diploma in Project Management ; Project Management and Project Leadership certificate	Business; consulting.
10. Ms Ellen Tshabalala	Non-Executive Director	Female	African	International Licentiate Diploma of Banking; Bachelor of Commerce Degree; Post Graduate Diploma in Labour Relations	Business; strategy


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Annexure C

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
11. Mr Harry Gazendam	Non-Executive Director	Male	White	BA; B Proc; Dip Labour Relations; AEDP; EDP; BA; B Proc & Dipl LR; ; EDP; UCLA	Labour Relations; HR Management; Remuneration; Corporate Governance
12. Mr Peter Moyo	Non-Executive Director	Male	African	BAcc; BAcc (Hons); CA(SA); CA; Higher Diploma in Tax Law; Advanced Management Programme	Financial; Business
13. Ms Nolwazi Gcaba	Non-Executive Director	Female	African	B. Juris; LLB	Legal
14. Ms Nunu Ntshingila	Non-Executive Director	Female	African	BA; MBA; Diploma in Advertising (AAA School of Advertising).	Marketing
15. Mr Almir De Sousa	Non-Executive Director	Male	Indian	LLB; BA; Special Diploma in International Trade Law	Legal; International trade; public private partnership; and project finance
16. Ms Maphefo Mohuba	Non-Executive Director	Female	African	BA; Honours in Philosophy	Business


FAN

Annexure C

NAME	POSITION	GENDER	RACE	QUALIFICATIONS	SKILLS FOR BOARD
17. Mr Nishi Kant Choubey	Non-Executive Director	Male	* 1. International candidate : Indian	M.A. in Economics; Diploma in Inter-Modal Management	Rail; Warehousing; Multi-Modal Logistics
18. Ms Yasmin Forbes	Non-Executive Director	Female	Coloured	MBA; Diploma in marketing; Public Relations Practitioner	Information and Communications Technology sales; Business Development; Brand Creation and Sustainability

*1. International Candidate: Indian


Kant

TRANSNET-07-927

BB24-MKNG-675

Butie Tsalane

From: Jumarie Botha
Sent: Wednesday, June 15, 2011 11:06 AM
To: Butie Tsalane
Cc: Thamsanga Msoni
Subject: RE: Recommendation for the appointment of New Non-Executive Directors to the Board of Transnet Vongani Masendo

Dear Butie

I have discussed with Ihani, please note that Minister's comments dated 25 May 2011 suffice. No need for a revised decision memo as Minister also signed the revised cabinet memorandum. Just add this memo to the previously signed memo.

Regards

Jumarie

-----Original Message-----
From: Butie Tsalane
Sent: 15 June 2011 09:56 AM
To: Jumarie Botha
Subject: Recommendation for the appointment of New Non-Executive Directors to the Board of Transnet Vongani Masendo

Hi Jums

Please see attached motive submitted to DG. Please advise whether this will suffice.

R
Butie

7/13/2020

Business Day

Kevin Allan and Karen Heese Lack of money not the cause of ailing municipalities. Page 9

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FTSE-JSE indices	Close	% ch
All Share	31 521.33	▼ 0.93
Top 40	28 186.66	▼ 1.08
Financials	30 685.02	▼ 0.54
Resources	52 725.71	▼ 1.68
Goldex	2 395.65	▼ 3.19

FTSE-JSE all share analysis	% ch
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Commodities	Latest	% ch
Gold PMF	1 537.75	▼ 0.47
Gold NY	1 535.31	▼ 0.67
Brent Future	1 278.3	▼ 0.90
Platinum PMF	1 826.00	▼ 0.33
Palladium Spot	803.90	▼ 0.69

Foreign Markets	Latest	% ch
Dow Jones	12 044.28	▼ 0.22
S&P 500	1 281.44	▼ 0.27
FTSE 100	5 808.89	▼ 0.95
Nikkei 225	9 449.46	▼ 0.07
Xetra Dax	7 060.23	▼ 0.61

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Flooding halts output at Goliath's Sub Nigel mine

NEWLY formed Goliath Gold will suspend operations at its Sub Nigel mine because of flooding, resulting from the cessation of pumping at the nearby Grootvlei mine. The Grootvlei mine, once owned by Pamodzi Gold, is up for sale after liquidators terminated a management contract for the mine awarded to preferential bidder Aurora Empowerment Systems. Page 11

Metorex to sell Zambian plant

METOREX yesterday said it had agreed to sell its Sable operation in Zambia to Glenore for R90m as one of the key conditions of the purchase of Metorex by Brazilian miner Vale. Page 11

Sanlam explores India, Africa

SANLAM is pursuing new deals that will be financed from its cash pile of R30m, its CEO said yesterday. He said they would announce "positive developments in the next month or two". Page 12

Tanzania plans 'super-profit' tax

TANZANIA, which vies with Mali to be Africa's third-biggest gold producer, may introduce a "super-profit" tax on minerals similar to one implemented in Australia. Page 12

SA commerce revolution 'close'

ONLINE retailer Kalahari.net said this week SA was on the brink of a mobile commerce revolution, given the growing numbers of people using cellphones to access the internet. Page 13

Essar's deal 'almost wrapped up'

INDIAN conglomerate Essar said yesterday it expected to wrap up a \$750m investment in Zimbal's Zisco "within two to three weeks", with first production in 12 to 15 months. Page 14

High fuel prices hurt McDonald's

FAST-food franchise McDonald's reported a lower than expected sales increase at established stores in the US last month as high petrol prices and unemployment cramped its business. Page 15

Business confidence dips again

BUSINESS confidence dipped for the second month in a row, signalling a possible downturn in sentiment, the South African Chamber of Commerce said yesterday. Page 2

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Chabane accused of poor results

MINISTER in the Presidency for performance, evaluation and monitoring Collins Chabane was yesterday criticised by opposition MPs, who said his department had achieved nothing. Page 3

Youth leader could be kingmaker

THE African National Congress's influential Eastern Cape youth league chairman Ayanda Mntshini could be positioning himself as kingmaker in the battle for control of the league. Page 3

Attacks on sheep cost farmers

EASTERN Cape sheep farmers are enraged over packs of marauding dogs which they say are attacking and eating their sheep stock, costing them millions of rands. Page 4

Divided Opec's talks break down

OPEC talks broke down yesterday without an agreement to raise output after Saudi Arabia failed to convince the other states, causing crude prices to shoot higher. Page 5

Plan to criminalise sports graft

AUSTRALIA's best-known sports codes are backing a government push to make sports corruption a crime with penalties of up to 10 years in prison. Page 19

'Equal pressure' at Super derby

BULLS captain Victor Matfield believes the pressure will be evenly split between his side and the Stormers in Saturday's decisive Super Rugby clash at Newlands. Back Page

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Trust in SA banks slides on poor service, high costs

SURE KAMHUNGA

Financial Services Editor

NEARLY half of South Africans no longer trust their banks and post service tops the list of their complaints, according to a global survey conducted by Ernst & Young and released yesterday.

The survey's results will probably please the government, which wants to penalise banks that mistreat customers with bad service or high fees.

The government believes regulatory oversight of the market should be tightened in the aftermath of the global financial crisis.

Presenting the findings, the associate director for advisory services at Ernst & Young, Colin Daley, said service quality had become the biggest cause of customer defection to rival banks in SA.

This contrasted with developed markets, where customer trust plummeted mainly due to the economic upheaval experienced because of the financial sector's reckless trading.

Among customers surveyed in SA, 48% cited service quality as the main reason they would change banks. Almost half of customers polled said they were not satisfied with their bank's service, and 47% said they had lost trust in their banks in the past year.

"Poor service quality and price are the main factors," Mr Daley said. "At least 50% of customers who

decided to change their main bank cited general levels of service quality, while 57% cited price."

Ernst & Young did not name the banks which customers said provided poor service.

The Treasury wants the financial sector to improve standards under its new policy, called Treating Customers Fairly.

Mr Daley said banks that differentiated themselves by providing good service and relevant products would gain market share. He said

banks had to reinforce brand loyalty, provide appropriate and profitable services, and rebuild trust.

The report found that the effect of the financial crisis on banks was still being felt globally, and trust had been affected. "Given that it is much easier to damage a brand than to repair one, it is essential for banks to execute brand reinforcement programmes," the report read.

kamhungs@bdfm.co.za

No easy walk into Africa: page 11

Chairmen of Transnet, Eskom and Denel to go

Minister persuades Cabinet in bid to gain greater oversight

PETER BRUCE

THE chairmen of three of SA's most powerful state-owned companies — Transnet, Eskom and Denel — are to be removed soon in a dramatic show of force by Public Enterprises Minister Makhosi Gigaba, as the government tries to tighten its grip on the commanding heights of the economy.

The changes were discussed and approved at a Cabinet meeting in Cape Town yesterday.

Business Day recently understands that Transnet chairman Makhosi Gigaba — who was appointed only late last year and who also briefly acted as the company's CEO — will be invited to move to the board of Eskom as an ordinary member.

Eskom chairman Mpho Makwata, it is understood, will not be offered another position.

He has served on the Eskom board since 2002 and became chairman last year after a row in which both then-chairman Bobby Godsell and CEO Jacob Magera left the company.

It is further understood that Mr Gigaba intends to replace virtually the entire Eskom board, with the exception of De Bernie Farouqi and one other member.

The proposed new Eskom chairman is little known in SA. He is Zola Tsoeli, chairman of the Lesotho Electricity Authority.

At Denel, Mr Gigaba intends to install Zoli Kuneke as chairman, replacing Sibosiso Sibisi, who is also president of the Council for Scientific and Industrial Research.

In all, about nine of the 14 Denel directors are expected to be replaced.

Neither Mr Gigaba, nor his spokesman, Makhosi Nkomo, were commenting on the changes yesterday.

While Mr Gigaba, still relatively new in his position, is not seeking activity to control the state-owned enterprises, he wants much tighter shareholder oversight as the government tries to develop

an economic model that fulfils its political promises to create millions of new jobs.

The boardroom changes follow hard on the heels of an effort by Mr Gigaba to put more of the bones of a new approach to the way in which the state-owned enterprises in his charge behave.

He wants to use them to build long-term partnerships with private capital in the construction of new ports, roads, rail and other infrastructure.

But, in a speech at Wits University this week, he also spelled out how he, as the shareholder, was uncomfortable keeping his distance from them.

Outlining his approach to getting state-owned enterprises and their customers closer, to the point where customers would be able to co-finance infrastructure projects, he also said that "the point I wish to emphasise is that this process will require joint projects between the shareholder (the government) and the SOEs (state-owned enterprises) as the SOE's interest is to fall back on its balance sheet."

Denel's struggle for profitability is well known, but there has been clearly also been growing unease in the Department of Public Enterprises with what it perceives as the independence of the Eskom management and board.

Public enterprises feel it was brought up to speed on the Koeberg contracts only as they were about to be announced. Normally, state-owned enterprises are required to consult ministers for any order worth more than R300m.

It is understood, nevertheless, that Mr Gigaba did not have it all his own way at the Cabinet meeting yesterday. His proposal to

Continued on page 2



Deflected soldiers sit on a Ratel armoured personnel carrier on a street in Sana'a, Yemen, chewing qat, a mild stimulant, earlier this week. The DA wants to know how the South African vehicles reached the strife-torn country. Picture: REUTERS

SA Ratels turn up in Yemen conflict

Call for arms control committee inquiry

WYNDHAM HARTLEY

Parliamentary Editor

CAPE TOWN — South African-manufactured Ratel armoured infantry carriers have been photographed in strife-torn Yemen, leading the Democratic Alliance (DA) to call for an investigation by the National Conventional Arms Control Committee (NCACC).

The Ratels were apparently being operated in the Yemeni capital, Sana'a, by soldiers who had defected to protesters demanding the end of President Ali Abdullah Saleh's rule.

The presence of the vehicles either means SA authorised their export or that another country sold Ratels to Yemen, which would constitute a violation of the end-user certificate.

South African law forbids the export of arms to violators of human rights, including countries involved in regional conflicts and those subject to a United Nations embargo. Details of arms exports are closely guarded secrets, overseen by the committee, which reports to Parliament.

DA defence spokesman David Maynier said in a statement yesterday that NCACC chairman Jeff Radebe should launch an investigation into how the converted Ratels, previously operated by the South African National Defence Force, had found their way to Yemen.

"Over 100 pictures of demonstrators in Yemen were recently published by Reuters and the Associated Press. The series includes a number of pictures of a converted Ratel infantry vehicle in Yemen," Mr Maynier said.

"The NCACC's latest annual report records that R373.6m worth of conventional arms were sold to Yemen in 2010. Conventional arms exports to Yemen last year included R239.4m worth of Category A conventional weapons, which are described as major conventional implements of war that could cause heavy personnel casualties."

Mr Maynier was ejected from the National Assembly in March.

Continued on page 2

SA severely burnt: page 6

JSE falls as Bernanke signals end of easing programme

RON DERBY and ALISTAIR ANDERSON

SOUTH African shares fell to their lowest since the end of last month after the US Federal Reserve gave no indication of a new round of stimulus measures — sending metal prices diving yesterday.

Concerns about statements made by US central bank chairman Ben Bernanke drove markets weaker. Doug Blatch, head of equity trading at Investec Asset Management, said:

"Mr Bernanke gave no indication of plans for a third round of asset purchases known as quantitative easing. The second round ends this month."

Concerns that deteriorating global growth would reduce demand pushed metal prices lower. Copper dropped as much as 2.4%. Gold was weaker for a second day, falling 0.8% while silver slumped 3%. Platinum dropped 1.2%.

The JSE all share index shed 0.9% to its lowest since May 23. The index has now fallen 4.8% from its record high reached on February 14.

Bank economist Colin Garraway said the global economy's recovery was still being led by the US. Africa can only do as well as the global economy lets it. Nothing new is pulling us along."

Anglo America fell 1.4% yesterday and BHP Billiton shed 2.3% to its lowest since March 16. Copper is a significant chunk of both companies' earnings.

AngloGold Ashanti was down 3.1% on the fall in bullion. Harmony dropped for the third successive day, down 4.6% — to its lowest price since March 23.

Also weighing on mining shares was a demand from the National Union of Metalworkers for a 14% increase for members at plant and gold companies, and Impala Platinum. *Writ: Bloomberg*

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7/13/2020

Business Day

THURSDAY 9 JUNE 2011 Business Day

Business & Economy

IN BRIEF

'Secrecy bill' a sticky issue with Pratley

LEGISLATION | Opposition to the "secrecy bill" gained momentum yesterday when prominent businessman heeded the call by Pickin. Pay chairman Gareth Ackerman to speak up against it. Pratley Group CEO Kim Pratley yesterday echoed Mr Ackerman's sentiment and encouraged other businesspeople to speak out. "There is the perception that government is engaging with business, and they are not. The other misconception is that business is engaging correctly with labour, and we are not," Mr Pratley said. The Pratley Group is a diversified manufacturing, mining and research company. The Protection of Information Bill has been vehemently criticised by civil society and opposition parties. *Amelie van Velle*

Sub-Saharan growth 'to pick up'

REPORT | Growth in sub-Saharan Africa is set to pick up to 5.1% this year from 4.1% last year and then accelerate to 6.7% in 2012, according to a report by the World Bank. The report says in a new report. Growth in the region was likely to remain strong in the medium term, supported by the global recovery, a growing domestic middle-income class and rapidly rising business confidence. *Mariam Isa*

Miners ready to strike at Exxaro

LABOUR | Miners at Exxaro Resources, a large supplier of coal to Eskom, will start a strike on Monday about a plan to cut jobs, the National Union of Mineworkers said yesterday. "More than 7,000 workers at Exxaro will walk down, the union said. The dispute is about the possible repatriation of 300 workers across Exxaro operations." *Bloomberg*

Africa credit dynamics improving

GROWTH | Credit dynamics are improving in countries in sub-Saharan Africa, thanks to a strong expected growth rate of 5.5% this year, Moody's Investor's Service said yesterday. The pick-up in growth is sustained by improved governance, liberalised domestic industries, better public finances and a boom in the region's commodities, the global ratings agency said. *Mariam Isa*

Transnet raises iron-ore target

RAILWAYS | Transnet, SA's ports and rail utility, has raised its target for iron-ore transport on its Sishen-Saldanha line to 12-million tons a week, CEO Brian Molelele said yesterday. The target compared with 11-million tons a week this year, he said at a conference in Cape Town. Transnet plans to expand the line's capacity to 12-million tons a year by 2015. *Bloomberg*

Minerals chief to call it a day

MINING | The director-general of the Department of Mineral Resources, Sindiwe Nkomo, will step down at the end of this month to take early retirement, Minister Susan Shabangu said yesterday. Mr Nkomo has run the department for 14 years. The director-general occupies a powerful position, overseeing the day-to-day operations of a department. *Reuters*

HOW ARE WE DOING?

GRAIN | Maize deliveries to shore rose to 693 000 tons in the week to June 3, from a revised 338 000 tons the week before, data showed yesterday. White maize deliveries rose to 249 000 tons from a revised 109 000 tons, while yellow maize shipments increased to 443 000 tons from a revised 227 000 tons, the South African Grain Information Service said.

Maize finished the week with a higher average price, although the volume of contracts traded on the day remained low. The July white maize contract was up R17 to R17.24 a ton, while the September contract gained R15.20 to R17.90. The December white maize contract picked up R17.20 to R18.42.20 a ton. *Reuters and i-Hel Stage*

Transport adds investment to job sheet

LINDA ENSOR
Political Correspondent

CAPE TOWN — The Department of Transport is transforming its role from one of mere policy formulation to also managing and driving all investment in the transport sector, the department said yesterday.

This would cover national and provincial government, along with municipalities and agencies such as Airports Company SA.

An investment plan consisting of the department's director-general and the CEOs of transport entities has been mooted. Its role would be to consolidate all proposed projects in the sector to avoid duplication, provide a single interface with investors and the Treasury and ensure a co-

sistent approach to how the private sector can participate in transport projects. This structure would also indirectly include Transnet and South African Airways through the Department of Public Enterprises.

A co-ordinated approach — already available through the inter-departmental cluster system — would also cut the time it took for projects to get all the necessary approval, departmental spokesman Thami Ngidi said yesterday.

All the different entities "are pulling in different directions when it comes to investment. We need to pull all these initiatives together," the department's head of special projects, Lwazi Mboji told Parliament's transport committee.

The move towards centralisation and co-ordinated government is a growing trend. It is already apparent in the Department of Public Service and Administration's national approach to the employment conditions of public servants, in the procurement of goods and services by the state, and oversight over local government. This approach is consistent with the African National Congress' conception of a developmental state.

SA's transport system, both road and rail, is in need of huge investment to clear backlogs and equip it to serve the needs of a growing and modernising economy, but this cannot be achieved by the state alone.

The high-speed train links and the creation of a rail and road corridor between Johannesburg and Durban are the high-ticker projects on offer. The 600 participants will include potential domestic and foreign investors, asset managers, merchant banks and service providers. They will be asked to share their views on the various funding models that would allow the private sector to invest in infrastructure upgrade and maintenance.

The national focus is over-stretched and is unable to comprehensively fund transport infrastructure projects," Mr Mboji said.

The conference follows a similar engagement in April by the Passenger Rail Agency of SA with investors. They were presented with the agency's new rolling stock, programme and the business opportunities that arose from it. The agency plans to spend R87bn on new rolling stock over the next 16 years.

ensor@business24

SA's oil use increases in line with economic growth

AUSTIN ANDERSON
Economics Staff

SA's oil usage increased in line with its gross domestic product growth last year, data from global energy company BP showed yesterday.

Last year global energy consumption grew at its quickest rate since the aftermath of the 1973 oil price shocks, and China's energy consumption overtook the US's for the first time.

The story told by the data in this year's report is that of a strong rebound of global energy consumption in 2010, following the global recession. "BP CEO Bob Dudley said that the global energy market is in a strong recovery, and the global energy market is in a strong recovery," he said.

Oil is the world's leading fuel, at 33.6% of global energy consumption, but it did lose market share last year, for the 11th consecutive year.

BP's World Energy Outlook 2011 SA climate change programme manager Richard Worthington said he was concerned by SA's dependency on oil and other energy sources.

"We need to wean off oil glob-

ally," he said. "Transport is 50% dependent on oil and sudden fluctuations in oil prices are very dangerous for economies. We need to grow renewable energy as fast as we can, here in SA and abroad."

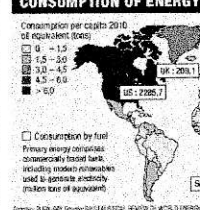
He stressed that SA's dependency on oil was especially worrying. "Our oil use is one thing that leads us to be vulnerable to climate change and to the world's responses to climate change," he said.

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"We need to wean off oil glob-

CONSUMPTION OF ENERGY





3.1 Conflict of Interest

- 3.1. 1 Transnet is a State-Owned Company established in terms of s2 of the Legal Succession to the South African Transport Services Act.⁴⁰
- 3.1. 2 In terms of the PFMA, (which lists Transnet as a public entity⁴¹) the Board is the accounting authority⁴².
- 3.1. 3 As the accounting authority, the Board must ensure that Transnet maintains:

“(i) effective, efficient and transparent systems of financial and risk management and internal control”⁴³.
- 3.1. 4 In terms of the Companies Act⁴⁴, Transnet is a State-Owned Company⁴⁵ and must therefore comply with this legislation and its Regulations.
- 3.1. 5 Section 66 (1) of the Companies Act gives the Board the authority to manage and control the business affairs of Transnet except to the extent that the MOI⁴⁶ provides otherwise.
- 3.1. 6 During the procurement of the 1064 Locomotives, various Resolutions, approvals and/or decisions were taken by the Board and/or its Executives in their capacity as Directors and/ or employees of Transnet.
- 3.1. 7 The word “director” is defined in s1 of the Companies Act, to include any person occupying the position of a director or alternate director, by whatever name designated.⁴⁷
- 3.1. 8 Regulation 38⁴⁸ provides that any person, regardless of his/her title, qualifies as a prescribed officer if he/she exercises general executive control or regularly participates materially in the executive management of the company.
- 3.1. 9 With regard to Transnet, it therefore means that any executive manager or member of a committee who made or participated in the decisions, approvals and/or Resolutions in respect of the procurement of 1064 Locomotives would be regarded as a director.
- 3.1. 10 Central to the responsibilities of directors both in terms of the PFMA and the Companies Act, is the duty to act in the best interests of the company at all times.
- 3.1. 11 The duty to act in the best interests of the company entails, among other things, avoiding a conflict of interest between a director and the company.
- 3.1. 12 One of the former directors of Transnet, Mr I Sharma breached his fiduciary duties when he failed to declare a conflict of interest between Mr S Essa and himself whilst acting as a

⁴⁰ Act 9 of 1989.

⁴¹ Listed under schedule 2 of the PFMA.

⁴² s49 (1) of the PFMA.

⁴³ s51(1)(a)(i) of the PFMA.

⁴⁴ Act 71 of 2008.

⁴⁵ s1 of the Companies Act.

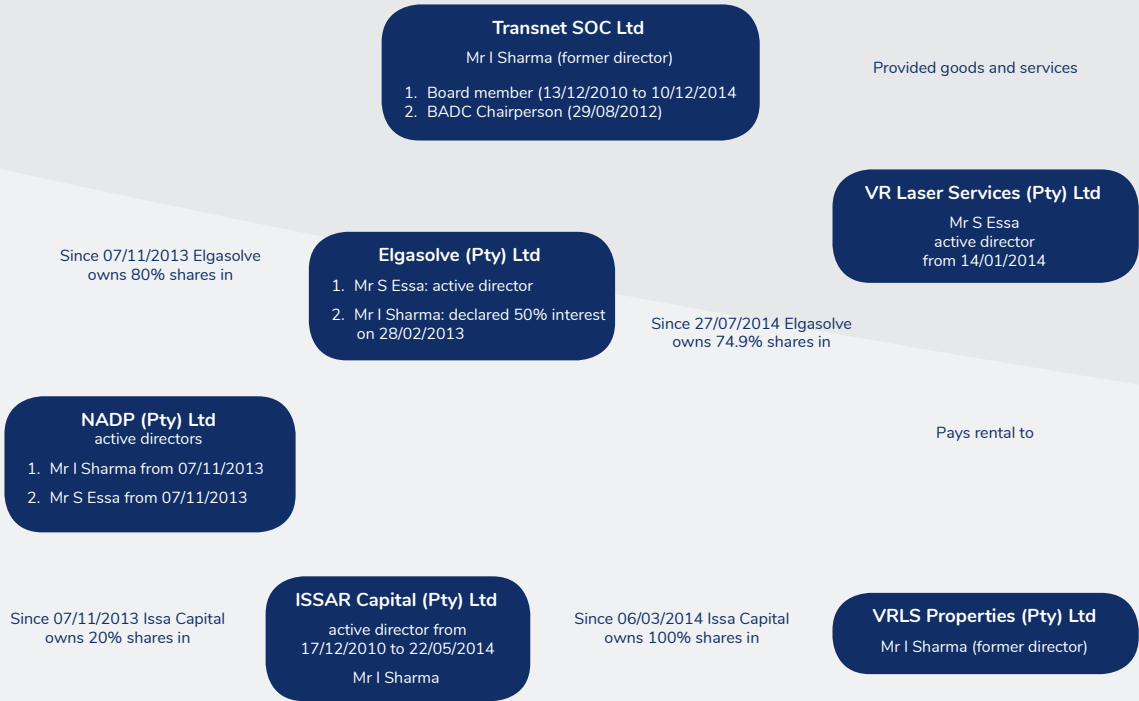
⁴⁶ s1 of the Companies Act defines a Memorandum of incorporation as a document that set out rights, duties and responsibilities of shareholders, directors and others within and in relation to a company.

⁴⁷ The word “includes”, in the definition of the word “director” means that certain persons are to be regarded as directors even though they may be designated by a different name See a definition of a director at “Contemporary Company Law” 2nd Edition, 2012 by Farouk HI Cassim.

⁴⁸ Regulation 38 of the Companies Act.



- director of Transnet and the Chairperson of the BADC as required by the Companies Act.
- 3.1. 13 In 2010, Mr I Sharma was appointed as a director of Transnet and became the Chairperson of the BADC on 29 August 2012, a Board subcommittee that approved all submissions relating to procurement⁴⁹ of the 1064 Locomotives and recommended the appointment of preferred bidders to the Board. The Board relied heavily on the recommendations of the BADC.
- 3.1. 14 On 24 January 2014, the BADC meeting which was chaired by Mr I Sharma recommended to the Board that BT, CNR, CSR and GE be appointed as the four OEMs to manufacture the 1064 Locomotives. Included in the recommendation by the BADC was the split of the award of the locomotives as follows: BT (240 electric), CNR (232 diesel); CSR (359 electric); and GE (233 diesel).
- 3.1. 15 Messrs I Sharma and S Essa were co-directors and shareholders in a number of companies. The diagram below illustrates the business relationships between Messrs I Sharma and S Essa.



- 3.1. 16 The diagram illustrates that:
- (a) from 2013 to 2015⁵⁰, Mr I Sharma was a director of VRLS Properties (Pty) Ltd ("VRLS Properties"), which leased land to VR Laser Services (Pty) Ltd ("VR Laser");

⁴⁹ Part E Exhibit 3, In terms of 2013/14 Delegation of Authority, the prescribed threshold of the Transaction that require the BADC approval was R2 bn.

⁵⁰ CIPC search records that Mr Sharma became a director of VRLS Properties on 09 December 2013 and resigned on 12 October 2015.



- (b) Mr S Essa is a director of VR Laser⁵¹ and a shareholder in Elgasolve (Pty) Ltd (“Elgasolve”);
- (c) Elgasolve currently owns 75% of the shares in VR Laser;
- (d) Mr S Essa is listed as a director of Elgasolve⁵² whilst Mr I Sharma declared a 50% shareholding in Elgasolve on 28 February 2013;
- (e) during 2014, Elgasolve held 80% shareholding in the National Agricultural Development Project Pty (Ltd) (“NADP”). Messrs I Sharma⁵³ and S Essa⁵⁴ are co-directors of NADP;
- (f) the other 20% shareholding in NADP is held by Issar Capital (Pty) Ltd⁵⁵ (“Issar Capital”); and
- (g) Issar Capital in turn holds 100% shareholding in VRLS Properties.

3.1. 17 VR Laser was listed as an active Transnet vendor and had previously done business with Transnet to the value of R200 000.00 per annum. Mr I Sharma derived material benefit from VR Laser on the basis that VRLS Properties received rent from VR Laser.

3.1. 18 Mr S Essa, on behalf of one of his companies, Tequesta, concluded a Business Development Services Agreement⁵⁶ with CSR (Hong Kong) Co. Ltd (“CSR Hong Kong”)⁵⁷ on 18 May 2015 to “provide advisory and consulting services in respect of the Project and to aid Business Development and to assist in achieving the Company’s BEE objectives in the Territory”⁵⁸.

3.1. 19 The “Project”⁵⁹ is defined in the Business Development Services Agreement as “any portion of the Tender for the supply of 359 Electric locomotives (22E) to Transnet SOC Limited, South Africa⁶⁰.” The terms of the Business Development Services Agreement were, inter alia, the following:

- (a) Tequesta would provide various advisory services relating to the acquisition of the 359 locomotives;
- (b) for its services, Tequesta would be paid 21% of the contract value of the 359 locomotives (R3 098 916 720);
- (c) Tequesta would be paid 2% (R362 440 000) of the contract value as a success fee; and
- (d) the payment of the balance of 19%, (R3 443 180 000) would be paid on a pro-rata basis to the milestones achieved.

⁵¹ CIPC search records that Mr Essa is an active director of VR Laser with effect from 14 January 2014.
⁵² CIPC search records that Mr Essa is an active director of Elgasolve with effect from 14 January 2014.
⁵³ CIPC search records that Mr Sharma as an active director of NADP and appointed as such from 07 November 2013.
⁵⁴ CIPC search records that Mr Essa as an active director of NADP and appointed as such from 07 November 2013.
⁵⁵ CIPC search records that Mr Sharma was appointed as a director of Issar Capital on 17 December 2010 and resigned on 22 May 2014.
⁵⁶ Part F Exhibit 4, Business Development Services Agreement, dated 18 May 2015.
⁵⁷ CSR Hong Kong is a related company to CSR SA.
⁵⁸ Clause 3.1 of the Business Development Services Agreement.
⁵⁹ The word “Project” is referred to as “Project 359” in the Business Development Services Agreement.
⁶⁰ Clause 1.1. of the Business Development Services Agreement.



- 3.1. 20 The Business Development Services Agreement further recorded that
- “It is hereby noted and agreed between the parties that the above services are provided as a pre-Project service and will conclude on the Company signing the Contract for the Project. The Company will not require any proof of delivery of the above services since it is understood that the Project would not have materialized without the active efforts of TEQUESTA to provide the services listed above.”⁶¹ (Own emphasis)*
- 3.1. 21 The significance of the clause mentioned above is that it confirms:
- (a) that although the Business Development Services Agreement was signed on 18 May 2015, Tequesta had already rendered the “services” to CSR prior to the conclusion of the Locomotives Supply Agreement with Transnet; and
 - (b) CSR’s acknowledgement that its appointment by Transnet would not have materialised without the active efforts of Tequesta.
- 3.1. 22 The BADC, with Mr I Sharma as the Chairperson recommended to the Board the appointment of CSR⁶² as one of the four OEMs⁶³. The recommendation by the BADC was approved by the Board on 24 January 2014 and Mr I Sharma was present at the meeting⁶⁴.
- 3.1. 23 On 17 March 2014, CSR concluded a LSA with Transnet to manufacture 359 New Dual Voltage Electric Locomotives, which is the exact number of locomotives that was agreed to between CSR Hong Kong and Tequesta. The fact that the Business Development Services Agreement confirms:
- (a) the exact number of locomotives that were awarded to CSR (359);
 - (b) the type of locomotives that were awarded to CSR (electric locomotives);
 - (c) the services rendered by Tequesta pre-date the award of the Tender; and
 - (d) that Tequesta is responsible for CSR being awarded the contract,
- leads to the unavoidable conclusion that the Business Development Services Agreement is tainted with fraud and corruption as it suggests, amongst others, that Mr S Essa on behalf of Tequesta played a pivotal role in ensuring that CSR is awarded the contract despite the competitive procurement process undertaken by Transnet.
- 3.1. 24 Mr I Sharma failed to declare his business relationship with Mr S Essa⁶⁵ whose company was contracted by CSR Hong Kong to provide services for the procurement of the 359 electric locomotives. He failed to declare a conflict of interests and as such, breached his

⁶¹ Pg 19 of the Business Development Services Agreement.

⁶² CRRC E-Loco Supply (Pty) Ltd is the successor in title of CSR, which is the related company or a representative of CSR Hong Kong.

⁶³ Part B Exhibit 7, Minutes of the BADC meeting held on 24 January 2014.

⁶⁴ Part B, Exhibit 1, Minutes of the special Board meeting held on 24 January 2014.

⁶⁵ Mr S Essa is a related person to Mr I Sharma.



fiduciary duties⁶⁶ in that:

- (a) he failed to ensure that the procurement of the 1064 Locomotives complied with s217(1) of the Constitution, in particular “fairness” during the evaluation of the tender Bids;
- (b) Mr I Sharma should have foreseen that his conduct will lead to the irregular award of the tender, in this instance, to CSR;
- (c) he should have foreseen that the irregular award might lead to the LSA between Transnet and CSR being susceptible to judicial challenge;
- (d) the setting aside of the LSA will eventually affect the business of Transnet; and
- (e) he allowed his own interests to prevail over those of Transnet.

3.1. 25 Mr I Sharma’s conflict of interest was also confirmed by PWC in its report to Transnet⁶⁷.

3.1. 26 Section 50 of the PFMA not only imposes fiduciary duties on the Board as a whole, but also on individual members of the Board. The core fiduciary duties which are relevant for purposes of this Report, include the duty to:

- (a) disclose to the Board any direct or indirect personal or private business interest that a member or any spouse, partner or close family member may have in any matter before the Board;
- (b) conduct themselves with fidelity, honesty and integrity; and
- (c) act in the best interests of the company.

3.1. 27 In addition to contravening the Companies Act and the PFMA, Mr I Sharma contravened the following internal governance framework:

- (a) Transnet Code of Ethics (“Code of Ethics”); and
- (b) the Transnet Declaration of Interest and Related Party Disclosure Policy (“DOI”).

3.1. 28 The Code of Ethics requires, inter alia, that non-executive directors:

- (a) refrain from using a position of authority and/or facilities provided by Transnet to further their own interests or that of friends and relatives; and
- (b) disclose any potential conflict of interests.

3.1. 29 The DOI provides guidance to directors and any person occupying the position of a director or alternate director by whatever name designated on their duties to disclose and manage

⁶⁶ s75 of the Companies Act places an obligation on a director who has a personal financial interest in respect of a matter on the Board agenda or where he knows that a “related person” has personal financial interests in the matter.
⁶⁷ Part F Exhibit 5, PWC Draft Report and Presentation, dated 14 June 2017. This report records the interview conducted by PWC with Mr I Sharma on 19 November 2014. The report states that Mr I Sharma failed to declare his interests in NADP and VRLS Properties in his April 2014 declaration. It records that the reason for not declaring his interests in these entities, it was an oversight on his part.



a conflict of interest. The DOI defines a “conflict of interest” as⁶⁸:

“a personal financial interest; or has private interests or personal considerations or has an affiliation or relationship⁶⁹ which affects, or may affect, or may be perceived to affect a directors judgement in acting in the best interests of Transnet⁷⁰”(Own emphasis)

- 3.1. 30 The seriousness of a breach of fiduciary duty has generally been emphasized by the courts throughout the years. In **S v Gardiner and Another 2011 (4) SA 79 (SCA)**, two joint chief executive officers were imprisoned for seven years for breach of their fiduciary duties.
- 3.1. 31 In view of the seriousness of the breach of fiduciary duties relating to the conflict of interest, we recommend the following:
- (a) as an alternative to the Tender being declared irregular, the Board can also institute legal proceedings to cancel the LSA between Transnet and CSR on the basis of the breach of warranties and representations in terms of clause 3.1.7 of the LSA⁷¹;

(b) application in terms of s162(5) of the Companies Act be instituted against Messrs I Sharma and S Essa to be declared delinquent directors;

(c) criminal charges be laid against Messrs I Sharma and S Essa in terms of s34 of PRECCA⁷²; and

(d) an engagement with the Special Investigating Unit and/or other law enforcement agencies to obtain and/or subpoena the relevant documentation or information from foreign entities⁷³ and/or individuals outside the jurisdiction of the Republic of South Africa.

3.2 Approval of the Business Case and Increase in the ETC

- 3.2. 1 During 2012, McKinsey Incorporated (“McKinsey”) was appointed by Transnet to finalize its Business Case.
- 3.2. 2 One of the issues that became a point of contention after the award of the tenders to the OEMs, was whether or not the Business Case included or excluded forex hedging and escalation.
- 3.2. 3 Before the Business Case could be submitted to the Board and subsequently to the Shareholder Minister, it had to be considered and approved by Transnet internal procurement structures. As a result of this process, the Business Case was presented to

⁶⁸ Part E Exhibit 5, clause 4.2 of DOI.

⁶⁹ Includes the connection between any two or more persons who are related or inter-related.

⁷⁰ Clause 5.2 of the DOI defines “Conflict of Interests”.

⁷¹ In terms of clause 3.1.7.1 of the LSA, CSR represented and warranted that:
“to the best of its knowledge, information and belief no material matter exist which might give rise to a civil, criminal, arbitration proceeding any jurisdiction..., which in any such case would affect its capacity to fulfil its obligations, inter alia, under this agreement and/ or any other Project Document to which it is a party”. (Own emphasis)

⁷² Prevention and Combating of Corrupt Activities Act 12 of 2004. s34 of PRECCA places a duty on certain persons to report certain offences relating to corruption. Failure to report such criminal activity is an offence.

⁷³ CSR Hong Kong and Tequesta.

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

AFFIDAVIT

I, the undersigned,

NOMACHULE GIGABA (formerly: **MNGOMA**)

do hereby state under oath that:

1. I am an adult female businessperson residing in Pretoria, Gauteng. I married Mr Knowledge Malusi Gigaba (*“Mr Gigaba”*) on 30 August 2014. Our marriage relationship subsists but we are in the process of getting divorced.
2. All the facts stated in this affidavit are, unless the context indicates otherwise, within my personal knowledge. They are to the best of my knowledge and belief both true and correct.
3. I freely and voluntarily give this affidavit to the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (*“the Commission”*) regarding my knowledge about Mr Gigaba’s involvement and activities on matters that fall within the Commission’s Terms of Reference and areas of investigation. In particular, I deal with my experience and knowledge of Mr Gigaba’s relationship with members of the Gupta family during the time that I have known him. I set out my observations during our visits to the Gupta family home in Saxonwold, Johannesburg (*“the Gupta residence”*), from 2011 to 2018, in which latter year I last met any member of the Gupta family.
4. On 21 and 22 January 2021, the Commission interviewed me.

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5. I am also assisted and advised in this matter by my counsel. My attorneys are Ramushu Mashile Twala (RMT), Attorneys.

THE GOVERNMENT POSITIONS HELD BY MALUSI OVER THE PERIOD FROM 2009 TO 2018

6. Mr Gigaba held the positions tabled below over the years from 2004 to 2018:

No.	Period	Position held
1.	29 April 2004 - 31 October 2010	Deputy Minister: The Department of Home Affairs
2.	1 November 2010 - 25 May 2014	Minister: The Department of Public Enterprises (“DPE”)
3.	26 May 2014 - 31 March 2017	Minister: The Department of Home Affairs
4.	31 March 2017 - 27 February 2018	Minister: The Department of Finance

7. Mr Gigaba told me that he was active in the planning and coordination of election activities for the African National Congress (“ANC”). As I recall, he was at one time the Head of ANC Elections, nationally.

MY RELATIONSHIP WITH MR GIGABA AND THE GIGABA FAMILY

8. I met Mr Gigaba during 2009 when he was the Deputy Minister of the Department of Home Affairs. During 2010, I moved in with him, to his Pretoria home, when we were expecting our first child. Mr Gigaba gave me a credit card for my use, and to be able to buy household items, which was linked to his money market bank account. We married on 30 August 2014.

9. Mr Gigaba’s family home is situated in Mandeni in KwaZulu-Natal.

10. To the best of my knowledge, Mr. Gigaba's sister, Ms Gugu Gigaba, has been employed at Transnet SOC Limited ("*Transnet*") since February 2017 and she is currently a Manager in the Project Management Office.
11. Ms Nozipho Gigaba, Mr Gigaba's sister, at some stage after Mr Gigaba and I were married, lived in our home while she was working at Sahara Computers, a company owned by the Gupta family. Over time, my relationship with Nozipho deteriorated, for reasons which are not relevant for the purposes of this affidavit.

MEETING THE GUPTAS AND VISITS TO THE GUPTA RESIDENCE

12. From the time that I met Mr Gigaba during 2009, when he was the Deputy Minister of the Department of Home Affairs, he would regularly visit persons whom he described as "my advisors" in Johannesburg. According to Mr. Gigaba, he visited "his advisors" to discuss work related matters. At that time, I did not know the identity of "his advisors". I presumed that he was referring to Mr Thami Msomi ("*Mr Msomi*"), whom I understood to be his advisor and Chief of Staff. I had met Mr Msomi before through Mr Gigaba. I am since informed that Mr Msomi was his then Head of the Deputy Minister's Office at the Department of Home Affairs.
13. About 2 to 3 months *before* he took up the position of Minister of the DPE, Mr Gigaba told me when he arrived at home after visiting the Gupta residence that Mr Ajay Gupta (whom he mentioned by name) had told him that he would move from the Department of Home Affairs to the DPE. He was so excited and told me about the portfolio of the DPE. Mr Gigaba was indeed appointed as Minister of the DPE about 2 months later during November 2010. I had not yet personally met Mr Ajay Gupta at the time.
14. Mr Gigaba's visits to his "advisors" became more regular when he became the Minister of the DPE, often more than once per week. When I questioned him as to whether these were his official advisors, he then told me that the Guptas were his unofficial advisors who would advise him in respect of decisions to be made at work and in return he assisted them on certain things.
15. In 2011, during his tenure as Minister of the DPE, I became unhappy with the little time that Mr Gigaba was spending with our children because of his frequent evening visits to his "advisors". Mr Gigaba told me that it was important for him that I meet

“his advisors”. He told me that he would need to take work decisions on the day after his visits to them. He told me that they are responsible for the decisions made at work. He explained to me that as things were happening at work, he needed to report on it to his “advisors”.

16. During the time of sittings of Parliament, Mr Gigaba would usually fly down to Cape Town on a Monday evening or Tuesday morning to attend Parliament and return home on the Thursday evening or Friday morning. During this time, he would inform me of his visits to the Guptas on the Mondays (preceding his trip to Parliament) and on the Friday evenings or sometimes on Saturdays (following his return from Parliament). When Parliament was in recess, the meetings took place on any day of the week following receipt of a telephone call. I understand that it was usually Mr Ajay Gupta who would telephone him.
17. I first met his “advisors” and learnt of their identity during 2011, when Mr Gigaba still held the position of Minister of DPE.
 - 17.1. During late 2011, Mr Gigaba told me that “his advisors” wanted to meet me and our eldest son - who was born during June 2011. Initially, I did not want to go. Mr Gigaba told me that they are his long-time friends and he wanted me to know where he goes when he says that he is going to his “advisors”. I agreed and the meeting took place at the Gupta residence. This was the first time that I met the Guptas. From the meeting I learnt that his “advisors” were the Guptas. At the Gupta residence, I met Mr Ajay Gupta, his wife and their son. There was no formal meeting that took place. Mr Ajay Gupta gifted our son a gold jewellery necklace. I have not seen the necklace since then. According to what Mr. Gigaba would tell me, he would frequently visit the Gupta residence on his own during that year.
 - 17.2. On several occasions during 2012, I would visit the Gupta residence in Saxonwold, Johannesburg, together with Mr Gigaba.
 - 17.3. After I met the Guptas, Mr. Gigaba would tell me that he is either going to meet “my advisors” or “Ajay”.
18. A few months after my second son was born (in December 2012), I visited the Guptas in their residence, upon the invitation of Mr Gigaba, who informed me that the Guptas would like to meet our second child.

19. In 2013, I met persons that Mr Gigaba identified as members of the Gupta family from India one or two days before the Gupta wedding that was held at Sun City. Mr Gigaba told me that he needed to assist the Guptas to welcome and fetch some of their guests at the Waterkloof Airforce base ("*Waterkloof*") who were arriving from India, which I did. Mr Gigaba left me to sit inside the building while he met with the Guptas.
20. On the day of the Gupta wedding, Mr Gigaba called to tell me that he was asked to attend the wedding. I do not know when he received the invitation to the wedding. We packed and were escorted to attend at Waterkloof to receive the Gupta aircraft. When we left Waterkloof, there were many blue light vehicles and metro police. Mr Gigaba and I attended the wedding at Sun City where I briefly met more members of the Gupta family. While at the wedding, I posted on my Facebook a photo of the henna pattern designed on my hand. Mr. Gigaba asked me to remove it from my Facebook postings, as it was generating negative media reporting.
21. I have since been to the Gupta residence on many other occasions in the company of Mr. Gigaba.
22. The procedure each time we attended the Gupta residence was generally the same. We would arrive at the main gate. Mr Gigaba's driver would announce our arrival to the security guard. The driver would be directed where to park. One of the security personnel would escort us into the house and take us to the lounge area before asking us to hand over our cellular phones. Our refreshment, and sometimes meal orders would be taken. Mr Ajay Gupta would arrive to greet me, and after some small talk, he would brief Mr. Gigaba on the meeting that they were about to hold in an adjacent private meeting room. We would often find either Mr Siyabonga Mahlangu ("*Mr Mahlangu*"), Mr Gigaba's former Legal Advisor at the DPE, or Mr Msomi, Mr Gigaba's Chief of Staff at the DPE, or both, at the Gupta residence. Mr Mahlangu would be present more often than Mr Msomi. Mr Gigaba, together with either Mr Mahlangu or Mr Msomi or both if they were present, would enter the adjacent private meeting room.
23. I was often left alone whilst Mr Gigaba attended the private meetings with Mr Ajay Gupta and others in the adjacent private room. I asked Mr Gigaba why I needed to hand over my cellular phone and he told me that it was because the matters that he and others were discussing were confidential as they related to Cabinet, the ANC,

the NEC, and other sensitive matters. It did not make sense to me that I had to hand over my phone because most of the time I was alone while they attended their meetings. Sometimes, I would get bored and fetch my cellular phone to communicate via social media platforms.

24. Apart from Mr Ajay Gupta, Mr Mahlangu and Mr Msomi, I did not see any other attendees of these meetings that Mr Gigaba attended in the adjacent private meeting room. At best, I often heard voices from that room and presumed that there were other attendees present, especially since Mr Ajay Gupta would brief Mr. Gigaba on the meeting that they were about to enter in the adjacent private meeting room. Often, there would be a number of vehicles already parked at the Gupta residence by the time that we arrived, some of which appeared to be official government vehicles with blue lights.
25. As already mentioned, Mr Ajay Gupta would brief Mr. Gigaba in my presence about the meeting that they were about to join. I recall that the topics included a variety of issues including tenders and contract extensions at Transnet; the need to change certain executives and officials at Eskom; matters relating to the cancellation of a South African Airways ("SAA") flight route; and certain people that Mr Gigaba needed to meet prior to a trip to India. I also recall Mr Ajay Gupta talking to a paper dealing with DPE matters to Mr Gigaba that he needed to discuss at the meeting. On one or two occasions, Mr Gigaba reported to Mr Ajay Gupta some of the responses that he had received from Ms Dudu Myeni ("*Ms Myeni*") relating to SAA. I also recall overhearing Mr Ajay Gupta briefing Mr Gigaba about the cancellation of a SAA route between South Africa and Mumbai so that a Gupta airline could deliver the route.
26. At some stage, Mr Gigaba told me that Mr Ajay Gupta wanted him to get rid of Mr Brian Dames ("*Mr Dames*"). Having met Mr Dames, I asked Mr Gigaba why and he said that the Guptas do not like Mr Dames because there are things that Mr Dames was supposed to do but did not do.
27. Our visits to the Gupta residence would usually last about one to one and a half hour from the time that we arrived.

Meetings held at our home*Meeting with the Guptas*

28. During 2013, Mr Ajay Gupta met with Mr. Gigaba at our then official state residence at 266 Auriga Street in Waterkloof, Pretoria. I recall seeing Mr Ajay Gupta at our home at most twice. The meetings took place in an underground room or bunker at our home.
29. Mr Gigaba told me that Mr Ajay Gupta was meeting with him to discuss matters relating to Transnet tenders and the signing of contracts on the one occasion and on the other occasion it concerned an Eskom project that was giving Mr Gigaba 'a headache'.

Meeting with Mr Gigaba's staff

30. Mr Gigaba invited staff from his office at the Department of Home Affairs to our residence prior to a trip to Mumbai and New Delhi, India.
- 30.1. During the last period of Mr Gigaba's tenure as Deputy Minister of Home Affairs, Mr Gigaba complained to me that the Guptas were demanding that he finalise his trip to Mumbai and New Delhi, India.
- 30.2. During or about 2010, I accompanied Mr Gigaba and other government officials on the trip to Mumbai and New Delhi, India. Before the trip, I overheard Mr Gigaba complaining to Mr Ajay Gupta that he could not go on the trip to India because he was still at the Department of Home Affairs; therefore he could not justify a trip to discuss a new flight route between South Africa and India which was a matter that fell under DPE. At a later stage, Mr Gigaba mentioned that he would create an official state visit to India whilst at the Department of Home Affairs so that he could meet the Indian nationals that Mr Ajay Gupta wanted him to meet in relation to the South Africa/Mumbai route.
- 30.3. In India, Mr Gigaba and Mr Msomi attended various meetings. I did not see with whom they met as I was out shopping when they attended the meetings.
- 30.4. Mr Gigaba later told me in 2010 that the Guptas wanted to introduce their own airline to service the Johannesburg/Mumbai flight route and that the Guptas

were demanding that he compel SAA to cancel their Johannesburg/Mumbai route. Mr Gigaba did not support that demand.

PRIOR KNOWELDGE OF APPOINTMENTS IN STATE OWNED ENTERPRISES

31. Mr Gigaba would often tell me that the Guptas wanted certain individuals to be appointed into senior positions at state owned enterprises.

31.1. After one of the 'The New Age Breakfast sessions', Mr Gigaba told me that Mr Brian Molefe ("*Mr Molefe*") was going to be moved from Transnet to Eskom Holdings SOC Limited ("*Eskom*"). I was told this before Mr Molefe was officially appointed to Eskom. He told me that the Guptas wanted Mr Molefe at Eskom and not Mr Brian Dames ("*Mr Dames*").

31.2. Mr Gigaba also told me that Mr Siyabonga Gama ("*Mr Gama*") would be appointed the Chief Executive Officer of Transnet before the appointment was made.

31.3. Mr Gigaba also told me that he intended to speak to Mr Gama to appoint his sister, Ms Gugu Gigaba, to Transnet. To the best of my knowledge, Ms Gugu Gigaba was appointed and remains in the employ of Transnet.

31.4. On many occasions, Mr Gigaba informed me that the Guptas knew and had told him about who would be moved from and appointed to SOE's

TENSIONS RISING

32. As Mr Gigaba's tenure as Minister of the DPE progressed, he often told me that the Guptas were putting pressure on him to take certain decisions with which he did not agree. I recall Mr Gigaba mentioning to me that the Guptas did not like Mr Monwabisi Kalawa, the then SAA Chief Executive Officer, or Mr Dames, the then Eskom Chief Executive Officer. Mr Gigaba enjoyed working with both of them. When I asked Mr Gigaba why he did not stop using the Guptas as his advisors, he told me that he could not. There were several times when Mr Gigaba would get upset and tell me that he did not want to but needed to go meet the Guptas as he needed to 'report back' to them on certain matters. He was also upset that they were making unreasonable demands on him.

33. During early 2014, Mr. Gigaba's relationship with the Guptas began to appear strained. The Guptas wanted Mr Gigaba to get rid of Mr Dames as the Chief Executive Officer of Eskom because Mr Dames was not doing what the Guptas wanted him to do for them at Eskom. However, Mr Gigaba did not agree with the Guptas' instruction. Mr Gigaba then started avoiding phone calls from the Guptas. When Mr Gigaba ignored the phone calls, the Guptas would send Mr Msomi to speak to him and Mr Gigaba would then agree to meet with them. Mr Ajay Gupta would regularly call Mr Gigaba and demand that he attend the Gupta residence to meet certain people. This upset Mr Gigaba because he would have to cancel his planned official appointments in order to do so. Mr Gigaba also told me that Mr Ajay Gupta told him that if he wanted to run the DPE as he wished, he would be moved back to the Department of Home Affairs. I understand that Mr Ajay Gupta would often tell Mr Gigaba that he should remember why he was appointed at the DPE.

Mr Gigaba's relationship with Ms Dudu Myeni ("*Ms Myeni*")

34. When Mr Gigaba was appointed as the Minister of the DPE, he had a close working relationship with Ms Myeni. Ms Myeni facilitated our honeymoon trip to Mauritius. He would often meet her at the Sheraton Hotel for lunch and thereafter he would go to the Gupta residence.
35. At a later stage, Mr Gigaba informed me that there was some disagreement between him and Ms Myeni about certain decisions pertaining to the direction of SAA, which resulted in tensions between them.
36. Mr Gigaba and Ms Myeni began to disagree on many aspects relating to matters concerning SAA, including the issues regarding the cancellation of the SAA Johannesburg/Mumbai flight route.
37. On Sundays, Mr Gigaba and I would regularly have lunch in Sandton. While driving to return home, I would overhear Mr Gigaba's telephone discussions with Ms Myeni. He would sometimes share the detail of such discussions with me which would include that:

- 37.1. he did not understand why Ms Myeni had been appointed as the Chair of SAA because he did not believe her to be competent for that position;
- 37.2. Ms Myeni would feed information to the former President without telling him about it;
- 37.3. when Mr Gigaba did not want to follow the instructions of Mr Ajay Gupta or Ms Myeni, one or other would phone the former President to complain about him. Ms Myeni would then pass on instructions from President Zuma to Mr Gigaba which would upset him. Mr Gigaba believed that he should have had a direct line of communication to the former President and not receive instructions via Ms Myeni because he did not report to her.
38. Ms Myeni told Mr Gigaba that if he did not do as he was told, he would go back to the Department of Home Affairs.

Mr GIGABA'S RETURN TO THE DEPARTMENT OF HOME AFFAIRS

39. On 26 May 2014, Mr Gigaba was transferred back to the Department of Home Affairs as Minister.
40. Mr Gigaba did not believe that the former President would transfer him back to the Department of Home Affairs because he believed that they shared a very close relationship.
41. Mr Gigaba therefore appeared very shocked and hurt when his transfer was announced after the 2014 elections. The former President told Mr Gigaba, in front of the ANC Top Six leaders, that the reason he was being moved back to Department of Home Affairs concerned the strengthening of border controls. But Mr Gigaba knew that that was not the reason. Mr Gigaba told me this when he came back from his meeting with the President at which he was notified of his redeployment to the Department of Home Affairs. Mr Gigaba did not say anything in response in front of the others who were present at the meeting.

THE GUPTAS' APPLICATIONS FOR SOUTH AFRICAN CITIZENSHIP

42. During Mr Gigaba's term of office as Minister of the Department of Home Affairs, he informed me that he was assisting some of the Gupta family members to obtain citizenship in South Africa. He said that the Guptas were conducting business in South Africa and that they needed their family then living in India to be in South Africa.
43. One day in 2015, Mr Gigaba came home with blank official documents in a brown envelope that he informed me the Guptas needed to sign. I went with him to the Gupta residence and on arrival Mr Ajay Gupta greeted us. Mr Gigaba went with Mr Ajay Gupta into a separate room carrying the same brown envelope. When we left the Gupta residence to go home, Mr Gigaba carried the same brown envelope with him. The next morning, Mr Gigaba called me to ask about the whereabouts of the brown envelope. He asked me to look for the brown envelope at home. Later that same day, he called again to inform me that he had found the brown envelope in the boot of his official car.
44. It is publicly known that Mr Gigaba, during his term as Minister of the Department of Home Affairs, had approved the early naturalisation of members of the Gupta family.

MALUSI GIGABA'S TRANSFER FROM THE DEPARTMENT OF HOME AFFAIRS TO THE DEPARTMENT OF FINANCE

45. On or about 30 March 2017, whilst Mr Gigaba and I were attending a fashion show and gala dinner in Cape Town, he received a telephone call on his cellular phone. He left the venue to take the call. When Mr Gigaba returned, he told me that we needed to leave the function immediately. In the car, he informed me that the call that he had received was from the former President. The former President had informed him that he had decided to reshuffle his Cabinet and that Mr Gigaba would be appointed as the Minister of Finance.
46. This change in Mr Gigaba's portfolio appeared to upset him very much. He informed me that the former President told him that he initially wanted to appoint Mr Molefe as the Minister of Finance but finally decided to appoint him (Mr Gigaba) at the request of the other NEC members.

47. By the time that Mr Gigaba moved to the Department of Finance, his relationship with the Guptas had deteriorated and the visits to the Gupta residence had become infrequent.

GIFTS, CASH AND BENEFITS RECEIVED FROM THE GUPTAS

48. Over the years, Mr Gigaba had received cash and various gifts and benefits, discussed below, from the Guptas. This is apart from the gold jewellery necklace that Mr Ajay Gupta gave to our eldest son on the first occasion that I met him during 2012. I do not know if Mr Gigaba ever declared the jewellery gift to the DPE.

Gifts

The white 3-series BMW motor vehicle ("the BMW")

49. A few months before Mr Gigaba took office as Minister of the DPE, Mr Ajay Gupta gave Mr Gigaba the BMW. Mr Ajay Gupta handed over the BMW to Mr Gigaba, in my presence, at the offices of Sahara Computers in Midrand. I later used the BMW as my private vehicle. The registration of the BMW was eventually transferred into my name from a name unfamiliar to me. Mr Gigaba informed me that he had given the car to one of his friends for repairs to one of the lights, but the car was never returned.

Cash and benefits

Wedding gifts of cash

50. Mr Gigaba and I married on 30 August 2014. I did most of our wedding planning. We invited both the former President and the Guptas but none of them attended. Mr Molefe was invited and did attend.
51. Mr Gigaba informed me that, as a wedding gift, the Guptas gave him a cash donation towards the cost of the wedding in addition to paying for the cost of a honeymoon in Dubai. I do not know how much money the Guptas in fact gave.

52. I estimate that our wedding cost between R4 million to R5 million. I paid all the wedding expenses, including caterers and other suppliers, in cash from the bundles of cash that I received from Mr Gigaba

Cash collected from the Gupta residence

53. Mr Gigaba had two Close Protection Officers ("CPO") who accompanied him in the same vehicle. I knew his lead CPO named Lawrence (I think his surname was 'Mahlalele') ("Lawrence") very well.
54. On several occasions that we attended the Gupta residence, I personally observed Mr Gigaba leaving the adjacent private meeting room, where the meetings were held, to request that his cellular phone be brought to him. He would call one of his CPOs to bring his leather bag, kept in the boot of his official vehicle, to the front door of the residence, where he would collect the leather bag. Mr Gigaba would carry the bag into the private meeting room and, a short while later, he would emerge with the bag to carry it out of the residence for the CPO to place it in the boot of his official vehicle. I recall that Mr Gigaba had two of those leather bags. I attach similar examples of these bags obtained via an Internet search as **Annexures "A" and "B"**.
55. I subsequently learnt that the leather bags contained bundles of cash notes.
- 55.1. There were several occasions when Mr Gigaba and I would go to Sandton City immediately after visiting the Gupta residence. At Sandton City and in my full view, Mr Gigaba would take bundles of cash notes out of the same leather bag that he had brought out of the Gupta residence and which had been placed in the boot of his official vehicle, for handing to Lawrence to pay for his suits purchased at HTK Sartoriale ("the HTK store").
- (a) When Mr Gigaba purchased suits from the HTK store, suits would be kept aside for him from which he would make a selection. He would leave the HTK store with the suits and inform the sales person that one of his protectors would return to pay for it.
- (b) Mr Gigaba sometimes shopped at the Fabianni store in Sandton City when I was with him. He paid in cash for clothing that he bought there.

- 55.2. On several occasions, I had also personally observed Mr Gigaba transferring money from his brown and black leather bags into his brown leather personal carry bag. I attach a similar example of the personal carry bags obtained via an Internet search as **Annexure "C"** and **"D"**. He would later use the cash from his personal carry bag to pay for our meals at restaurants.
- 55.3. Apart from a Louis Vuitton handbag bought in Sandton City which Mr Gigaba paid in cash, he did not typically buy gifts for me with the cash collected at the Gupta residence. He told me to use the credit card, up to no more than a R100,000 monthly credit limit, that he gave to me years before. This card was linked to his money market bank account. He did, however give me cash of between R100,000 to R150,000 for shopping when I holidayed overseas.
56. About one week after the Gupta wedding held at Sun City during 2013, Mr Gigaba and I visited the Gupta residence. On our return home, the CPOs took the bags from the boot of his official vehicle and placed them in the lounge, as usual, including the leather sports bag (**Annexure A**) that Mr Gigaba had brought out of the Gupta residence during our visit there. Mr Gigaba took the sports bag to his study and I went to check on our children. On learning that our second child was very ill, I rushed to Mr Gigaba in the study to tell him that we needed to take our child to hospital immediately. On opening the door of the study without knocking, I found Mr Gigaba unpacking bundles of cash, in denominations of R100 and R200 notes, and placing them in his safe. I was shocked to see all the money and asked him what the money was for. He told me that Mr Ajay Gupta gave the money to him and that it was to assist the ANC in its upcoming 2014 Election Campaign. I knew that Mr Gigaba was involved in the planning and coordination of ANC election activities, being deployed at least once to Mpumalanga, and that he was involved in the purchase of campaign T-shirts and posters.

Ms Nozipho Gigaba: Payment of her bad debt and employment at Sahara Computers

57. During 2013, Mr Gigaba's father called us to a meeting at their family home in Mandeni in KwaZulu Natal. Following a private discussion that Mr Gigaba had held with his father, he told me that his father had asked him to assist his sister, Ms Nozipho Gigaba, to settle a R850,000 bad debt in her name. Mr Gigaba told me that when we returned home, he would ask Mr Ajay Gupta for the money.

58. At a later stage, Mr Gigaba told me that Mr Ajay Gupta had agreed to give him the R850,000 and that Mr Mahlangu would collect the initial amount of R425,000 for payment towards the debt. He also told me that Mr Mahlangu would assist the family with the process to have his sister's name removed from an adverse listing by credit bureaus. I was informed that the name was removed from credit listing.
59. The Guptas had also employed Ms Nozipho Gigaba in a marketing position at Sahara Computers. As far as I know, she did not work there for very long before leaving their employ.

Cash for renovations to Mr Gigaba's home on the family plot

60. During Mr Gigaba's tenure as Minister of the DPE, he told me that he wanted to extend his two bedroom flat situated in front of the main house on his family's plot in Mandeni, KwaZulu Natal. A bigger house would better accommodate our family and manage family politics.
61. Mr Gigaba contracted his brother-in-law, (*"the builder"*), to do the building renovations. I learnt that Mr Ajay Gupta funded the building renovation when one day Mr Gigaba told me that he was going to get the money from Mr Ajay Gupta to pay the builder. He later called that same day to tell me that he was flying to KwaZulu Natal immediately to pay the builder. I do not know the cost of the building renovations but the completed structure, which took a few months to build, consisted of three bedrooms, two bathrooms and a lounge area.
62. I was present on at least three occasions when Mr Gigaba paid the builder in bundles of cash for the tiling and plumbing. I do not know how much money was given.
63. Despite assurances that Mr Gigaba gave to me, I do not know if he officially declared any of the gifts, cash or benefits to the ANC and to the relevant government authorities.

THE GUPTA MONEY COUNTER

64. In one of the visits to the Gupta residence, when Mr Gigaba was still Minister of DPE, we attended a function at the Gupta residence, Mr Ajay Gupta took us on a tour of one of the newly renovated houses in the Gupta compound. We were part of a small group of people who were unknown to me. He showed us a room that had been converted into a small cinema and in another area, I saw a sauna.
65. At one area, I saw a device which looked like a small version of an Automated Teller Machine ("ATM"). Mr Ajay Gupta demonstrated how it operated by punching an amount on the keyboard of the machine, which was R10,000 if I recall correctly, and it dispensed the cash notes in denominations of R100 and R200.

CONFISCATING MY DEVICES TO DESTROY POSSIBLE EVIDENCE

66. During February 2020, I asked Mr Gigaba for a divorce. Without expanding on the details surrounding the personal circumstances of my request for a divorce, I bring the following to the attention of the Commission:
- 66.1. Mr Gigaba asked me to delay the divorce proceedings until after he appears before the Commission.
- 66.2. Around June 2020, Mr Gigaba asked me for all of my electronic devices because he had brought someone to our home, whom he introduced as an IT expert, to delete certain information from all of my phones, iPad and laptop ("my devices"). I refused to hand over my devices. This made him visibly upset. On querying what information needed to be deleted, Mr Gigaba stated that certain pictures and information on my gadgets could be used to prove that he had visited the Guptas regularly which would contradict his answers in Parliament to the questions put to him by the Economic Freedom Fighters Members of Parliament. He said that he did not want the same to happen to him as had happened to Mr Molefe during the Public Protector investigation - which had used his cellphone records to prove that he had visited the Gupta residence. He was also particularly concerned to delete any photographs that I had taken on our trip to Mumbai and New Delhi in India, photographs of our honeymoon

trips to Mauritius and Dubai and my private trips to Dubai. I did not hand over my devices.


- 66.3. Mr Gigaba also asked me not to speak to the Commission nor the law enforcement agencies about Gupta visits, the cash and the gifts.
- 66.4. On Thursday, 18 June 2020, a domestic incident occurred at our home. On or about Wednesday, 24 June 2020, Mr Gigaba called me into the living area where I met Captain Mavuso and Sergeant Ntabambi of the HAWKS. They demanded my two iPhones, my old Huawei phone, my iPad and my MacBook and knew exactly where to locate each gadget in various parts of our home. They refused my right to legal representation. They demanded all the usernames and passwords for the devices, all details of my email and social media accounts, making me test each one in their presence. When the confiscated gadgets were later returned to me, all photographs and emails relating to my trips overseas, visits with the Guptas, and other information were deleted from the devices.
- 66.5. The events of 18 June 2020 and subsequent are contained in court papers, under the case Gigaba v Minister of Police and Others (43469/2020) whose judgment appears under [2021] ZAGPPHC 55 (11 February 2021). The papers can be made available if required.

LOSS OF PERSONAL PASSPORTS

66. On my return from Durban on 1 March 2021, I discovered that mine and my children's personal passports are missing, and not where I had left them. I found only an empty passport cover for my passport. I also discovered that copies of my passport that I had made earlier and kept them in my drawer were also missing.
67. I confronted Mr Gigaba about the whereabouts of my children's passports and mine later that day, and he denied having seen them. I believe that the theft of my children's passport and mine was to conceal evidence of a trip that we took to Mauritius.


DEPONENT

I certify that the deponent who acknowledges that she knows and understands the contents of this affidavit; that it is the truth to the best of her knowledge and belief and that she has no objection to taking the prescribed oath and regards same as binding on her conscience; and the administration of the oath complies with the Regulations published under Government Notice R1258 in Government Gazette 3619 of 21 July 1972, as amended. This affidavit is signed and sworn to before me at SANDTON on this 06th day of **MARCH** **2021**.


COMMISSIONER OF OATHS
EX OFFICIO:
FULL NAMES:

GUGULETHU OSCAR MADLANGA
~~PHYSICAL ADDRESS:~~
~~PRACTISING ATTORNEY~~
~~COMMISSIONER OF OATHS~~
~~MADLANGA & PARTNERS INC~~
~~ATTORNEYS~~
~~THE OFFICES OF HYDE PARK~~
~~DESIGNATION:~~
~~1ST FLOOR, STROUTHOS PLACE~~
~~HYDE PARK, JOHANNESBURG.~~
~~P.O. BOX 522118, SAXONWOLD, 2132~~

A



Sam
N.Y.

B



Sam
N.Y

C



60m
N.Y

D



Sam
N.Y

Report on the laundering of Regiments' proceeds of
contracts alongside McKinsey for the benefit of Essa /
the Guptas

13 November 2020



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

13 November 2020

REPORT ON THE LAUNDERING OF REGIMENTS’ PROCEEDS OF
CONTRACTS ALONGSIDE MCKINSEY FOR THE BENEFIT OF ESSA /
THE GUPTAS

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Annexures

Annexure Number	Description
Annexure 1	Joint McKinsey / Regiments proposal to Transnet for the Coal Line contract (GSM/14/04/1037) June 2014
Annexure 2	Joint McKinsey / Regiments proposal to Transnet for the NMPP contract (GSM/14/04/1040) June 2014
Annexure 3	Regiments email to McKinsey 13 June 2014
Annexure 4	Regiments Spreadsheet SD Calculation-Feesper Mck.xlsx attached to email to McKinsey 13 June 2014
Annexure 5	Regiments ledger accounts summary for the Advisory unit for the 2015/16 financial year
Annexure 6	Extract from Regiments Advisory Invoice Tracking spreadsheet 7 December 2015
Annexure 7	Email from Wood to Singh 18 May 2015
Annexure 8	Email from Wood to Pita 5 August 2015

1. Introduction

1. The Commission’s report on Vikas Sagar’s relationships with Regiments, Trillian, Iqbal Sharma and Salim Essa (“Essa”) shows how Essa orchestrated the incorporation of Regiments Capital (“Regiments”) as McKinsey’s supplier development partner at Transnet in 2012.
2. Niven Pillay (“Pillay”) and Litha Nyhonyha (“Nyhonyha”) of Regiments have repeatedly testified in civil litigation that the original arrangement reached between Regiments and Essa in this regard was that an entity nominated by Essa would receive 30% of all amounts received by Regiments flowing from its position as McKinsey’s supplier development partner at Transnet and an additional 5% would be paid to Albatime (Pty) Ltd, the company of Kuben Moodley (“Moodley”) who had introduced Regiments to Essa. It is not clear whether this

30% / 5% arrangement was ever implemented by Regiments. The cash flows analysed by the Commission show that the arrangement actually implemented by Regiments for most of the lifespan of its relationship with McKinsey was that Essa's entities were ordinarily paid 50% of Regiments' revenue from Transnet with Albatime being paid 5% of the Transnet revenue (leaving Regiments with only 45% of the Transnet revenue). Pillay and Nyhonyha suggest that this was the product of a later agreement reached by Eric Wood ("Wood") of Regiments with Essa without consulting them.

- 3. In some cases, Regiments' laundering arrangements with Essa and Albatime on joint McKinsey / Regiments contracts with Transnet were fraudulently presented by Regiments in joint McKinsey / Regiments bid submissions as Regiments' supplier development arrangements. In other cases, the laundry payments were made without any pretext for such payments in the proposals submitted by McKinsey / Regiments.
- 4. Through these laundry arrangements, hundreds of millions of rands were laundered through shell companies nominated by Essa out of fees paid by Transnet to Regiments on McKinsey / Regiments appointments at Transnet.

2. Findings

- 5. Regiments has publicly admitted that it had an arrangement with Essa and Moodley that they paid Essa and Albatime 50% and 5% respectively of the income they received from Transnet in respect of contracts on which they worked alongside McKinsey. They claim that these payments were "business development" fees due to Essa who introduced them to McKinsey and to Moodley who introduced them to Essa. (Regiments also paid these fees to Essa and Albatime on a range of public sector contracts that did not involve McKinsey, but these are not relevant for present purposes).
- 6. The "business development" fees paid to Essa were simply money laundering payments. The shell companies designated by Essa to receive these "business development" fees changed over time. They included
 - a. Chivita Trading (Pty) Ltd;
 - b. Homix (Pty) Ltd;
 - c. Forsure Consultants (Pty) Ltd;
 - d. Fortime Consulting (Pty) Ltd;
 - e. Medjoul (Pty) Ltd;

- f. Haustaff (Pty) Ltd; and
 - g. Maher Strategy Consulting (Pty) Ltd.
7. All of these shell companies operated as out and out money laundering vehicles without any legitimate business activities. Revenue received from Regiments by these shell companies was, within days, laundered on to lower level money laundering entities. Apart from inflows from Regiments and other corrupt associates of Essa and the Guptas, the shell companies had no income. Apart from outflows to lower level laundry entities, the shell companies had no expenses of consequence. None of the shell companies paid PAYE (employees' tax) to SARS.
8. The joint McKinsey / Regiments proposals in June 2014 for the Coal Line contract (GSM/14/04/1037) (**Annexure 1**) and the NMPP contract (GSM/14/04/1040) (**Annexure 2**) stated that Regiments would be using Homix and Albatime as supplier development partners.
9. The Coal Line and NMPP contracts were awarded to McKinsey and Regiments without any competitive bidding process. At the same time, Transnet also awarded to McKinsey and Regiments, without any competitive bidding process, contracts for the Kumba Iron Ore (GSM/14/04/1038) and Manganese (GSM/14/04/1039) contracts.
10. In the context of preparing joint proposals for these four contracts, Regiments emailed to McKinsey on 13 June 2014 a spreadsheet containing a detailed breakdown of fees that were to be paid by Regiments to Homix and Albatime in their guise as supplier development partners of Regiments on the four contracts (**Annexure 3**). The spreadsheet attached to Regiments' email of 13 June 2014 provided for aggregate amounts in excess of R100 million to be paid to Homix and Albatime on the four contracts (**Annexure 4**).
11. McKinsey has confirmed through David Fine's statement to Parliament that neither Homix nor Albatime were involved in providing services on any project in which McKinsey were involved. However, as is detailed below, millions of rands were paid to Homix and Albatime from the amounts paid by Transnet to Regiments in respect of these four contracts and other Regiments / McKinsey contracts at Transnet. Fine has testified that he was unaware of any payments made by McKinsey to Homix and Albatime. The Commission accepts that, with the possible exception of Vikas Sagar, no person at McKinsey would have been aware of the payments to Homix and Albatime that actually did take place from amounts paid by Transnet to Regiments in respect of the relevant contracts, despite the fact that neither Homix, nor Albatime, provided any services on these contracts.
12. In February 2016, Regiments produced an internal valuation of its Advisory unit for the purposes of determining what payments should be made between Wood and Pillay and Nyhonyha when Wood, with a 32% interest in Regiments, took the Advisory unit with him to

Trillian but gave up his interest in all other business units within Regiments. In the course of that exercise, Regiments generated a ledger accounts summary for the Advisory unit for the 2015/16 financial year (**Annexure 5**). That summary listed aggregate payments to Albatime and Essa's laundry entities under the column "BD Payments". It showed that Regiments had paid total payments to these "business development partners" of R274 154 718.11 in the financial year, including payments aggregating over R100 million on contracts alongside McKinsey.

- 13. Regiments maintained a running reconciliation of the payments it had received from Transnet and the corresponding payments it had made to Essa's laundry entities and Albatime. The spreadsheet containing this reconciliation was named "Advisory Invoice Tracking". The copy of the Advisory Invoice Tracking spreadsheet generated on 7 December 2015 (**Annexure 6**) shows that these laundry payments included payments on every contract with McKinsey, and that, in addition to the payments in the 2015/16 financial year, just under another R90 million worth of laundry payments had been made in respect of Regiments / McKinsey contracts in the 2014/15 financial year.
- 14. Regiments forwarded copies of the "Advisory Invoice Tracking" spreadsheet to Anoj Singh ("Singh") when he was CFO of Transnet (see for example **Annexure 7** - email of Wood to Singh on 18 May 2015) and to his successor as Transnet CFO, Garry Pita ("Pita") (see for example **Annexure 8** - email of Wood to Pita on 5 August 2015). The CFO's of Transnet were aware of the payments being made by Regiments to Essa's laundry entities.

3. Conclusions

- 15. Over the period March 2014 to February 2016, Regiments paid hundreds of millions of rands to money laundering vehicles designated by Essa in return for his role in corruptly procuring their appointment to contracts with State Owned Enterprises.
- 16. More than R200 million of these laundry payments derived from fees paid to Regiments on contracts where they worked as McKinsey's supplier development partner at Transnet. Laundry payments were also made by Regiments to an Essa shell company from the fees paid to Regiments on the SAA contract where it worked alongside Regiments.
- 17. In some of its joint proposals with McKinsey, Regiments fraudulently provided for these laundry payments by describing Essa's laundry vehicle, Homix, as Regiments' supplier development partner.
- 18. A detailed breakdown of the laundering fees was provided by Regiments to successive Transnet CFOs, Singh and Pita.

Annexure 1

RFP GSM/14/04/1037:
Provision of Professional
Services to Support Transnet
in Increasing the Coal Line
with a breakthrough of 2Mt
(two million tonnes) per week
for a period of 12 months

Transnet

Closing date 17 June 2014 June 2014 @ 12:00

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CONFIDENTIAL

Memorandum to
The Secretariat, Transnet Acquisition Council

RFP GSM/14/04/1037: Provision of Professional Services to Support Transnet in Increasing the Coal Line with a breakthrough of 2Mt (two million tonnes) per week for a period of 12 months

McKinsey & Company and Regiments Capital are pleased to submit this proposal in response to Transnet’s solicitation regarding the provision of professional services to support Transnet in increasing the coal line with a breakthrough of 2mt (two million tonnes) per week for a period of 12 months (RFP GSM/14/04/1037)

This memorandum outlines our proposed approach and credentials, and should be read in conjunction with the attached exhibits. Please do not hesitate to contact us if you require clarification or further information.

This main proposal document is structured into six sections:

- Our understanding of the situation and importance of coal volumes
- Our value proposition
- Our approach
- Our team
- Proposed project governance
- Our supplier development commitments

Professional arrangements are included in a separate document within the proposal attachments.

OUR UNDERSTANDING OF THE SITUATION AND THE IMPORTANCE OF THE COAL VOLUMES

Transnet is now in the third year of its Market Demand Strategy (MDS). This strategy defines Transnet’s growth plans across all operating divisions and includes a number of ambitious targets:

- Invest more than R300bn in order to grow its volumes by more than 70% by 2019/2020, including commodities export and domestic coal, iron ore, manganese and containers
- Contribute 5% to total GDP by 2019/2020
- Help create ~580,000 jobs per year economy wide by 2019/2020
- Enable ~R240bn a year in export revenue by 2019/2020 through global thermal coal supply, iron ore exports to China, and becoming the world’s largest exporter of manganese

Achieving the MDS requires simultaneous infrastructure investment and volume growth to create the cashflow required to fund the infrastructure. Given the cashflow-funded nature of this strategy, shifting customer expansion plans and delays to individual infrastructure projects that enable volumes can have a dramatic effect on Transnet’s finances, including its ability to stay within board-mandated cash interest cover and gearing parameters. Current risk estimates indicate that Transnet faces a capital funding gap in 2014/2015 of approximately R24bn.

EXHIBIT 1

Risks facing Transnet’s capital programmes will affect volumes and cash available for investment

VERSION AS AT JULY 2013

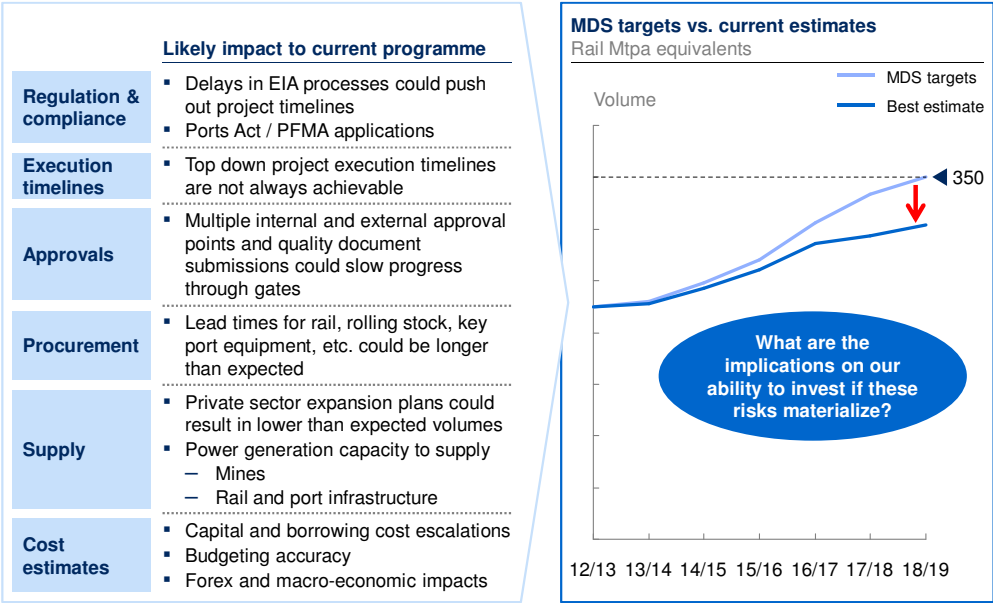


EXHIBIT 2

Even if Transnet delivers original Corporate Plan volumes, it will breach CIC and Gearing parameters through 2018

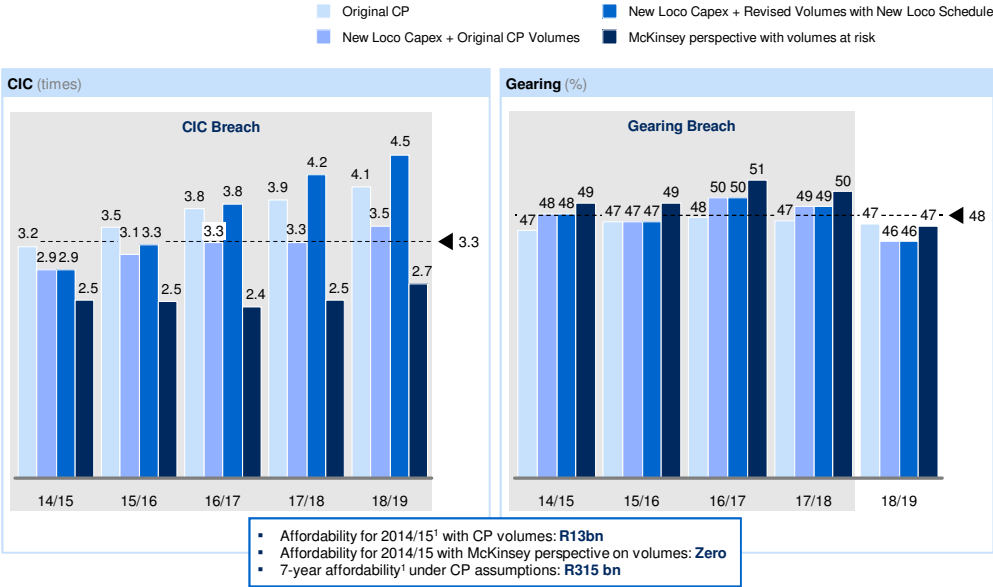
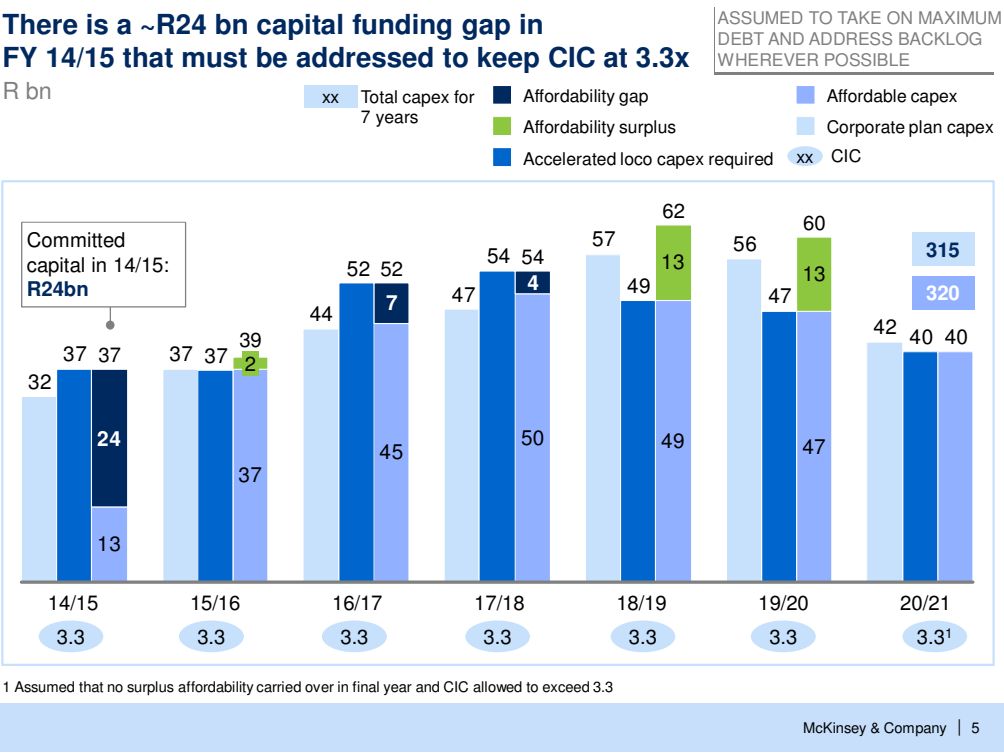


EXHIBIT 3

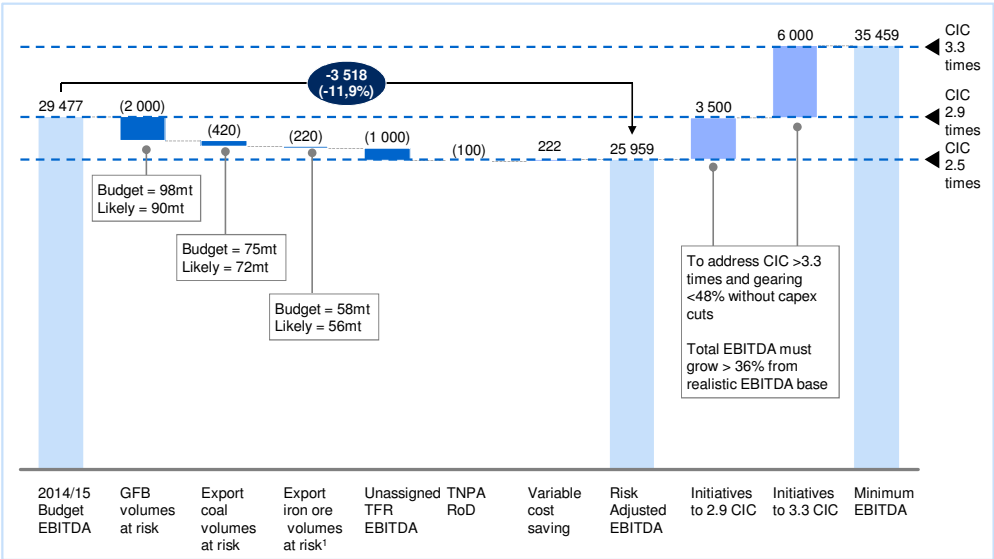


In order to mitigate this risk, Transnet is urgently seeking levers to generate additional cash flow from its existing businesses. Currently, Transnet is targeting R9.5bn in EBITDA initiatives, including additional volumes from the coal line.

EXHIBIT 4

EBITDA initiatives of R9.5bn are required to remain within financial parameters

R million, 2014/15



Therefore, the Coal business unit has set a stretch target for export volumes of 77Mt and for domestic volumes of 19Mt in 2014/15. While the early weeks of the year were very successful, the Export Coal line has since struggled with challenges that have caused its performance to fall below target:

- Following the annual infrastructure maintenance shutdown, there have been a range of locomotive and infrastructure-related disruptions that have slowed volumes to RBCT
- Persistent cable theft has caused numerous failures of the OHTE system, necessitating the use of Diesels and slowing traffic
- Resource constrains e.g. shortages of locomotives resulted in Transnet Freight Rail (“TFR”) being unable to capitalise on demand from mines
- Variations in the timing of trains arriving at Ermelo and issues with the reliability of the infrastructure entering and leaving Ermelo yard has made it difficult to realize the target number of Shongololos and their anticipated improvement in cycle times

The Coal business unit currently has a budget of 75Mt in Export Coal and 17Mt Domestic Coal in 2014/2015, though based on performance registered in the

second half of 2013/2014 and the first two months of 2014/2015, these figures may be aspirational. To bridge the gap between current performance and the required target, Transnet has asked for dedicated external support.

OUR VALUE PROPOSITION

McKinsey & Company

McKinsey and Company is uniquely positioned to help Transnet deliver additional volumes on the coal line:

- McKinsey has twice assisted Transnet in driving coal line operations previously (in 2005 and 2009), each time resulting in 15-20% operational improvement gains
- Our previous work has given us a clear indication of which levers are most likely to create impact (see Our Approach section below), which will allow us to start working with the Coal line team to drive change from day one
- In addition to our experience helping Transnet, we have also served many rail clients globally, and will bring this expertise to bear. Experts that will support our work with you are listed below, with detailed CVs available in the supporting Powerpoint exhibits:
 - Catherine O’Connor, Kevin Neher and Mike Crowley (North America-based rail operations and maintenance experts)
 - Gregoire Hirtz, Jurgen Muller, Anselm Ott (Europe-based rail operations and maintenance experts)
 - Prashant Jani (India-based rail scheduling expert)
 - Jan Weydringer (South Africa-based Mine/Rail and Rail/Port interface expert)
 - Marc van Olst and Pravesan Govinder (South Africa-based rail operations experts, including previous experience serving Transnet on coal line operations)
- Beyond rail operations experience, McKinsey has helped Transnet craft the implementation plans for the MDS, created the Results Management Office to support the execution of required initiatives, and worked with you to build the Group Capital Integration and Assurance function to improve effectiveness, transparency and accountability in capital spending. No other third party has such a detailed understanding of Transnet’s strategy, its current operational

concerns, and its uniquely complex links between cashflow and capital planning

- From a market perspective, McKinsey also understands the economics of the global and local coal industry in detail, including strategic trends, and has supported Transnet on multiple occasions in validating its demand forecasts for commodities including coal

Regiments Capital

Regiments Capital is also uniquely placed to assist Transnet on the Coal line:

- Regiments has conducted several engagements at Transnet in Strategy formulation, Financial Risk Management, Business Case validation, Programme Management Office design and Transaction Advisory Service.
- Through its Consulting division, Burlington Strategy Advisors, Regiments Capital has been involved in operational improvement assignments in numerous industries, from high volume industrial manufacturing to underground mining and banking.
- Regiments take a heavily analytical yet practical approach to identifying opportunities for improvement. Its product offerings include overhead and input cost optimisation, optimal equipment and resource utilisation and process re-engineering.

OUR APPROACH

Achieving breakthrough performance in 2014/2015 will not be easy. Technical solutions alone are likely to fall short because they do not consider the bigger picture, for example. Achieving sustainable volume increases will require solutions that address technical systems, the management systems, and mindsets and behaviours.

Based on our experience in rail operations and with the Coal line in particular, we have identified 18 levers (13 technical and 5 management levers) that are likely to allow the Coal line to deliver the appropriate volume. In addition to the technical levers shown below, success depends on effective management systems: collaboration across the coal line, effective and easy to use tools, such as control tower and performance dashboards, and filling critical vacancies and roles. In the longer term, we must also focus on mindsets and behaviours: clear and shared direction, personal motivation and management behaviours.

We will review and refine this set of levers through a rapid re-baselining phase.

EXHIBIT 5

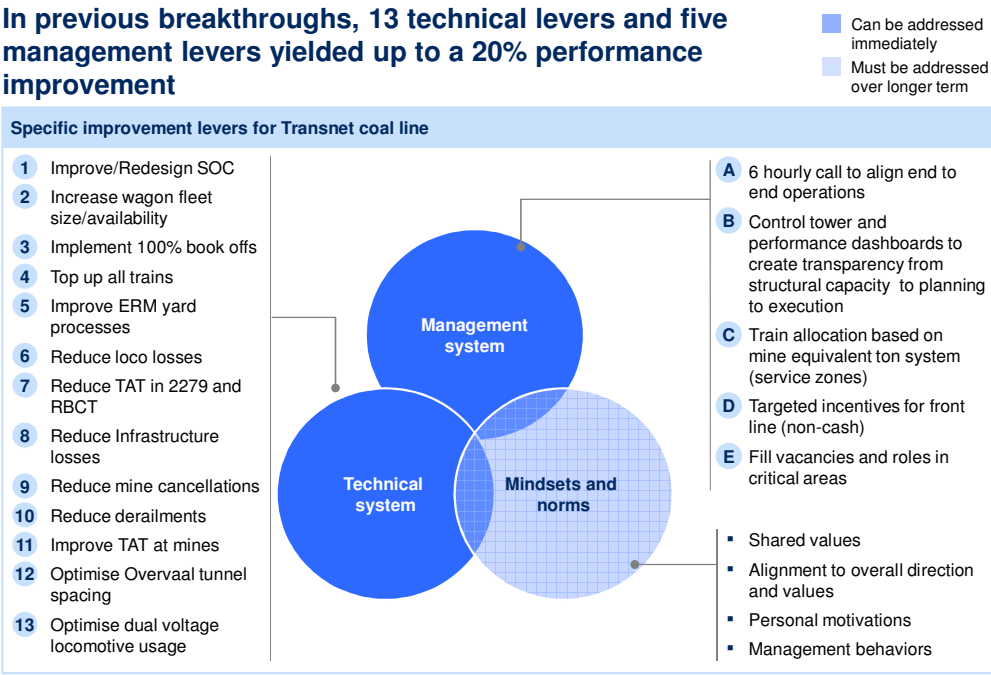


EXHIBIT 6

Proposed workplan

	1	2	3	4	
	Rapid baselining and diagnostic	Reduce variability and stabilise the line	Create buffer and ramp-up growth	Sustain and embed change, handover	
Timing	12 May6 weeks	23 June8 weeks	18 Aug11 weeks	3 Nov21 weeks ¹	31 Mar
Objectives	<ul style="list-style-type: none">Identify pain pointsAssess implementation of previous interventionsDesign new interventions, based on previous workDefine volume baseline and targets	<ul style="list-style-type: none">Reintroduce a stable Isigqi on the lineDeliver a steady weekly volumeShorten recovery after disruption	<ul style="list-style-type: none">Increase steady state volumeFill vacancies and establish succession and training programBuild continuous improvement team	<ul style="list-style-type: none">Sustain increased volumesReinforce mindset changes to sustain growthHand over to Transnet team	
Actions	<ul style="list-style-type: none">Analyse volumes, TAT and variability of performanceConduct workshops with coal line operations and infra managersObserve yard and SOC performance	<ul style="list-style-type: none">Incorporate Isigqi into daily planReinforce countdownFill key vacancies and train operatorsShift 1-2 priority mindsets	<ul style="list-style-type: none">Create resource bufferImprove loco reliabilityPilot electronic countdown toolDevelop succession and training planCreate change prog.	<ul style="list-style-type: none">Roll-out electronic countdown toolAddress specific issues with interventionsCreate SOC analytics capabilityHold handover w/shops	
Deliverables	<ul style="list-style-type: none">Baseline and targets for both baseline and # trainsPrioritised list of interventions and projected impact	<ul style="list-style-type: none">Daily plan checklistTweaked countdown process and toolDisruption playbookDraft Coal Line Way	<ul style="list-style-type: none">Pilot electronic countdown toolSOC/CTC toolkitSuccession planning and training materialFinal Coal Line Way	<ul style="list-style-type: none">Final electronic countdown toolProject reportHandover material	

1 Includes 2 weeks holiday break

- Phase 1 (May-June 2014): Rapid rebaselining and initiative prioritisation
- Engage coal line management – create joint purpose and co-create improvement program

– Define structural capacity constraints

– Prioritise issues (technical, management systems) and accompanying volume levers

– Develop targets for operational KPIs

– Identify constraining mindsets and behaviours

– Define implementation plan, including stakeholder engagement plan

– Provide shutdown support

– Create a shutdown post-mortem with recommendations to mitigate risks in future shutdowns
- Phase 2 (July - Aug 2014): Reduce variability and stabilize the line
- Reduce variability and stabilize the line within existing operating philosophy by re-implementing essential tools, processes and embedding these into the TFR continuous improvement process; focus on quick wins

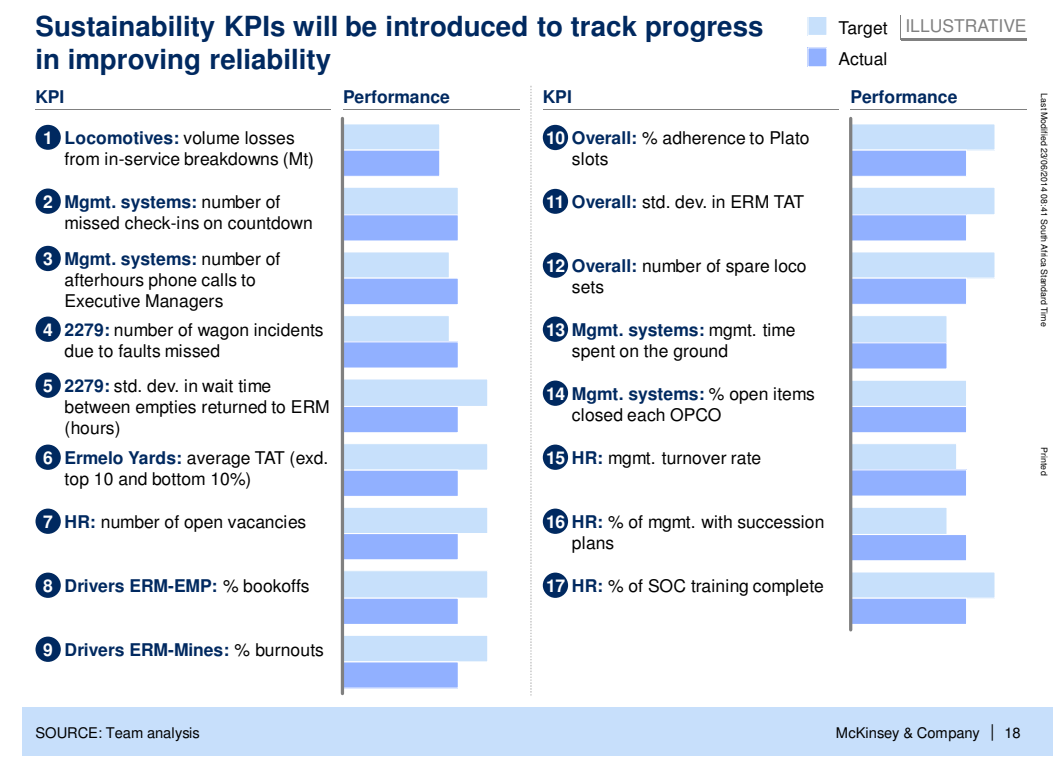
- Create and operationalise priority management system changes, including aligning reporting to decision making and strengthening partner management
- Address required shifts for 1-2 priority mindsets, starting with the coal line management team
- Fill high-priority vacancies and identify additional needs
- Stabilise system and reduce weekly volume variance
- Implement training to reinforce key roles
- Begin development of “the Coal Line way”
- **Phase 3 (Sept-Nov 2014): Create buffer and ramp-up growth**
 - Complete implementation of prioritized initiatives and ensure all Phase 2 changes are stable
 - Improve reliability and utilization of locomotives, wagons and crew to create buffer and increase capacity to capture growing mine demand
 - Develop tools and system support to reinforce the new way of working and enable sustainability, e.g. piloting a tech-enabled yard management tool
 - Develop a succession plan and planning process for all key roles, including short-term substitution, and recruit and train people for remaining vacancies(subject to Transnet and market availability constraints)
 - Codify “the Coal Line way” and create a change program to roll-out and reinforce the required mindset across the Coal line team
- **Phase 4 (Nov 2014 – March 2015): Sustain and embed new behaviours through mindsets, tools and processes and handover to Transnet**
 - Roll-out specific tailored interventions to support sustainability, e.g. tech-enabled tools
 - Monitor penetration of the Coal Line Way mindset change program, management systems changes and operating plan changes, with remedial interventions as required
 - Revise KPIs and targets embedded in SPOs/incentives to align with the Coal Line Way and support stable volumes
 - Create analytics capability in the SOC team to enable continuous improvement and sustain growth

- Finalise documentation of new operating principles, ensure all operators are trained and establish a training process and plan for the future

Where funding is required to drive interventions (e.g. rental of combis to test the impact of faster crew replacement), the team will present a business case to the GM Coal BU for approval. Should the business case be approved, it is expected that Transnet will provide the necessary funding to implement the proposed intervention.

In addition to improving volumes, sustainability will be a key focus of this work. On a monthly basis, we will track sustainability progress across the system according to a set of KPIs to be agreed with the Coal line team. For illustrative purposes, some of the proposed KPIs are shown below.

EXHIBIT 7



OUR TEAM

Our team leadership will consist of Norbert Dorr (Director, McKinsey), Vikas Sagar (Director, McKinsey), Christina Planert (Principal, McKinsey), Ashvin Sologar (Associate Principal, McKinsey), Eric Wood (Executive Director,

Regiments), Indheran Pillay (Head of Operations, Regiments), and Shingai Ngara (Project Manager, Regiments). CVs for each individual can be found in the attached Powerpoint exhibits.

The full time team on the ground will be as shown in the table below:

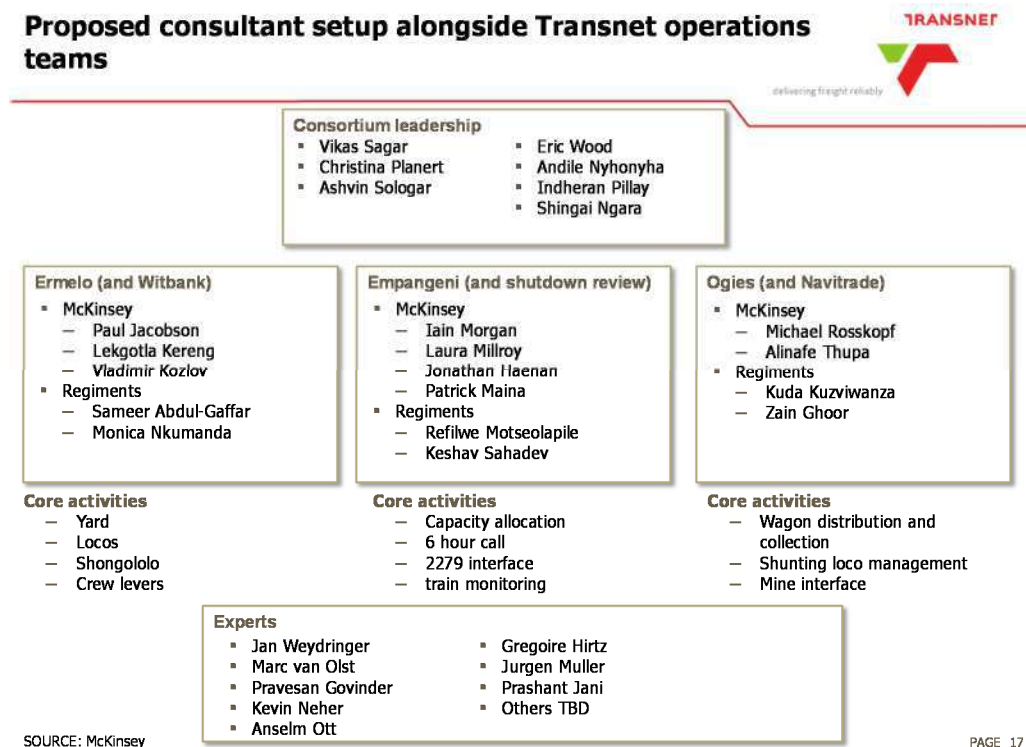
Phase	Month	McKinsey		Regiments		Total
		Mgr	Consultants	Mgr	Consultants	Full team
1	May	1	4	-	6	11
	Jun*	3	8	-	9	20
2	Jul	3	7	-	8	17
	Aug	2	5	1	8	16
3	Sep	2	5	1	8	16
	Oct	1	2	2	10	15
	Nov	1	2	2	10	15
4	Dec	1	1	3	11	16
	Jan	1	1	3	11	16
	Feb	1	1	3	11	16
	Mar	1	1	3	11	16

*In June, two rail scheduling experts will also support the team

To begin, one team will be stationed in each of Empangeni, Ermelo and Ogies to support the operational teams there. As levers and initiatives are refined, individuals will be stationed at the areas where they can drive greatest impact.

We will also utilize a team of rail and operations experts (e.g., Marc van Olst) to support the teams on an as needed basis, as described in the “Our Value Proposition” section. We have proposed below the team structure to work alongside the Transnet operations teams.

EXHIBIT 8



Success depends upon working together to build the capability of the Coal line team to sustain this breakthrough. Hence, we will need to select ~15 people from your organisation to work alongside our team on a dedicated basis. These individuals will help implement and drive initiatives, and eventually own them so that these initiatives can continue to deliver value for Transnet year after year. Should these 15 people not be available to mirror and support our team, we will need to provide additional resources to drive value in this year, with a commensurate increase in costs.

In addition, we will need ad hoc support, particularly in the following areas:

- Coal line management – Operations managers in each of the three areas
- SOC and CTC teams – Execution manager in each
- Planning teams – Planning manager in the SOC and 1-2 planners
- Resource management teams – Locomotive and wagon monitors in SOC
- Yard operations teams – Yard and Depot operations managers
- TFR continuous improvement teams

Each member of the Transnet client team will need to work closely with us to define the necessary changes and to use their role in the organization to implement

them. They will also be responsible for reporting on these changes to the steering committee, with support from the McKinsey/Regiments team. This support will be required from May until project completion in March and is pivotal to delivering a sustainable change. Without dedicated participation by these teams a sustainable breakthrough will not be possible.

PROJECT GOVERNANCE

The project will be governed by a steering committee drawn from Coal line, TFR and Transnet senior management, combined with leaders from McKinsey and Regiments, and external experts.

We have proposed a project governance structure below, including suggested individuals from Transnet. These teams will meet on a bi-weekly to monthly basis to review progress and take decisions to shape the direction of our work.

EXHIBIT 9

Proposed project governance structure	
<div><div>TRANSNET</div><div>delivering freight reliably</div><div>DISCUSSION DRAFT</div></div>	
Governance element	Description
<div><div>Steerco</div><div><div><div>▪ Group CFO</div><div>▪ TFR CE</div><div>▪ TE CE</div><div>▪ TFR COO</div></div><div><div>▪ TFR GM Coal BU</div><div>▪ TFR GM Infrastructure</div></div></div></div>	<div><div>▪ Use steering committees to take key decisions, provide guidance, and debottleneck project</div><div>▪ Proposed meeting dates:<div><div>— Bi-weekly following project launch</div></div></div><div>▪ Duration: 90 minutes</div></div>
<div><div>Project sponsors</div><div><div><div>▪ GCFO</div><div>▪ TFR CE</div></div><div><div>▪ TE CE (TBD)</div></div></div></div>	<div><div>▪ Weekly updates<div><div>— In person or via email</div></div></div></div>
<div><div>Project leads</div><div><div><div>▪ TFR GM Coal BU</div><div>▪ Transnet GM Commercial Accounts</div></div></div></div>	<div><div>▪ Regular discussions on on-going progress and working requirements</div></div>
<div><div>Other experts</div><div><div><div>▪ TFR Logistics Integrator</div><div>▪ TFR GM Continuous Improvement</div><div>▪ Yard and countdown managers at Ermelo, Ogies</div><div>▪ TFR Coal BU Head of Operations</div><div>▪ TFR GM NOC</div><div>▪ Head of SCC</div><div>▪ TFR Head of Capital Projects</div></div></div></div>	<div><div>▪ In person, ad-hoc as needed</div></div>
<div><div>SOURCE: McKinsey, Transnet memorandum to GCE</div><div>PAGE 16</div></div>	

OUR SUPPLIER DEVELOPMENT COMMITMENTS

McKinsey & Company

Our supplier development plans include training for Transnet, Regiments and McKinsey employees, as well as local procurement initiatives:

- We will train at least 40 SOC and Operations personnel above the basic requirements of this engagement. These individuals will be able to provide evidence of having attended training sessions as well as exposure to on-the-job training in problem solving fundamentals, structuring problems, and applying lean tools to operational challenges
- In addition, we expect to train 20-24 Regiments consultants on topics including problem solving, rail operations and general operations improvement techniques. Each individual will be provided with a development plan, and an evaluation of progress for formal tracking purposes
- Funds from this engagement will also be used to support the training of McKinsey Leadership Programme Fellows and McKinsey Business Analysts
- Where possible, our procurement will prefer local, black-owned businesses

The aggregate spend by McKinsey & Company on Supplier Development will meet or exceed 70% of the fees it obtains as a result of this engagement, inclusive of fees shared with Regiments Capital. Exclusive of fees shared with our consortium partner, our Supplier Development will constitute >19% of fees obtained as a result of this engagement.

In addition to all of the initiatives described above, 25% of our total profit in any year is directed towards the South Africa Foundation, a non-profit organization dedicated to driving transformation in South Africa. Specific valuation and details on our supplier development commitments may be found in the formal Supplier Development Plan template accompanying this document.

Regiments Capital

Regiments Capital is fully committed to supplier development, and will support it through this engagement by supporting the following Supplier Development Partners:

- We will source IT support services from Seth Consulting, and provide mentorship and growth strategy expertise to its owner
- We will purchase technology hardware and software from Preferred IT

- We will sub-contract consultants and services from Accompany Advisory, Homix and Albatime, and provide them with skills development opportunities, and IPR for processes and methodology that they can use in future assignments
- We will subcontract legal services from Pule for the execution of the project
- We will subcontract engineering resources from DEC for the execution of the project

The aggregate spend by Regiments capital on Supplier Development will meet or exceed 20% of the fees it obtains as a result of this engagement. Specific valuation and details on Regiments Capital supplier development commitments may be found in the formal Supplier Development Plan template accompanying this document.

□ □ □

McKinsey & Company and Regiments have a track record of partnering successfully with Transnet and possess unparalleled experience of driving operational transformations in South Africa and around the globe. Furthermore, the partnership between McKinsey and Regiments offers Transnet a local, established collaboration, with global reach, which brings the best expertise and reach to the programme from both entities, offers industry-leading empowerment credentials and which is committed to skills transfer and development.

We remain highly committed to the success of Transnet and South Africa, and would consider it a privilege to support you in implementing this important strategic endeavor.

Sincerely,

C. Planert

Christina Planert

Eric Wood

Enclosure

Summary of Professional Practices

McKinsey & Company, Inc.¹, traditionally has followed several professional practices, summarized below, that are at the heart of our approach to client service. We consider it essential that our clients understand these practices.

PROTECTING CONFIDENTIAL INFORMATION

Effective client service usually requires our access to confidential information. We recognize that you will entrust such information to us with the expectation that we handle it carefully and professionally. We are committed to meeting the highest professional standards.

We will never disclose your confidential information, materials that we develop for you from your confidential sources or information that we believe conveys significant competitive advantage, to anyone outside our Firm without your prior consent, except in the unusual circumstance when we are legally compelled to do so. We will only use such information in connection with our consulting services for you, and only those staff members with a “need to know” will have access to such information.

All McKinsey personnel are apprised of their professional obligations to our clients. Among these obligations is the vigorous protection of confidential client information. In addition, all McKinsey personnel must acknowledge their understanding of this responsibility by signing a confidentiality agreement with McKinsey.

The work that we do with you also may include information developed from non-confidential sources and conceptual frameworks, approaches, and generic industry perspectives that do not contain your confidential information. We bring such information, frameworks, approaches, and perspectives to each new assignment, and any such information may be shared within our Firm and with other clients. We are able to do this because we have retained ownership of such information, frameworks, approaches, and perspectives (and of any enhancements thereto) while serving our clients.

¹ These practices apply to services rendered by McKinsey & Company, Inc. or any of its affiliates.

We aspire to a relationship based on trust and confidence, and we welcome the opportunity to discuss any areas of particular sensitivity you may have regarding the handling of confidential information. Where appropriate, we will enter into explicit confidentiality agreements.

COLLABORATING AND GETTING YOUR FEEDBACK

To ensure a structured and systematic dialogue about our joint collaboration and impact, it is our standard practice to ask for formal feedback from key client individuals (usually the Steering Committee) at the end of each engagement. We typically use our proprietary online tool to solicit feedback on our contributions towards the project’s vision and goals. All data are secure and are used only as a basis for a dialogue with you on how to serve you better. The feedback is not used for evaluating individuals (neither McKinsey nor client team members).

SERVING COMPETING CLIENTS

It is the longstanding policy of McKinsey to serve competing clients and clients with potentially conflicting interests (including in connection with merger, acquisition, and alliance opportunities) and to do so without compromising our professional responsibility to maintain the confidentiality of client information. We place primary reliance on the integrity of our professional staff to maintain such confidences. Nonetheless, we ensure that consultants who develop important insights about your company are not later placed in a situation of potential conflict. To assure this, consultants who had access to your confidential information will not be assigned, for a significant period following an assignment for your company, to a study for another client where such confidential information could be used to your material competitive disadvantage.

Consistent with our confidentiality obligations, the consultants who work with you are unlikely to know that other McKinsey consultants serve one of your competitors or another party involved in a potential transaction that you are considering or effecting. Similarly, you should not expect to be advised or consulted about our serving your competitors or such other parties.

MANAGING RELATIONS WITH OUTSIDE PARTIES

As a basic policy, we do not make public client names, client materials, or reports prepared for clients without their permission. We similarly require that clients not use our name, refer to our work, or make our work products available outside their

organization without our prior permission. In those cases when disclosure from either side may be appropriate, we will discuss this first and only proceed if we reach agreement.

Occasionally, we become involved in legal actions as witnesses, sources of information, or as a party because of our work with a client. If this should occur, we will advise you promptly and work closely with you and your legal counsel to coordinate our response. We ask that you hold us harmless and indemnify us in connection with associated damages and costs, including legal costs, except to the extent they are found to have resulted from our gross negligence or willful misconduct. Also, in the event that a substantial amount of McKinsey professional time is required to respond to the action, the cost of such time will be discussed with you and billed accordingly.

TERMINATION

We believe that either party should have the freedom to terminate the relationship at any time if it becomes evident that the potential value of the work does not warrant further effort. In the event that a project is stopped before completion, only the professional fees and costs incurred to that date are billed.

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The practices summarized above reflect key aspects of our basic approach to client service and reflect our commitment to maintain the highest professional standards. We would welcome the opportunity to discuss our professional practices with you.

Annexure 2

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**RFP GSM/14/04/1040:
Provision of Professional
Services to Support
Transnet in De-risking and
Acceleration of the New
Multi-Product Pipeline
(NMPP)**

Transnet

Closing date 24 June 2014 @ 12:00

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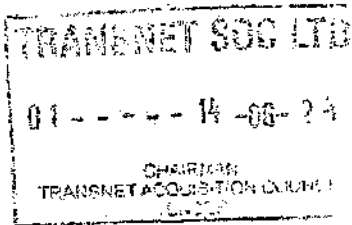


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Memorandum to
The Secretariat, Transnet Acquisition Council



RFP GSM/14/04/1040 : Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP)

McKinsey & Company and Regiments Capital are pleased to submit this proposal in response to Transnet’s solicitation regarding the provision of professional services to support Transnet in de-risking and acceleration of the new multi-product pipeline (NMPP) (RFP GSM/14/04/1040).

This memorandum outlines our proposed approach and credentials, and should be read in conjunction with the attached exhibits. Please do not hesitate to contact us if you require clarification or further information.

This main proposal document is structured into five sections:

- Our understanding of the situation
- Our approach
- Our value proposition
- Our team
- Our supplier development commitments

OUR UNDERSTANDING OF THE SITUATION

The New Multi-Product Pipeline (“NMPP”) is Transnet’s largest programme in execution with actual budgeted cost of R23.4 billion. The 555km 24” trunk line, together with pump stations and terminals will enable the future inland fuel demand to be met through greater pipeline capacity (increase volume from 4.4 billion litres to 8.7 billion litres) and flexibility as well as allow the existing Durban Johannesburg Pipeline (DJP) to be decommissioned.



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NMPP has experienced delays in project execution in the past. This has historically resulted in significant cost escalation and reputational risk exposure for Transnet. Historically issues identified by Transnet included:

- ❑ Integration with EPCM led to disruptions as late in 2012/2013, including de-scoping of AWP and change of Transnet Project Managers.
- ❑ Project Management and Project Controls in particular are fundamental and imperative to ensure that key risks are effectively mitigated and reported accordingly.
- ❑ TM2 management detected the incorrect progress reporting by Group Five during mid-November 2013 and verbally instructed Group Five to review and rectify their reported progress figures.
- ❑ Ongoing poor performance and re-work by Group Five.
- ❑ Progress as per the Constructability schedule as at 31 October 2013 showed additional slippages to the MC date, compared to the PSR and NMPP OPCO reported dates.
- ❑ The October 2013 risk modeling reflected a most likely delay beyond the latest approved milestone dates.
- ❑ The TM2 Final Forecast Cost (FFC) at R2.977bn exceeds the project budget of R2.777bn. There is a risk that this FFC will be breached should there be further schedule slippage past mid-June 2014 and the overall ETC (R23.4bn) is at risk.
- ❑ A site visit Group Capital Integration and Assurance (GCIA) to TM1 in February 2014 identified potential opportunities for improvement.

Currently, TM1 and TM2 engineering, construction and commissioning/ramp-up remain to be finalized – therefore the volumes and EBITDA contained in the 2014/15 Corporate Plan are at risk. The Regulatory Asset Base (RAB) is also at risk (currently only ~50% of the project is in the RAB with the regulator investigating any non-prudent increase in the overall Estimated Total Cost (ETC)). NERSA has appointed an independent consultancy to assist in its study to formulate an independent view on the prudence with which the NMPP was built.

Moreover, due economic crises the original business case assumptions changed resulting in 2014 actuals being half of what was expected in the original business case. The significantly lower estimated inland demand will lead to significant operational adjustments when NMPP moves to multiproduct delivery. The issues include: increased size of interfaces (~4x larger), required slug sizes for a bigger pipeline (~2x bigger) and significantly longer lead times (~3x longer).



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Cost and schedule overruns, coupled with operational difficulties that have currently not been adequately addressed or considered, will lead to a difficult few years ahead for the project. Our understanding is that TPL and TCP would further benefit from increased joint collaboration. This cross-functional team should also include Prudency, Group 5 and Legal to ensure the optimal system solution is found, instead of the optimal technical solution. Accordingly, to ensure optimal completion of the project the de-risking and acceleration of the project is required.

OUR APPROACH

Overall we propose a three-phase approach that addresses the abovementioned issues. Please see Enclosure no.1 for supporting exhibits.

Phase 1 (6 weeks): Re-baselining

In the first phase we will focus on two workstreams:

- **Re-baselining of the execution of project:** Realistic estimation of a completion date and required budget by (for illustrative :
 - Cross-checking actual quantities completed with on-site observations, QS team and site interviews
 - Analysing contractor productivity comparing actual vs planned quantities completed, quantities to go (including scope/design changes) and earned vs burned man-hours
 - Identification of risks caused by disruptive events such as inclement weather and strikes
 - Understanding outstanding claims and organizational capacity to manage
 - Checking cost recovery assumptions with site team
 - Evaluating historical quality issues and understanding future risk of reworks
- **Re-baselining of the commercial assumptions of project**
 - Understanding of the original business case assumptions understand what had changed with regards to NMPP requirements in last 6 years especially verification of the demand forecast and assumed operational philosophy
 - Clarification of boundary conditions to understand what can be optimised
 - Deep dives on demand forecasts for inland fuel and operational viability of options was necessary



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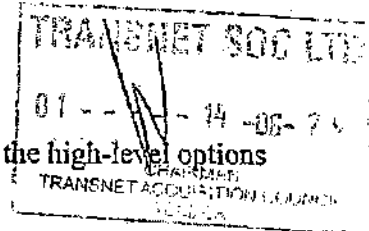
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- Cross-functional workshop held to understand the high-level options available to fulfill requirements
- High-level NPV analysis of options and understanding of risks were required to ensure the options were directionally correct
- Range of options delivered to Steerco
- Formation of a cross-functional team put together to ensure business cases could be refined and delivered to board

Phase 2 (~ 8 weeks): Detailing and optimizing business cases

Phase 2, follows immediately after Phase 1. While the baseline establishes the factual status quo and identifies high level strategic options, detailed remaining scope, related operational philosophy, priority sequence for construction, regulatory and legal implications have to be defined.

To fast-track the delivery of detailed business cases we propose to use “pressure-cooker” approach, i.e., multidisciplinary collocated team to address the outstanding questions in a focused structured way. After the preparation, the core of the effort happens during one week in which the whole business case is reviewed. The executive decisions are taken at the end of each day. Any outstanding open questions and their implications are ring-fenced for further deep dives.

We will set up an integrated, multi-disciplinary scrubbing team (including Group 5) in the first 3 weeks to:

- Develop the detailed engineering for alternative options (e.g. tightlining vs four tanks vs full scope) in order to determine engineering, constructability, operability, cost and schedule implications of each option
- Identify levers to scrub, descope or defer components of each option, and verify contract terms to optimize the solution(s), i.e., detailing out and signing off with TPL the minimum technical requirements for beneficial operation (e.g. temporary CP on the pipeline, tightlining vs four tanks at TM1, ring-fencing of deprioritized components at TM2, etc.)
- Identifying the requirements for capitalization of assets and tariff recovery; identifying potential split of the project/asset base that would enable earlier capitalization of separate components and/or deprioritisation of non-capitalizable assets



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- ❑ Review regulatory implications of the options as well as the alignment with the public commitments; and necessary mitigation actions of reputational risk
 - ❑ Define the interdependencies between TM1, TM2 and S&A
 - ❑ Revise the construction schedule
 - ❑ Recommend one option to proceed with given the above considerations

Phase 3 (12 weeks): Setting-up execution front-line support

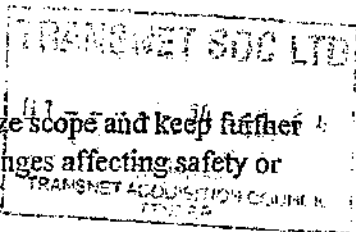
This phase will start immediately after Phase 1 for TM2 and after phase 2 for TM1 and overall project. Phase 3 will focus on the following elements:

- ❑ **Control Tower** will create transparency on construction progress, costs, claims and upcoming risks on site. It is a basis for tightly managing construction progress on sit. This will include:
 - Develop/confirm the re-baselined schedule with realistic milestones
 - Set up the Control Tower room on site, including dashboards for same-day view of project progress, upcoming workfronts per discipline, next milestones, issues, risks and action items, and commissioning sequence
 - Support client and contractor teams to conduct site observations, record daily progress and identify and report constraints on site to the Control Tower team. Streamline progress reporting by fostering closer collaboration on between Planning, Construction and QS, including
 - ❑ Directly involve foremen in the weekly work planning session
 - ❑ Integrate weekly work plan for all the related activities, to identify and prevent coordination problems
 - ❑ Daily plan review on the field, with attendance of all the related foremen, to foresee / solve potential coordination issues
 - Report site observations and escalate priority issues to central project Control Tower for high level decision-making and resolution. Build capabilities of project team to run Control Tower
 - ❑ Syndicate and refine Control Tower setup with site team input
 - ❑ Refine meeting cycle and decision-making forums (e.g. daily check-in, weekly forums per discipline)
 - ❑ Assist Control Tower lead and team to manage issues, risks and action item deliverables with daily progress report-backs



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- Work with Engineering and client team to freeze scope and keep further design changes to a minimum (only design changes affecting safety or critical operations)
- Start daily performance and issue resolution dialogues in the Control Tower from the 2nd week, even with limited facts, to train the construction and commissioning teams to engage with the Control Tower
- Start site observations from the 2nd week, even with limited refinement of the schedule, in order to uncover root cause issues and emerging potential risks and constraints
- **Contractor management:** Review contracts to develop claims and counter-claims strategy, and identify levers to incentivize contractor performance
 - Support, coach and build up capabilities of contract management team in prioritizing, processing and closing claims
 - Work with contract management team to create a claims strategy both at a site level and for the whole project
 - Set up a contracting SWAT team to identify, prepare and institute counter-claims against the contractor
 - Review the Group 5 contract to identify mechanisms to incentivize performance for the remainder of the project (both damages and rewards)
 - Determine potential to impose early delay damages on G5 to demonstrate willingness to manage performance strongly
- **Reporting:** Ensuring senior visibility and engagement, i.e., monthly GCE and GCFO on-site progress review (via VC)
- **Cash flow at risk monitoring:** Monitor regularly that the cash flow expenditures are in line with the agreed budget as well as perform quantitative risk assessment including revenue impact; EBITDA impact; Cost vs benefit analysis; and Monte Carlo analysis if applicable.
- **Commissioning management**
 - Establish the commissioning sequence to identify critical path systems in the schedule
 - Stress-test commissioning process with internal and external experts to identify potential to streamline commissioning activities and reduce time to beneficial operation
 - Align Commissioning and Construction schedules and add Commissioning dashboard to the Control Tower



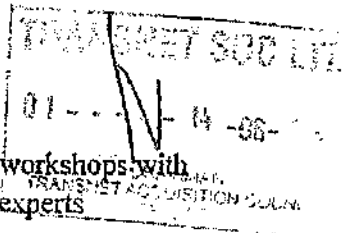
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- Run Commissioning Excellence and Readiness workshops with commissioning teams, facilitated by McKinsey experts



Phase 4 (8-10 months): Implementation

Phase 4 starts will start after Phase 3 and will focus on implementation of the execution support set-up in Phase 3.

OUR VALUE PROPOSITION

McKinsey & Company

McKinsey and Company is uniquely positioned to help Transnet to de-risk and accelerate the New Multi-Product Pipeline (NMPP):

- McKinsey & Company is the only consultancy firm with a dedicated global capital productivity practice, bringing (see Enclosure no.2)
 - **Holistic top management perspective**, i.e., independent holistic viewpoints based on relevant best-practice experience on the project and ability to join forces with external firms
 - **Global reach and capability**: engagements in a broad range of industries and geographies leveraging functional and industry practice know-how; ability to integrate across strategy, organization, and operations and a set of proprietary tools and frameworks
 - **Unequalled client relations**: 60 Fortune Global 500 clients in last 4 years; Proven track record of value creation (~ 30% as NPV improvement as % of original estimate on average), problem solving jointly with the client team, emphasizing capability building and skill transfer, >75 engagements per year
 - **Unrivalled talent**: > 45 active senior capital productivity practitioners globally, leading industry-specific (e.g., automotive) and field experts (operations, procurement)
- In addition we bring
 - **Proven value improvement approaches** – see Enclosure no.3
 - **Set of proprietary tools** – see Enclosure no.4



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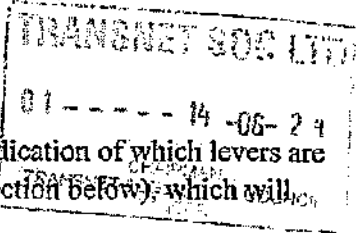


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- Our previous interactions have given us a clear indication of which levers are most likely to create impact (see Our Approach section below), which will allow us to start working from day one
- In addition to our experience helping Transnet, we have also served many clients on CAPEX globally, and will bring this expertise to bear. Non-exhaustive list of experts that will support our work with you is provided below, with detailed CVs available in the supporting Powerpoint exhibits in Enclosure no.5:
 - Markus Rebman, Principal, Toronto (capex diagnostic)
 - Charles Dumont, Associate Principal, Montreal (control tower)
 - Davide Gronchi, Senior Expert, Hamburg (design optimization)
 - Emanuele Rive, Associate Principal, Milan (lean construction)
 - James E. Banaszak, Senior Expert, Canada (capex execution)
 - Lukasz Abramowicz, Associate Principal, Warsaw (contracting)
 - Rocco Colassante, Associate Principal, Milan (lean construction)
 - Edward Zaayman, Engagement Manager, Johannesburg (execution)
 - Gerhard Nel, Senior Expert, Johannesburg (execution)
 - Homayoun Zarrinkoub, Expert, Montreal (contracting)
 - Carlos Mendes, Specialist, Johannesburg (control tower)
- McKinsey has helped Transnet craft the implementation plans for the MDS, create the Results Management Office to support the execution of required initiatives, and build the Group Capital Integration and Assurance function to improve effectiveness, transparency and accountability in capital spending. No other third party has such a detailed understanding of Transnet's strategy, its current operational concerns, and its uniquely complex links between cash flow and capital planning.
- From a market perspective, McKinsey also understands the economics of the global and local oil industry in detail, including strategic trends, and has supported Transnet on multiple occasions in validating its demand forecasts for commodities.

Regiments Capital

Regiments Capital is also uniquely placed to assist Transnet:



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- ❑ Regiments has a conducted several engagements at Transnet in Strategy formulation, Financial Risk Management, Business Case validation, Programme Management Office design and Transaction Advisory Service.
 - ❑ Through its Consulting division Burlington Strategy Advisors, Regiments Capital has been involved in operational improvement assignments in numerous industries, ranging from high volume industrial manufacturing to underground mining and banking.
 - ❑ Regiments take a heavily analytical yet practical approach to identifying opportunities for improvement. Its product offerings include overhead and input cost optimisation, optimal equipment and resource utilisation and process re-engineering.

OUR TEAM

Our team leadership will consist of Norbert Dorr (Director, McKinsey), Vikas Sagar (Director, McKinsey), Prakash Parbhoo (Principal, McKinsey), Peter Safarik (Principal, McKinsey), Eric Wood (Executive Director, Regiments), Indheran Pillay (Head of Operations, Regiments), and Vimal Ichharam (Project Manager, Regiments). CVs for these individuals can be found in the attached Powerpoint exhibits (Enclosure no. 5).

The full-time working teams will consist of

- ❑ For Phase 1: Re-baselining of the execution of project, the full time team on the ground will consist of McKinsey project manager and 5 consultants and Regiments project manager and 5 consultants
- ❑ For Phase 1: Re-baselining of the commercial assumptions of project, the full time team on the ground will consist of McKinsey project manager and 2 consultants
- ❑ For Phase 2: Detailing and optimizing business cases, the full time team on the ground will consist of McKinsey project manager and 2 McKinsey and 1-2 Regiments consultants
- ❑ For Phase 3: Setting-up execution front-line support, the full time team on the ground will consist of McKinsey project manager and 3 McKinsey consultants and a Regiments project manager and 3-5 consultants
- ❑ For Phase 4: Implementation, the full time team composition will be finalized based on the specific needs as defined in previous phases, however



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it will correspond to McKinsey project manager and 2 consultants and
Regiments project manager and 3-5 consultants.

Teams will be mostly stationed TM1 and TM2 to optimally support the project execution.

We will also utilize a team of experts (e.g., Edward Zaayman, Gerhard Nel, Lukasz Abramowicz, Emanuele Riva) to support the teams on an as needed basis, as described in the “Our Value Proposition” section. We have proposed below the team structure to work alongside the Transnet operations teams.

Each member of the Transnet client team will need to work closely with us to define the necessary changes and to use their role in the organization to implement them. They will also be responsible for reporting on these changes to the steering committee, with support from the McKinsey/Regiments team. This support will be required from May until project completion and is pivotal to delivering a sustainable change. Without dedicated participation by these teams a sustainable breakthrough will not be possible.

OUR SUPPLIER DEVELOPMENT COMMITMENTS

McKinsey & Company

McKinsey & Company is fully committed to localisation and transformation within our organisation and in South Africa. Over the past years, we have been dedicated to finding ways to have meaningful and sustainable impact on the community and we will continue doing so. We are supportive of the objectives of the Government’s New Growth Plan and are committed to developing a robust Supplier Development Plan to assist in meeting these objectives

We will demonstrate how we will dedicate our resources within & outside the scope of this Transnet contract to ensure the creation and preservation of jobs, skills transfer and small business promotion

Please see details in Annexure B: Supplier Development Plan: McKinsey and Company.



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Regiments Capital

Regiments Capital is fully committed to supplier development, and will support it through this engagement by supporting the following Supplier Development Partners:

- ❑ We will source IT support services from Seth Consulting, and provide mentorship and growth strategy expertise to its owner
- ❑ We will purchase technology hardware and software from Preferred IT
- ❑ We will sub-contract consultants and services from companies such as Accompany Advisory, Homix and Albatime, and provide them with skills development opportunities, and IPR for processes and methodology that they can use in future assignments
- ❑ We will subcontract legal services from Pule for the execution of the project
- ❑ We will subcontract engineering resources from DEC for the execution of the project

The aggregate spend by Regiments capital on Supplier Development will meet or exceed 20% of the fees it obtains as a result of this engagement. Specific valuation and details on Regiments Capital supplier development commitments may be found in the formal Supplier Development Plan template accompanying this document.

PROFESSIONAL ARRANGEMENTS

Please see separate document on professional arrangements.

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McKinsey & Company and Regiments have a track record of partnering successfully with Transnet and possess unparalleled experience of driving operational transformations in South Africa and around the globe. Furthermore, the partnership between McKinsey and Regiments offers Transnet a local, established collaboration, with global reach, which brings the best expertise and reach to the programme from both entities, offers industry-leading empowerment credentials and which is committed to skills transfer and development.

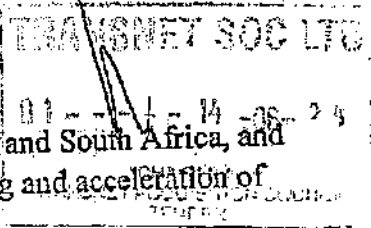


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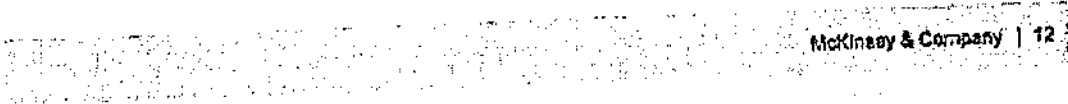
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We remain highly committed to the success of Transnet and South Africa, and would consider it a privilege to support you in de-risking and acceleration of NMPP.



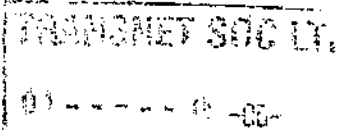
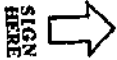
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We aspire to a relationship based on trust and confidence, and we welcome the opportunity to discuss any areas of particular sensitivity you may have regarding the handling of confidential information. Where appropriate, we will enter into explicit confidentiality agreements.

COLLABORATING AND GETTING YOUR FEEDBACK

To ensure a structured and systematic dialogue about our joint collaboration and impact, it is our standard practice to ask for formal feedback from key client individuals (usually the Steering Committee) at the end of each engagement. We typically use our proprietary online tool to solicit feedback on our contributions towards the project’s vision and goals. All data are secure and are used only as a basis for a dialogue with you on how to serve you better. The feedback is not used for evaluating individuals (neither McKinsey nor client team members).

SERVING COMPETING CLIENTS

It is the longstanding policy of McKinsey to serve competing clients and clients with potentially conflicting interests (including in connection with merger, acquisition, and alliance opportunities) and to do so without compromising our professional responsibility to maintain the confidentiality of client information. We place primary reliance on the integrity of our professional staff to maintain such confidences. Nonetheless, we ensure that consultants who develop important insights about your company are not later placed in a situation of potential conflict. To assure this, consultants who had access to your confidential information will not be assigned, for a significant period following an assignment for your company, to a study for another client where such confidential information could be used to your material competitive disadvantage.

Consistent with our confidentiality obligations, the consultants who work with you are unlikely to know that other McKinsey consultants serve one of your competitors or another party involved in a potential transaction that you are considering or effecting. Similarly, you should not expect to be advised or consulted about our serving your competitors or such other parties.

MANAGING RELATIONS WITH OUTSIDE PARTIES

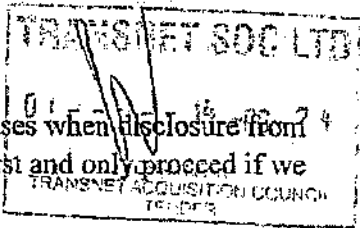
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Occasionally, we become involved in legal actions as witnesses, sources of information, or as a party because of our work with a client. If this should occur, we will advise you promptly and work closely with you and your legal counsel to coordinate our response. We ask that you hold us harmless and indemnify us in connection with associated damages and costs, including legal costs, except to the extent they are found to have resulted from our gross negligence or willful misconduct. Also, in the event that a substantial amount of McKinsey professional time is required to respond to the action, the cost of such time will be discussed with you and billed accordingly.

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We believe that either party should have the freedom to terminate the relationship at any time if it becomes evident that the potential value of the work does not warrant further effort.

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The practices summarized above reflect key aspects of our basic approach to client service and reflect our commitment to maintain the highest professional standards. We would welcome the opportunity to discuss our professional practices with you.



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01-05-24
CHAIRMAN
TRANSNET ACQUISITION COUNCIL
TEL: 011 708 1111

RFP GSM/14/04/1040:
Provision of Professional
Services to Support
Transnet in De-risking and
Acceleration of the New
Multi-Product Pipeline
(NMPP) -

Transnet

Closing date 24 June 2014 @ 12:00



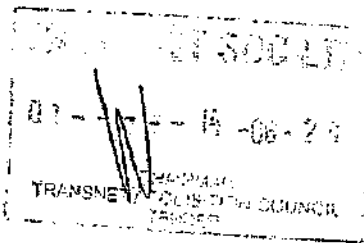
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Memorandum to
The Secretariat, Transnet Acquisition Council

RFP GSM/14/04/1040 : Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP)

McKinsey & Company and Regiments Capital are pleased to submit this proposal in response to Transnet’s solicitation regarding the provision of professional services to support Transnet in de-risking and acceleration of the new multi-product pipeline (NMPP) (RFP GSM/14/04/1040).

This memorandum outlines our proposed professional arrangements. An overview of our approach, team, value proposition and understanding of the context is included in a separate technical document.

PROFESSIONAL ARRANGEMENTS

The total fees for this engagement will be a maximum of 175 million ZAR (90 million fixed, 85 million milestone delivery based), excluding expenses and VAT. McKinsey’s standard expenses are 15% of its professional fees. Regiments expenses will be calculated at 10% of its professional fees. Regarding fixed fees, McKinsey will be apportioned 50% of the fees, and Regiments 50%.

Consortium Partners	Fee basis	Professional Fees	Expenses	Total (excluding VAT)
McKinsey & Company	Fixed (Phases 1-3)	45,000,000	6,750,000	51,750,000
Regiments Capital	Fixed (Phases 1-3)	45,000,000	4,500,000	49,500,000
McKinsey & Company	Milestone delivery based (Phase 4)	42,500,000	6,375,000	48,875,000
Regiments Capital	Milestone delivery based (Phase 4)	42,500,000	4,250,000	46,750,000
Total		175,000,000	21,875,000	196,875,000

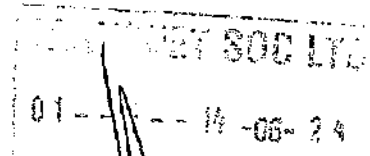
The fee allocations described above may shift if both Transnet and the consortium partners feel that a different allocation of resources from consortium members would materially improve impact for Transnet.



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The fixed fees above are for the re-baselining, detailing and optimizing business cases and setting-up front-line execution support (Phase 1-3 described in the "Approach" section), and will be invoiced on a monthly basis.

Basis for the milestone delivery based fees should be determined after completion of Phase 2 and before starting of Phase 4. We should jointly define the criteria and principles. Risk milestone delivery based fees will be invoiced monthly.

The criteria should be defined jointly, however they could include e.g.:

- ▣ Delivery of the project according to the milestone as defined at Phase 3
- ▣ Delivery of tightlining solution within estimated budget
- ▣ Maintain detailed project transparency
- ▣ Managing claims to the level estimated in Phase 3
- ▣ Delivery of scope of optimized business cases

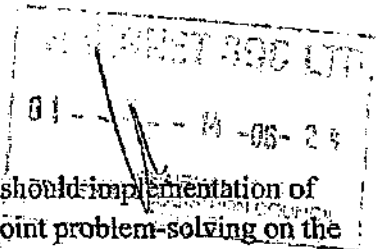
Progress against the criteria shall be presented monthly at the NMPP Steering Committee and signed-off by GCiA in consultations with key NMPP Steering Committee members.

- ▣ The following guardrails should also apply:
 - The programme will take a "one programme, one baseline, one impact" approach
 - KPIs of relevant Transnet executives must be aligned with the impact targets for which the consortium is held accountable
 - Transnet will commit resources and leadership time as described above to make the effort successful.
 - In the event of unforeseen circumstances in material situations such as management change leading to project termination, significant shifts in strategy or operational philosophy, etc.: fixed fees will be paid in full, and contingent fees will be paid as a direct proportion of the planned project duration (e.g. if 50% of the project duration has elapsed prior to the material situation, 100% of fixed fees will be paid, and 50% of the total value of contingent fees will be paid)
 - Work may be terminated with one month's notice by either Transnet or the consortium. If work is terminated by Transnet (but the work is deemed satisfactory), outstanding fees are to be determined upon termination



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- Transnet is obliged to notify the consortium should implementation of agreed initiatives be delayed, and allow for joint problem-solving on the rationale and alternatives to recover the deficit in opportunity
- The consortium will be compensated for material delays caused by Transnet

Invoicing and confidentiality

We would invoice you at the end of each month and payments are due immediately at the date of issue of the invoice. Interest (at prime) will be charged on past-due payments.

Unless expressly agreed otherwise, we treat all our client relationships and reports as strictly confidential (with the exception of material already in the public domain). We do not publish our clients' names, materials, or reports without their permission and request that our clients do not use our name, refer to our work, or make our products available outside their organisation without our prior consent. In the rare cases that disclosure by either side is appropriate we discuss this with our clients and only proceed by mutual agreement.

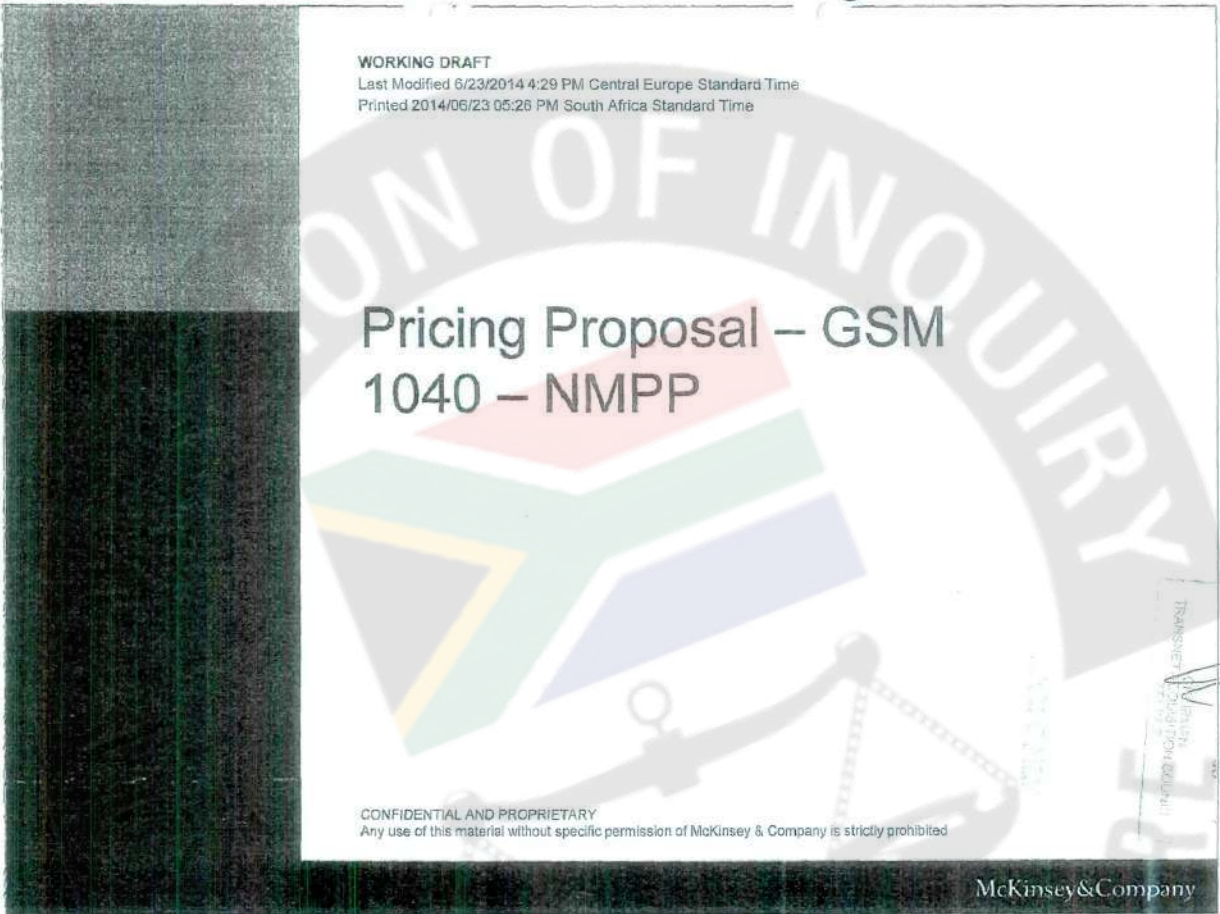
□ □ □

We remain highly committed to the success of Transnet and South Africa, and would consider it a privilege to support you in implementing this important project.



Issue: 2019-05-03_12:04:34

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Pricing and Delivery Schedule – Rate per hour (only fixed phases)

Title of the Resource	Resource Level (DPSA Salary Band)	Resources - Phase 1	Resources - Phase 2	Resources - Phase 3	No. of hours	Per diem rate (ZAR)
Director	Band 16	2	1		2 1188	2,942
Partner	Band 16	2	1		2 1188	2,942
Associate Principal	Band 16	3	1		3 2511	2,942
Engagement manager	Band 16	2	1		1 2160	2,942
Associates	Band 16	7	2	3	3 6345	2,942
MLP Fellow	Band 16	2	1	2	2 2970	2,942
Research Analysts	Band 16	2	2		1 810	2,942
Specialists and Experts	Band 16	4	2	3	3 2052	2,942
Production specialists	Band 16	3	2	2	2 783	2,942
Analytics specialist	Band 16	2	1	2	2 891	2,942
Regiments – Director	Band 16	2	1		2 297	2,942
Regiments- Partner	Band 16	1	1		1 351	2,942
Regiments- Associate Principal	Band 16	1	1		1 702	2,942
Regiments - Associate	Band 16	5	2		5 7155	2,942
Regiments - Research analysts	Band 16	2	1		2 1188	2,942

Estimated Total cost for Phase 1-3 – fixed fees (excl. expenses and VAT) ZAR 89,999,700

McKinsey & Company

Unit Number: 60232014 423 PM Central Europe Standard Time

Printed: 2019/05/03 05:20 PM South Africa Standard Time

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Pricing and Delivery Schedule – Project Fees

Phase of Project	Deliverable	Number of hours	Fees (ZAR)
Phase 1 (fixed)	As described in the Technical part of the proposal, chapter "Approach"	9,882	29,072,844
Phase 2 (fixed)	As described in the Technical part of the proposal, chapter "Approach"	5,724	16,840,008
Phase 3 (fixed)	As described in the Technical part of the proposal, chapter "Approach"	14,985	44,085,870
Phase 4 (milestone based)	Monthly progress report against criteria to be defined after Phase 2	28,874	84,946,918
Estimated Total cost of the project (excl. expenses and VAT)		59,465	174,945,640

Last Modified 05/23/2014 at 2:29 PM Central European Standard Time

Printed 2014/05/23 05:26 PM S&P Africa Standard 1

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0080-0981-0001-0339



Annexure 3

TRANSNET-05-744

BB23-AS-336

Innocentia Ngubeni

From: Indheran Pillay
Sent: Friday, 13 June 2014 18:43
To: Janine_Kamaar@mckinsey.com
Cc: Kgomotso Mogomotsi; Shashank Sood
Subject: RE: SD Committment
Attachments: SD Calculation-FeesperMck.xlsx; TRX SD Value Summary_FeesperMck.xlsx

Hi Janine,

Attached please find the calculations based on your numbers. Thanks.

Regards,

From: Janine_Kamaar@mckinsey.com [mailto:Janine_Kamaar@mckinsey.com]
Sent: Friday, June 13, 2014 6:27 PM
To: Indheran Pillay
Cc: Kgomotso Mogomotsi; Shashank Sood
Subject: Re: SD Committment

Hi Indheran

Thanks for your response.
I received my numbers from the ED's responsible for each contract.

@ Shashank, would you be able to send us a summary of all contract values based on the final LoP's you are putting together? Just want to ensure we are all using the correct values.

Many Thanks
Janine

From: Indheran Pillay [IndheranP@regiments.co.za]
Sent: 06/13/2014 03:50 PM GMT
To: Janine Kamaar
Cc: Kgomotso Mogomotsi <KgomotsoM@regiments.co.za <mailto:KgomotsoM@regiments.co.za> >
Subject: RE: SD Committment

Hi Janine,

The numbers that I am using is based on the anoj memos to brian regarding these projects. Does not include expenses. Are you sure that your numbers are correct?

Regards,

From: Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com>
[mailto:Janine_Kamaar@mckinsey.com]
Sent: Friday, June 13, 2014 3:24 PM
To: Indheran Pillay
Cc: Kgomotso Mogomotsi
Subject: RE: SD Committment
Importance: High

Hi Indheran

Hope you are well.

Thanks for putting this together.
I have noticed that the contract values you are using are different to the contract values I have on my side. I have attached a spreadsheet highlighting the differences.
Please let me know if you are able to scale the values proportionately (up or down as needed), to ensure we have consistency in our reporting.

Once this has been done, please could you resend us the SD Value Summaries and your SD Plans for inclusion in the RFP's.

Many Thanks
Janine

(See attached file: McK vs Regiments contract values for TRX RFP'sv2.zip)

Janine Kamaar | Transformation Manager
McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa Direct +27 11 506-8306 | Fax +27 11 506-8306 | Mobile +27 82 329-8121 | Internal 327-8306 janine_kamaar@mckinsey.com <mailto:janine_kamaar@mckinsey.com>

Indheran Pillay ---2014/06/12 02:52:04 PM---Hi, Attached please find the SD commitments in both my original format and the TRX one. Thanks.

From: Indheran Pillay <IndheranP@regiments.co.za <mailto:IndheranP@regiments.co.za> >
To: "ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com> " <ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com> >,
Cc: "Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> " <Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> >,"Kgomotso Mogomotsi" <KgomotsoM@regiments.co.za <mailto:KgomotsoM@regiments.co.za> >
Date: 2014/06/12 02:52 PM
Subject: RE: SD Commitment

Hi,
Attached please find the SD commitments in both my original format and the TRX one. Thanks.

Regards,

From: ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com> [mailto:ashvin_sologar@mckinsey.com]
Sent: Wednesday, June 11, 2014 6:56 PM
To: Indheran Pillay
Cc: Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com>
Subject: RE: SD Commitment

Thanks Indheran!

Ashvin Sologar
McKinsey & Company | 88 Stella Street, 3rd Floor, Sandown Mews East, South Africa Direct +27 11 506 8094 | Mobile +27 82 329 8094
Assistant: Martyna Grzeda, +27 11 506 8801 martyna_grzeda@mckinsey.com <mailto:martyna_grzeda@mckinsey.com>
Please bear in mind the environmental impact of printing this email or any attachments.

Indheran Pillay ---11/06/2014 18:50:31---Awesome! I'll get this converted into the SD Value Summary Template.
Regards,

From: Indheran Pillay <IndheranP@regiments.co.za <mailto:IndheranP@regiments.co.za> >
To: "Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> " <Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> >,"ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com> " <ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com> >
Date: 11/06/2014 18:50
Subject: RE: SD Commitment

Awesome! I'll get this converted into the SD Value Summary Template.

Regards,

From: Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> [mailto:Janine_Kamaar@mckinsey.com
<mailto:Janine_Kamaar@mckinsey.com>]
Sent: Wednesday, June 11, 2014 4:39 PM
To: ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com>
Cc: Indheran Pillay
Subject: Re: SD Commitment

Hi Ash

The below should work. It does however need to fit into the SD Value Summary template, as attached.
It is also important to note that 20% SD Value is required for Coal (GSM 1037), however 50% SD Value is required for the other 3 RFP;s, of which 30% must be focussed on Enterprise & Supplier Developemnt to SMME's, black owned, black woman owned ect. The supplier development partners listed below, should therefore fit into these categories.

Hope this helps.

Kind Regards
Janine

(See attached file: TRX SD Value Summary_template.zip)

Janine Kamaar | Transformation Manager
McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa Direct +27 11 506-8306 | Fax +27 11 506-8306 | Mobile +27 82 329-8121 | Internal 327-8306 janine_kamaar@mckinsey.com
<mailto:janine_kamaar@mckinsey.com>

Ashvin Sologar---2014/06/11 03:05:57 PM---Hi Janine, Do you think the below will work according to Transnet's SD requirements?

From: Ashvin Sologar/JOH/Africa/MCKINSEY
To: "Indheran Pillay" <IndheranP@regiments.co.za <mailto:IndheranP@regiments.co.za> >,
Cc: "Janine Kamaar" <Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> >
Date: 2014/06/11 03:05 PM
Subject: Re: SD Commitment

Hi Janine,

Do you think the below will work according to Transnet's SD requirements?

From: Indheran Pillay [IndheranP@regiments.co.za]
Sent: 06/11/2014 12:42 PM GMT
To: Ashvin Sologar
Subject: SD Committment

Hi Ash,
Does this work? If yes, I will generate similar tables for the rest of the projects.

Supplier Development Partner

SD Category

Description

Value

Seth Consulting

Enterprise and Supplier Development

source IT support services, provide mentorship and growth strategy expertise to owner of business

1,500,000.00

Preferred IT

Enterprise and Supplier Development

purchase technology hardware and software

500,000.00

Accompany Consulting

IPR, new skills development, job creation/preservation

subcontract consultants from accompany consulting for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.

4,000,000.00

Homix

Job creation/preservation, new skills development, IPR

TRANSNET-05-749

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subcontract services from Homix for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.

6,000,000.00

Albatime

Job creation/preservation, new skills development, IPR

subcontract services from Albatime for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.

1,000,000.00

Pule

Job creation/preservation

subcontract legal services from Pule for the execution of the project

1,500,000.00

DEC

Job creation/preservation

subcontract engineering resources from DEC for the execution of the project

2,000,000.00

SD Total

16,500,000.00

SD Total as a % of Total Fees

20%

Regards,

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BB23-AS-342

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Annexure 4

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Total Fees	168 375 000,00
Success Fee	
Total Fixed Fee	

fixed Fee	Mckinsey	60%	-
	Regiments	40%	-
Success Fee	Mckinsey	40%	-
	Regiments	60%	-
Total	Mckinsey	46%	77 625 000,00
	Regiments	54%	90 750 000,00

Commitment	50%	45 375 000,00
------------	-----	---------------

Supplier Development Partner	SD Category	Description	% of Total	Value
Seth Consulting	Enterprise and Supplier Development	source IT support services, provide mentorship and growth strategy expertise to owner of business	5,0%	4 537 500,00
Preferred IT	Enterprise and Supplier Development	purchase technology hardware and software	2,5%	2 268 750,00
Accompany Consulting	IPR, new skills development, job creation/preservation	subcontract consultants from accompany consulting for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	10,0%	9 075 000,00
Homix	Job creation/preservation, new skills development, IPR	subcontract services from Homix for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	29,5%	26 771 250,00
Albatime	Job creation/preservation, new skills development, IPR	subcontract services from Albatime for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	3,0%	2 722 500,00
Pule	Job creation/preservation	subcontract legal services from Pule for the execution of the project		-
DEC	Job creation/preservation	subcontract engineering resources from DEC for the execution of the project		-
SD Total				45 375 000,00
SD Total as a % of Total Fees				50%

Total Fees	185 185 000,00
Success Fee	146 685 000,00
Total Fixed Fee	38 500 000,00

fixed Fee	Mckinsey	60%	23 100 000,00
	Regiments	40%	15 400 000,00
Success Fee	Mckinsey	40%	58 674 000,00
	Regiments	60%	88 011 000,00
Total	Mckinsey	44%	81 774 000,00
	Regiments	56%	103 411 000,00

Commitment	20%	20 682 200,00
------------	-----	---------------

Supplier Development Partner	SD Category	Description		Value
Seth Consulting	Enterprise and Supplier Development	source IT support services, provide mentorship and growth strategy expertise to owner of business	1,0%	1 034 110,00
Preferred IT	Enterprise and Supplier Development	purchase technology hardware and software	0,5%	517 055,00
Accompany Consulting	IPR, new skills development, job creation/preservation	subcontract consultants from accompany consulting for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	6,0%	6 204 660,00
Homix	Job creation/preservation, new skills development, IPR	subcontract services from Homix for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	10,5%	10 858 155,00
Albatime	Job creation/preservation, new skills development, IPR	subcontract services from Albatime for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	2,0%	2 068 220,00
Pule	Job creation/preservation	subcontract legal services from Pule for the execution of the project	0,0%	-
DEC	Job creation/preservation	subcontract engineering resources from DEC for the execution of the project	0,0%	-
SD Total				20 682 200,00
SD Total as a % of Total Fees				20%

Fee	133 100 000,00	
Commitment	50%	66 550 000,00

Supplier Development Partner	SD Category	Description		Value
Seth Consulting	Enterprise and Supplier Development	source IT support services, provide mentorship and growth strategy expertise to owner of business	1,5%	1 996 500,00
Preferred IT	Enterprise and Supplier Development	purchase technology hardware and software	0,5%	665 500,00
Accompany Consulting	IPR, new skills development, job creation/preservation	subcontract consultants from accompany consulting for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	10,0%	13 310 000,00
Homix	Job creation/preservation, new skills development, IPR	subcontract services from Homix for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	24,5%	32 609 500,00
Albatime	Job creation/preservation, new skills development, IPR	subcontract services from Albatime for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	3,0%	3 993 000,00
Pule	Job creation/preservation	subcontract legal services from Pule for the execution of the project	4,0%	5 324 000,00
DEC	Job creation/preservation	subcontract engineering resources from DEC for the execution of the project	6,5%	8 651 500,00
SD Total				66 550 000,00
SD Total as a % of Total Fees				50%

Total Fees	238 760 000,00
Success Fee	
Total Fixed Fee	

fixed Fee	Mckinsey	40%	-
	Regiments	60%	-
Success Fee	Mckinsey	40%	-
	Regiments	60%	-
Total	Mckinsey	43%	102 580 000,00
	Regiments	57%	136 180 000,00

Commitment	50%	68 090 000,00
------------	-----	---------------

Supplier Development Partner	SD Category	Description	% of Contract	Value
Seth Consulting	Enterprise and Supplier Development	source IT support services, provide mentorship and growth strategy expertise to owner of business	2,5%	3 404 500,00
Preferred IT	Enterprise and Supplier Development	purchase technology hardware and software	1,5%	2 042 700,00
Accompany Consulting	IPR, new skills development, job creation/preservation	subcontract consultants from accompany consulting for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	10,0%	13 618 000,00
Homix	Job creation/preservation, new skills development, IPR	subcontract services from Homix for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	24,5%	33 364 100,00
Albatime	Job creation/preservation, new skills development, IPR	subcontract services from Albatime for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	3,0%	4 085 400,00
Pule	Job creation/preservation	subcontract legal services from Pule for the execution of the project	4,0%	5 447 200,00
DEC	Job creation/preservation	subcontract engineering resources from DEC for the execution of the project	4,5%	6 128 100,00
SD Total				68 090 000,00
SD Total as a % of Total Fees				50%

Annexure 5

Annexure 6

Transnet												
Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Chivita/Homix	Kupanua	Albatime	Bank	Outstanding	Bank date
Transnet	31-Oct-14	oct	TRXGCIAD01(INV0055)	GCIA Portfolio - TRXGCIAD002	3 934 510,27		1 967 255,14				3 934 510,27	24/11/2014
Transnet	Dec-14	15-Jan-15	TRXHR20002	Capital Projects - HR Recruitment TRXHR20002	402 799,83						402 799,83	22/05/2015
Transnet	Dec-14	15-Jan-15	TRXHR1002	Capital Project - HR strategy TRXHR1002	1 249 029,60		624 514,80			62 451,48	1 249 029,60	22/05/2015
							2 591 769,94			62 451,48	-	
Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)		Chivita/Homix	Kupanua	Albatime	Bank	Outstanding	Bank date
Transnet	Jan-15	31-Jan-15	TRXGCIAD05(INV0092)	GCIA Portfolio - TRXGCIAD005	664 820,64					33 241,03	664 820,64	27/03/2015
Transnet	Jan-15	31-Jan-15	TRXDCT00001 (INV0096)	Durban Container Terminal - TRXDCT00001						43 900,03	878 000,64	27/03/2015
Transnet	Jan-15	31-Jan-15	TRX-IES0001 (INV0095)	GCIA SWAT2 IES - TRXIES0001	903 055,56					45 152,78	903 055,56	27/03/2015
Transnet	Jan-15	31-Jan-15	TRXMC0114	Maputo Corridor - TRXMC0114	2 218 123,26			665 436,98			2 218 123,26	27/05/2015
							-	665 436,98	122 293,84	-	-	
Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)		Chivita/Homix	Kupanua	Albatime	Bank	Outstanding	Bank date
Transnet	Feb-15	28-Feb-15	TRXGCIAD06	GCIA Portfolio - TRXGCIAD006	3 065 478,24					153 273,91	3 065 478,24	27/03/2014
Transnet	Feb-15	28-Feb-15	TRXDCT00002	Durban Container Terminal - TRXDCT00002	2 483 120,64					124 156,03	2 483 120,64	27/03/2015
Transnet	Feb-15	28-Feb-15	TRX-IES0002	GCIA SWAT2 IES - TRXIES0002	2 895 109,80					144 755,49	2 895 109,80	27/03/2015
							-	-	422 185,43	-	-	
Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Homix	Kupanua	Albatime	Bank	Outstanding	Bank date
Transnet	Mar-15	30-Mar-15	TRXCOAL010	Coal - TRXCOAL011	1 337 599,99		668 800,00			66 880,00	1 337 599,99	03/07/2015
Transnet	Mar-15	30-Mar-15	TRXGCIAD07	GCIA Portfolio - TRXGCIAD007	2 753 513,14		1 376 756,57			137 675,66	2 753 513,14	22/05/2015
Transnet	Mar-15	30-Mar-15	TRXNMPP012	NMPP - TRXNMPP012	3 947 833,55		1 973 916,78			197 391,68	3 947 833,55	22/05/2015
Transnet	Mar-15	30-Mar-15	TRXDCT00003	Durban Container Terminal - TRXDCT00003	2 151 663,36		1 075 831,68			107 583,17	2 151 663,36	22/05/2015
Transnet	Mar-15	30-Mar-15	TRX-IES0003	GCIA SWAT2 IES - TRXIES0003	2 231 702,42		1 115 851,21			111 585,12	2 231 702,42	22/05/2015
							6 211 156,23		671 115,62	-	-	
Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Chivita/Homix	Kupanua	Albatime	Bank	Outstanding	Bank date
Transnet	Apr-15	30-Apr-15	TRXCOAL012	Coal - TRXCOAL012	14 264 250,00		7 132 125,00			713 212,50	14 264 250,00	03/07/2015
Transnet	Apr-15	30-Apr-15	TRXGCIAD08	GCIA Portfolio - TRXGCIAD008	3 327 344,79		1 663 672,40			166 367,24	3 327 344,79	01/07/2015
Transnet	Apr-15	30-Apr-15	TRXNMPP013	NMPP - TRXNMPP013	3 947 833,55		1 973 916,78			197 391,68	3 947 833,55	22/05/2015
Transnet	Apr-15	30-Apr-15	TRX-IES0004	GCIA SWAT2 IES - TRXIES0004	2 132 647,70		1 066 323,85			106 632,39	2 132 647,70	01/07/2015
Transnet	Apr-15	30-Apr-15	TRXID005	Kumba Iron Ore	1 341 780,00		670 890,00			67 089,00	1 341 780,00	03/07/2015
Transnet	Feb-15	28-Feb-15	TRX-MC	Maputo Corridor - TRXMC0115	331 373,38			157 713,98		-	331 373,38	11/06/2015
Transnet	Apr-15	30-Apr-15	TRX-HR20005	HR Hiring - Recruitment	436 956,43					436 956,43	-	22/05/2015
Transnet	Jan-15	31-Jan-15	TRXHR20003	HR Hiring - Recruitment	409 268,52					409 268,52	-	22/05/2015
Transnet	Feb-15	28-Feb-15	TRXHR20004	HR Hiring - Recruitment	417 915,20					417 915,20	-	22/05/2015
							12 506 928,02			-	-	
Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Forsure	Haustaff	Albatime	Bank	Outstanding	Bank date
Transnet	May-15	31-May-15	TRXCOAL	Coal -	4 232 250,00		2 116 125,00			211 612,50	4 232 250,00	03/07/2015
Transnet	May-15	31-May-15	TRXGCIAD09	GCIA Portfolio - TRXGCIAD009	3 425 462,52			1 712 731,26		171 273,13	3 425 462,52	03/07/2015
Transnet	May-15	31-May-15	TRXNMPP	NMPP - TRXNMPP	4 275 000,00			2 137 500,00		213 750,00	4 275 000,00	03/07/2015
Transnet	May-15	31-May-15	TRX-IES0005	GCIA SWAT2 IES - TRXIES0005	2 079 410,89			1 039 705,45		103 970,54	2 079 410,89	03/07/2015
Transnet	May-15	31-May-15	TRXID006	Kumba Iron Ore - TRXID006	5 278 200,00		2 639 100,00			263 910,00	5 278 200,00	03/07/2015
Transnet	May-15	31-May-15	TRX-GBF00001	GFB	3 711 840,00		1 855 920,00			185 592,00	3 711 840,00	21/08/2015
Transnet	May-15	31-May-15	TRX-SAL0001	GCIA - Saldanha Support	2 334 576,82		1 167 288,41			116 728,84	2 334 576,82	03/07/2015
Transnet	May-15	31-May-15	TRX-MAN001	Manganese-Megaproject Exc.Org	6 881 673,33			3 440 836,67		344 083,67	6 881 673,33	03/07/2015
							7 778 433,41		1 610 920,68	-	-	
Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Forsure	Haustaff	Albatime	Bank	Outstanding	Bank date
		02-Jun-15	TRXFR00001	China Development Bank	189 240 000,00					147 607 200,00	189 240 000,00	Bank date
Transnet	Jun-15	30-Jun-15	TRXCOAL014	Coal -	12 477 509,00		6 238 754,50			623 875,45	12 477 509,00	18/08/2015
Transnet	Jun-15	30-Jun-15	TRXGCIAD10	GCIA Portfolio - TRXGCIAD010	1 778 817,81			889 408,91		88 940,89	1 778 817,81	18/08/2015
Transnet	Jun-15	30-Jun-15	TRXNMPP015	NMPP - TRXNMPP015	3 620 667,10			1 810 333,55		181 033,36	3 620 667,10	18/08/2015
Transnet	Jun-15	30-Jun-15	TRX-IES0006	GCIA SWAT2 IES - TRXIES0006	3 815 932,03			1 907 966,02		190 796,60	3 815 932,03	18/08/2015
Transnet	Jun-15	30-Jun-15	TRX-GBF00002	GFB Breakthrough TRXGBF00002	5 016 000,00		2 508 000,00			250 800,00	5 016 000,00	21/08/2015
Transnet	Jun-15	30-Jun-15	TRX-SAL0002	GCIA - Saldanha Support	2 925 058,33		1 462 529,17			146 252,92	2 925 058,33	18/08/2015
Transnet	Jun-15	30-Jun-15	TRX-MAN002	Manganese-Megaproject Exc.Org	6 881 673,33			3 440 836,67		344 083,67	6 881 673,33	18/08/2015
										-	-	
Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Forsure	Haustaff	Albatime	Bank	Outstanding	Bank date
Transnet	Jul-15	31-Jul-15	TRXCOAL015	Coal -	28 691 520,00		14 345 760,00			1 434 576,00	28 691 520,00	31/08/2015

Transnet	Jul-15	31-Jul-15	TRXGICIA011	GCIA Portfolio - TRXGICIA011	2 036 003,18			1 018 001,59		101 800,16	2 036 003,18	-	02/09/2015
Transnet	Jul-15	31-Jul-15	TRXNMPP015	NMPP - TRXNMPP015				-		-	-	-	
Transnet	Jul-15	31-Jul-15	TRX-IES0007	GCIA SWAT2 IES - TRXIES0006	4 829 541,49			2 414 770,75		241 477,07	4 829 541,49	-	02/09/2015
Transnet	Jul-15	31-Jul-15	TRXIOD002	Iron Ore renegotiation				-		-	-	-	
Transnet	Jul-15	31-Jul-15	TRX-GFB00003	GFB Breakthrough TRXGFB00003	8 151 000,00			4 075 500,00		407 550,00	8 151 000,00	-	16/09/2015
Transnet	Jul-15	31-Jul-15	TRX-SAL0002	GCIA - Saldanha Support				-		-	-	-	
Transnet	Jul-15	31-Jul-15	TRX-MAN003	Manganese-Megaproject Exc.Org	6 881 673,33			3 440 836,67		344 083,67	6 881 673,33	-	18/09/2015

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Transnet partners			Bank	Outstanding	Bank date
							Fortime	Medjoul	Albatieme			
Transnet	Jul-15	31-Aug-15	TRXCOAL015	Coal -	5 411 427,93		2 705 713,97	2 373 433,30	270 571,40	5 411 427,93	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRXGICIA011	GCIA Portfolio - TRXGICIA011	1 932 126,83			966 063,42	96 606,34	1 932 126,83	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRXNMPP015	NMPP - TRXNMPP015	4 798 629,13		2 399 314,57	2 104 661,90	239 931,46	4 798 629,13	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-IES0007	GCIA SWAT2 IES - TRXIES0006	4 110 178,12			2 055 089,06	205 508,91	4 110 178,12	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRXIOD002	Iron Ore renegotiation			-		-	-	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-GFB00003	GFB Breakthrough TRXGFB00003	9 405 000,00		4 702 500,00	4 125 000,00	470 250,00	9 405 000,00	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-SAL0002	GCIA - Saldanha Support			-	-	-	-	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-MAN003	Manganese-Megaproject Exc.Org	6 881 673,33			3 440 836,67	344 083,67	6 881 673,33	-	01/10/2015

Date of Invoice		Invoice no	Mandate	Invoice Amount		Transnet partners		Bank	Outstanding	Bank date
						Fortime	Medjoul	Albatieme		
	30-Sep-15	TRXCOAL017	Coal	5 411 427,93		2 705 713,97		270 571,40	5 411 427,93	-
	30-Sep-15	TRXGICIA013	GCIA Portfolio Optimisation	1 102 716,19			551 358,10	55 135,81	1 102 716,19	-
	30-Sep-15	TRXIES0009	SWAT2-IES	2 041 014,41			1 020 507,21	102 050,72	2 041 014,41	-
	30-Sep-15	TRXGFB0005	GFB	9 405 000,00		4 702 500,00		470 250,00	9 405 000,00	-
	30-Sep-15	TRXMAN0005	Manganese	6 881 673,33				344 083,67	6 881 673,33	-
	30-Sep-15	TRXNMPP017	NMPP Acceleration	5 016 000,00		2 508 000,00		250 800,00	5 016 000,00	-
	30-Sep-15	TRXSWIBC001	SWAT 2 GFB CASE	3 511 232,10		1 755 616,05		175 561,61	3 511 232,10	-
	30-Sep-15	TRXSW2CM001	TRXSW2CM001	107 702,93				5 385,15	107 702,93	-
				33 476 766,89		9 916 213,97	3 327 481,35	1 673 838,34	9 405 000,00	-

Date of Invoice		Invoice no	Mandate	Invoice Amount		Transnet partners		Bank	Outstanding	Bank date
						Fortime	Medjoul	Albatieme		
	30-Oct-15	TRXIES0010	SWAT2-IES	2 280 241,50		6 270 000,00	1 140 120,75	114 012,08	2 280 241,50	-
	30-Oct-15	TRXGFB0006	GFB	12 540 000,00				627 000,00	12 540 000,00	-
	30-Oct-15	TRXMAN0006	Manganese	6 881 673,33		2 508 000,00		344 083,67	6 881 673,33	-
	30-Oct-15	TRXNMPP018	NMPP Acceleration	5 016 000,00				250 800,00	5 016 000,00	-
	30-Oct-15	TRXSWIBC0001	SWAT 2 GFB CASE	3 549 916,00		1 774 958,00		177 495,80	3 549 916,00	-
	30-Oct-15	TRXSW2CM001	TRXSW2CM001	72 703,50					72 703,50	-
				12 612 703,50		8 778 000,00	2 915 078,75	1 513 391,54	12 612 703,50	-

GL 18 793 650,00 6 242 560,00
Diff 45 584,57 -0,10

SAFCOL	1 761 300,00
SAA	2 793 000,00
Total Outstanding	22 017 703,50

SAFCOL	1 761 300,00
Grand Total	23 779 003,50

SAFCOL										
Client	Month	Date of invoice	Invoice no	Project	Amount (incl vat)	Homix	Albatime	Bank	Outstanding	Bank date
				SAFCOL - SAFFPL1001	957 600,00	478 800,00	47 880,00			
				SAFCOL - SAFFPL1002	2 992 500,00	1 496 250,00	149 625,00			
	Feb-15	12/03/2015	Regiments Capital	SAFCOL - SAFFPL1003	1 761 300,00	880 650,00	88 065,00		1 761 300,00	
						880 650,00	88 065,00		1 761 300,00	

Nedbank										
Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	ProGrace	Bank	Outstanding	Bank date	
	Mar-15	31/03/2015	NED 03/15	Nebank Capital - ACSA Swap R1.5bln	1 515 799,00		1 515 799,00	-	31/03/2015	
						-				
								-		

SAA										
Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)			Bank	Outstanding	Bank date
	Mar-15	31/03/2015	MK/SAA1001	Working Capital Optimisation project(Mar-Oct 2014)	6 241 500,00	2 496 600,00	312 075,00	6 241 500,00	-	
	Oct-15	30/10/2015	SAA-010		2 793 000,00				2 793 000,00	
									2 793 000,00	

YTD Total	E13+E18
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Client	Month	Date of Invol	Project	Amount (incl vat)	Expected Payment	Chivita	Albatime	Outstanding	Bank date
Transnet	Mar-14	31-Mar-14	Capital Room	3,494,145.60	1-May-14	1,747,072.80	162,518.40	0.00	
Transnet	Mar-14	31-Mar-14	1064 - Transaction Advisory	6,127,500.00	1-May-14	3,063,750.00	285,000.00	-	
Transnet	Mar-14	31-Mar-14	2nd Defined Benefit	7,980,000.00	1-May-14	3,990,000.00	399,000.00		
Transnet	Mar-14	31-Mar-14	Project Factory	2,353,940.40	1-May-14	1,176,970.20	109,485.60		
Transnet	Mar-14	31-Mar-14	1064 - TCO	1,225,500.00	1-May-14	612,750.00	57,000.00		
Transnet	Mar-14	31-Mar-14	1064 - FRM	3,676,500.00	1-May-14	1,838,250.00	171,000.00		
Transnet		18-Mar-14	Swot	12,540,000.00		11,913,000.00	583,255.81	-	
		5-Mar-14	War Room	2,588,256.00		1,294,128.00	120,384.00		
		5-Mar-14	Project Factory	1,205,892.00		602,946.00	56,088.00		
PPC	Mar-14	31-Mar-14	Transaction Advisory	41,191,734.00					
				285,000.00	1-May-14	no			
Transnet			Maputo Corridor	5,732,680.32				5,732,680.32	
Transnet			Maputo Corridor	4,999,834.80		21.81		-	
				10,732,515.12					

Client	Month	Date of Invol	Project	Amount (incl vat)	Expected Payment	Chivita	Albatime	Outstanding	Bank date
Transnet	Apr-14	30-Apr-14	2nd Defined Benefit TRA005	7,980,000.00		3,990,000.00	399,000.00	-	23/05/2014
Transnet	Apr-14	30-Apr-14	Project factory- TRXPF0003	2,721,590.40		1,360,795.20	126,585.60	2,721,590.40	
Transnet	Apr-14	30-Apr-14	Capital Room- TRXWR0003	3,360,566.00		1,680,283.00	156,305.40	3,360,566.00	
Transnet	Apr-14	30-Apr-14	Maputo Corridor - TRXMC006	4,602,921.80				-	04/06/2014
Transnet	Apr-14	30-Apr-14	Risk Share -Outperformance	79,230,000.00		45,856,500.00	2,573,550.00	-	30/04/2014
				97,895,078.20		52,887,578.20	3,255,440.99	6,082,156.40	

Client	Month	Date of Invol	Project	Amount (incl vat)	Homix	Chivita	Albatime	Outstanding	Bank date
Transnet	May-14	21-May-14	TRXSWOT03	22,800,000.00	21,660,000.00		228,000.00	-	26/05/2014
Transnet	May-14	30-May-14	2nd Defined BenefitTRA006	7,980,000.00		3,990,000.00	399,000.00	7,980,000.00	
Transnet	May-14	30-May-14	Coal - TRXCOAL001	3,268,000.00		1,634,000.00	163,400.00	3,268,000.00	
Transnet	May-14	30-May-14	NMPP - TRXNMPP001	3,676,500.00		1,838,250.00	183,825.00	3,676,500.00	
Transnet	May-14	30-May-14	Project factory- TRXPF0004	3,661,331.45		1,830,665.73	170,294.49	3,661,331.45	
Transnet	May-14	30-May-14	Capital Room - TRXWR0004	4,382,698.33		2,191,349.17	219,134.92	4,382,698.33	
Transnet	May-14	30-May-14	Iron Ore - TRXO001	4,902,000.00		2,451,000.00	245,100.00	4,902,000.00	
Transnet	May-14	30-May-14	Manganese - TRXMG0002	6,127,500.00		3,063,750.00	306,375.00	6,127,500.00	
				56,798,029.78				33,998,029.78	

Annexure 7

From:
Sent:
To:
Subject:
Attachments:

Eric Wood <EricW@regiments.co.za>
Monday, May 18, 2015 11:46 AM
Anoj Singh Corporate JHB
FW: RE: Revised Outstanding Revenue
Advisory Invoice Tracking - 2015-2016.xlsx

Hi Anoj
I have attached the list of o/s invoices as requested
Thanks

Eric Wood
Executive Director
+27 83 626 0857

10

CELEBRATING A DECADE
OF SUCCESS STORIES
2004-2014

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91 Central Str, Houghton, 2198 Postnet Suite 25, Private Bag X11, Birnam Park, 2015

From:
Sent:
To:
Cc:
Subject:

Yvonne Mokone
18 May 2015 11:44 AM
Eric Wood
Indheran Pillay; Perry Tambatamba
RE: Revised Outstanding Revenue

Good Day Mr Wood,

Attached is the updated schedule.

Regards,

Yvonne Mokone
Junior Accountant
+27 83 284 0825

10

CELEBRATING A DECADE
OF SUCCESS STORIES
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91 Central Str, Houghton, 2198 Postnet Suite 25, Private Bag X11, Birnam Park, 2015

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Annexure 8

From:
Sent:
To:
Subject:
Attachments:

Eric Wood <EricW@regiments.co.za>
Wednesday, August 5, 2015 2:35 PM
Garry Pita Transnet Corporate JHB
Outstanding Invoices
Advisory Outstanding Invoices August 2015.xls

Hi Garry

Please could you assist with the attached list of outstanding invoices (in particular the May and June 2015 invoices are overdue). Should you require the underlying invoices and supporting memos (as delivered to Transnet at the time of invoicing), please let me know.

Your assistance in this regard is much appreciated

Thank You

Eric Wood

Eric Wood

Executive Director

+27 83 626 0857

10

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91 Central Str, Houghton, 2198 Postnet Suite 25, Private Bag X11, Birnam Park, 2015

From: Perry Tambatamba
Sent: 05 August 2015 01:17 PM
To: Eric Wood <EricW@regiments.co.za>
Subject: Advisory Outstanding Invoices August 2015.xls

Hi Eric,

Please find the up-dated schedule for Transnet. Please ignore the last one that I sent.

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Table 2: Summary of Known Kickback Agreements Related to the Capture of Transnet by the Gupta Enterprise

Date of Agreement	Chinese Party	Gupta Enterprise Party or Other Counter Party	Specific Transnet Project	Payment Terms	Total Payments Due
13 June 2011	ZPMC	JJ Trading FZE	iCLM HQ 0762 – 7 Cranes (total) for Transnet	3% success fee based on Price A 85% of Price B Price A = ZPMC's original offer to Transnet Price B = Any increase in price paid to ZPMC by Transnet over and above Price B	Unknown
14 April 2012	CNR (Hong Kong)	Century General Trading	95 Locomotive Project	20% commission on total contract value	R523.32m
8 July 2013	CNR (Hong Kong)	Century General Trading	232 Diesel Locomotives Project	2% success fee 19% sales	R2.088bn

				commission	
20 May 2014	CNR (Hong Kong)	Tequesta Group Limited	232 Diesel Locomotives Project	2% success fee 19% sales commission	Remainder of R2.088bn
11 November 2014	CNR Da Lian Rolling Stock Co	Tequesta Group Limited	232 Diesel Locomotives Project (inferred but not explicitly stated in contract)	One off fee of \$18.2m in five instalments, which appears to equal 2% of contract success fee	\$18.2m
10 February 2015	CSR	Regiments Asia	95 Locomotive Project	20% of total contract value	Remainder of R523.32m
8 March 2015 [although unsigned]	CNR Rolling Stock	Business Expansion Structured Projects	CNR Relocation Costs	Difference in price between 'benchmark price' of R280m and whatever Transnet agreed to pay	n/a
25 April 2015	CNR Rolling Stock	Business Expansion Structured Projects	CNR Relocation Costs	Difference in price between 'benchmark price' of	R67.2m

				R580m and whatever Transnet agreed to pay (ultimately R647.2m)	
18 May 2015	CSR Hong Kong	Tequesta Group	359 Locomotive Project	2% of contract value as success fee 19% of contract value as sales commission made as Transnet pays CSR	Remainder of original R3.787bn
10 June 2015	CSR Zhuzhou Electric Locomotive Company	Regiments Asia	12 year maintenance plan	21% of contract value paid by Transnet	R1.298bn
August 2016 Addendum to original Business Development Agreements	CRRC	Regiments Asia & Tequesta Group	100 Locomotive Project & 359 Locomotive Project	Immediate release of 15% surety held by CRRC for past payments and retention by CRRC of future payments	\$18.2m

FOF-06-202

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				for final 359 Locomotive Project until final payment received from Transnet as surety	
August 2016	CRRC	Regiments Asia	95 Locomotive Project	Immediate release of 15% surety held by CRRC for past payments and retention by CRRC of future payments for final 359 Locomotive Project until final payment received from Transnet as surety	\$4 357 543.04

16/11/2015	456,000.00	Green Blossom (FNB 62564567067)	Integrated Capital Management (10011447584)
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Section Nine: Total Amounts Paid to the Gupta Enterprise Arising From State Capture Contracts

9.1. Transnet Kickbacks

708. An additional stream of funds paid to the Gupta Enterprise from state funds consists of the kickbacks that the Enterprise was paid, or due to be paid, arising from contracts placed by Transnet in relation to ship-to-shore crane contracts and the multiple locomotive procurements.

709. I have addressed these kickbacks, their contractual underpinnings, and the evidence at our disposal showing that the payments were made in my previous evidence before the Commission, and I do not traverse it again here. Instead, I provide, below, a brief overview of the amounts known to have been paid to the Gupta Enterprise arising from these contracts; or, alternatively, payments which we have reasonable belief were made based on related evidence.

9.1.1. Kickbacks in Relation to the Liebherr Contract

710. Ledgers extracted from the #Gtupaleaks show that Liebherr Cranes transferred \$2,593,480.86 (R26,586,799.49) to Accurate Investments, a Gupta Enterprise company based in Dubai, in 7 payments between July 2013 and May 2014 as follows:

Table 235: Payments Made by Liebherr Cranes to Accurate Investments

Date	Amount (USD)	Amount (ZAR)²²
22/07/2013	905,000.88	8,886,837.14
17/02/2014	212,006.01	2,296,152.29
15/04/2014	371,105.83	3,919,211.56
07/05/2014	405,598.52	4,240,532.52
09/05/2014	402,879.32	4,170,687.29
26/05/2014	296,890.30	3,073,378.69
TOTAL	\$2,593,480.86	R26,586,799.49

711. I do not know if Liebherr Cranes caused further payments to be made to Accurate Investments. I have attempted to request this information from Liebherr's Swiss headquarters, but have not received a reply identifying the terms of the underlying agreement (that Liebherr does not deny) or the amounts paid thereon. I hope that Liebherr may still decide to provide the Commission with this information and explain why they entered into a relationship with Accurate Investments related to a contract in South Africa into which Accurate Investments would have had no legitimate insight.

9.1.2. Kickbacks in Relation to the ZPMC Contract

712. The precise amount that was to be paid to the Gupta Enterprise by ZPMC is unknown. As I discuss in Section 3.1. of my report to the Commission on Transnet-related money flows, the underlying agency agreement between ZPMC and JJ Trading, the money laundering agent for the Gupta Enterprise, provides no specific monetary value to be paid by ZPMC. Instead, the contract stipulated that JJ Trading would be paid a proportion of the increase

²² In the interests of calculating a total sum paid to the Gupta Enterprise in Rand, I have converted the dollar amounts deposited into Accurate Investments using the prevailing USD:R spot exchange rate.

in the baseline offer made by ZPMC to Transnet, but did not provide any indicative figures of what this baseline figure might be.

713. However, the hawala ledger, extracted from the #Guptaleaks, shows the Gupta Enterprise earned **\$3,987,103** (net, equal to **R33,379,031.04**) between the 22nd of December 2011 and the 30th of January 2014 from kickbacks paid by ZPMC to JJ Trading. Of this amount, between 3.8% and 3.9% was paid onwards as a commission fee to a person identified only as 'David.' I have subtracted these amounts from the total tally of payments to the Gupta Enterprise.
714. I do not subtract any 'fee' or cut taken by JJ Trading, for two reasons. First, the underlying contract does not provide for such a fee, or it is not made explicit. Second, the payments reflected in the hawala ledger increased the overall running balance without any deductions or haircuts. As such, the payments were reflected in the hawala ledger as to the full benefit of the Gupta Enterprise.
715. The following payments were made to JJ Trading by ZPMC:

Table 236: Net Earnings of the Gupta Enterprise in Relation to Kickbacks Paid by ZPMC to JJ Trading

Date	To	From	Amount (USD)	Amount (ZAR) ²³
22/12/2011	JJ	Shanghai Zhenhua Heavy Industries	969,086	7,931,193.64
31/03/2012	JJ	Shanghai Zhenhua	969,086	7,411,375.91

²³ In the interests of calculating a total sum paid to the Gupta Enterprise in Rand, I have converted the dollar amounts deposited into Accurate Investments using the prevailing USD:R spot exchange rate.

		Heavy Industries		
17/05/2012	JJ	Shanghai Zhenhua Heavy Industries	969,086	8,106,501.29
28/01/2013	JJ	Shanghai Zhenhua Heavy Industries	1,245,974	11,335,123.86
Sub-Total: Payments Made by ZPMC to JJ Trading			4,153,232	34,784,194.70
31/12/2011	JJ	David	38,764	313,732.55
14/05/2012	JJ	David	38,764	317,791.14
17/05/2012	JJ	David	38,764	324,264.73
30/01/2013	JJ	David	49,837	449,375.24
Sub-Total: Payments Made to 'David' By JJ Trading			166,129	1,405,163.66
TOTAL Payments to JJ Trading Less 'David' Commission			\$3,987,103	33,379,031.04

9.1.2. Kickbacks in Relation to the Transnet Locomotive Procurements

716. As discussed in Section 6 in my report to the Commission on Transnet-related payments, vast sums were paid by CRC, CNR and CRRC to the Gupta Enterprise through three laundering routes.

717. The first route was conducted via JJ Trading and Century General Trading. These entities, controlled by the Worlds Window network, received deposits

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from CSR, CNR and CRRC, and, after taking a set fee (20% in relation to the 95 locomotive contract and 21% in relation to the 359 and 100 locomotive contracts), paying this onto the Gupta Enterprise.

718. As noted in my report to the Commission on Transnet-related money flows, in January 2015, participants to the kickback scheme distributed an Excel spreadsheet that set out the funds that had been transferred via the JJT/CGT route. This was shared in anticipation of JJT and CGT being replaced as the primary money laundering route.
719. According to the spreadsheet, CSR, CNR and CRRC had paid \$123,903,822.89 to JJT and CGT in relation to the 95, 100 and 359 locomotive procurements. Of this, a certain proportion had been retained by JJT and CGT, and a larger proportion paid onto the Gupta Enterprise. Using the figures provided in the spreadsheet we can confirm that the Gupta Enterprise had been paid **\$98,051,019.91** by CSR, CNR and CRRC as follows:

Table 237: Kickbacks Paid to JJ Trading, Century General Trading and the Gupta Enterprise Flowing from the 359, 100 and 95 Locomotive Procurements During the JJT/CGT Laundromat Phase

	359 Project	100 Project	95 Project	Total
TOTAL PROJECT VALUE	R18,122,320,000	R4,400,000,000	R2,686,600,000	R22,152,232,000
CJT/JJT Take of Kickbacks	21%		20%	
Gupta Enterprise Take of Kickbacks	79%		80%	
Total Kickbacks Paid as of January 2015	\$107,203,921		\$16,699,902.89	\$123,903,822.89

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Deduced JJT/CGT Take	\$22,512,823.41	\$3,339,980.57	\$25,825,803.98
Deduced Gupta Enterprise Take	\$84,691,097.59	\$13,359,922.32	\$98,051,019.91

720. The excellent work done by amaBhungane in tracing and tracking the individual kickback payments in relation to the various locomotive procurements includes a very useful 'best estimate' rand value based on prevailing exchange rates on the dates that Transnet made payments to the different railway manufacturers. For the period in which JJT/CGT acted as the primary laundry conduit, amaBhungane's calculations show that:

- a. R166,863,800 was paid to CGT in relation to the 95 locomotive procurement as of the date of the 'final workings' document;
- b. R448,457,720 was paid to JJ Trading in relation to the 100 locomotive procurement as of the date of the 'final workings' document;
- c. R706,770,480 was paid to JJ Trading in relation to the 359 locomotive procurement as of the date of the 'final workings' document.

721. Applying the percentage distribution of the kickbacks to these amounts shows that the Gupta Enterprise earned at least **R1,046,121,317** from the 95, 100 and 359 locomotive procurements during the JJT/CGT money laundering phase:

Table 238: Best Estimate of Rand Value of Kickbacks Earned by the Gupta Enterprise from the 95, 100 and 359 Loco Procurements During JJT/CGT Laundromat Phase (all amounts in ZAR)

Project	Best Estimate of Kickbacks via JJT/CGT Laundromat	Percentage Due to Gupta Enterprise	Kickbacks Earned by Gupta Enterprise Through JJT/CGT Money Laundering Phase
95 Loco	166,863,800	80%	133,491,040
100 Loco	448,457,720	79%	354,281,598
359 Loco	706,770,480	79%	558,348,679
TOTAL	1,322,092,000		1,046,121,317

722. In Section 6.2 of my report to the Commission on Transnet-related money laundering, I recounted how Tequesta Group and Regiments Asia were formed in Hong Kong on the 20th of June 2014, with Salim Essa as the sole director. Between the 8th of December 2014 and the 1st of September 2016, Tequesta and Regiments Asia were paid **\$145,177,086.91** by CNR, CSR, CRRC and Da Lian locomotive in relation to the 95, 100, 359 and 232 locomotive procurements. The funds were paid into Tequesta and Regiments Asia's accounts at HSBC in Hong Kong.

723. The split between these payees was as follows:

Table 239: Total of Payments by CNR, Da Lian, CSR and CRRC to Tequesta Group and Regiments Asia Pursuant to 95, 100, 359 and 232 Locomotive Kickback Agreements

CNR (and Da Lian)	\$41,978,136.50
CSR	\$89 206 842.47
CRRC	\$17,461,948.25
TOTAL	\$145,177,086.91

724. I have applied the prevailing Dollar:Rand exchange rate on the days of payment, as shown below. This shows that the Gupta Enterprise was paid the equivalent of **R1,898,253,828** in kickback payments made to the Tequesta Group and Regiments Asia related to the 95, 100, 359 and 242 locomotive procurements:

Table 240: Kickbacks to Tequesta Group and Regiments Asia Flowing from 95, 100, 359 and 242 Locomotive Procurements Converted to ZAR at Prevailing Exchange Rates on Day of Payment

Tequesta Group				
Date	Amount (USD\$)	USD: ZAR	ZAR	Payor
07/08/2015	5,567,500.00	12.7182	70,808,579	CSR (HK)
26/08/2015	4,717,500.00	13.1407	61,991,252	CSR (HK)
31/08/2015	3,999,998.00	13.3406	53,362,373	CNR (HK)
09/09/2015	3,910,000.00	13.6312	53,297,992	CSR (HK)
14/09/2015	4,207,500.00	13.5706	57,098,300	CSR (HK)
16/09/2015	4,250,000.00	13.4675	57,236,875	CSR (HK)
25/09/2015	11,234,250.00	13.7437	154,400,162	CNR (HK)
29/09/2015	4,122,500.00	14.0139	57,772,303	CSR (HK)
20/10/2015	4,228,748.00	13.2276	55,936,187	CSR (HK)
20/10/2015	3,952,498.00	13.2276	52,282,063	CSR (HK)
27/10/2015	4,228,748.00	13.7129	57,988,398	CSR (HK)
27/10/2015	4,271,248.00	13.7129	58,571,197	CSR (HK)

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01/06/2016	2,704,159.50	15.6539	42,330,642	CRRC (HK)
TOTAL:	\$61,394,649.50		R833,076,322	
Regiments Asia				
Date	Amount (USD\$)	USD/ ZAR	ZAR	Payor
08/12/2014	3,599,998.00	11.4246	41,128,537	DA LIAN
09/12/2014	3,574,998.00	11.5024	41,121,057	DA LIAN
10/12/2014	3,716,998.00	11.4868	42,696,412	DA LIAN
11/12/2014	3,649,998.00	11.5047	41,992,132	DA LIAN
12/12/2014	3,577,998.00	11.5966	41,492,611	DA LIAN
02/02/2015	2,720,000.00	11.6065	31,569,680	CSR (HK)
06/02/2015	2,550,000.00	11.2955	28,803,525	CSR (HK)
10/02/2015	4,930,000.00	11.5546	56,964,178	CSR (HK)
13/02/2015	1,869,990.00	11.7355	21,945,267	CSR (HK)
06/03/2015	2,918,579.50	11.7979	34,433,109	CSR (HK)
06/03/2015	660,335.25	11.7979	7,790,569	CSR (HK)
10/03/2015	1,530,000.00	12.2063	18,675,639	CSR (HK)
23/03/2015	1,260,448.00	12.1328	15,292,763	CSR (HK)
23/03/2015	1,890,595.50	12.1328	22,938,217	CSR (HK)
13/04/2015	2,506,215.25	12.1278	30,394,877	CSR (HK)
13/05/2015	2,836,982.50	11.9679	33,952,722	CSR (HK)
13/05/2015	1,902,885.25	11.9679	22,773,540	CSR (HK)

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13/05/2015	1,299,801.75	11.9679	15,555,897	CSR (HK)
19/06/2015	3,512,689.25	12.2726	43,109,830	CSR (HK)
07/08/2015	2,500,644.75	12.7182	31,803,700	CSR (HK)
10/08/2015	307,810.72	12.7000	3,909,196	CSR (HK)
14/09/2015	3,469,696.00	13.5706	47,085,856	CSR (HK)
30/09/2015	8,622,906.00	13.8143	119,119,410	CNR (HK)
09/10/2015	3,520,227.25	13.3634	47,042,204	CSR (HK)
09/11/2015	3,563,699.50	14.1950	50,586,714	CSR (HK)
22/12/2015	3,344,590.25	15.0904	50,471,204	CRRC (HK)
12/01/2016	2,762,148.00	16.8822	46,631,135	CRRC (HK)
01/09/2016	5,181,354.50	14.6482	75,897,517	CRRC (HK)
TOTAL:	\$83,782,437.41		R1,065,177,506	
<p>TOTAL KICKBACKS PAID TO BOTH TEQUESTA AND REGIMENTS ASIA (ZAR)</p> <p>R1,898,253,828</p>				

725. Bank statements made public by amaBhungane, attached as Annexure PP to my report to the Commission on Transnet-related money laundering, show that from at least October 2016 Tequesta chose to use a Habib Bank account in Dubai to receive kickbacks.

726. The bank statements, which were unfortunately limited to a single month, show that Tequesta was paid **\$19,886,383.41** by CRRC in the month of

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October 2016, equivalent to **R275,522,220**. Note that this amount included a payment of \$9,503,192.02 that amaBhungane convincingly argues was paid by CSR in relation to the maintenance kickback agreement between it and Tequesta:

Table 241: Kickbacks Paid to Tequesta Habib Overseas Bank Account by CRRC Related to Transnet Locomotive Procurements Including CSR Maintenance Agreement

Date	Amount (USD\$)	USD:ZAR	ZAR
09/10/2016	9,503,192.02	13.7818	130971091.78
27/10/2016	2,168,192.64	13.89	30116195.77
29/10/2016	8,214,998.75	13.93	114434932.59
TOTAL	\$19,886,383.41		R275,522,220.14

727. On the 3rd of August 2016, CRRC signed addenda to the agreements between it, Regiments Asia and Tequesta. This addenda set out, inter alia, specific payment terms, including the retention of funds paid as surety and guarantees for CRRC. I do not traverse those payment terms here suffice to note that the addenda additionally provided a reconciliation of the amounts that Tequesta and Regiments had invoiced CRRC in relation to specific contracts.

728. These addenda makes it possible to identify a number of payments made by CRRC, according to the addenda, which we would otherwise not be aware of due to the gaps in the banking records available. Note that the dates of the payments below are made prior to the last known payments made into the HSBC accounts of Regiments and Tequesta in Hong Kong, suggesting that Regiments and Tequesta had already begun making use of a separate set of unknown and undisclosed accounts.

729. These addenda show that, in addition to the above payments, Tequesta and Regiments Asia were paid **\$12,493,719** (equivalent to **R180,660,650**) by CRRC as follows:

Table 242: Additional Payments to Tequesta and Regiments Asia Related to the 95 and 359 Procurements as Revealed by Contract Addenda

Loco Contract	Recipient	Date	Amount (USD\$)	Amount (ZAR)
359	Tequesta	04/07/2016	4,933,200	74,187,932
359	Tequesta	02/08/2016	5,364,276	74,187,932
95	Regiments Asia	18/07/2016	2,196,243	32,284,786
TOTAL			\$12,493,719	R180,660,650

730. Based on the above, we can conclude that the Gupta Enterprise definitely earned at least **\$275,608,209.23** (equivalent to **R3,400,558,015**) by the end of October 2016 in relation to the 95, 100, 359 and 242 locomotive procurements, as follows:

Table 243: Total Traced Kickbacks Paid by CSR, CNR, CRRC, Da Lian to the Gupta Enterprise via Known Laundry Vehicles Related to the 95, 100, 395 and 242 Locomotive Procurements

Money Laundering Phase/Route	Amount (USD)	Amount (ZAR Equivalent)
JJT/CGT	98,051,019.91	1,046,121,317
Regiments and Tequesta via HSBC Hong Kong	145,177,086.91	1,898,253,828
Regiments and Tequesta via Unknown Bank	12,493,719	180,660,650
Tequesta via Habib Bank Dubai	19,886,383.41	275,522,220
TOTAL	\$275,608,209.23	R3,400,558,015

731. The above calculations have, of course, only tracked and traced those payments that we can confirm with primary documentation such as bank statements or contract addenda. However, these amounts do not include any of the payments that were anticipated to flow to the Gupta Enterprise after the October 2016 cut-off date for the last available bank statement. Again, I rely on amaBhungane's excellent calculations, which show that, based on the known payments made by Transnet to the locomotive suppliers, it is highly likely that a further **R3,768,046,193.40** was due to be paid to the Gupta Enterprise as follows:

Table 244: Total Outstanding Kickbacks Due to Gupta Enterprise Related to the 95, 100, 359 and 232 Locomotive Procurements after October 2016

Project	Outstanding Kickbacks (ZAR)
95 Locos	15,753,721
100 Locos	25,080,000
359 Locos	2,026,274,680
232 Locos	1,700,937,792.40
TOTAL	R3,768,046,193.40

732. I strongly suspect that the outstanding payments in regards to the above contracts were, indeed, paid. If this is correct, we can therefore infer that, by the end of 2018, when the last kickbacks were due to be paid, the Gupta Enterprise would have earned **R7,168,604,208.40** from the 95, 100, 359, 242 locomotive procurements and the CSR maintenance contract:

Table 245: Total Value of Known and Suspected Kickbacks Paid in Relation to the 95, 100, 359, 232 Loco Procurements and Maintenance Services Contracts

	ZAR
Total Known Kickbacks Paid	3,400,558,015
Total Kickbacks Outstanding	3,768,046,193.40
TOTAL	R7,168,604,208.40

9.1.2. Kickbacks in Relation to the CNR Relocation Contracts

733. As discussed in Section 3.7 of my report to the Commission on Transnet-related money laundering, Bex Structured Products (“Bex”) entered into two related agreements with CNR with regards to the relocation of CNR’s South African production facilities. The contract provided that Bex would receive a portion of funds paid by Transnet to CNR over and above CNR’s actual costs.
734. In total, CNR paid **R76,586,903.13** to Bex on the 25th of September 2015. These funds were ultimately paid, after considerable laundering, *inter alia*, to Confident Concepts and Integrated Capital Management.

9.1.2. Total Kickbacks Earned by Gupta Enterprise from Transnet-Related Procurements

735. Based on the above calculations, the Gupta Enterprise can be shown to definitely have received **R3,537,110,748.66** in relation to the totality of tainted Transnet contracts related to the procurement of cranes and locomotives. Further, I believe it is likely that the Gupta Enterprise was paid a further **R3,768,046,193.40** in relation to Transnet procurements as kickbacks. In total, therefore, I calculate that the Gupta Enterprise most likely earned **R7,305,156,942.06** from Transnet- related procurement as follows:

Table 246: Grand Total of All Kickbacks Paid to the Gupta Enterprise Related to the 95, 100, 359 and 232 Locomotive Procurements, Attendant Maintenance Contract, CNR Relocation Costs and the Purchase of Cranes from Liebherr Cranes and ZPMC

Project	Total Kickbacks Paid to Gupta Enterprise (Equivalent ZAR)
Purchase of Liebherr Cranes	26,586,799.49
Purchase of ZPMC Cranes	33,379,031.04
95, 100, 359, 232 Locomotive Procurements including Maintenance	3,400,558,015

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Contracts: Payments Confirmed by Primary Documentation	
CNR Relocation Contract	76,586,903.13
Sub-Total: Known Kickbacks Paid	3,537,110,748.66
95, 100, 359, 232 Locomotive Procurements including Maintenance Contracts: Suspected Further Kickbacks	3,768,046,193.40
TOTAL	7,305,156,942.06

9.2. *The Total Funds Paid to the Gupta Enterprise Derived from State Capture*

736. Based on the foregoing calculations included in the report, I calculate that the Gupta Enterprise was paid directly or via numerous money laundering vehicles, a total of **R16,190,048,614.87**, all of which was drawn from South African state funds or kickbacks paid related to state expenditure, as follows:

Table 247: Total Payments to the Gupta Enterprise Arising from State Capture

<i>Direct Payments to Gupta Enterprise by Organs of State</i>		
Organ of State	Gupta Enterprise Recipient	Amount
FS Department of Agriculture and Rural Development	Nulane	24,984,240.00
FS Department of Agriculture and Rural Development	Estina	280,202,652.00
FS Department of Education	Sunbay Trading	28,500,000.00
FS Office of the Premier	Sunbay Trading	4,578,810.00
Transnet	Cutting Edge	45,904,113.24

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53. In total, Regiments Capital was paid **R8,218,132.20** by SA Express, as shown in the table below.

Table 19: Payments from SA Express to Regiments Capital

Date	Amount (ZAR)	Regiments Capital Bank Account	Bank Statement Description
2013-08-22	1,368,000.00	200477757	SAX SA EXPRESS
2013-09-23	1,368,000.00	200477757	SAX SA EXPRESS
2013-12-20	912,000.00	200477757	SAX SA EXPRESS
2014-09-02	1,777,123.20	200477757	SAX SA EXPRESS
2015-12-11	1,140,000.00	200477757	SAX SA EXPRESS
2015-12-18	1,653,000.00	200477757	SAX SA EXPRESS
Total	8,218,123.20		

2.1.2. Payments to Regiments Group by Transnet

54. In total, Regiments Capital's Standard Bank Account 200477757 was paid **R978,353,370.57** by Transnet in relation to a number of projects and contracts, as detailed below.

Table 20: Payments to Regiments Group by Transnet

Date	Amount (ZAR)	Regiments Invoice Number	Project/Contract and Invoice Number
22/05/2013	11,739,995.88	TRXRMO001 and TRXRMO002	Transnet – Results Management Office
03/07/2013	2,637,374.04	TRXRMO003	Transnet – Results Management Office
31/07/2013	3,215,123.76	TRXRMO003	Transnet – Results Management Office
18/09/2013	3,286,741.98	TRXRMO004	Transnet – Results Management Office

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02/10/2013	3,288,507.00	TRXRMO005	Transnet – Results Management Office
13/10/2013	2,852,964.00	TRXRMO006	Transnet – Results Management Office
2013-11-21	5,077,119.96	TRA001	Transnet - Second Defined Pension Fund
04/12/2013	2,636,393.64	TRXRMO006	Transnet – Results Management Office
2014-02-20	12,255,000.00	TRX1064TC001	Transnet - 1064 TCO
2014-02-28	45,400,500.00	TRX1064FRM02	Transnet - 1064 FRM
2014-03-25	4,466,794.32	TRXMG0001	Transnet - Manganese
2014-04-09	22,803,648.00	TRXPF0001	Transnet - Project Factory
2014-04-11	5,848,086.00	TRXWRO002	Transnet -War Room
2014-04-17	12,540,000.00	TRXSWOT02	Transnet - SWOT
2014-04-30	79,230,000.00	TRX1064RISK01	Transnet - 1064 Risk
2014-05-23	7,980,000.00	TRA005	Transnet - Second Defined Pension Fund
2014-05-26	22,800,000.00	TRXSWOT03	Transnet - SWOT
2014-07-14	29,575,400.00	TRXCOAL002	Transnet - Coal Terminal
2014-07-16	16,282,113.37 ¹	TRXPF0005	Transnet - Project Factory
2014-08-06	34,021,241.67	TRXIO003	Transnet - Kumba Iron Ore
2014-08-08	22,296,186.28	TRXIO001	Transnet - Kumba Iron Ore
2014-09-29	16,054,050.00	TRXNMPP004	Transnet - NMPP Acceleration
2014-11-12	27,573,750.00	TRXCOAL004	Transnet - Coal Terminal
2014-11-24	40,353,890.58	TRXGCIA002	Transnet - GCIA Portfolio Optimisation
2015-01-26	38,040,481.69	TRXCOAL008	Transnet - Coal Terminal
2015-02-04	11,933,176.86	TRXGCIA003	Transnet - GCIA Portfolio Optimisation
2015-02-12	5,534,603.10	TRXHR0002	Transnet - HR Recruitment Strategy

¹ The payment made into the Regiments account on this date was R21,310,780.32. However, this includes an amount invoiced against the Transnet Maputo Corridor of R5,028,666.95. I address payments with regards to the Maputo corridor below.

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2015-03-04	8,850,400.00	TRXCOAL009	Transnet - Coal Terminal
2015-03-11	34,523,000.00	TRXNMPP011	Transnet - NMPP
2015-06-12	189,240,000.00	TRXFR00001	Transnet - China Development Bank Loan
2015-07-01	5,459,992.49	TRXGCIA008	Transnet - GCIA Portfolio Optimisation
2015-07-03	14,264,250.00	TRXCOAL012	Transnet - Coal Terminal
2015-07-03	31,374,469.63	TRXSAL0001	Transnet - GCIA Saldanha Support
2015-08-18	31,499,657.60	TRXMANG002	Transnet- Manganese
2015-08-21	8,727,840.00	TRXGFB00001	Transnet- GFB Breakthrough
2015-08-31	28,691,520.00	TRXCOAL015	Transnet - Coal Terminal
2015-09-02	7,066,121.97	TRXGCIA011	Transnet - GCIA Portfolio Optimisation
2015-09-16	8,151,000.00	TRXGFB00003	Transnet- GFB Breakthrough
2015-09-18	6,881,673.33	TRXMANG003	Transnet- Manganese
2015-10-01	32,539,035.34	TRXCOAL016	Transnet - Coal Terminal
2015-10-30	1,261,287.55	TCP CORPORTRXHR20008	Transnet - HR Recruitment Strategy
2015-11-02	18,660,338.96	TRXNMPP017	Transnet - NMPP Acceleration
2015-11-30	17,727,830.83	TRXNMPP018	Transnet - NMPP Acceleration
2015-12-18	9,405,000.00	TRXGFB00005	Transnet - GFB Breakthrough
2016-01-22	31,314,747.27	TRXNMPP019	Transnet - NMPP Acceleration
2016-02-03	2,576,476.17	TRXSW2CM002V2	Transnet – SWAT II Change Management
2016-02-17	11,166,065.35	TRXSWIBC0003	Transnet - SWAT II GFB Case
2016-04-13	388,968.00	TRXSW2CM003	Transnet – SWAT II Change Management
2016-06-22	1,748,991.42	TRXIES0013A	Transnet - SWAT II IES

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TOTAL	991,241,808.04	
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55. When disaggregated by contract, the following payments were made by Transnet to Regiments:

Table 21: Payments to Regiments Group by Transnet Disaggregated by Contract

Date	Amount (ZAR)	Regiments Invoice Number	Project/Contract and Invoice Number
2015-02-12	5,534,603.10	TRXHR0002	Transnet - HR Recruitment Strategy
2015-10-30	1,261,287.55	TCP CORPORTRXHR20008	Transnet - HR Recruitment Strategy
SUB-TOTAL	6,795,890.65		
2013-11-21	5,077,119.96	TRA001	Transnet - Second Defined Pension Fund
2014-05-23	7,980,000.00	TRA005	Transnet - Second Defined Pension Fund
SUB-TOTAL	13,057,119.96		
2014-02-28	45,400,500.00	TRX1064FRM02	Transnet - 1064 FRM
2014-04-30	79,230,000.00	TRX1064RISK01	Transnet - 1064 Risk
2014-02-20	12,255,000.00	TRX1064TC001	Transnet - 1064 TCO
SUB-TOTAL	136,885,500.00		
2014-07-14	29,575,400.00	TRXCOAL002	Transnet - Coal Terminal
2014-11-12	27,573,750.00	TRXCOAL004	Transnet - Coal Terminal
2015-01-26	38,040,481.69	TRXCOAL008	Transnet - Coal Terminal
2015-03-04	8,850,400.00	TRXCOAL009	Transnet - Coal Terminal
2015-07-03	14,264,250.00	TRXCOAL012	Transnet - Coal Terminal
2015-08-31	28,691,520.00	TRXCOAL015	Transnet - Coal Terminal
2015-10-01	32,539,035.34	TRXCOAL016	Transnet - Coal Terminal
SUB-TOTAL	179,534,837.03		
2015-06-12	189,240,000.00	TRXFR00001	Transnet - China Development Bank Loan

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SUB-TOTAL	189,240,000.00		
2014-11-24	40,353,890.58	TRXGCIA002	Transnet - GCIA Portfolio Optimisation
2015-02-04	11,933,176.86	TRXGCIA003	Transnet - GCIA Portfolio Optimisation
2015-07-01	5,459,992.49	TRXGCIA008	Transnet - GCIA Portfolio Optimisation
2015-09-02	7,066,121.97	TRXGCIA011	Transnet - GCIA Portfolio Optimisation
SUB-TOTAL	64,813,181.90		
2015-08-21	8,727,840.00	TRXGFB00001	Transnet- GFB Breakthrough
2015-09-16	8,151,000.00	TRXGFB00003	Transnet- GFB Breakthrough
2015-12-18	9,405,000.00	TRXGFB00005	Transnet - GFB Breakthrough
SUB-TOTAL	26,283,840.00		
2016-06-22	1,748,991.42	TRXIES0013A	Transnet - SWAT II IES
SUB-TOTAL	1,748,991.42		
2014-08-08	22,296,186.28	TRXIO001	Transnet - Kumba Iron Ore
2014-08-06	34,021,241.67	TRXIO003	Transnet - Kumba Iron Ore
SUB-TOTAL	56,317,427.95		
2015-08-18	31,499,657.60	TRXMANG002	Transnet- Manganese
2015-09-18	6,881,673.33	TRXMANG003	Transnet- Manganese
SUB-TOTAL	38,381,330.93		
2014-03-25	4,466,794.32	TRXMG0001	Transnet - Manganese
SUB-TOTAL	4,466,794.32		
2014-09-29	16,054,050.00	TRXNMPP004	Transnet - NMPP Acceleration
2015-03-11	34,523,000.00	TRXNMPP011	Transnet - NMPP Acceleration
2015-11-02	18,660,338.96	TRXNMPP017	Transnet - NMPP Acceleration
2015-11-30	17,727,830.83	TRXNMPP018	Transnet - NMPP Acceleration
2016-01-22	31,314,747.27	TRXNMPP019	Transnet - NMPP Acceleration

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SUB-TOTAL	118,279,967.06		
2014-04-09	22,803,648.00	TRXPF0001	Transnet - Project Factory
2014-07-16	21,310,780.32	TRXPF0005	Transnet - Project Factory
SUB-TOTAL	44,114,428.32		
2013-05-22	11,739,995.88	TRXRMO001	Transnet -- Results Management Office
03/07/2013	2,637,374.04	TRXRMO003	Transnet – Results Management Office
31/07/2013	3,215,123.76	TRXRMO003	Transnet – Results Management Office
18/09/2013	3,286,741.98	TRXRMO004	Transnet – Results Management Office
02/10/2013	3,288,507.00	TRXRMO005	Transnet – Results Management Office
13/10/2013	2,852,964.00	TRXRMO006	Transnet – Results Management Office
04/12/2013	2,636,393.64	TRXRMO006	Transnet – Results Management Office
SUB-TOTAL	29,657,100.30		
2015-07-03	31,374,469.63	TRXSAL0001	Transnet - GCIA Saldanha Support
SUB-TOTAL	31,374,469.63		
2016-02-03	2,576,476.17	TRXSW2CM002V2	Transnet – SWAT II Change Management
2016-04-13	388,968.00	TRXSW2CM003	Transnet – SWATII Change Management
SUB-TOTAL	2,965,444.17		
2016-02-17	11,166,065.35	TRXSWIBC0003	Transnet - SWAT II GFB Case
SUB-TOTAL	11,166,065.35		
2014-04-17	12,540,000.00	TRXSWOT02	Transnet - SWOT
2014-05-26	22,800,000.00	TRXSWOT03	Transnet - SWOT
SUB-TOTAL	35,340,000.00		

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2014-04-11	5,848,086.00	TRXWRO002	Transnet -War Room
SUB-TOTAL	5,848,086.00		
TOTAL	991,241,808.04		

56. The above calculations exclude payments made by Transnet to Regiments in relation to the Maputo Corridor Project as the business development fees paid by Regiments in relation to this contract were not made to companies forming part of the Gupta Enterprise. In the interest of completeness, the following table itemises the amounts paid by Transnet to Regiments in relation to this program:

Table 22: Payments Made by Transnet to Regiments in Relation to the Maputo Corridor Project

2014-01-08	2,609,333.46	TRXMCO001	Transnet - Maputo Corridor
2014-02-05	2,609,333.46	TRXMCO002	Transnet - Maputo Corridor
2014-02-25	5,690,954.10	TRXMCO003	Transnet - Maputo Corridor
2014-04-23	4,999,834.80	TRXMCO005	Transnet - Maputo Corridor
2014-06-04	4,602,921.00	TRXMCO006	Transnet - Maputo Corridor
2014-07-16	5,028,666.95	TRXMCO004	Transnet - Maputo Corridor
2014-08-28	3,989,230.50	TRXMCO007	Transnet - Maputo Corridor
2014-09-10	5,460,491.70	TRXMCO008	Transnet - Maputo Corridor
2014-11-05	3,806,870.40	TRXMCO11	Transnet - Maputo Corridor
2014-12-19	804,064.80	TRXMCO112	Transnet - Maputo Corridor
2015-05-27	2,218,123.26	TRXMCO114	Transnet - Maputo Corridor
2015-06-11	331,373.38	TRXMCO115	Transnet - Maputo Corridor
SUB-TOTAL	42,151,197.81		

2.1.3. Payments to Regiments Group by the Free State Government Provident Fund

57. The Free State Provident Fund paid Regiments Securities a total of R2,319,216 in two payments as follows:

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SECTION “C”



EXHIBIT SS 6

**POPO SIMON
MOLEFE**

IN THE COMMISSION OF ENQUIRY INTO STATE CAPTURE:

AFFIDAVIT

I, the undersigned,

POPO SIMON MOLEFE

do hereby make oath and state as follows: -

Introduction

1. I am an adult businessman and currently chairperson of the Board of Transnet SOC. During the period 1 August 2014 to 30 August 2017, I served as the Chairperson of the Board for the Passenger Rail Agency of South Africa ("PRASA").
2. The facts set out herein affidavit are within my personal knowledge and belief, unless stated otherwise or the context makes the contrary apparent, and they are to the best of my knowledge and belief both true and correct.
3. To the extent that I make submissions of a legal nature in this affidavit, I do so on the advice received in the preparation of the affidavit.
4. I begin by noting that I have already given evidence to this Commission: in my capacity as Chairperson of the Board of Transnet – on 7 May 2019.



MM

5. I appear before you now to relate my experiences as the Chairperson of the Board of PRASA. I submit that my experiences at PRASA equip me to assist the Commission to better understand the different strategies that were used by those involved in state capture. In this affidavit, I will set out how, in my view, state capture was implemented at PRASA and how people who occupied positions of influence, especially in the award of tenders, had been made vulnerable by the manipulations of those at the heart of state capture. I will also seek to show that individuals and institutions that were under a duty to protect PRASA and those who were made vulnerable failed to fulfil that duty and as a result allowed the capture of PRASA to succeed and benefit certain individuals and entities connected to them.
6. In this regard, I am of the respectful view that PRASA was one of the state institutions that was identified for and became a victim of state capture. I add with concern that, the capture was so wide and deep that PRASA may not yet have freed itself totally from the shackles of state capture.
7. In this affidavit, and in my evidence, I will address the following matters: my appointment as Chairperson of PRASA's Board; the challenges that I experienced from varied quarters thereafter; how I became aware of the maladministration at PRASA; the various steps I took to attempt to correct what I perceived to be the wrongs and the obstacles that were put in my way; some of the approaches that I made on behalf of the Board to protect PRASA's and the public interest; and the conclusions to which I have arrived recently as regards what went on at PRASA.
8. PRASA is an organ of state. As such, it is subject to the applicable constitutional, statutory and regulatory measures. These have been collated into a file, which forms Annexure **PM1** to this affidavit. I confirm that it contains all the relevant measures that



are relevant to the matters with which I deal herein. Where it will be helpful or necessary, I will refer to the relevant measure.

9. However, for general purposes it will suffice to place on record the following. Unlike many of the large SOEs, PRASA falls under the general authority of the Minister of Transport, as opposed to the Minister of Public Enterprises. As a result, PRASA is funded by National Treasury through allocations made to the Department of Transport. PRASA's Board is its Accounting Authority and its CEO its Accounting Officer. Insofar as procurement of goods and services by PRASA is concerned, PRASA is of course subject to all measures that are applicable to organs of state and in addition to its own SCM processes and procedures.
10. Finally, PRASA's main object and business is to ensure that rail and bus passenger services are provided within and to and from South Africa in the public interest; and its second object and business is to generate income from the exploitation of its assets. As a result of its being captured, for many years now PRASA has failed to deliver on these mandates. Fed up with PRASA's non-delivery and maladministration and the failure of those who are responsibility of its oversight, NGOs have had to turn to the Courts to protect the rights of commuters and the public. I understand that separate evidence on this issue will be presented to the Commission on these matters.

My early days at PRASA

11. As I have noted, I was appointed to the PRASA Board on 1 August 2014 by the then Minister of Transport, Ms Dipuo Peters. Minister Peters further appointed the other members of the Board, a process that I was not involved in. Soon after my appointment, I met with Mr Lucky Montana, who was then the Group Chief Executive



However, an Opinion that the Board obtained from another leading law firm in Johannesburg found nothing amiss with the appointment.

33. Notwithstanding the foregoing, I must record that the investigations conducted by Werksmans led to the Board reviewing two massive contracts: a R3,5 billion contract that was awarded to an entity called Swifambo; and a number of security contracts awarded to Siyangena. I note at this stage that the former has already been reviewed and set aside, but the latter is still the subject of litigation. However, in order not to interrupt the various developments that took place in the meantime, I will deal first with the developments. In doing so, I will address the following matters: Mr Roy Moodley's influence at PRASA and elsewhere; attempts to get Mr Montana back at PRASA; and my efforts to get higher powers involved; and how the Minister finally got rid of the Board.

Mr Roy Moodley

34. It is my observation that the *modus operandi* of those bent on capturing state-owned entities is to first capture senior officials in strategic and influential positions of such entities. In my experience, these captors target the decision makers, so that they can direct contracts, and ultimately money, to favoured companies or individuals. As I detail immediately hereunder, the conduct of Mr Roy Moodley is a clear example of this method of operation.
35. I did not know Mr Moodley until I was appointed to the PRASA's Board. However, soon thereafter, I noted that the name Roy Moodley was on the lips of many at PRASA. Some employees described him as "the owner" of PRASA. I was told that he had several companies which provided services to PRASA ranging from security, in the form of "Royal Security", to advertising, through a company styled "Strawberry Worx". I would go so far as to say that if one did not know Mr Moodley, one would easily mistake him for an executive manager of PRASA. I was told that he would often

walk around with managers in their work environment, almost as if he himself was a PRASA Manager.

36. It is my firm view that Mr Moodley intended to capture me. By way of examples, and to support my contention, I highlight certain instances in the paragraphs hereunder.
37. Shortly after my appointment, Mr Moodley who appeared to know of my love for Golf invited me to a Golf Day he had arranged and that would be attended by Mr Montana, as CEO. However, PRASA was also holding a separate function on the same day to recognize their high performing employees. I chose to attend the function honouring PRASA employees, and congratulate them, rather than attend Mr Moodley's event.
38. Later, Mr Moodley invited me to the Durban July Handicap horse racing event. In an attempt to persuade me to attend, Mr Moodley advised me that then President, Jacob Zuma, Minister Jeff Radebe and other Ministers had accepted the invitation and were his guests at the event every year. This invitation, too, I declined.
39. On another occasion, in October 2014, Mr Moodley overheard me referring to my plans to attend "The Masters", a prestigious golfing event held at Augusta, Georgia, in the United States of America ("USA"). I had attended the tournament on a number of occasions in the past. Mr Moodley asked to join me at The Masters (April 2015), together with a Spanish business partner of his.
40. I informed Mr Moodley that I did not have a problem with his attending The Masters with me, as I had taken several acquaintances there before. Mr Moodley offered to cover the costs for air travel, accommodation, transfers and subsistence for my wife and I. Instead, I paid for the house that I rented every year, paid for air tickets for my wife and paid for the badges for four persons to access the Augusta National Golf Course. I did all of this to prevent Mr Moodley insisting on paying for my wife and I.



41. I further informed Moodley that he should find his own accommodation as my rented house was fully occupied. He then indicated that I could stay in his accommodation that he had reserved. I was extremely uncomfortable with his constant attempts to get closer to me and declined the suggestion.
42. I was later warned by a former colleague of mine at another SOC that he had heard Mr Moodley soliciting funds from directors of the said Spanish company, which he was consulting with through a former colleague at the time. He told them that he needed funds from them in order to take the Chairperson of PRASA, his wife and children to The Masters. He was alleged to have told them that he needed to cover all the costs for me and my family for a week.
43. I was very disturbed by these revelations and the potential damage it could cause to my reputation. I then told Mr Moodley that I was no longer able to go to The Masters, as there were certain emergencies at PRASA that required my intervention. But when I told him to proceed to The Masters without me, he said that if I was not going he, too would cancel.
44. When I was satisfied that Mr Moodley had cancelled and I had attended to the emergency at PRASA, I departed later in the week to join my wife and our friends from the USA whom we had invited to the Masters.
45. I am aware that there is a dispute between PRASA and Siyangena, which is a company in which Mr Moodley has an interest. At the time I made this affidavit, the matter had still not been heard. I understand that evidence on this matter will be led by someone else. It is a matter of public record that PRASA did not pay the Attorneys and Counsel representing PRASA in its defence of the litigation by Siyangena, resulting in these Lawyers withdrawing from the matter. The withdrawal of Counsel and attorneys left the door open for the High Court to hand down a default judgement to the prejudice of PRASA. Siyangena could potentially claim from PRASA and the

Department of Transport six billion Rand (R6 000 000 000). The reluctance by PRASA to act in its own interest and prevent a huge loss of taxpayers' money is inexplicable. Fortunately, through the actions of my Board at the time, we were able to reverse such acts of malfeasance.

PRASA's Board and Mr Montana

46. As I have indicated that, after being appointed the new Board was serious about discharging its fiduciary duties. The PP in her report "Derailed" had exposed irregularities and malfeasance at PRASA and the Board was determined to hold management accountable. In my view, it is this determination that led to a strained relationship between the Board and Mr Montana and an inevitable fall-out. As I have already said, Mr Montana on several occasions attacked the Board and also the then Minister.
47. By way of examples, the Board noted certain media articles that appeared in the Financial Times, Business Day and City Press which pointed to the attack by Mr Montana on PRASA and the Board on particular. Montana appeared to have sold a narrative to the media which portrayed the Board's anti-corruption fight as a personal conflict between myself and Montana, the basis of which was never explained. Mr Montana further appeared to initiate conflict with PRASA through the following individuals:
- 47.1 Mr. Steven Sangweni, the President of the Commuters Association, who appeared to enjoy irregular funding from PRASA for activities designed to provide personal support for Mr. Montana against the BOC. Mr Sangweni threatened that if Mr Montana was not reinstated arson would be committed on the PRSA trains. I found



without following proper disciplinary procedures: [p 375, para 8.25.1]; and that the conduct of habitually suspending employees contravened PRASA's disciplinary code: [p 376, para 8.25.4] and constitutes maladministration and improper conduct: [p 377, 8.25.7].

70. The PP also noted that there was a culture of poor information management or hiding of information that could provide evidence of maladministration: [p 382, para 8.33.2].
71. Among the specific remedial action the PP said should be taken is the following. The Board must: take cognizance of the findings of maladministration and improper conduct by Mr Montana and other functionaries [p 383, para 9.2.1]; report to the National Treasury and the Auditor-General particulars of the alleged financial misconduct and the steps it took; and support National Treasury in conducting a forensic investigation into all PRASA contracts above R10 million from 2012 and then take appropriate measures to address the findings: [p 384, para 9.2.5].
72. Given all of these concerns, which had been aired in the public space, one would have expected that the Board's decision to accept Mr Montana's resignation would receive support from those who cared about PRASA, its employees, the commuters it serves and the public good.
73. Sadly, as I note in the rest of this affidavit, not only was there no support for the Board when it began its clean-up, but in fact it was vilified and eventually effectively disbanded.

Former President Zuma's attempt to intervene

74. After the Board had accepted Mr Montana's resignation, he publicly announced that if the Minister and the Board wanted him back he would be available to resume his responsibilities as CEO. The Board, however, showed no interest in having him back.

75. Then, quite unexpectedly, in early August 2015 then President Zuma and Minister Radebe, who was then the Minister in the Presidency responsible for Planning, Monitoring and Evaluation, called a meeting at the Presidential Guest House in Pretoria. Minister Peters was invited to the meeting, along with Mr Montana and me. The meeting took place on 20 August 2015. It was initially meant to commence at 15:00, but only started after 18:00 and ended after 02:00 the following morning. I was not given any reasons for the delayed start of the meeting and was merely requested to wait.
76. Just before the Minister and I were called into the meeting room, I was informed by one of the security officials that Mr Montana and Mr Roy Moodley had just left the meeting room from the opposite side. I was alarmed, as it appeared that Mr Montana and Mr Moodley had been granted an audience, or had held a meeting with the President, prior to our meeting. As the Chairperson of the Board, I found it very strange that they would be consulted before the President met with me.
77. Minister Jeff Radebe started off by giving an account of how he had attempted to get hold of me to meet with a President Zuma. He claimed that his secretary informed my personal assistant that President Zuma wanted to meet with me. He indicated that his secretary was told that I was in Knysna on holiday playing golf and that I would see the President when I returned. The Minister appeared to be driving the message that the Chairman of PRASA (me) did not have respect for the President of the Republic of South Africa.
78. What Minister Radebe had omitted to say was that although he was the Minister communicating what purported to be an official message he did so by means of a private Gmail email account. My personal assistant had requested his secretary to communicate via an official Government email address in order for the meeting to be



correctly diarised. This was done at my insistence, as I wanted any meeting request with the President to be arranged through official channels.

79. Minister Radebe further stated that he had read in various media reports of on-going conflict between myself and Mr Montana. As such he was concerned about the potential impact of this conflict and possible escalation thereof.
80. Minister Radebe indicated that he had suggested to Minister Dipuo Peters that both Mr Montana and I be asked to meet with them, as the President was also concerned about the public spat between the two of us.
81. Minister Dipuo Peters responded by indicating that she had asked Minister Radebe appeal to Mr Montana to stop making public statements which brought PRASA into disrepute, and to accept that he was no longer the Group Chief Executive Officer, as the Board had accepted his resignation. Minister Peters explained that said she had made the request to Minister Radebe as he shared a close relationship with Montana.
82. At that point Minister Peters questioned Minister Radebe on the leaked "PRASA in Turmoil" report and stated that she could not understand why he had kept it to himself and did not share it with her, given that it concerned a State entity that she was responsible for. Minister Radebe, however, denied having been possession of the report.
83. To her credit Minister Peters stated that Mr Montana was fighting the BOC for discharging their fiduciary duties by investigating malfeasance in PRASA . She insisted that Board was obliged to investigate and that such an investigation should not be taken as personal by Mr Montana.
84. At that point I asked President Zuma to explain what protocol he was applying when he invited the Minister and I separately. I stated to him that as I was reporting to the



Minister, the correct protocol was one of inviting the Minister and the Minister could then invite me, if she felt it necessary.

85. President Zuma was visibly irritated by my question. I told him that it was improper to invite the Minister and her report as if they had the same status in Government. Still irritated he said to me "I appointed her, I can invite her and whomever I want to invite. " At that point I said, "yes Mr President the prerogative is yours."
86. I was shocked when the President said "I have invited that boy, Lucky Montana." He then asked Minister Radebe call Mr Montana into the meeting.
87. President Zuma stated that whilst he was on state visit to the People's Republic of China, he had read about the public spat between Mr Montana and I. He said that it was embarrassing to the ANC, especially since both Mr Montana I were members of the ANC.
88. President Zuma stated that Mr Montana was very knowledgeable about commuter rail transportation and he should not be lost to the country. He said that we should sort out our differences and bring Montana back as the Group Chief Executive Officer of PRASA.
89. The President indicated that senior members of the ANC were concerned that Mr Montana and I had been making unpleasant statements about and against each other in the media.
90. At this juncture I wish to point out that, whilst Minister Peters and I went into the meeting not knowing what the agenda was, it appeared that Mr Montana had been briefed before-hand, as he proceeded to present a long report in which he attacked both Minister Peters and me.
91. He also spoke disparagingly about the Board. I did not respond to his utterances as I considered them irrelevant. As Mr Montana had threatened to litigate against the Board



(although he never did follow through with this threat), I told the meeting that I would reply in court should his threat to litigate materialise. I chose to rather to focus on the termination of Mr Montana's service and the correctness of the Board's approach. After Mr Montana's presentation and the comments from Mr Zuma, it became clear to me that Mr Zuma wanted Mr Montana reinstated as PRASA's CEO.

92. I then invited Mr Zuma to address the Board and explain why he had a problem with its decision to release Mr Montana as the CEO, after it had accepted his resignation letter. Mr Zuma did not appear to take kindly to my invitation and the fact that I was not prepared to simply reinstate Mr Montana as the CEO. At that point, about 02:00 the following morning, the meeting ended because Mr Zuma fell asleep whilst we were talking. This was the last meeting I had with Mr Zuma. I left the meeting deeply concerned that the President of the country was personally interfering in the operations of PRASA, when the issues at hand clearly fell within the purview of the Board.

The dismissal of the Board

93. After Mr Montana's departure from PRASA, the Board sought to appoint a new CEO and embarked on a rigorous recruitment and interviewing process. However, Minister Peters frustrated the Board's attempts to appoint a CEO. Instead, she insisted that Mr Collins Letsoalo, who was at the time the Chief Financial Officer of the Department of Transport, be seconded to the post of CEO with effect from 1 July 2016, despite the initial opposition by the Board to his secondment.
94. Mr Letsoalo appeared to have been instructed to stop or significantly curtail the Werksmans investigation: he insisted that it is he who should take charge of the investigations. This soon led to tensions with the Werksmans investigation team.



95. Thereafter, on 12 August 2016, Minister Peters herself attempted to stop the investigations. I annex her letter as **PM7**. I responded by letter to Minister Peters on 24 August 2016, setting out why the Board could was unable to simply stop the investigations. My response is annexed as **PM8**.
96. Minister Peters then dissolved the Board on 8 March 2017, by way of an announcement during the meeting of the Portfolio Committee on Transport. No reasons were given for the removal of the Board.
97. Shortly thereafter, Minister Peters appointed an interim Board. However, the dismissed Directors and approached the High Court to set aside our dismissal. Minister Peters opposed the application. She lost with costs and we were reinstated. A copy of the judgment is annexed as **PM9**.
98. In March 2017, Minister Peters was replaced by Minister Mkhacani Joseph Maswanganyi as Minister of Transport. Minister Maswanganyi, who had been a member of the Portfolio Committee on Transport, avoided meeting with the Board, despite several requests. It appeared to me from the outset that Minister Maswanganyi's agenda was to dissolve the Board.
99. On 5 June 2017, Minister Maswnganyi asked the Board to show cause why it should not be dissolved. Again the "irregular" appointment of Werkmans was raised as a key reason for the decision. His letter is annexed as **PM10**. The Board's response is annexed as **PM11**. The Minister did not follow through on his threat, but sought to achieve the same result through a different route.
100. When everything else failed he attempted to weaken the Board by ensuring that it did not have a quorum. I later found out that the directors were lobbied to resign from their respective positions on the Board, the intention being to isolate me as the Chairperson so that I could not be effective. Some Directors, including the representative of National

Treasury, did resign. They were not replaced. The nominee of the Department of Transport stopped attending Board meetings. These developments left the Board ineffective, as it a quorum could not be formed.

Other attempts to vilify the Board

101. Desperate to expose the above developments to South Africans, on 8 March 2017, I wrote to the Speaker of the National Assembly, Honourable Ms Baleka Mbete, requesting parliamentary intervention. Among the matters I raised were: the failures in governance as detailed in the PP's report; the irregular and fruitless and wasteful expenditure of some R14,7 billion that had been uncovered by the Board-appointed investigators; and meetings of the Portfolio Committee did not follow the agenda and merely criticised the Board. I asked for a probe into the relationship between the Minister and the Board. I confirm the correctness of the contents. A copy of my letter is **PM12**.
102. On the same day, 8 March 2017, I wrote to the Chairperson of the Portfolio Committee, Ms Dimakatso Magadzi, expressing concern about the humiliating treatment meted out to the Board Members, at what should have been a professional and systematic process of accounting to Parliament and oversight. I implored her and the Committee to ensure that it desists from attacking the persons of the Directors. That letter is annexed as **PM13**. I again confirm the correctness of the contents.
103. Both these letters went unanswered.
104. Instead, in what appears to be an indication of contempt for the Board and the entities that were required to hold her to account, Minister Peters announced at that Portfolio Committee meeting that she was dissolving the Board.



105. The meetings of the Portfolio Committee are about assessing the performance of the entity reporting. Such assessment is usually based on the annual report.
106. The meetings of the Portfolio Committee during 2015, 2016 and 2017 could best be described as chaotic.
107. Members did not follow the reporting brief that the Committee gave to the BoC. Their engagements with the BoC were hostile.
108. In my view the Portfolio Committee focused on trying to find wrong-doing with the investigations commissioned by the BoC, the appointment of Werksmans, the and regularity of BoC meetings.
109. The MP's even went so far as to debating gossip of the alleged purging of unidentified PRASA employees.
110. Some MP's, especially those belonging to the governing party could not disguise the fact that they wanted the BoC removed.
111. I found the conduct of the members of the Portfolio Committee to be disgraceful and it appeared from their line of questioning that they appeared to have been lobbied to compel the BoC to stop the investigations. The looting of the public purse and holding those responsible for such looting accountable did not appear to be important to them at all.
112. I also wish to add that Minister Peters and the Portfolio Committee, quite inexplicably, insisted that Werksmans be vetted by the State Security Agency (SSA). Given the allegations against key SSA officials was very concerned and refused to accede to the request. It was also strange to me that such SSA vetting was only required of Werksmans and not any other service provider conducting investigations as PRASA. Moreover, this requirement only emerged as more and more corruptions was exposed,

particularly after Mr Auswell Mashaba revealed that R80 million was paid to individuals who claimed to be collecting finds on behalf the governing party.


Non-action by law-enforcement agencies

113. On 13 May 2016, pursuant to the investigations by Werksmans, I addressed a letter to both General Berning Ntlemeza, the Head of the Directorate of Priority Crime Investigation (DPCI), and to Advocate Shawn Abrahams, National Director of Public Prosecutions (NDPP). The letter is annexed as **PM14** and sets out the seriousness of investigations that had already been undertaken and the cases which had been reported to the Central Reporting Office in terms of the Prevention and Combating of Corrupt Activities Act (PRECCA) for further investigation. The letter to General Ntlemeza noted that a several cases concerning PRASA had been registered with the South African Police Services, but seemingly no progress had been made. I asked the DPCI to allocate dedicated resources to process the cases, especially those registered as serious offences.
114. However, notwithstanding the seriousness of the cases and the evidence forwarded, the Hawks refused to discharge their constitutional mandate. Ultimately, on 27 May 2017, the Board applied to the High Court for an order compelling the Hawks to act.
115. Notwithstanding that the application was brought three years ago, the matter has not been finalised. This is because, instead of dealing with the merits of the Board's complaints, the Hawks began by raising technical objections. The Court however dismissed these and showed its disapproval by awarding costs on an attorney and client scale. I annex its judgment as **PM15**. Thereafter the Hawks filed their answering affidavit and PRASA filed its Replying Affidavit. The matter has however not been taken further. It is clear that the interim boards that were installed simply do not have the determination of the dismissed Board to hold those who hold power to account.

116. In light of the foregoing, I am of the view that as our claws sunk deeper into the roots of corruption, the Board could not rely on the Portfolio Committee for support. That Committee did not take its responsibility of oversight in respect public assets seriously. It appeared to me that they would rather turn a blind eye to malfeasance and protect the culprits, than work zealously in defence of the public purse. I was never able to fully comprehend why public representatives would give scant or no attention at all to the matters that affected the interest of the public that they purported to represent.

Conclusion

117. As I have detailed above, PRASA was plagued by corruption. Whilst Mr Montana was there it was one of the captured state institutions. His reign was so long, that he has had the opportunity to install many Daniel Mtinkulus. I fear that they still wield weighty influence at PRASA, and are still probably implementing Mr Montana's plans.
118. The failure of successive Ministers to appoint a permanent and independent Board with people determined to continue the clean-up operation we began is allowing this to happen.
119. I hope that the Commission will call the Administrator and require him to account for the present position.



Popo Simon Molefe

I hereby certify that the deponent 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 in Johannesburg the 17 day of February 2020, and that the Regulations contained

in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

Maria Mpumelelo Mkhwanazi
Membership Number: 20006311
Commissioner of Oaths CA (SA) (RSA)
5 Commerce Square, 39 Rivonia Road
Sandhurst, 2196

Signature: Mkhwanazi 17/02/2020

COMMISSIONER OF OATHS

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~~SS6-PSM-259~~

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

CASE NO:2015/42219

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Applicant

and

SWIFAMBO RAIL LEASING (PTY) LTD

Respondent

REPLYING AFFIDAVIT

I, the undersigned

POPO SIMON MOLEFE

do hereby make oath and state

1. I am the deponent to the founding affidavit in this application and my position and authority within the applicant and in relation to this application remain as set out therein.
2. As set out in the founding affidavit, many of the facts set out herein are not within my personal knowledge and pre-date my involvement with

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that this application rests on a well-founded and cogent factual basis.

8.54. In relation to review proceedings based on the principle of legality, I am advised that the requirement is that the review must be brought within a reasonable time, and that what is reasonable depends on the circumstances. I submit that the explanation of the circumstances which resulted in the delay in launching the application demonstrates that PRASA acted reasonably in bringing the application.

9. Swifambo is not innocent

9.1. Mr Massaro and his ignorance have been exploited to contend that Swifambo is an innocent tenderer. The contention is untrue and Swifambo is aware that the contention is untrue.

9.2. In early July 2015 Mr Mamabolo informed me that he had uncovered criminal conduct within PRASA committed over an extended period of time while Mr Montana held the position of GCEO. In this regard I have attached as annexure RA12, a confidential report that was prepared by the BIU, under the direction of Mr Mamabolo. This report reveals serious unlawful conduct concerning PRASA that was instigated by Mr Montana, and attempts by him to stymie the board's efforts to clean up the organization. It also shows that there

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was a plan to assassinate me and that surveillance had been on my personal security, which had been found to be wanting. Since my life was threatened, I laid a complaint on 22 July 2015 and a charge of conspiracy to commit murder is accordingly being investigated. I have also had to enlist the services of a personal protection service to ensure my safety. I also instructed Mr Mamabolo to report any and all suspected criminal activity to the South African Police Services ("SAPS").

9.3. In mid-August 2015, Mr Mamabolo received a phone call from a person who did not wish to be named. Mr Mamabolo was informed by this person that a "*Mashaba*" wanted to meet with him to discuss the Swifambo tender and to facilitate a meeting with me, as the chairperson of the board. Mr Mamabolo decided to first meet with Mr Mashaba without me.

9.4. Mr Mamabolo, the unnamed person and Mr Mashaba met at a restaurant situated in the Grey Owl Village shopping Centre in Pretoria, called Antonnio's Italian Kitchen. At this meeting, Mr Mashaba told Mr Mamabolo that he was worried that his involvement in the Swifambo tender would negatively affect his other businesses. Mr Mashaba suspected that people were investigating him and he wanted the investigation to stop. Mr Mashaba wanted Mr Mamabolo to arrange a meeting with me to discuss these issues.

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- 9.5. Mr Mashaba explained to Mr Mamabolo that he had initially been approached by a Makhensa Mabunda ("Mr Mabunda"), who convinced him to get involved with a tender to supply locomotives to PRASA. Mr Mabunda told Mr Mashaba that he was friends with Mr Montana, who was working at PRASA.
- 9.6. Mr Mamabolo decided to arrange the meeting with me and Mr Mashaba. I met Mr Mashaba at the Maslow Hotel in Sandton on 31 August 2015. I was accompanied by Mr Mamabolo and Mashila Mtlala ("Mrs Mtlala"). Mrs Mtlala is a member of the board and the FCIP Committee Chairperson.
- 9.7. Mr Mashaba once again explained that he had been approached by a Mr Mabunda, who had asked him to participate in a tender to supply PRASA with locomotives. Mr Mashaba said that before being approached by Mr Mabunda, he had no previous business relationship with Mr Mabunda. We also know now that neither Mr Mashaba nor Mr Mabunda had any experience in supplying locomotives.
- 9.8. Mr Mashaba told us that he knew that the Swifambo tender was under investigation and did not want his association with the tender to negatively affect his other businesses. Mr Mashaba wanted an assurance from me that his businesses would not be affected by the investigation. I explained to him that I could not give him any assurances or indemnify him in any way.

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- 9.9. Mr Mashaba informed us that, through his involvement with Mr Mabunda, he had been in contact with a Maria Gomes ("Ms Gomes"). Ms Gomes had initially contacted him telephonically and wanted to meet him in person to discuss the Swifambo bid. Ms Gomes invited him to meet her.
- 9.10. Mr Mashaba explained that he met with Ms Gomes. Ms Gomes told Mr Mashaba that she wanted money for the "*movement*". Ms Gomes also told him that she knew the bid to supply locomotives to PRASA was worth billions and she could not understand why ten percent (10%) of the value of the bid could not be paid to the African National Congress. Ms Gomes was insistent that money should go to the movement.
- 9.11. Mr Mashaba explained further that Mr Mabunda had instructed him to pay some of the money received from PRASA into specified accounts, without Mr Mashaba knowing who was being paid or the reason for the payment. Mr Mashaba was insistent that he did not know the identity of the beneficiaries and he was merely informed that the money would "*benefit the movement*".
- 9.12. Mr Mashaba said that it was a "*pity*" that he did not have the documents with him that reflected the payments that had been made. However, he undertook to provide the

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documents. I suggested that he should give the documents to Mr Mamabolo or Mr Mamabolo could collect them from him.

9.13. On or about 2 September 2015, Mr Mamabolo collected the documents from Mr Mashaba at his offices situated in Block G, Central Park 400, 16th Road, Midrand. Mr Mashaba handed over an envelope containing the following documents:

9.13.1. A payments schedule, attached as "RA15" ("payments schedule").

9.13.2. Email correspondence from a Mr George Sabelo and Mr Mashaba, attached as "RA16".

9.13.3. A payment authorisation letter, dated 20 May 2013, attached as "RA17".

9.13.4. A Similex invoice, dated 1 January 2014, attached as "RA18".

9.13.5. A Similex invoice, dated 5 January 2014, attached as "RA19".

9.13.6. A payment authorisation letter, dated 10 January 2014, attached as "RA20".

9.13.7. A payment authorisation letter, dated 17 January 2014, attached as "RA21";

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- 9.13.8. A payment notification, dated 6 May 2014, attached as "RA22".
- 9.13.9. A series of emails between Maria Gomes and Mr Mashaba, dated 8 January 2014, 9 January 2014 and 26 May 2014, attached as "RA23".
- 9.14. Mr Mashaba and Mr Mamabolo had various other meetings during which Mr Mashaba explained the content of the documents. Mr Mashaba explained that:
- 9.14.1. After payments were made by PRASA to Swifambo or Swifambo Holdings, he was instructed by Ms Gomes to make the payments set out in the payments schedule.
- 9.14.2. Mr Mashaba confirmed that such payments were made to entities who were not creditors of Swifambo or Swifambo Holdings.
- 9.14.3. The amounts received by Swifambo or Swifambo Holdings would be transferred to his company AM Consulting Engineers. AM Consulting Engineers would pay a company known as Similex. Once the payments had been made to Similex, Ms Gomes would then distribute the funds.

9.14.4. Mr Mashaba maintained that he did not know who ultimately received the money.

9.14.5. Mr Mashaba explained that the reason why the payment amounts of R90, 000.00 and R1,050,000.00 were undated in the payments schedule was because both these payments were made in cash to Ms Gomes.

9.15. The following facts corroborate the documents handed over by Mr Mashaba and his version of events:

9.15.1. Mr Mashaba is a director of AM Consulting Engineers (Pty) Ltd. The relevant part of a CIPC report confirming this is attached as "RA24".

9.15.2. Ms Gomes is a director of a company known as Similex (Pty) Ltd. A CIPC report confirming this is attached as "RA25". It should be noted that the auditors for Similex (Pty) Ltd are Van Wyk Auditors. The auditors used by Swifambo.

9.15.3. In terms of the letter of authority, dated 20 May 2013 (RA17), Mr Mashaba states: "*Kindly facilitate the following payment from Swifambo Rail Holdings, account number: 202538117 to the following account ...*". The first initiation payment

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made by PRASA to Swifambo was paid to Swifambo Rail Holdings.

9.15.4. The investigators found an expression of interest for the provision of locomotives from Siyaya Rail Solutions (Pty) Ltd ("Siyaya Rail Solutions"), which is identified as a subsidiary of the S Group. A copy of the expression of interest is attached as "RA26". At the top of the fifth page it states that Siyaya Rail Solutions had entered into strategic partnerships with two international companies, one of them being Vossloh.

9.15.5. Mr Mabunda is a director of Siyaya Rail Solutions, S Group Investments (Pty) Ltd ("S Group") and Siyaya Consulting Engineers (Pty) Ltd ("Siyaya Consulting"). The relevant portion of the CIPC reports, in relation to each company, is attached as "RA27" to "RA29". It is be noted that the auditors for Siyaya Rail Solutions, S Group and Siyaya Consulting are Van Wyk Auditors. The auditors used by Swifambo and Similex.

9.15.6. The expression of interest confirms that Mr Mabunda was interested in the supply of locomotives to PRASA and that Mr Mabunda had,

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through his S Group entities, identified Vossloh as its supply partner.

9.15.7. As set out in the founding affidavit (in paragraph 17.3), the RFP was collected by someone from the S Group. The entity S Group Holding Company (Pty) Ltd paid for the tender documents using the reference "Swifambo".

9.15.8. A number of entities under the control of Mr Mabunda have been awarded tenders by PRASA. Some of those entities were implicated by the Public Protector in the Derailed report.

9.15.9. Email correspondence between Mr Montana and Ms Gomes dated 17 December 2013 was discovered during the investigation. I attach the email correspondence as "RA30".

9.15.10. The first alarming feature of this correspondence is the familiarity between Ms Gomes and Mr Montana. For instance, they refer to each other as "comrades". The second alarming feature is that Mr Montana sends Ms Gomes details of various projects within PRASA. Mr Montana had no business sending such information to Ms Gomes. Similex is not a tenderer, supplier or contractor to

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PRASA. Ms Gomes, to the best of my knowledge, is not involved in any entities supplying services to PRASA.

- 9.16. At the beginning of September 2015, Mr Mashaba continued to contact Mr Mamabolo to request that he facilitate another meeting with me. I declined to meet with Mr Mashaba and instead instructed Mr Mamabolo to facilitate a meeting between Mr Mashaba and PRASA's attorneys. A meeting was arranged. However, Mr Mashaba cancelled the meeting, stating that he had been advised not to attend.
- 9.17. The confirmatory affidavits of Mr Mamabolo and Mrs Mtlala are attached as "RA13" and "RA31".
- 9.18. The information set out above was provided to the SAPS and is presently being investigated by the Directorate for Priority Crime Investigation (the Hawks) and the NPA. I understand that this case has been registered by the Anti-Corruption Task Team as a national priority offence.
10. In addition, Mr Massaro does not deny that Swifambo had no previous involvement or track record in the rail industry prior to the award of the tender. Swifambo was a shelf company acquired for the sole purpose of obtaining the tender. Mr Massaro confirmed that Swifambo was not trading when it submitted the bid. Mr Massaro alleges that the execution of the contract involved purchasing and setting up office equipment, and

PO-03-306



PARLIAMENTARY OVERSIGHT

EXHIBIT ZZ 12

MANUEL SIMAO FRANCA
DE FREITAS

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

CONFIRMATORY AFFIDAVIT BY MANUEL SIMAO FRANCA DE FREITAS

I, the undersigned,

MANUEL SIMAO FRANCA DE FREITAS

do hereby make oath and state as follows:

- 1. I am an adult male Member of Parliament.
- 2. Save where otherwise stated, or where it may otherwise appear from the content hereof, the facts deposed to in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
- 3. I annex hereto marked "A", a copy of my Curriculum Vitae, the contents of which I confirm.



4. I annex hereto marked "B", a copy of a report that I prepared for submission to the Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State ("the Commission"). My report is entitled *"The effectiveness or otherwise of parliamentary oversight in respect of alleged state capture or corruption, particularly as regards the manner in which the Portfolio Committee on Transport dealt with allegations pertaining to PRASA during the 4th and 5th Parliaments"* ("my report").
5. My report is, in the main, based on my personal experiences as a Member of Parliament, particularly as a member of the Portfolio Committee on Transport ("the Transport Committee"). To the extent that the facts referred to in my report lie within my personal knowledge, including what took place at meetings of the Transport Committee which I attended, I confirm that these facts are true and correct.
6. As appears from the report itself, I have refreshed my memory by making extensive use of documents and hypertext links referred to in the report. These include summaries of meetings of the Transport Committee prepared by the Parliamentary Monitoring Group ("PMG"). To the extent that I have relied on identified documents or hypertext links, I believe them to be reliable sources and I believe that what I have stated in my report based thereon is true and correct.
7. I have extensive experience of the PMG's reports on portfolio committees and I confirm that I regard them as the most reliable and extensive available records of the proceedings of the Transport Committee. The PMG reports are not

necessarily verbatim or complete records (like Hansard aims to be) but they are in my view reasonably accurate and are generally considerably more extensive than the official minutes kept by the committee itself. To the extent that I have drawn on PMG reports of meetings, I confirm that I believe them to be substantially true and correct.

8. I have also read and considered the report prepared by the PMG for submission to the Commission entitled "*Parliamentary oversight over the Passenger Rail Agency of South Africa*" ("the PMG report"). The PMG report extracts from the PMG's records, reports (or extracts from reports) which it has prepared over the years which relate to discussions within the Transport Committee pertaining to PRASA, particularly as regards allegations of corruption, poor financial controls, poor governance or the like. To the extent that the PMG report refers to meetings of the Transport Committee which I attended (which is a substantial portion of them), it accords with my recollection of the meetings concerned.

PO-03-320

ZZ12-MSFDF-004




MANUEL SIMAO FRANCA DE FREITAS

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at JHB on this 22 day of January 2021, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS
Full Names: Michael Ian Crichton
Office: Ward Councillor, City of Johannesburg, Ward 56
Business Address: 2nd floor, Eureka House, 22 Marlborough Road, Springfield

I certify that deponent acknowledged that He/she knew and understood the contents of the above declaration, that I duly administered the prescribed oath, and that there after the deponent in my presence affixed his/her signature/mark/thumbprint to the declaration at JHB on 22/01/2021
before me or office
COMMISSIONER OF OATHS
SIGNATURE: 
FULL NAMES Michael Ian Crichton
COUNCILLOR
CITY OF JOHANNESBURG, CIVIC CENTRE
150 LOVEDAY STREET, BRAAMFONTEIN



PO-03-382

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At the PC meeting of 30 August 2016⁶⁶, the Committee addressed the performance of PRASA as it had only achieved 45% of its targets set for 2016/17. In his presentation to the PC, Acting GCEO, Mr C Letsoalo undertook to resolve the problems of PRASA.

The Committee expressed its unhappiness with the lack of security on trains and at stations, late trains, arsoned trains and infrastructure and looting. It appeared that nothing was being done to addresses these and other issues. The Committee discussed the appointment of Werksman's attorneys and the ANC members expressed this dissatisfaction with this appointment.

Mr Ramatlakane (ANC) said that he had asked for the PC to be copied on the board resolutions as he claimed that Board members were "looting" PRASA in a "sophisticated" manner by inflating their salaries.

Motion with notice in the NA about PRASA and the investigation

At the sitting of the NA on that same day, I tabled another motion with notice to debate PRASA and the state that it was in and the attempt by the Minister to stop the investigation into Prasa and what needed to be done to get Prasa back on track (Annexure M009). As per previous attempts this matter was not debated.

31 August 2016

Transport PC: PRASA performance

On the meeting held on 31 August 2016⁶⁷, members expressed concern about the low level of compliance by PRASA as the AG had identified recurring problems. The Acting GCEO, Mr Collins Letsoalo, explained that PRASA had a dysfunctional administrative system. He explained that only 20 executive were required as opposed to the current 65. He claimed that it appeared that PRASA board members were paying themselves additional unauthorised remuneration. Mr M Sibande (ANC) expressed concern that Board members were paying themselves extra without the Minister's approval.

Mr Ramatlakane (ANC) stated that recently there had been an extraordinary Board meeting where a resolution had been taken to dismiss the Acting GCEO, Mr Collins Letsoalo. He requested PRASA and the chairperson to appraise the PC developments in this regard and that the PC receive a copy of the Board minutes. I got the distinct impression that this had been discussed by the ANC and that there was an agenda of sorts to protect Letsoalo.

Dr Popo Molefe requested that he and Board members should respond to the questions "in committee", ie; for the meeting to take place in private without the public and the media present.

⁶⁶ PMG Minutes. (30 August 2016). *Passenger Rail Agency of South Africa (PRASA) on its performance Day 1*. PMG. Retrieved from: <https://pmg.org.za/committee-meeting/23167/>

⁶⁷ PMG Minutes. (31 August 2016). *PRASA inquiry: day 2*. PMG. Retrieved from: <https://pmg.org.za/committee-meeting/23186/>

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The Chairperson disallowed the request as this was against parliamentary processes. Any "in committee" meetings may only take place upon application to, and acceptance by, the Speaker.

I was interested in knowing why Dr Molefe would want to reply "in committee".

Dr Molefe explained that it was not possible to predetermine that there were issues that needed to be addressed in committee. Molefe explained that there were *sub-judice* matters which could prejudice the litigation. The PC Chairperson had ruled that queries should be replied to without prejudicing matters.

Mr Maswanganyi (ANC) stated that Popo Molefe had insinuated that the ANC had received R80 million from PRASA, this was in reference to articles by News24 on 26 August 2016⁶⁸ and on AmaBhungane on 26 August 2016⁶⁹ and various other media that alleged that Molefe had alleged in papers filed in the Gauteng High court the previous week; that the supplier of PRASA's controversial Afro 4000 locomotives had paid R80 million to "entities who were not creditors" of the company after an Angolan businesswoman had insisted that ten percent of the tender's value be paid to the ANC. The story had also been reported in BusinessTech reported by Rapport in 26 August 2016.⁷⁰

Molefe denied that he had made such a statement, stating that he had heard allegations that PRASA had paid the ANC R80 million. He explained that PRASA had never paid the ANC money and that he had never made such claims. He indicated that what the media had reported were records before the court.

Mr Maswanganyi (ANC) expressed that he had a concern that PRASA had spent R93 million on a private legal firm for services. This was the ANC's attempt at deflecting from the true issue of corruption – by deflecting from the real problem. It was also very clear that the ANC was positioning Molefe as the "enemy" or the "bad guy" in this saga.

Mr Radebe said that the Acting GCEO was closing all the leaks so that there were no future looting. Radebe requested Letsoalo scrutinise every invoice from the 31 August 2016 until the AGM of 2016. The ANC members of the committee had told PRASA not to cancel existing contracts in place, as according to ANC members, this would have massive legal implications. My interpretation was that the real agenda was that those benefitting from tenders should be able to do so and this was a convenient excuse that allowed these enterprises to continue unabated. Mr Radebe (ANC) suggested that the Committee had to approach SAPS to investigate Werksmans political and business links. This was never done; I suspect

⁶⁸ Myburgh, P-L. & Serrao, A. (26 August 2016). Exclusive: ANC implicated in PRASA 'bribes'. *News24*. Retrieved from: (<https://www.news24.com/SouthAfrica/News/exclusive-anc-implicated-in-prasa-bribes-20160826>)

⁶⁹ Amabhungane & Mail & Guardian. (26 August 2016). President Zuma's friend collect PRASA cash for the ANC. *Amabhungane*. Retrieved from: <https://amabhungane.org/stories/president-zumas-friend-collected-prasa-cash-for-the-anc/>

⁷⁰ BusinessTech. (26 August 2016). ANC alleged to have received R80 million in PRASA train bribes report. *BusinessTech*. Retrieved from: <https://businesstech.co.za/news/government/134597/anc-alleged-to-have-received-r80-million-in-prasa-train-bribes-report/>

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that this was simple political posturing with no action in reality. It was also interesting to me how warm the ANC members were with Letsoalo.

The meeting was concluded with the Chairperson expressing anger towards the Board, saying that they should be “thrown out lock, stock and barrel” because it had been “disrespectful” to the Committee. Mr Maswanganyi (ANC) echoed the anger about allegations in the media about the ANC getting R80 million.

23.16.September 2016

9 September 2016

Charges laid against PRASA and others

On 9 September 2016 I filed an affidavit⁷¹ (Annexure C011) relating to allegations that the ANC, as well as PRASA officials were the beneficiaries of a bribe in order for Swifambo Rail Leasing to secure the controversial Afro4000 Locomotive tender, which had been involved in two derailments as a result of their dimensions being too large for South Africa’s railways.⁷²

This affidavit concerned possible criminal offences committed by various persons in terms of the *Prevention and Combating of Corrupt Activities Act, Act 12 of 2004*.

A civil matter was heard in the Gauteng local division of the High Court in Johannesburg in the matter with the parties PRASA and a company called Swifambo Rail Leasing and the deponent being Mr. Popo Molefe. The case number appeared to have been 2015/42219.

In my affidavit I stated that I was of the opinion that there were several allegations that had been made in the matter which, if found true, may have constituted criminal offences on the part of the individuals mentioned.⁷³

It was alleged that one Auswell Mashaba, at the time a director of Swifambo had paid a portion of the money that Swifambo received in terms of its contract with PRASA to another company, AM Consulting Engineers (Pty) Ltd where Mashaba was also a director.

AM Consulting had then allegedly transferred these funds to a company known as Similex (Pty) Ltd. One Maria Gomes, a director of Similex, would allegedly then distribute the money to accounts of the African National Congress. According to the Molefe affidavit, AM Consulting was not a creditor of Swifambo, and there was no apparent justification for the payments that Swifambo made to AM Consulting. The payments had allegedly been made on the instruction of one Makhensa Mabunda, an associate of Lucky Montana, the then GCEO of Prasa, who told Mashaba that it was being done “for the benefit of the

⁷¹ de Freitas, M. (9 September 2016). *Affidavit about PRASA, Swifambo and others*.

⁷² de Freitas, M. (9 September 2016). DA lays charges following alleged ANC and Prasa bribe. Politicsweb. Retrieved from: <https://www.politicsweb.co.za/politics/da-lays-charges-following-alleged-anc-and-prasa-br>

⁷³ Koyana, X. (9 September 2016). DA lodges graft complaint over Prasa train deal. Retrieved from: <https://ewn.co.za/2016/09/09/Prasa-DA-calls-for-all-involved-in-locomotives-scandal-to-be-questioned-by-police>

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movement". Mr. Mabunda was a director of the S Group Holdings, a strategic partner of a German company called Vossloh AG, who supplied Swifambo with the locomotives it delivered to PRASA.

In my affidavit I submitted that these allegations constituted corrupt activities in terms of section 3 of the Act. It seems on the facts set out in the Molefe affidavit that numerous gratifications were offered and accepted between several stakeholders, acting as inducement for the stakeholders to *inter alia* act in a dishonest, biased or unauthorised manner or to violate legal duties and rules.

Based on this, I requested that the matter be investigated, and the appropriate steps be taken to see justice done and the rule of law upheld.

The SAPS cas number for this case is 1403/8/2018. After submitting all the required information, including files carefully colour-coded and carefully filed, the SAPS lost the files. I had to reproduce the file again. My meetings with the investigating officers were very disappointing. It was clear that the officers were ill-equipped and ill-qualified to conduct the investigations required.

14 September 2016

Petition to the Public Protector: request to include the Gibela deal

On 14 September 2016 I wrote to the PP, Adv. Thuli Madonsela, requesting her to instruct Werkmans Attorneys – who were busy at the time with a forensic investigation into tender irregularities at PRASA – to specifically include the R16 million Gibela deal involving SAA Chairperson Dudu Myeni's son, Thalete, in its terms of reference.

The remedial action in Adv Madonsela's report included the commissioning of a forensic investigation into all PRASA contracts or tenders over R10 million awarded between 1 April 2012 and 30 June 2015. This deal fell within the remit of these terms of reference prescribed by the PP and I argued should be included in the ongoing investigation. In a New24 report released on 11 September 2016, it was revealed that Myeni's son and other politically-connected stakeholders in PRASA's R51 billion contract for new passenger carriages had cashed in on their shares in the already dubious tender, before a single new train had been built. According to reports, JSE-listed tech giant EOH earlier that year paid R16.5m for 100% of the shares in New Africa Rail, French manufacturing giant Alstom's BEE partner in the contract.⁷⁴

Thalete Myeni, "ANC tycoon" Monde Africa and Sesinyi Seopela, the late former ANC Youth League leader Peter Mokaba's bodyguard, were NAR's local shareholders when the Alstom-led Gibela consortium won PRASA's R51bn contract for the supply of 3 600 new passenger carriages in 2012. Due to the political connections of those involved, the deal exceeding R10 million and also falling within the *Derailed* probe timeframe, I wrote to the PP requesting her to extend her investigation into the Gibela deal.

⁷⁴ Myburgh, P. (11 September 2016). Myeni and co's 16m PRASA 'freebie'. News24. Retrieved from: <https://www.news24.com/SouthAfrica/News/myeni-and-cos-r16m-PRASA-freebie-20160911-2>

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As I will demonstrate in this document, as of 2017, PRASA had paid nearly R2,65 billion for trains that could not run on the South African rail network. Claims had been made of substantial payments worth millions made to ANC fundraisers who claim to be friends of the previous President. To add insult to injury, the quality of work from various contractor and service providers were so poor that they do not meet minimal standards and in some cases may possibly put commuters in danger.

10 November 2016

Reply to question indicated reason for main fruitless and wasteful expenditure

Replies to question 231 (Annexure Q047) issued on 10 November 2016 indicated that the majority of the fruitless and wasteful expenses in the last 2 financial years was primarily due to *“the Afro 4000 locomotive contract amounting to R715 million. The Auditor General found the contract to be irregular and the contract is currently under litigation.”* In addition, the replies indicated that *“R85 million relates to assets purchased and not utilized timeously, interest on late payment as a result of cash constraints, processes not followed on termination of employment, additional cost on projects due to inadequate planning and services rendered that did not add value.”*

Replies to question 232 (Annexure Q048) confirmed the discontinuation of the acquisition of the Afro 4000 locomotives.

23.17. February 2017

26 February 2017

In the Sunday Times of 26 February 2017, it published a report entitled, *“Acting Prasa CEO ups his own pay by 350% and demands chauffeur”*⁷⁵ The report alleged that upon being appointed as ACEO of PRASA he demanded the same remuneration package that Lucky Montana had, despite allegations of Letsoalo’s secondment appointment letter contradicting this.

28 February 2017

Letter to Chair of the PSC: Adv. Sizani regarding Letsoalo remuneration

On 28 February 2017 I wrote to the Chairperson of the Public Service Commission (PSC), Adv. Sizani (Annexure C012) about the allegations made in the media against the former acting Chief Executive Officer of PRASA, Collins Letsoalo and violations of protocol, which lead to Letsoalo’s annual remuneration package increasing by as much as 350%. I requested that Sizani launch an investigation into the circumstance surrounding the alleged increase in remuneration.⁷⁶

⁷⁵ Jika, T. (26 February 2017). Acting Prasa CEO ups his own pay by 350% and demands chauffeur. Sunday Times. Retrieved from: <https://www.timeslive.co.za/sunday-times/news/2017-02-26-acting-prasa-ceo-ups-his-own-pay-by-350-and-demands-chauffeur/>

⁷⁶ (27 February 2017). DA: Manny de Freitas says DA requests Public Services Commission investigation into personal enrichment by Prasa Acting CEO. Polity. Retrieved from: <https://www.polity.org.za/article/da-manny-de-freitas-says-da-requests-public-service-commission-investigation-into-personal-enrichment-by-prasa-acting-ceo-2017-02-27>

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On the same day, the media reported that the Prasa board had voted to remove Letsoalo as Acting GCEO of PRASA.⁷⁷

At the NA sitting that day I called for a debate on how Acting GCEO attempted to obtain an astronomical salary increase illegally and how such practices could be prevented (Annexure M010). This motion was also not agreed to.

23.18. March 2017

23.18.1. 3 March 2017

The Minister of Transport, Ms Dipuo Peters, withdraws the secondment of Mr Collins Letsoalo from PRASA with effect from 1 July 2016. Peters claimed that the decision should not “be misconstrued as an indication of any wrongdoing by Mr Letsoalo.”⁷⁸

23.18.2. 7 March 2017

PSC response letter received: Letsoalo remuneration matter

On 7 March 2017 I received a reply from the PSC indicating that they would request the secondment agreement from the Minister regarding for Letsoalo “in order to assess its jurisdiction to investigate the complaint and that they would keep me abreast of developments (Annexure C013)

23.18.3. Transport PC Meeting: The state of PRASA⁷⁹

The Chairperson, Ms D Magadzi (ANC), requested PRASA to explain why the Board had allowed a 350% salary increase for the former Acting GCEO (Mr Collins Letsoalo).

Mr L Ramatlakane (ANC) requested, in terms of Parliamentary Rule 167⁸⁰, that the information presented be the truth, and that every person who provided the truth would be protected from incrimination.

Mr Tefetso Phitsane, PRASA board member, explained that the Minister of Transport had seconded one of her staff to PRASA but there was a grey area with regards the conditions to secondments. PRASA then wrote to the newly appointed Acting GCEO, Mr Letsoalo, stating that PRASA would pay his annual salary applicable to his position and not that of the GCEO. Subsequently, there had been a dispute about the salary. Letsoalo claimed that his salary was confirmed via a series of emails between himself and the PRASA executive and the board.

⁷⁷ October, A. (28 February 2017). Prasa removes Letsoalo as acting chief executive. News24. Retrieved from: <https://www.news24.com/citypress/news/prasa-removes-letsoalo-as-acting-chief-executive-20170228>

⁷⁸ Mnisi, I. (3 March 2017). Media Alert. Retrieved from: <https://www.transport.gov.za/minister-of-transport-statement-on-the-passenger-rail-agency-south-africa-prasa->

⁷⁹ PMG Minutes. (7 March 2017). PRASA Board on the firing of the Acting Group Executive Officer. PMG. Retrieved from: <https://pmg.org.za/committee-meeting/24094/>

⁸⁰ Rule 167 is entitled “General Powers” which allows a Portfolio Committee to summon any person to provide evidence before a Committee.

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I explained that the situation was embarrassing as both parties had erred badly. I noted that the Board stated that on 7 July 2016, there was a letter from the Minister which they claimed that they did not know about. I queried how this was possible; this meant that either the Board was incompetent or someone was lying; either way it was very odd. It was shocking that they had an official who was proudly saying how he was negotiating his own salary. In my opinion it was beyond arrogance. The media repeated what I had said in the committee meeting; *"I have seen more professionalism in a high school tuckshop. This is actually sickening"*⁸¹

Mr Mulaudzi (EFF) and Mr G Radebe (ANC) called for the suspension of the "corrupt" Board and a comprehensive enquiry into PRASA while Mr M Sibande (ANC) felt that the Board and its various actions were in question, particularly with regards the fact that a CEO of PRASA had not yet been appointed.

Mr Ramatlakane (ANC) said that that issue of Mr Letsoalo paying himself was a "scapegoat". He claimed that Mr Letsoalo had refused to pay Werksmans Attorneys and that the Sunday Times article about Mr Letsoalo paying himself was, without doubt a "sponsored article".

Although I agreed with Radebe that an inquiry should be launched, our reasons for it were very different. While I had been fighting for an inquiry into PRASA to expose the corruption in it and to identify the network and individuals therein it that made the corruption possible, Radebe and the other ANC members wanted to do the very opposite. They were angry with Popo Molefe for speaking out about allegations of pay-outs to ANC coffers – a cardinal since for the ANC! They also needed the attention diverted away from the corruptors and needed a distraction; Molefe (who has dared to "betray" the ANC) and his Board would be perfect scape goats. The ANC also needed an emotive issue to occupy the attention away from the looting of PRASA and the appointment of an "expensive legal firm" by Molefe, was a perfect issue.

The Chairperson said that she would write a letter to the Minister, with the President copied in the letter, explaining that the Board had been involved in "dispute after dispute" and thus an inquiry was necessary.

My argument was that there was nothing stopping the PC from initiating an inquiry, irrespective whether the PC Chair wrote a letter to the Minister or anyone else. My statement was ignored.

23.18.4. Ministers are generally unaccountable: one example

Interesting to note is that on 7 March 2017, the Minister had submitted an apology to the PC indicating that she could not join the PC meeting as she claimed to have been booked off by her doctor. I thought nothing of it as the Minister, and all other ministers in my experience, seldom attended PC meetings in any event. I was used to her being an invisible Minister, just like all her predecessors. I was therefore

⁸¹ Gqirana, T. (7 March 2017). Prasa board 'less professional than a high school tuckshop' – MP. *News24*. Retrieved from: <https://www.news24.com/news24/southafrica/news/prasa-board-less-professional-than-a-high-school-tuckshop-mp-20170307>

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most surprised when only one hour later, after the Transport PC had adjourned and we were all in the National Assembly Chamber for a Plenary, I saw Peters, looking fit and healthy, in the Chamber. At the next day, the second day of hearings, the Invisible Minister was again not present.⁸²

23.18.5. 8 March 2017

Transport PC Meeting: The state of PRASA (and a second attempt at an inquiry)

On 8 March 2017⁸³ the heated discussion on the firing of Acting GCEO, Mr Collins Letsoalo, by the PRASA Board and the performance of the Board continued. The Minister's absence from the meeting concerned the Committee as she was the appropriate person to answer their questions, she had not attended the meeting the previous day as she claimed that she was ill, only to be seen in the NA chamber an hour later.

Members said that there was a reluctance to answer questions by the PRASA Board. Mr Sibande (ANC) agreed with the request of Mr Hunsinger (DA) that an ad-hoc parliamentary committee be formed to get firm details on the appointment of Werksman's and the reasons for their contract. Mr Ramatlakane (ANC) said that more work had to be done. He stated that besides the formation of an ad-hoc parliamentary committee, the PC was empowered to conduct an investigation and suggested that a resolution to that effect be adopted.

Mr Maswanganyi (ANC) suggested that the Committee deal with the matter of the enquiry at its next meeting. He asked if the current board was underperforming compared to the previous boards as there was only three months left of its term.

I expressed my enthusiasm to hear the Board responses which they should respond truthfully, but I also expressed my disappointment with the Board and their reluctance to answer questions. In my opinion, the Board's recalcitrant attitude was the very reason PRASA was the way it was. I explained that I received many complaints from members of the public about people who lost their jobs because the trains had not arrived on time. I explained that all I heard was about people that were trying to fatten their pockets. I agreed with Radebe's statement that the Board was reluctant to answer questions, this was serious and that someone needed to be subpoenaed. I appealed to the Board to respond to the questions posed. I explained that every time I submitted official questions, every time I received "nonsense" answers, after which I would have to submit new questions that were rephrased in an attempt to "zoom in" to obtain specific replies. It was clear to me that the Board appeared to have a problem with the whole PC who they were to be accountable. I urged them to answer the questions to see if they were on top of the game.

⁸² de Freitas, M. (15 March 2017). *Manny de Freitas says the ANC demonstrates a continued Prasa cover-up*. Polity. Retrieved from: <https://www.polity.org.za/article/da-manny-de-freitas-says-the-anc-demonstrates-a-continued-prasa-cover-up-2017-03-15>

⁸³ PMG Minutes (8 March 2017). PRASA Board and Metrorail service delivery challenges. PMG. Retrieved from: <https://pmg.org.za/committee-meeting/24120/>

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Mr William Steenkamp, PRASA Board member, assured the Committee that the answers would be furnished in five days. He said that there had been no agreement between PRASA and the Department of Transport regarding the secondment of Mr Letsoalo as GCEO and there was no contract. The Acting GCEO had been brought into PRASA by the Minister, making it difficult for him to be accountable to the Board. Because of the manner this appointment was done, he carried himself as if he was the administrator of PRASA. That facilitated a difficult relationship between the Board and the Acting GCEO. Mr Steenkamp requested that the Minister be questioned on the authority she gave the Acting GCEO. The board had been asked by the Minister to restart the hiring process of the GCEO but the matter of hiring the GCEO did not lie with the Board but at cabinet level. There was an agreement between the Department of Transport and Mr Letsoalo but there had never been an agreement between the DoT and PRASA. The board was also concerned that Mr Letsoalo was dismissing people at his own discretion without following procedure. An extensive discussion on the matter of the Acting CEO's salary ensued.

The matter of what Werksmans Attorneys was doing was discussed at length. Mr Lindikhaya Zide, Acting Group CEO of PRASA, agreed that there was a lot of dissatisfaction about the service of Metrorail. He confirmed that the work PRASA was currently focusing on was the work begun by Mr Letsoalo. He presented operational challenges and noted that current performance was marked by customer dissatisfaction, decreasing capacity and poor service before presenting an operations turnaround plan.

Mr Sibande (ANC) said that the issues raised in the turnaround strategy were the same issues raised the previous year and the one before that. He asked what the status quo was regarding concerns raised the previous year. When the meeting had been concluded, the Acting Director-General of the Department of Transport read aloud a letter that he had received from the Minister of Transport, Minister Dipuo Peters, in which she dissolved the board of PRASA.

At the end of the second day of hearings, the committee unanimously agreed that it undertake an investigation into PRASA and the problems that it was currently confronting. The terms of reference and other details would be discussed in subsequent meetings. The motion to initiate an inquiry into PRASA was reconfirmed by myself at that same meeting. The Parliamentary Communications Service released a statement echoing this.⁸⁴

23.18.6. Peters fires PRASA Board

Before the end of the meeting, the DoT Acting DG, Matabatha Mokonyama read out a letter that had been sent to the Committee from Minister Dipuo Peters in which she dissolved the Board of PRASA. In her letter, Peters explained that she had been booked off by her doctor as she claimed to be ill.

I learnt that besides Peter being invisible, she had a repugnance for doing her own dirty work. She did not have the plain decency to make the announcement herself that she was firing the Board. Instead, an

⁸⁴ Maputi, A. (8 March 2017). Transport Committee to establish inquiry into Prasa governance challenges. Parliamentary Communications Services. Retrieved from: <https://www.parliament.gov.za/press-releases/transport-committee-establish-inquiry-prasa-governance-challenges>

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official in the Transport department made the announcement on her behalf on 8 March 2017 at the meeting. The Minister had not provided reasons to the PC, and the Board members themselves, for firing the Board.

23.18.7. Peters announces a new PRASA Board

On 8 March 2017, Minister Peters announced an interim Board for PRASA.⁸⁵ Nowhere were details given regarding this “interim” board. On numerous occasions I asked questions about this. The only response I received was that an interim board had a limited time lifecycle in office.

As was revealed at the meeting, the members of the Board had gone through the entire process in 2016 to identify someone to serve as PRASA GCEO but the minister had stopped the whole process and asked the Board to start again. As quoted in the media, I said that the minister has realised that she had messed up with this decision and was trying to fix the problem she had caused.⁸⁶

23.18.8. Molefe challenges minister’s decision to fire the PRASA Board

The then PRASA Board chairperson, Popo Molefe subsequently approached the courts to have the decision by Peters to be set aside and have the board reinstated.

23.18.9. 14 March 2017

PC Transport meeting regarding PRASA inquiry

Despite there being unanimous agreement by the PC on 8 March 2017 that an inquiry into PRASA would take place, at this meeting; on 14 March 2017⁸⁷, the ANC members had a complete opposite stance to what they had stated only 6 days earlier. Suddenly, according to the ANC, no investigation was necessary!⁸⁸ According to ANC members the Minister’s removal of the Board meant that no inquiry was necessary; as if suddenly all the allegations of corruption, theft, looting and mismanagement and maladministration had never taken place. The reality is that they had taken place and, whether a Board led by Molefe was in place or not, an inquiry was absolutely needed.

Obviously, behind the scenes they had been instructed to toe the line and to assist in a cover-up that involved people all the way up allegedly including then President Zuma. This was clear to me as the discussions in the PC were always slanted away from investigating the corruption in PRASA but instead their focus had been on Molefe.

⁸⁵ Gernetzky, K and Magubane, K. (13 March 2017). Dipuo Peters names interim PRASA board. *Bizcommunity*. Retrieved from: <https://www.bizcommunity.com/Article/196/585/159027.html>

⁸⁶ Jadoo, Y. (9 March 2017). DA ‘not surprised’ by minister’s decision to fire Prasa board. *The Citizen*. Retrieved from: <https://citizen.co.za/news/south-africa/1451627/da-not-surprised-by-ministers-decision-to-fire-prasa-board/>

⁸⁷ PMG Minutes. (14 March 2017). *AARTO Amendment Bill: summary of submissions; PRASA Inquiry: discussion*. PMG. Retrieved from: <https://pmg.org.za/committee-meeting/24139/>

⁸⁸ Maputi, S., (14 March 2017). Transport committee shelves proposed inquiry into PRASA. *Parliament.gov.za*. Retrieved from: <https://www.parliament.gov.za/news/transport-committee-shelves-proposed-inquiry-PRASA>



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Mr Sibande (ANC) said that the Committee had agreed on an inquiry initially. However, the Committee had not anticipated that the Minister would be so quick to respond about PRASA. An inquiry was not necessary as the PRASA Board had already been expelled.

Mr Maswanganyi (ANC) suggested that the Minister be requested to appear before the Committee after which the Committee should decide whether to pursue the inquiry or not.

I stated that since the 8 March meeting, it appeared that ANC Members had been instructed to toe the line and keep quiet. I expressed concern that the PC allowed the Minister to tell it how to conduct oversight. I could not support the proposal to abandon the inquiry. I expressed my disappointment that the Committee was not acting as an independent body. I explained that I had no choice but to speak to the media about the corruption at PRASA which involved billions. I explained that this Committee's "change of heart" had become a part of the cover-up.

Mr Radebe (ANC) said that I should not make accusations, as this was wrong. Radebe accused me of behaving like a "lunatic" or a "political-grandstander". The Chairperson agreed that it would be fair to invite the Minister to speak to the Committee. She recommended that the Committee suspend the enquiry until Members had heard from the Minister.

Mr Hunsinger (DA) questioned whether the Committee was compromising. The existence of the Ad Hoc Committee was legitimate given that there are other matters that would fall under investigation. Procedurally, it would be wise to summon the Minister to provide explanations to the Committee. After that, the Terms of Reference for the Ad Hoc Committee should be established. At no stage should the compilation and existence of the Ad Hoc Committee be put in jeopardy as it was a firm decision taken by the Portfolio Committee to accept a committee of investigation.

Mr Radebe (ANC) proposed closure of the meeting and the meeting was abruptly (and conveniently) closed.

23.18.10. 15 March 2017

Letter to Alli requesting confirmation of continuation of investigation

With the appointment of a new PRASA Interim Board, I wrote to its chairperson, Nazir Alli (Annexure C014). I knew Alli well as he was previous the CEO of the South Africa National Roads Agency Limited (SANRAL). My letter requested that he confirm that the investigation into maladministration and corruption at PRASA will continue to;

"ensure that those responsible for the massive amount of wasteful and irregular are held to account."

I received no response or acknowledgement of my letter.

23.18.11. 22 March 2017

Response letter received from PP about PRASA investigation

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I received a letter from the Public Protector on 22 March 2017 (Annexure C015), it was a response to my letter that I had written to her in September 2017; a full 6 months later! However, I was grateful to have received a reply. The PP advised that she had “concluded that the matter can best be dealt with by PRASA.” She further explained that she was closing this file and that my complaint had been referred to the Acting GCEO of PRASA for action. This I felt was a most disappointing response as I believe that as PRASA had all the allegation levelled against it, that it was inappropriate for it to investigate itself.

23.18.12. 24 March 2017

Response letter from PSC regarding Letsoalo remuneration matter

On 24 March 2017 I received a letter from the PSC advising me that the Letsoalo remuneration matter was receiving their attention (Annexure C016).

23.18.13. 30 March 2017

New Transport Minister Joe Maswanganyi is appointed

On 30 March 2017, as a result of one of President Zuma’s cabinet reshuffles, one of the ANC PC members, Joe Maswanganyi was appointed as transport minister. It quickly became clear to me the reason for this appointment; he was willing to do his master’s (then President Zuma) bidding. My suspicions were confirmed by the manner that the new minister led his department as events unfolded in the subsequent months.

23.18.14. Letter written to Letsoalo requesting confirmation that PRASA investigation would continue

Considering that a new Board of PRASA was in place, I wrote to the Acting GCEO of PRASA, Collins Letsoalo (Annexure C035) requesting that he confirm that the investigation into maladministration and corruption at PRASA would continue. No response was received.

23.19. April 2017

10 April 2017

Courts dissolve interim board and reinstate previous Board under Molefe

On 10 April 2017, Judge Peter Mabuse ordered that the former board be reinstated and that the interim board be dissolved⁸⁹.

23.20. May 2017

22 May 2017

Visit to Elandsfontein and Ravensklip train stations in Ekurhuleni

My visit to the Elandsfontein and Ravensklip stations revealed that there had been no maintenance of infrastructure. The infrastructure at these stations had been left to delapidate^A, left to rust^B and was overgrown with foliage and grass^C. The rust was so bad that it was clearly dangerous for commuters when using the bridge accessing the station. Security was generally lacking^D. The only obvious modern changes were the erection of new signage^E and automatic turnstiles^F which had never been operable as

⁸⁹ Axing of Molefe, Prasa board set aside. (10 April 2017). Mail & Guardian. Retrieved from: <https://mg.co.za/article/2017-04-10-axing-of-molefe-prasa-board-set-aside/>

PO-04-833



PARLIAMENTARY OVERSIGHT

EXHIBIT ZZ 13

THEMBEKILE
MAKWENTU

IN THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE (“THE COMMISSION”)

PASSENGER RAIL AGENCY OF SOUTH AFRICA (“PRASA”)

SWORN AFFIDAVIT

I, the undersigned,

MARIA MAGDALENA BEZUIDENHOUT

Do hereby declare under oath as follows:

1. I am an adult female and a citizen of the Republic of South Africa. I am currently employed by the Auditor-General South Africa (“the AGSA”) in the role of Business Executive: Corporate Legal Services. My employer is a constitutional institution established in terms of section 181(1)(e) of the Constitution of the Republic of South Africa, 1996 (the Constitution).
2. The content of this affidavit falls within my personal knowledge, except where otherwise stated or unless the contrary appears from the context, and is true

 1 

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and correct. My comfort with the content of this affidavit is derived firstly from my personal involvement in the preparation of the work intended for the Commission, and secondly from personal discussions that I had with the former Auditor-General, the late Kimi Makwetu (hereafter referred to as "AG Makwetu").

3. I depose to this affidavit in response to a request from the Commission made to the current Auditor-General, Tsakani Maluleke (hereafter referred to as "AG Maluleke"). In doing so, I am acting with her knowledge and approval.
4. The Commission's request to AG Maluleke emanated from the sad and untimely passing of AG Makwetu on 11 November 2020. At the time of his passing, AG Makwetu was in the process of finalising his submission that was due for presentation to the Commission before 30 November 2020, the last day of his seven-year term as Auditor-General.
5. This affidavit is an attempt, in whichever way possible, to fulfil AG Makwetu's promise of cooperation to the Commission and, by extension, to honour his promise of absolute transparency to the people of South Africa. In doing so, I intend to advise the Commission of my personal involvement in preparing AG Makwetu's submission, the format and content thereof and the advanced stage of completion thereof at the time of his passing.

AG Makwetu's approach

6. In April 2020, AG Makwetu roped in a small team of three (3) AGSA employees to assist him in preparing a submission that he promised to the Commission. The team consisted of myself, Jan van Schalkwyk (Corporate Executive in the Office of the Auditor-General) and Polani Sokombela (Business Executive responsible for the audit of PRASA). The brief to the team was relatively

 2 

This resulted in PRASA being consistently elevated in the general report of the AGSA from the 2015-16 financial year onwards as one of the top contributors to irregular expenditure per audit cycle.

61. For the benefit of the Commission, I demonstrate the exponential increase in PRASA's irregular expenditure in Table 2.

Table 2: Increase in irregular expenditure¹

Amount R 2017-18	Amount R 2016-17	Amount R 2015-16	Amount R 2014-15	Amount R 2013-14
R24,2b	R20,3b	R15,3b	R0,55b	R0,01b

62. The instability in the Board and at PRASA's key management level negatively impacted the operations of the entity and contributed to the collapse in the control environment. Although the auditors continuously reported ineffective compliance monitoring processes to senior management, these deficiencies were not addressed and resulted in repeat non-compliance findings. This included ineffective steps taken to prevent irregular, fruitless and wasteful expenditure.
63. Section 49(2)(b) of the PFMA states that in the event that a public entity does not have a controlling body, the chief executive officer of the entity or the person in charge of the entity is the accounting authority, unless applicable legislation provides otherwise. On a number of occasions, the Board had not

¹ Detailed information is contained in paragraph 140 onwards.



been lawfully constituted and this resulted in a reliance on section 49(2)(b) of the PFMA.

64. During the 2013-14 to 2017-18 financial years, the Board composition changed often. These changes are reflected in Table 3 below.

Table 3: Instability in the PRASA Board

Date	Board movements
1 August 2014	Board appointed under chairmanship of P Molefe
1 November 2016	National Treasury representative resigned The Board was not properly constituted in terms of the Legal Succession Act
8 March 2017	Board under chairmanship of P Molefe was dismissed. Interim board chaired by N Alli was appointed
10 April 2017	The Board under chairmanship of P Molefe is reinstated
31 July 2017	The Board under P Molefe's term expired
1 August 2017	As no Board existed, the Acting Group CEO assumed the role of accounting authority in terms of section 49(2)(b) of the PFMA
19 October 2017	An Interim Board was appointed under chairmanship of Advocate Makhubele

	No National Treasury representative was appointed to the Board, therefore it was not properly constituted in terms of the Legal Succession Act
5 February 2018	National Treasury representative was appointed and the Board was properly constituted
12 April 2018	A new Interim Board chaired by K Kweyama was appointed The Department of Transport and SALGA representatives were appointed subsequently

65. The instability in the Group CEO position was equally troublesome, with a new appointment every year and, on occasion, more than one per year. Furthermore, these appointments were made in an acting capacity and only in 2018 an Interim Group CEO was appointed. Table 4 demonstrates the movement in appointments from the 2015-16 until the 2018-19 financial years.

Table 4: Instability in the Group CEO position

Date of appointment/resignation	Group CEO
July 2015	L Montana (resignation)
August 2015	N Khena (appointed as Acting Group CEO)
July 2016	C Letsoalo (appointed as Acting Group CEO)
February 2017	L Zide (appointed as Acting Group CEO)
December 2017	C Molepo (appointed as Acting Group CEO)

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engagements being held and commitments sought to address the regressing audit outcomes, the constant changing of Ministers, Board members and Group CEOs, hindered the delivery on commitments made.

180. Table 5 depicts the changes in leadership and oversight structures during the audit cycle³ –

Table 5: Leadership and oversight changes

Roleplayers	Movements	Period
Ministers	D Peters	Until 30 March 2017
	J Maswanganyi	31 March 2017 – 28 February 2018
	B Nzimande	28 February 2018 – 29 May 2019
Board	National Treasury representative resigned. The Board was not properly constituted in terms of the Legal Succession Act	1 November 2016
	The Board chaired by P Molefe was dismissed. Interim board chaired by N Alli appointed	8 March 2017
	The Board chaired by P Molefe is reinstated	10 April 2017
	The Board's term	31 July 2017

³ Since the 2016/17 audit was only concluded on 31 July 2018, the table contains information over a longer period of time.

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	expired	
	The Acting Group CEO was the accounting authority in terms of section 49(2)(b) of the PFMA	1 August 2017
	A new interim board chaired by Advocate Makhubele was appointed. No National Treasury representative on the board, therefore the Board was not properly constituted in terms of the Legal Succession Act.	19 October 2017
	National Treasury representative was appointed and the Board was properly constituted	5 February 2018
	A new interim Board chaired by K Kweyama was appointed and the Department of Transport and SALGA representatives were appointed subsequently.	12 April 2018
Group CEO	C Letsoalo appointed as Acting group CEO	July 2016
	Lindikaya Zide appointed as Acting Group CEO	February 2017
	Cromet Molepo	December 2017

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	appointed as Acting group CEO	
	L Zide appointed as Acting Group CEO	April 2018
	S Sithole appointed as Acting Group CEO	June 2018
Group Chief Financial Officer	Ms H Muyatsa	Until November 2016
	Ms Y Page appointed as Acting Group CFO	November 2016 to February 2018
	Ms T Mahlati appointed as Acting Group CFO	February 2018

181. The rapid changes in the roles set out in Table 5 resulted also in the significant delay to complete the 2016-17 audit.

Engagement of PRASA’s oversight structures on the 2016-17 audit

182. Before the auditors finalised the management and audit reports, the team discussed the draft audit outcomes and significant internal control deficiencies with the Audit and Risk Committee on 16 July 2018 and again with the chair of the Audit and Risk Committee and the Group CEO on 27 July 2018. At the meeting with the Committee on 16 July 2018, the following key issues were highlighted for the Committee’s attention and oversight -

182.1 The audit opinion regressed due to a qualification in respect of irregular and fruitless and wasteful expenditure.

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review of the PAA, not with the view of substituting existing statutory roles and responsibilities of accounting officers, accounting authorities or their oversight structures, but to put mechanisms in place to deal with instances when those charged with statutory responsibilities failed to play their part. The powers to refer material irregularities to public bodies for investigation, or to take binding remedial action, are therefore a complementary step in the journey towards full transparency, accountability and consequences for failing to adhere to financial prescripts that eventually result in material irregularities.

275. Our extended powers do not mean that oversight structures, including those in Parliament and other legislatures, can now become complacent. In fact, with the extended powers of the AGSA the onus on oversight is even more stringent. Parliamentary committees will be equipped to call public bodies to account for the material irregularities that the AGSA had referred to them for investigation and action. The AGSA’s reports will equip Parliamentary committees to interrogate material irregularities detected during our audits. It will be in the best interest of those accounting officers and accounting authorities to take these findings and the direction of oversight to heart because of they don’t, dire consequences in the form of personal certificates of debt will be their fate.

DATED AND SIGNED AT _____ ON THIS _____ DAY OF _____ 2020.

DEPONENT



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COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
BRAAMFONTEIN CHAMBERS

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understood it to be.

CHAIRPERSON: Was the President at the time aware of Mr Montana's attack on the board in the media? That is what had prompted the meeting actually if I understood you correctly.

MR MOLEFE: Chairperson the President was aware. There is a matter I did not include in the- in my affidavit but in the light of the deep questioning that the President- I mean the Chairperson is raising, I need to bring it on board now.

CHAIRPERSON: Mm.

- 10 **MR MOLEFE:** After a long time with Mr Montana attacking the board of directors and we having started- the board having started the investigations. I and of course in my discussion with the then Treasurer General of the party Dr Zweli Mkhize. I had agreed he had suggested that I should address the leadership of the party. So, we then convened a meeting for me to talk to the top 6 of the party. The- my recollection is that the only person who was not in that meeting was the Speaker of Parliament who in her capacity as the chairperson of the party was in the top 6.

CHAIRPERSON: Mm.

- 20 **MR MOLEFE:** I addressed that meeting not talking about what is happening in PRASA and so on simply to say, you are the ruling party. This country the state-owned companies are governed in terms of the laws of this country and those laws have either been adopted from the past maybe adapted to the new situation. And several of them were laws which were made by our party, this party, so fundamentally you as the

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ruling party you are the custodians of the constitution of the Republic of South Africa. But you are also the custodians of all the laws which are used to govern either state companies and so on. The key provisions that govern which you have responsibility to ensure have to happen in respect of PRASA is that there is a public finance management act, there is the South African Transport Services Act of- I think it was 2009 Act.

CHAIRPERSON: Mm.

MR MOLEFE: So, I said to them, I am not here to ask you to do anything for me as a person. What I am here to tell you that all of you, you
10 approved my appointment as the chair of the board. In a sense you deployed me on the board of control of PRASA. And I am running that organization on behalf of the country. The board of directors was appointed by the Government by the governing party. It is subjected to sustain attack by Mr Montana but none of you has raised a voice to say, why are you taking an institution that we are using to advance the economic and development- social development objectives of the Government in the country. I said you are not doing that. So I am here therefore to tell you today that although I have been quiet for a long time I am now going to begin to act and when I act I would be applying the
20 legal instruments that you have armed me with to run that company, the Public Finance Management Act.

CHAIRPERSON: Mm.

MR MOLEFE: One of those is the critical issue of fiduciary responsibilities. The requirement for us to manage prudently the finances of the country and to deal with corruption in the company. So that is what

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I am going to be doing. I remember them saying- and the current President was also in that meeting. He says, we were not expecting this. We are going to have another meeting. Eish, you have not given us enough time to think about this. And I said, no, I am not asking for anything. I am just making you aware so that when things happen out there, at least you have been forewarned about these matters. So, the President was in that meeting Chairperson, he knew about this.

CHAIRPERSON: Mm.

MR MOLEFE: And that meeting happened before the meeting of the 20th
10 of August and I do state in my affidavit that apart from that meeting of the 20th of August I did not have any other meeting with the President until today.

ADV VAS SONI SC: How long before the meeting of the 20th of August was your meeting with the top6?

MR MOLEFE: I would not really be able to place time on that but it was when Mr Montana had started attacking the board of directors. It could be that he was still on the- in PRASA but I cannot really establish that ...
(intervenes)

CHAIRPERSON: Sure.

20 **MR MOLEFE:** But the reality is that what I am able to establish is that in response to the question of the Chairperson that the President knew.

CHAIRPERSON: Yes. And knew quite well.

MR MOLEFE: And he knew quite- he knew quite well.

CHAIRPERSON: You had told them.

MR MOLEFE: I had told them.

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CHAIRPERSON: Ja.

MR MOLEFE: In that meeting.

ADV VAS SONI SC: Just to follow up to the earlier questions Mr Molefe.

At the- at your meeting with the top 6 as I understand it they were suggesting they want to consider it and perhaps come back to you or you come back to them. Or am I wrong that that was the only possible meeting that was going to be on the cards?

MR MOLEFE: They were saying, but we have not- you have not given us enough time to think about what you are saying. Well implied in that
10 statement is that they would want time at some point to think about it. But that is what- that was not what I was asking for. I was informing them that there are these things happening. You are the custodians of the laws of the country. You are the governing party. You are doing nothing because you wanted to allow space to see if the campaigns of Mr Montana would lead to the defeat of the board- the collapse of the board. And that is not happening.

ADV VAS SONI SC: Did they- before this meeting of the 20th of August 2015, did the top 6 call you back or informally raise this matter with you again?

20 **MR MOLEFE:** They never called me to any meeting.

CHAIRPERSON: And how did that meeting between yourself and the top 6 which must have been the top 5 on that day.

MR MOLEFE: The top 5, yes.

CHAIRPERSON: How did it end?

MR MOLEFE: Because one was absent.

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CHAIRPERSON: Ja, one was absent. How did it end?

MR MOLEFE: Well it ended with the Deputy President saying, we have to go to another meeting of the working committee. We are not able to comment on what you have said as we have not had time to think about it. But I was not asking for comment. I was stating a fact that ... (intervenes)

CHAIRPERSON: You were informing them.

MR MOLEFE: Informing them.

CHAIRPERSON: Ja.

10 **MR MOLEFE:** That things are going to happen and they will be happen- they will happen persuade- pursuant rather, pursuant to protection of the interest of the company and the country.

ADV VAS SONI SC: What is the ... (intervenes)

CHAIRPERSON: Well I am- I am sorry Mr Soni. I am glad you decided to tell me that part Mr Molefe. Different members of our society in this country can make all kinds of beautiful statements about how much they are opposed to corruption and how much they abore corruption and how much they are opposed to State Capture. And how much they abore it and how much they do not want it to happen again. But if people are not
20 prepared to tell the truth about what they know, all efforts to cap corruption are not going to bear fruit.

We need as a country to face the reality and tell one another certain truths and admit where we have not done the right things. Because as you probably know that I have been saying people should really come forward. State Capture will happen again in this country if

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we find that it has happened and we are not able to make recommendations that will make sure that if implemented it never happens again. It will happen again if we do not come out and say and speak certain truths even if certain people might not be happy with those truths. Because one of the issues we have got to look at is, what did various institutions, what did various functionaries of the state, what did various bodies, what did various individuals of influence know about State Capture and at what stage. And about the levels of corruption in the country. And what were they prepared to do about it for the country.

10 Then we know various people take the oath to be faithful to the Republic of South Africa and if you ask me to be faithful to the Republic of South Africa means if the interest of the Republic of South Africa seem to clash with somebody else's interest, those of the Republic prevail. And I wrote- we send letters, the Commission to various political parties recently who are represented in Parliament and ask them to make their own contributions which includes whether over the years Parliament had adequate oversight mechanisms to perform its oversight functions effectively. And hopeful we will get some information and so. But part of what one is trying to see is how did we come to be where we are? Did
20 certain various bodies play their part properly including Parliament? And if they did not play it properly, had they play it properly could some of the things have been avoided and could we have not reached the point where we are.

So, I just mentioned this because I just found- I just think that what you have told me is very important. You do not need to say anything

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in response but I just thought I would say this. But I am not preventing you from saying something if you want to but I am just- I do not want you to feel obliged to say anything.

MR MOLEFE: No, I- thank you Chairperson but I believe in the values that the Chairperson has articulated, the values that requires that to the extend that the interest of the country are in conflict with our own personal interest that we would subordinate our personal or party interest to the interest of the country.

CHAIRPERSON: The country, yes.

10 **MR MOLEFE**: That is a value that I hold dear.

CHAIRPERSON: Yes.

MR MOLEFE: And that is a value for which I would continue to fight for and I am not prepared to compromise my integrity, my reputation simply to endear myself to the party. But Chairperson not everybody can do that. There are many young people, young professional who begin to work. They get married, start a family, they buy a home, pay a huge bond and expensive car and children and private school. They are put by- in the positions and certain individuals in high places in the party make them believe that the extend to which they could have upward mobility
20 whether where they are or in the broader society is dependent on them pleasing those occupying position of influence and decision making either in the state-owned companies or in the party.

I would say and I am saying it here that I think the party that I belong to is failing the country and has failed the country over this several years. That we had values which inspired and sustained us and

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cost me as a young person to join the struggle for freedom to sacrifice to go in and out of jail. To be even in the last treason trial in the Apartheid government which would have meant that had the judge decided to impose the ultimate penalty, I would have been hanged. I would have died unless I was saved by the negotiations that then came shortly after that. But the party being so strong and having enjoyed so much good will from ordinary and poor people of this land has failed them. And it pains me because I know as a young man I have had to go into communities and talk to ordinary people about why it was important for them to
10 become part of the struggle for freedom. It was not an easy job with (indistinct) organisations, a few months later they are dead but we kept on going back to the people until finally by the 80s the mid-80s the movement for liberation had (indistinct) every corner of our country. And the current ruling government party became a household name and the system of Apartheid collapsed under the pressure of the resistance of ordinary people in various communities. And that huge prizes, the ultimate prize was paid by many of those ordinary people either through assassination or all forms of murder which happened to our people.

So, it pains me Chairperson to sit where I am sitting and seeing
20 what is happening. I recall one time I was almost like an isolated individual and referred to part of that where I say from a hero of the liberation struggle, I became this individual who was now being isolated. And because I could not none of this influential people in my party could raise a voice and say, he is doing the right thing. We support what you are doing. You others who are doing what is wrong, stop it, prepared to

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do that.

CHAIRPERSON: Hmm.

MR MOLEFE: I did an expensive interview and I was very angry Chairperson when I did that interview.

CHAIRPERSON: Hm.

MR MOLEFE: I did that interview with the Mail and Guardian.

CHAIRPERSON: Hm. Hm.

MR MOLEFE: And that article would say.

CHAIRPERSON: Hm.

10 **MR MOLEFE:** That in the governing party.

CHAIRPERSON: Hm.

MR MOLEFE: There is a lot of riff raff.

CHAIRPERSON: Hm.

MR MOLEFE: Of individuals who believe that PRASA is their farm. That PRASA is a place where they just want to come and harvest.

CHAIRPERSON: Hm.

MR MOLEFE: They do not see it as a vehicle.

CHAIRPERSON: Hm.

20 **MR MOLEFE:** That has to empower and improve the lives of the poor people. I made that interview. It was a long interview.

CHAIRPERSON: hm.

MR MOLEFE: To the credit of my party they did not try to attack me.

CHAIRPERSON: Hm.

MR MOLEFE: They kept quiet. And they did so because they knew I was informing them about the terrible things that we were uncovering

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as we were investigating.

CHAIRPERSON: Hm.

MR MOLEFE: But probably some of them were benefiting from the balance that other people uses like jazz. They were getting funding also this illicit funding from – from the coffers of the party the – be they for conferences or what.

CHAIRPERSON: Hm.

MR MOLEFE: When I came into PRASA Chairperson I found that the GCE of PRASA – GCO could be instructed, look the (indistinct) has got
10 a big rally and I need this – give us trains, give us busses.

CHAIRPERSON: Hm.

MR MOLEFE: And I said no Minister we cannot do this thing. You cannot this is a state owned company. If you want to use its assets you got to pay for using those assets.

CHAIRPERSON: Hm.

MR MOLEFE: I do not mind if PRASA gives you preferential rates.

CHAIRPERSON: Hm.

MR MOLEFE: But ask them to give you a quote to tell you how much it will cost for them to transport people to an event of the ruling party.

20 **CHAIRPERSON:** Hm.

MR MOLEFE: We stopped that thing.

CHAIRPERSON: Hm.

MR MOLEFE: And obviously I would not have endeared myself to a lot of people who began to feel that I am becoming disloyal to the party. That I am loyal to the country.

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CHAIRPERSON: But you know it is just very important because if there are more and more people who do not throw that line (indistinct) and stays and if there are more and more influential people in the party who would think that they can just pick up the phone and phone a CEO of a parastatal of a state owned entity and say the party needs A,B,C,D now or needs A,B,C,D and that must be done then it creates serious problems. It creates serious problems. So obviously what the country needs are people who are going to be in government departments, state owned entities and in Boards who will be firm to do the right thing. And

10 in many cases if we had the right number of people who would do the right thing and be firm maybe we would not be where we – we are in many respects in terms of levels of corruption because I think everybody accepts that we have levels of corruption that are really totally unacceptable. So I really appreciate what you have said and it is very important. We – we – there are certain things that if we do not change we must forget about making this country better. We must just forget. There are certain things that must change. Thank you Mr Soni I appreciate that we have. But this is important what we have been talking about. Extremely important. But before we leave that meeting

20 can I ask whether you shared with the top 5/top 6 at that meeting also what the – some of the things that may have emanated from the Public Protector's Interim Report because I think the Public – the final report might not have been out at that time?

MR MOLEFE: I did Chairperson.

CHAIRPERSON: You did.

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MR MOLEFE: To say that there are these malfeasances, corruption identified by the Public Protector which is bad for the company and the country which we needed to deal with. But also to say that in the – on the other side as well we – we are seeing things that require that as a board we exercise our fiduciary duty in the best interest of the company and the country. They were aware of that and it was in that context that I was – I was saying to them we are going to act.

CHAIRPERSON: Hm.

MR MOLEFE: And if you look at the time period Chairperson maybe in
10 relation to the question that was raised by Counsel. It would have been then after the release of the ...

CHAIRPERSON: Yes.

MR MOLEFE: The Public Protector's Report. But of – by that time I was already aware of some of the critical issues identified in the Interim Report.

CHAIRPERSON: Yes. Yes. But also you confirm that after that meeting nobody from the top 6 ever came back to you to say, you know with regard to what you told us on that day we would like to do something about this.

20 **MR MOLEFE**: Nothing came.

CHAIRPERSON: Nobody.

MR MOLEFE: Nobody came back to me.

CHAIRPERSON: Yes.

MR MOLEFE: Chairperson.

CHAIRPERSON: Yes. Thank you.

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ADV VAS SONI SC: Mr Chairperson there are a number of issues I want to deal with. I take a caution you – placed earlier I say it is about seven minutes past four but I wonder if I can ask...

CHAIRPERSON: Yes.

ADV VAS SONI SC: For a bit of indulgence. They are not going to be long but our mind set might well be different if I came to it at a different time Mr Chairperson.

CHAIRPERSON: Yes well I – I can sit longer but also I would be concerned. I want to know Mr Molefe's situation because he – he may
10 have been justified to think we would have finished much earlier today and we have – we did not finish. One – there are two possibilities. Do you have in mind that if we stay a little longer we would finish with his evidence or do you think that he might still need to – to come back?

ADV VAS SONI SC: He definitely has to come back.

CHAIRPERSON: He has to come back.

MR MOLEFE: Because – those are the matters you raised about oversight.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And his affidavit deals quite in detail.

20 **CHAIRPERSON:** Yes. Mr Molefe in terms of your own life coming back like Monday I am assuming I do not know whether that is what you have in mind.

ADV VAS SONI SC: If Mr Molefe is available.

CHAIRPERSON: He is available.

ADV VAS SONI SC: It would – that is the appropriate time.

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CHAIRPERSON: How is your situation?

MR MOLEFE: I do have a difficulty Chairperson with Monday.

CHAIRPERSON: With Monday okay.

MR MOLEFE: I have ...

CHAIRPERSON: Yes.

MR MOLEFE: A critical Board Strategy meeting.

CHAIRPERSON: Yes.

MR MOLEFE: Which must approve.

CHAIRPERSON: Yes.

10 **MR MOLEFE:** A document that is required in terms of the statutory provisions and it has to be with the Minister.

CHAIRPERSON: Yes.

MR MOLEFE: Shortly after that meeting.

CHAIRPERSON: No that is fine.

MR MOLEFE: On Tuesday I again have an appointment outside Gauteng.

CHAIRPERSON: Yes.

MR MOLEFE: With my orthopaedic – I have had knee surgery Chairperson.

20 **CHAIRPERSON:** Okay.

MR MOLEFE: But the appointment with the orthopaedic I can postpone which means I can – I had already paid for my air ticket and so on. I can cancel that.

CHAIRPERSON: No, no, no.

MR MOLEFE: And come on Tuesday or Wednesday.

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CHAIRPERSON: Yes.

MR MOLEFE: Otherwise the whole week next week I will not be available if I do not cancel that.

CHAIRPERSON: Oh so next week the best you can do is to be available on Tuesday but that would entail cancelling the appointment with ...

MR MOLEFE: That is correct Chairperson.

CHAIRPERSON: Yes and you said probably that is out Gauteng.

MR MOLEFE: Out of Gauteng.

10 **CHAIRPERSON:** Yes. Look I – I think that we can make a plan for another day without needing you to cancel any appointment so I think we can accept that next week is going to be difficult for you. Another date must be arranged for – on another week not next week then. That is fine. That is fine. But let us look at – how much time do you think you need for us to...

ADV VAS SONI SC: About twenty minutes more Mr Chairman.

CHAIRPERSON: About twenty minutes. Would that be fine with you Mr Molefe – twenty minutes.

MR MOLEFE: That would be fine with me Chairperson.

20 **CHAIRPERSON:** Yes. But maybe let us take a short break and then come back. That is fine. Say about five minutes really. We adjourn.

REGISTRAR: All rise.

MEETING ADJOURNS

HEARING RESUMES

CHAIRPERSON: Yes Mr Soni.

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ADV VAS SONI SC: Mr Chairperson again I apologise but it just seems that these are short questions. It would – I am hoping to try and present as complete a picture about the two meetings as possible.

CHAIRPERSON: Yes okay.

ADV VAS SONI SC: Mr Molefe at the meeting with the Top 6 you did in a sense indicate (indistinct) the matters that the Public Protector had raised?

MR MOLEFE: That is correct Chairperson.

ADV VAS SONI SC: Now one of the questions I wanted to ask you is I
10 mean then we know that you would have talked about maladministration, corruption and so on. Did you tell them some of the amounts involved? For example you mentioned earlier today the Siyangena contract in the Public Protector's Report at that time was R1.95 billion. Did you indicate to the Top 6 that you know we are not dealing with small – small amounts of money?

MR MOLEFE: I would not have given the account of every amount but I would have given examples of them. For example this R1.9 billion in the Public Protector's Report was there. And the approximately R4 billion relating to the Braamfontein Depot modernisation because
20 already that had arisen by November and February – November 2014 and February 2015. Those figures we were aware of them and I would have mentioned – not conclusively with regard to every other figure because the investigations by Werksmans was still continuing.

ADV VAS SONI SC: And you would obviously have told them about the Swifambo contract which at that stage was marked at about R3.5

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billion?

MR MOLEFE: I did. I did Chairperson. Because by that time the Chairman of a company called Swifambo concerned that as things unravelled he was going to lose everything that he worked hard for and he will say I do not want to lose everything because of Swifambo. Swifambo was invited into it recently. He then disclosed to us the monies that they were paying to individuals who purported to be collecting the money on behalf of the ruling party. So by that time that was known and I think – let me not say I think. By the time I agreed
10 with the Treasurer General of the party about addressing the Top 6.

CHAIRPERSON: Top 6.

MR MOLEFE: He was aware of what was emerging and related to Swifambo and Siyangena and other things pertaining to your Prodigy and Strawberry Worx. Because those were already emerging at that time. Of course one of the reasons I met with him was to say, hey you – you – comrade you are the Treasurer General of the party these people are saying they were collecting money for the party, do you know them? Because initially he did not know them so that was really – it is normal to do so to establish the fact. Of course their response
20 was that – his initial response was that he did not know them. And he did not receive any money from them.

CHAIRPERSON: You say initial and finally?

MR MOLEFE: Well the – the – later on there is a problem of English one needs to be careful when talking to the lawyers.

CHAIRPERSON: Ja I know English is not our language.

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MR MOLEFE: But they – later on for example he did admit that he knew some of the people. He did not say he got money from them. For example a lady called Maria Gomez who would feature probably in the court applications or maybe evidence by other witnesses from Angola.

CHAIRPERSON: Yes.

MR MOLEFE: Where he said that is (indistinct) friend.

CHAIRPERSON: Yes I think I (indistinct) in some statements about ...

MR MOLEFE: And with regard to Mr Moodley he says he might not know him but he is a comrade you know. He supports...

10 **CHAIRPERSON**: The party.

MR MOLEFE: The party and so on. He did not say he gave us money.

CHAIRPERSON: Yes he said he supports the party.

MR MOLEFE: Ja he supports the party. And I said, hey man you know I have been in this movement for many years nowhere did I come across him even when I was working in – in what is today called KwaZulu Natal when I worked in Durban, all those townships there – Lamontville, Kwa Mashu, Clermont all of those places I never came across him but you see if you say he is I do not expect to have known everybody. All I can say is that he would not have been prominent.

20 **CHAIRPERSON**: Yes. Now going now back to the meeting of the Top5 / Top6 is there room for any member of the Top 6 who attended that meeting when you addressed them – is there room for any member of the Top 6 who attended that meeting to say Mr Molefe did not give us the impression that there was really serious situation of corruption and maladministration involved in PRASA that the Board was trying to fight

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against or investigate. Is there – would that be room for anybody to say that?

MR MOLEFE: Chairperson obviously that is what is – might go on the mind of an individual and it would not necessarily be true where I suppose he can want to say that but it is not going help because if you say at the time when he spoke to us we were not aware that this corruption was so bad they cannot say the same about the subsequent months.

CHAIRPERSON: Yes. Yes.

10 **MR MOLEFE**: Even Nkandla.

CHAIRPERSON: Yes. Yes.

MR MOLEFE: So that is the problem they would have.

CHAIRPERSON: Yes. But what you can say is, based on what you told them.

MR MOLEFE: Ja.

CHAIRPERSON: There should be nobody who can say that?

MR MOLEFE: There should be nobody who can say that.

CHAIRPERSON: Yes okay.

20 **MR MOLEFE**: Because the application of the Public Finance Management that our duty to (indistinct) the constitution of a country and other related legislation were predicated upon the malfeasance that I was saying is coming out of our investigations and PRASA and the findings of the Public Protector so they cannot say they knew nothing.

CHAIRPERSON: Yes.

MR MOLEFE: They would then have to explain to me why – in that

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context did I say I was going to...

CHAIRPERSON: Yes.

MR MOLEFE: Act and apply the Public Finance Management....

CHAIRPERSON: What was prompting you?

MR MOLEFE: Ja what was...

CHAIRPERSON: Ja.

MR MOLEFE: They would have a difficulty.

CHAIRPERSON: Ja. No, no, no. Again you know when you talk about the parastatal – I mean the state owned entities you – we all read what
10 we read about the state of PRASA at the moment and one is bound to look back and when one hears about things that were happening during the years when you were Chairperson of the Board and the things that may have happened before your time one is bound to say could it be that if so and so and so and so and so and so had given support and done the right thing could it be that this could have been avoided maybe PRASA would be in a better position today?

MR MOLEFE: My answer is in the affirmative Mr Chairperson.

CHAIRPERSON: Hm.

MR MOLEFE: And eish I must also say that it must be a difficult
20 witness for this Counsel it cannot be (indistinct) (mumbling).

CHAIRPERSON: No we appreciate.

MR MOLEFE: I know I was given this difficulty to Mr Pretorius as well.

CHAIRPERSON: Yes.

MR MOLEFE: I – I wrote to leaders of my party firstly I wrote to the Deputy President just before I left the office as Chair – Chairperson of

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PRASA I identified the critical challenges which were facing that company and I asked him and the government to intervene to get things back on track. One of the issues I raised was that here it is now the Board has been made dysfunctional, individuals in the Board were (indistinct) to resign. Some of them resigned. The Minister of Transport is holding back his nominee on the Board because for him it is important that the Board should not have a quorum. The representative of National Treasury resigned and in all fairness in my statement it is not clear what was the cause of his resignation but in
10 fairness to him he did not resign because he was being lobbied. He resigned because he ceased to be an employee of National Treasury. Now having resigned he could not represent National Treasury on the Board of PRASA.

CHAIRPERSON: PRASA.

MR MOLEFE: But it – but it meant that a replacement could be found easily because you just nominate and send one of the senior employees to the Board. But it was not in the interest of the new Minister then to make sure that there is a quorum and the Board can function fully. Because the Board would have functioned notwithstanding the fact that
20 a few individuals had resigned having been persuaded because others refused to resign.

CHAIRPERSON: Hm.

MR MOLEFE: That despite the offers which were made to them that look we will give you another position, money you will not be (indistinct) to this by resigning from this one. They stayed on. So had

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the Minister discharged her constitutional duty as an executive authority responsible for oversight on PRASA the Board would have continued to operate but he did not do so. So I said to the Deputy President you got to make sure that there is a proper Board. You have got to get the Group CEO for – for the company because that too was being (indistinct). So there are a number of critical issues that I had raised so nobody can say they were not aware of problems.

CHAIRPERSON: Do you have a copy of the letter that you say you sent to the Deputy – then Deputy President?

10 **MR MOLEFE:** I think I found it but what I found was an unsigned copy. I cannot find the signed one.

CHAIRPERSON: But you would know if it – it basically in substance the copy reflects what ...

MR MOLEFE: No the substance is the same.

CHAIRPERSON: Is the same ja. No that would be...

MR MOLEFE: I will try and get it from PRASA.

CHAIRPERSON: If we can get that that would be important.

MR MOLEFE: Thank you Chairperson.

CHAIRPERSON: Yes. But maybe for the sake completeness did you
20 get a response to that letter?

MR MOLEFE: No acknowledgment. They literally...

CHAIRPERSON: Nothing.

MR MOLEFE: The many letters I wrote whether to Parliament or to the Portfolio Committee, to SCOPA.

CHAIRPERSON: Yes.

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MR MOLEFE: I received no response.

CHAIRPERSON: Yes. Well I know that in your affidavit you do talk about the letter that you said you sent to the Chairperson of the Portfolio Committee on Transport and you did not get a response and then you sent a letter – also sent a letter to the then speaker of Parliament Ms Baleka Mbete and you say you did not get a response. What I cannot remember is whether you do attach copies of those letters because if you do not but if you can find them it would be important.

10 **MR MOLEFE**: The letters...

CHAIRPERSON: They are here?

MR MOLEFE: The letters I can find.

CHAIRPERSON: Okay alright.

MR MOLEFE: But Counsel can indicate what – how much of that he has got.

CHAIRPERSON: Okay no that is fine. No, no. As long as they are here it is fine.

ADV VAS SONI SC: They are annexure Mr Chairperson.

CHAIRPERSON: No that is fine. Thank you.

20 **ADV VAS SONI SC**: I am just finally from my side Mr Molefe at the meeting with the Top 6 did you indicate who the individual beneficiaries were and you will recall that throughout the week two names have cropped up all the time namely Mr Roy Moodley and Mr Makhensa Mabunda. Did you identify those people to the Top 6 well the meeting of the Top 6?

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MR MOLEFE: No I – I did not do so Chairperson and neither would I have had the motivation to do so because we are busy with the investigation. If the matters are going to result in – in litigation you do not start talking about them until you reach that point. So I did not. And I do not think I made a mistake by not mentioning them.

ADV VAS SONI SC: No, no I was just for the sake of completeness as to what they knew.

MR MOLEFE: Yes.

ADV VAS SONI SC: Now in relation – sorry – in relation to the meeting
10 of the 20 August you say it was described as a party meeting in obviously an ANC meeting. Who described it as that?

MR MOLEFE: It was described as meeting of comrades of the ANC by the President of the ANC who at that time was also the President of the Republic of South Africa.

ADV VAS SONI SC: So at that meeting it was quite clear that this is at whatever level not a meeting of organs of state or matters of an official nature it was a party meeting relating to an organ of state?

MR MOLEFE: It is so Chairperson because it was not official if it was the element of the state the organ of state, the official the Minister
20 would have had to submit a report or would have had to ask me to submit a report.

CHAIRPERSON: I wonder why it may have been decided that it should be seen as a party meeting apart from the fact that as you indicated certain concerns had been expressed at some meeting of the party from what you have said because as far as having that meeting as an official

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meeting of organs of state if that was what was wanted it could have happened because all the relevant functionaries were there in terms of the Chairperson of the Board was there, the Minister of Transport whom the Board reported was there, the President of the country was there and then the other one was the Minister in the Presidency. But that is something you might not be able to – to answer?

MR MOLEFE: I would not know why.

CHAIRPERSON: Yes.

MR MOLEFE: But all I can say is that there would probably be no other
10 reason save to say that those who convened the meeting did not want to give evidence as by way of record because if it was an official meeting I would have had to go and report to my Board of Directors as the Board of Directors.

CHAIRPERSON: Yes, yes.

MR MOLEFE: And it would have been minuted and I probably would have had to write a proper report. So people don't want that to lead any evidence so they would not want it to be an official statement.

CHAIRPERSON: Yes okay thank you.

ADV VAS SONI SC: I'm not going to be much longer Mr Chairperson
20 but these are issues [indistinct] to distinction that Mr Molefe made and I'll just raise it with him. One of the issues you raised Mr Molefe, was the distinction between the State, for example PRASA as an organ of State and the party which governed the State, that's the distinction you made earlier in your evidence.

MR MOLEFE: Correct Chairperson.

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ADV VAS SONI SC: Now when Mr Montana complained that he had not been consulted before the Board had been appointed what was the reaction of Minister Dipuo Peters, the President and Minister Radebe?

MR MOLEFE: There was no response from the President and Mr Radebe but Minister Dipuo Peters said, but you are an employee of a company you can't demand that the appointment – you should be involved in the appointment of the Board. So you don't have that right, Minister Peters did make that point.

CHAIRPERSON: Actually I'm glad that Mr Soni has gone back to it
10 because I wanted to ask – I wanted to say, did Mr Montana really say that, even in that meeting, that he was not consulted before your Board was appointed because it seems to me, maybe it might be the kind of thing that somebody would say outside of a meeting involving the people that he thinks should have consulted him because it's some kind of criticism and those would be the Minister, maybe the President as well, so I was quite surprised that you said, even in that meeting he complained that he had not been consulted before your Board was appointed.

MR MOLEFE: He complained in that meeting Chairperson and that is
20 precisely the reason why the Minister responded to that complaint in the meeting otherwise there would not have been a platform to respond to that.

CHAIRPERSON: Yes but she was the only one who...[intervenes].

MR MOLEFE: She is the only one who spoke about it.

CHAIRPERSON: Yes okay.

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ADV VAS SONI SC: And in response to what she said what were the – what was the reaction from President Zuma and Minister Radebe?

MR MOLEFE: My recollection is that they said nothing about that specific point.

CHAIRPERSON: Yes, did Mr Montana respond to that or not or did he leave it at that?

MR MOLEFE: I think he left it – he was happy with that detailed report that...[intervenes].

CHAIRPERSON: Yes that you had given.

10 **MR MOLEFE:** Just his views...[intervenes].

CHAIRPERSON: Now you said earlier on that he took the [indistinct] of the time of that meeting in presenting his report, if I understood you correctly are you able to say, maybe he took – he must have spoken for more than an hour presenting his report or you are not sure but what your impression is that most of the time he did – he took quite some time?

MR MOLEFE: Chairperson it was far more than an hour.

CHAIRPERSON: Far more than an hour?

MR MOLEFE: It was more than two hours, it was a long presentation.

20 I spoke very little in that meeting so did Minister Jeff Radebe and the President, probably the only other person...[intervenes].

CHAIRPERSON: Who took some time.

MR MOLEFE: But was not prepared for the meeting because he didn't know what to expect because Minister Dipuo Peters [indistinct] who would have spoken about the meetings he had with me with Mr

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Montana, her concern about the relationship and so on ja. So I think we did have a meeting early in July or in June between me and Mr Montana at the residence of the Minister.

CHAIRPERSON: So – I don't want to forget this part, before you came to the meeting you only knew that the meeting was about to be – was going to be about PRASA affairs, nothing more specific?

MR MOLEFE: Nothing more because...[intervenes].

CHAIRPERSON: Yes, once you get there – once, or as you left the meeting what was your impression of what the purpose of the meeting was, having been there for hours and having heard who spoke and so on, were you able to say, okay I think the real purpose of this meeting was A?

MR MOLEFE: My impression when I left the meeting was, the real purpose of the meeting was to get Mr Montana as the Group Chief Executive Officer of the company and I think the President was being used, hopefully to intimidate me because you have the [indistinct] of the President and you know, it's very difficult for people to say no. So I think...[intervenes].

CHAIRPERSON: What was the purpose as far as you were concerned?

MR MOLEFE: We can express our suspicions about who was behind it but it doesn't help if you can't collaborate.

CHAIRPERSON: Yes, but – ja okay thank you.

ADV VAS SONI SC: The second issue I want to raise about that meeting, about what Mr Montana said is, he alleged at the meeting that

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Minister Dipuo Peters was trying to get rid of him, now that's quite a serious charge against a sitting Minister in the presence of the President. Let me ask you, what was her reaction to that, Minister Dipuo Peters?

MR MOLEFE: I think Minister Dipuo Peters took umbrage to that allegation and pointed to the fact that, that matter was a matter taken by the Board and the fact that – a decision taken by the Board and the fact that she appointed this Board, had nothing to do with any agenda to remove the Group CEO. I suppose Mr Montana probably would have
10 needed to say to the Minister, you actually told me previously that you don't want me. So the decision that this Board has taken, actually was eventuating the objective that you had when you spoke to me but he didn't say so. [Indistinct] say you know, the manner which you appointed this Board and your brought in this Chairman of the Board – I must say on a public domain as well he said, together with those – Mr Montana, that I am the Chairman that fires Group CEO's, I fired the Group CEO of Petro SA, I had fired the CEO of the Armaments Corporation of South Africa, ARMSCOR and he says there is this pattern and wherever this person goes, he destroys State owned
20 companies and he is intent on destroying PRASA.

ADV VAS SONI SC: But he didn't say at this meeting?

MR MOLEFE: No he didn't say it in that meeting...[intervenes].

CHAIRPERSON: Public Domain?

MR MOLEFE: In the media.

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ADV VAS SONI SC: Now what was the President's reaction to Mr Montana's allegation about Minister Dipuo's motive?

MR MOLEFE: The President kept quiet you would have expected him to say, look he's a member of my Cabinet, if indeed he did that, somebody should have reported through the proper channels, the Minister – he didn't say anything. I think the objective of the meeting and of the President and – the Minister and the President was, look, we hope that this meeting will convince the Chairman of the Board to rescind through whatever mechanisms the decision that his Board has
10 taken and to some extent he put the Minister under pressure to say, it is the desire of the President that you stop – you reverse the decision of the Board but the Minister didn't want to go that route it would have been a very ugly scene because there was no way in which the Board of Directors would meet and allow a Minister, outside the Board of Directors to reverse it's decision.

CHAIRPERSON: Now you have already said, and you do say in your affidavit but you said also in your oral evidence that the meeting – that meeting ended at about 2AM the following morning, now – and you said it had started at around 6PM the previous day on the 20th. So it started
20 on the 20th it went on to the 21st of August. Now from 6PM on the 20th to 2AM on the 21st...[intervenes].

MR MOLEFE: Is eight hours.

CHAIRPERSON: Eight hours, now if you are right in saying that, in your analysis, that the purpose of that meeting was to get you to be convinced that Mr Montana must be allowed back at PRASA it seems

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that, then those who were attending were prepared to stay for quite a long time to try and achieve that.

MR MOLEFE: They were prepared to stay for that long.

CHAIRPERSON: And during the process everybody had to listen to a former CEO of the entity speak for, you say, about two hours...[intervenes].

MR MOLEFE: More like giving a key note address.

CHAIRPERSON: Yes.

ADV VAS SONI SC: I'm going to end on this note Mr Chairperson. If
10 this was a meeting – an official meeting where decisions would have to be rational and so on and a decision was taken that Mr Montana should be re-appointed, in law, there may have been good grounds for review but let me accept for a moment that this was a decision among comrades. What I'm failing to understand is this, that Mr Montana says, he doesn't want to work with the Board but the purpose of the meeting is, he must come back and work for the Board, I mean, even a party – if a party made a decision like that, most people would regard it as irrational, would you agree with me?

MR MOLEFE: That is correct but how many rational decisions have
20 been made by people in high positions. The latest of that was a Minister waking up because people in the party say, fire the Board and then she fires the Board and she gets into trouble. So it would have been an irrational decision but it doesn't follow that those in that meeting would not have done so. In the first instance it was irrational to even begin to want to discuss the matter in the manner in which it

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had been discussed. One would have expected that what would happen is that, even if it was a discussion about the party – members of the party, the President would have called the Minister and articulated what his concerns and fears were and would have called me to talk to me and in both instances attempt to get how we are reacting to what he is saying. Even before you take it to another forum but that was not done. I think it's like - this meeting was like school kids, learners being called to the office of the principal for the principal to read the riot act to them using the office – the status of that office to get them to
10 review their decision. So that I'm saying that even the manner in which the meeting was called was irrational, it was irrational to have Mr Montana preparing a long presentation which nobody was warned about which – in a meeting where nobody else was told that they needed to give any presentation, that in itself is irrational Chairperson.

ADV VAS SONI SC: I was not suggesting that it didn't happen, what I'm trying to suggest is, and I'm going to put this to you, one must question the *bone fides* of those taking that decision, do you agree with me because if it's not in the interest of the party how can...[intervenes].

MR MOLEFE: That is so, that is so Chairperson.

20 **CHAIRPERSON:** Well I take it that Minister Radebe would not have been at the meeting of the top six, top five that you addressed because he was not part of the top six?

MR MOLEFE: That is correct Chairperson.

CHAIRPERSON: And therefore he would not have known what you told the top six on that occasion but the, then President, was aware what

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you told the top six because this meeting of the 20th of August happened after the meeting that you addressed of the top six, is that right?

MR MOLEFE: It is correct Chairperson.

CHAIRPERSON: Yes, okay.

MR MOLEFE: But I need to say Chairperson, that he was not privy to the discussion of the top six doesn't put him in any disadvantaged position.

CHAIRPERSON: Yes, tell me more about that.

- 10 **MR MOLEFE:** Because he is in a Cabinet, he works with the Minister of Transport, the Minister of Transport reports regularly to the President and to the economic cluster on which Mr Radebe was sitting. So – and by the way Chairperson the issues about PRASA were very prominent in the – from the time when the complaints were given to the Public Protector and the interim report issued and so on and they remained – government would have taken an interest in those matters.

CHAIRPERSON: So you think that he probably knew enough, you say he must have known enough to be able to say that we should not be trying to get the Board to change its decision.

- 20 **MR MOLEFE:** [Indistinct] is a Minister, he should know that one does not do that. He had been the Minister of Public Enterprises so exercising on the side of many State owned companies. So he can't claim ignorance on issues of governance and the relationship between State owned companies and different ministries.

CHAIRPERSON: Okay.

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ADV VAS SONI SC: I have no further questions at this stage Mr Chairperson.

CHAIRPERSON: Well shouldn't Mr Molefe tell us the end of that meeting so that next time he deals with other things, shouldn't we just finalise how that meeting ended?

ADV VAS SONI SC: As it pleases. Mr Molefe we now know what the purpose of the meeting was and so on, how did the meeting – what was the formal outcome at the meeting or the outcome if there wasn't a formal...[intervenes].

10 **MR MOLEFE:** There was no formal outcome Chairperson. After I challenged the President to come and address the Board of Directors – the Board of control of PRASA to explain why he had a difficulty accepting the decision of the Board of control and having said that I would not change the decision of the Board of Directors as a result of a private meeting of comrades outside government and the Board itself. The President was tired so he fell asleep, the meeting just ended abruptly like that. There was nobody to summarise it was the person who called a meeting now had fallen asleep.

CHAIRPERSON: Okay is there anything else in regard to the meeting
20 that you want to – that you don't think you haven't touched upon that you want to highlight so that next time you come back Mr Soni can move on to something else?

MR MOLEFE: Chairperson save the conclusion that, what was quite apparent in that meeting and what was a matter of great concern was that the head of the State, the President of the Republic of South Africa

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and the President of the governing party which is the custodians of all the instruments of governments including the constitution was now, directly attempting to interfering with the matters of the Board of Directors of PRASA that was really of great concern.

CHAIRPERSON: Yes, no thank you. I had said earlier on you should make notes in case there are other things that you might wish to mention which counsel might not have asked but because you will come back maybe you want to deal with those when you come back but if you want to deal with some now, I give you the opportunity.

10 **MR MOLEFE:** Chairperson I would rather elect to...[intervenes].

CHAIRPERSON: Yes, to do it next time.

MR MOLEFE: To sleep over the matter and if there are then I can come back on...[intervenes].

CHAIRPERSON: No, no I just wanted to keep my promise to you because I had made that undertaking. Mr Soni, I think that, if at all possible there should not be – we shouldn't allow a long time to lapse before Mr Molefe comes back, subject to everyone's situation maybe we could look at the week after next and find a day, preferably not a Monday but that is – if you can explore one of the dates with Mr Molefe

20 but also we might not need him for a day it might be – I don't know what your estimate is, an hour or two hours.

ADV VAS SONI SC: About two hours.

CHAIRPERSON: About two hours so its sometimes easier to accommodate a shorter time than a whole day. So at this stage Mr

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Molefe you don't know how your situation might be during that week?
You don't have to commit yourself I just want to know...[intervenes].

MR MOLEFE: On reflection Chairperson I think if I keep my two commitments then I can appear here on – I don't know what the date will be, on the Wednesday of next.

CHAIRPERSON: Yes, Wednesday next week.

MR MOLEFE: I'll come for – I just want to see my orthopaedic and then come back.

CHAIRPERSON: Yes okay no that's fine I think that should be fine
10 with us.

ADV VAS SONI SC: Mr Chairperson we will formalise with Mr Molefe what it is and we will obviously accommodate him as [indistinct] on Wednesday that suits him.

CHAIRPERSON: Ja okay, no that's fine. So I'm happy as long as it's something that is not too inconvenient to you, I'm very conscious of the fact that – I think last time you may have spent two or three days in the Commission, this time you've spent three days already so we do need to give you some accommodation in terms of dates, the Commission has taken a lot of your time.

20 **MR MOLEFE:** I was telling counsel that it's not a big deal to me because I had to give evidence in the Delmas treason trial for the whole month and I say whole month, meaning all four weeks appearing every day, cross-examined for three weeks by senior counsel. Evidence in chief for a week so I know these things.

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CHAIRPERSON: Ja so this is really not much compared to that and of course that was hostile atmosphere I guess.

MR MOLEFE: That is true.

CHAIRPERSON: Yes, yes okay but thank you very much for having come to give evidence once again and that you have been able to stay for a little longer beyond 4 o' clock because we wanted to finish a certain section of your evidence. We are going to adjourn and then on Monday Mr Soni, will it be Mr Achmat?

ADV VAS SONI SC: No Chairperson it will be Ms Ngoyi.

10 **CHAIRPERSON:** Ms Ngoyi from PRASA, we're continuing with PRASA.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay no that's fine thank you very much we'll adjourn for the day and on Monday we'll start at normal time 10 o' clock, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 16 MARCH 2020

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

29 JUNE 2020

DAY 226



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COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

29 JUNE 2020

TRANSCRIBERS:

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PROCEEDINGS RESUME ON 29 JUNE 2020

CHAIRPERSON: Good morning Mr Soni, good morning everybody. Before we start I would like us to all rise and I observe a moment of silence in remembrance of all those who have passed on as a result of Covid-19 in this country and elsewhere in the world but also to honour the doctors, nurses and other health workers who are in the front line in the fight against the pandemic. Thank you.

Good morning Mr Molefe thank you very much for
10 coming back to the commission to continue with your evidence. We appreciate your commitment to helping the commission. I think you are coming to the commission probably for the sixth time. We really appreciate it, we understand that it might mean some inconvenience in terms of your other work but we appreciate that you continue to show your commitment to supporting the commission.

MR MOLEFE: Thanks Chairperson I am on pension.

CHAIRPERSON: Thank you very much. You may be seated Mr Molefe. Oh, I think there – there will need to be the
20 swearing – the oath first because it has been a long time but before that I do not know Mr Soni might wish to say something. I have been advised that it is acceptable that whenever I speak or you speak Mr Soni as well as the witness, we take off the mask and then we put it back when we are not speaking. Of course, we intend observing the

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social distance but I do not think there is enough space between Zwelihle here. Just one chair in between I do not think is enough. I think you need to move further – further up otherwise I am looking around I think there is – otherwise enough social distancing. Thank you very much. Mr Soni.

ADV SONI SC: Thank you Mr Chairperson I would like to place according to...(microphone off).

CHAIRPERSON: Please put on your microphone.

ADV SONI SC: Sorry Chairperson. That is according to the
10 advice we have received as well Mr Chairperson. Mr Molefe (intervention).

CHAIRPERSON: Okay alright then we can do the oath. Thank you.

REGISTRAR: Please place your full names for the record?

MR MOLEFE: My name is Popo Simon Molefe.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR MOLEFE: I do not.

REGISTRAR: Do you consider the oath to be binding on
20 your conscience?

MR MOLEFE: I do.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the truth if so please raise your right hand and say, so help me God.

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MR MOLEFE: So help me God.

CHAIRPERSON: Thank you very much. Yes Mr Soni.

ADV SONI SC: Thank you.

CHAIRPERSON: You might need to just re-orientate everybody where we left off.

ADV SONI SC: Yes.

CHAIRPERSON: With Mr Molefe's evidence

ADV SONI SC: Yes.

CHAIRPERSON: In the past and where we are continuing
10 there.

ADV SONI SC: Mr Chairperson you will recall that the last issue that we canvassed with Mr Molefe was the meeting on the 20 August 2015 at which former President Zuma attempted to persuade Mr Molefe to ask his board to take Mr Montana back after he had resigned and this was about six weeks after he had left the organisation on the 15 July 2015. Then you will also recall Mr Chairperson that Mr Molefe in dealing with that matter dealt with a meeting that he had held with the top six asking them to create some semblance
20 of normality at PRASA on account of the attacks that Mr Montana had been making against Mr Molefe and the board.

CHAIRPERSON: Just one second. The air conditioner seems to be on it does not feel like it is a heater it is like it is making us cold so I think somebody will attend to that. Okay.

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ADV SONI SC: Mr Chairperson may I ask if I can just really briefly deal with that matter because you will recall that one of the questions I asked and you also asked Mr Chairperson was whether it – it made sense that the board was being asked to take Mr Montana back given the background circumstances of which everybody knew. And you will recall that Mr Molefe said that it had been widely reported in the media. We have since then Mr Chairperson and we have augmented the file and at pages 222 to page 258...

10 **CHAIRPERSON:** Let us just indicate...

ADV SONI SC: Oh sorry yes Mr Chairperson.

CHAIRPERSON: Which number that file is?

ADV SONI SC: Yes. It will – Bundle D Exhibit SS6.

CHAIRPERSON: And what page?

ADV SONI SC: So this is the articles are at 222 to 258 Mr Chairperson.

CHAIRPERSON: And that would be the same file that Mr Molefe has got in front of him, is that right?

ADV SONI SC: That – that is so Chairperson yes.

20 **CHAIRPERSON:** Okay. Page 222 that is where they start.

ADV SONI SC: That is so.

CHAIRPERSON: Yes. But the instance when I was looking at this file they did not seem to be arranged according to dates.

ADV SONI SC: The – the articles themselves are not.

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CHAIRPERSON: The article (intervenes).

ADV SONI SC: Chairperson.

CHAIRPERSON: Why not? I thought that they would go front the earliest up to – when you read – when you try to follow the story.

ADV SONI SC: Yes.

CHAIRPERSON: Hm. I had to try and see which one is supposed to – you see for example at page 222 you have got an article of 7 August 2015 and at page 238 you have got an
10 article of 6 July 2015. I mean that is 26 and then at page 243 you have got an article of 23 July 2015.

ADV SONI SC: Yes.

CHAIRPERSON: They should have been arranged according to dates.

ADV SONI SC: They should have been arranged chronologically yes.

CHAIRPERSON: Yes. So that one could see the build-up. This is how the reporting started.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** And how it – how it built up.

ADV SONI SC: Yes.

CHAIRPERSON: Up to the date of the meeting.

ADV SONI SC: Yes.

CHAIRPERSON: In terms of what everyone must have been seeing in the – in the media.

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ADV SONI SC: In the media, yes.

CHAIRPERSON: Hm.

ADV SONI SC: Chairperson can I...

CHAIRPERSON: I do not know whether it can be changed?

ADV SONI SC: It will be done.

CHAIRPERSON: Yes.

ADV SONI SC: Mr Chairperson because with respect it – you are absolutely right that is how it should have been done.

10 **CHAIRPERSON:** Hm.

ADV SONI SC: I did not...

CHAIRPERSON: Okay the only – the only problem of course is that when you refer to the articles now if you mention the page numbers and the page numbers are going to change.

ADV SONI SC: Yes.

CHAIRPERSON: It will be problem with the transcript. But it may be that – it may be that later on when the – when this has been changed arrangements can be made for you to place on record what the latest number – page numbers will
20 be. Okay, alright.

ADV SONI SC: I apologise Chairperson.

CHAIRPERSON: Hm. Okay. It is quite dark where I am. I do not know whether there is anything that can be done about it. I know that last time there was that same issue but we will continue in the meantime.

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ADV SONI SC: Yes. Yes Chairperson. Chairperson may I say in regard to the articles.

CHAIRPERSON: Hm. Just one second. It may well be if that – if there are problems in getting – need to have better lighting here it may well be that a gas light might help so that when I want to read I can see the words.

ADV SONI SC: Yes.

CHAIRPERSON: Clearly. So – ja, okay alright.

ADV SONI SC: Chairperson the – it is not my intention in
10 referring to the articles to go into any depth. The idea is merely again to emphasise the point that it just made no sense and it was in the public arena that there was this incompatibility between Mr Montana and the board.

CHAIRPERSON: Well apart from any incompatibility I think for me what is most important is the fact that the question whether the articles which were in the media made it reasonable for us to – to make it reasonable for us to expect that people who normally read what is in the media would have been aware that at PRASA there are all these very
20 serious allegations of corruption.

ADV SONI SC: Yes.

CHAIRPERSON: That was alleged to have been taking place so that whatever proposals or decisions people were making they were making them being aware of all of these things.

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ADV SONI SC: Absolutely.

CHAIRPERSON: Ja.

ADV SONI SC: Yes.

CHAIRPERSON: Okay.

ADV SONI SC: Mr Molefe.

CHAIRPERSON: I think that it would help me a great deal if Mr Molefe is able and your questioning can be directed that he is able to say based on what I told the Top 6 anyone who was in that meeting would have known the following features
10 of corruption at PRASA because I told them.

ADV SONI SC: Yes.

CHAIRPERSON: 1, 2, 3, 4 at least some of the important ones.

ADV SONI SC: Yes.

CHAIRPERSON: It may be that it is something that he might be able to do without going back to refresh his memory.

ADV SONI SC: Yes.

CHAIRPERSON: It may be that it is something that he would prefer to refresh his memory before mention – saying it.

20 **ADV SONI SC:** Yes.

CHAIRPERSON: So if we do not deal with it now because he might not have – he might need to refresh his memory we can deal with it later when he has a time – he has had a chance to refresh his memory.

ADV SONI SC: Yes.

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CHAIRPERSON: But I would like – I would like that – that kind of evidence that makes it quite clear that here are some of the features of corruption or allegations of corruption at PRASA that anyone who was at that meeting was told about.

ADV SONI SC: And – and Chairperson with respect the – it was not just allegations of small corruption this was billions of rands. For example among...

CHAIRPERSON: Exactly.

ADV SONI SC: So – so perhaps I should ask Mr Molefe
10 whether he would like time to look at it.

CHAIRPERSON: Yes.

ADV SONI SC: Or he can talk about it now.

CHAIRPERSON: Yes, no that is fine. Mr Molefe you have heard the exchange between the Chairperson and myself and you understand the – the issue that rises because the whole question is should something have been done other than calling a meeting on the 20th to say take Mr Montana back? But I – do you want to go through the articles or do you know them sufficiently?

20 **MR MOLEFE:** Chairperson I – I do not intend to go through the articles unless Counsel would like me to do so and refer me to specific ones. I mean at the time I read a lot of them and I did refer earlier on in my evidence to this campaign to vilify the board and to attack the Chair of the Board and following the – the fact that in November of 2014 the Board

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had become aware that there was a big tender that was – that had been adjudicated upon and the Chair of the Finance Capital Investment Committee who had been the previous Chair of the Board had wanted the Board that I was chairing to quickly approve that tender for the modernisation of Braamfontein Depot and of course the procurement of the rails and turnouts as part of the preparation for the trains that were going to be coming from Brazil which were being manufactured in Brazil. And the Chairperson would recall
10 that during my evidence I said that the Board had been misled by the former GCE Mr Montana who had said that he had a probity report when we had asked for the probity report because we needed assurance that the process was proper and was clean. It turned out that that report did not exist and he knew it did not exist but he lied to the Board. So that is one aspect now we exposing and we stop that tender process for that time. It involved well over R2 billion. And then the next time is when we discover and actually insist that Mr Montana gives a report that in fact the Public
20 Protector was not only investigating PRASA but had been asking for comments of PRASA on the interim report that she had given to PRASA. The Chairperson would recall that Mr Montana then gave me a file containing that report around March 2015. Now the series of media reports come after we exposed what appears to be corruption at the time. And of

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course we were already saying we have got to investigate because the Auditor General also complains about the audit of the financial year. Now there are dots that one can connect Chairperson. Chairperson will recall that I – I had also referred to the – what I said was PRASA in turmoil and I said it was a – a report by Mr Montana. In fact, PRASA in turmoil was a section in the report of Mr Montana. The real thing is that Mr Montana had written a detailed report on the 27 July addressed to Minister Jeff Radebe who was in the
10 Presidency. I did say that I had gotten a copy from the whistle-blower but I was struggling to find it. I regret that Chairperson I am not computer savvy. I have found it last night.

CHAIRPERSON: Oh.

MR MOLEFE: And I read it but I tried to send it where I could – I could print it.

CHAIRPERSON: Hm.

MR MOLEFE: Then it looks like I have lost it so I would need to get some computer experts.

20 **CHAIRPERSON:** Yes.

MR MOLEFE: There to assist it but it is the report to Minister Jeff Radebe on the Board of PRASA.

CHAIRPERSON: Hm.

MR MOLEFE: Recent events at PRASA.

CHAIRPERSON: Hm.

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MR MOLEFE: It is a very long report.

CHAIRPERSON: Hm.

MR MOLEFE: When one reads that report there is a – there is a link and connection between a series of media articles and what that report was saying. Because a lot of what we read in these media articles are also contained in that report. And quite clearly the target in that report and as can be seen in the articles as well is the Chairman of the Board is a problematic person. Of course, to some instance in
10 some of – instances the Minister of Transport was also you know targeted for attacks. So I will look for that report and then it will assist the Chairperson. Now ...

CHAIRPERSON: Maybe before you – before you leave the report, I must just say I know that Mr Soni is very happy to hear that the report has been found. I am very happy that it has been found. I have been very concerned about whether we will ever find it.

ADV SONI SC: Yes.

CHAIRPERSON: They will make arrangements to make IT
20 people available to you because obviously we also want to have the report. You want us to have the report so if – if you – if the commission can assist with IT people that they will be made available to you and then we should have it.

MR MOLEFE: I will be pleased to hear that. But Chairperson Minister Jeff Radebe has got the report. If he

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wants to help the commission he too...

CHAIRPERSON: Yes.

MR MOLEFE: Can make the report available for the commission.

CHAIRPERSON: Well I was actually thinking as you were telling me that – as you were telling me that the report was addressed to him then it occurred to me that then we could ask him if he has – if he still has it.

MR MOLEFE: Ja.

10 **CHAIRPERSON:** But of course, if you can find it let – that will enable us to have it quicker but the former Minister may have to – to assist with issues relating to some of the matters that have come here.

MR MOLEFE: If he wants to help the commission.

CHAIRPERSON: Yes – no, no I am – I am confident that he – he will make himself available.

MR MOLEFE: Now Chairperson when I – I am going to come to the meeting of the – the Top 6.

CHAIRPERSON: Yes.

20 **MR MOLEFE:** But when I read the report last night.

CHAIRPERSON: Hm.

MR MOLEFE: It occurred to me that there is an explanation to the question that the Chairperson asked when the Chairperson said, you mean you could start the meeting at 6 and finish at 2? It is a long report and only Mr Montana

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knew what the meeting was about. Him the President and Mr Radebe. Because he spoke for a long time referring.

CHAIRPERSON: Hm.

MR MOLEFE: And talking from the notes which now turned out that it – it was in fact that – that report which of course Minister Radebe in the meeting denied to have received it. Mr Montana did not say, I wrote this report to Mr Radebe. I had told Minister before he went to that meeting that I had received this document leaked to me by a whistle-blower and
10 so she wanted Mr Radebe to give her copy and he denied that he had it in that. But it explains why that meeting was ...

CHAIRPERSON: Just one second. Just one second Mr Molefe I want to understand that part. Are you saying that at the meeting Mr Montana indicated that he had sent the report to the Minister?

MR MOLEFE: No, no.

CHAIRPERSON: Oh no.

MR MOLEFE: He did not say so but he was saying things
20 that are contained in that report. No, no Mr Montana was saying things that were contained in the report. And some of the questions that the President also comments he was making it is clear are contained in that report. And you will see the link between that and these articles. The essence was that I am Lucky Montana, I am the best Group CEO of

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this organisation. I can build PRASA. This board does not want to give me the opportunity to do that they are destroying me. There is nobody else who can run this organisation but me. And I told them that although I said I do not want extension on my contract I have changed my mind now. If you want me I can come back. And which is what the President was trying to do to say no, no.

CHAIRPERSON: And my recollection is that in your evidence last time you actually said the President also said
10 Mr Montana is the best guy to do this job.

MR MOLEFE: And as I read the report and of course when you read these articles you see what South African Commuters Organisation says even somewhere and he is saying in the article and what Zenzo Mahlangu I refer to him in my evidence earlier on he had been the General Secretary of SATAWU whose union was also doing business of course with the – with PRASA through I think a company called Blackstar but they had a trust called Bashume which belonged to the union. When you – so it is a common
20 message so around which all of these forces were being mobilised against the Board to some extent against the Minister of Transport as well. So – so now was corruption widely known at the time? We had already dealt with the Braamfontein Depot and we stopped it. We made it clear that we are stopping it because it was irregular and it

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involved billions of rands. When I briefed the Top 6 of the governing party – my party I referred to the fact that our investigations show that we have been misled. There was this tender that was about to be issued which was irregular and we stopped it. And we are conducting several other investigations which I reveal a massive corruption within the organisation there. So – so it was known at that time that there was this massive corruption but the speed in which the media campaign mass mobilisation demonstration and all

10 these other forces are being mobilised against the Board clearly to me was intended to stop those investigations. So to get these people out of the way before the investigations are fully concluded. Now Chairperson if you look at what we have seen in this process of State Capture itself and I did say so at the beginning of my evidence as well that for it to succeed systems in organisations must be broken, must be weakened. And I did say that good people were being removed from positions and substituted by people who were compliant who would carry out the agenda whose objective is

20 the looting of the public purse and this central message being that one of State Capture. So – so here to suddenly people feel that this Board is a problematic board. Corruption cannot continue for as long as these people are in office. But the most problematic one is this one called Popo Molefe who is the Chairman of the Board. Ja. Get him

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out of the way and then we can go back to – to our business as usual. So – so really that – that was the agenda. You see vilification I mean lies that are being told here about me being corrupt, me being doing this and that. And the judgment in court were evidence arising out of our investigation were presented confirmed the correctness of the positions that we took and proves a lie of what Mr Montana and all of these people were saying. Because I mean it went right up to the Constitutional Court, and our
10 position as the board of PRASA was repeatedly confirmed. So, Chairperson, yes, it was public knowledge, the leaders knew about that corruption.

CHAIRPERSON: No, thank you, Mr Molefe, why what was known in the public domain and what you told the top six at that meeting is important is because the top six are the top leaders of the governing party and most of them would have been in government as well and for me, the question arises, if they are told by the Chairperson of a board of an government entity such as PRASA that there is a lot of
20 corruption that we see has been happening, or that we think has been happening, and we are taking steps to investigate, I want to know what they did after that about what you told them.

I want to know what they did, not from you because you told me already that they never came back to you for

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anything, but I want to know when they come here, I want to know what they did about that.

We are all aware of what is in the public domain about PRASA, even now. We are all aware about what is in the public domain about other SOEs about which there have been a lot of evidence of corruption in this Commission, SAA, Eskom, Denel and it would appear that these things do not start just now, these things seem to have started a long time ago and it is only proper that this
10 Commission should ask the question to some of those people, where were you, what did you do about this? Did you not have a responsibility to do something? So that is why it is important to me to know, apart from what was in the media.

We have the advantage that you had a meeting with the top six and you told that you alerted them and are there no steps that they ought to have taken, maybe which would have made sure that PRASA is not where it is today in terms of its financial position and that is part of
20 accountability and part of what we have to look at.

I mean, you were here last time when we touched on the issue of parliamentary oversight. I asked the same questions about parliament.

Where was parliament when all of these things – all of this corruption appears to have been happening all

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these years, what were they doing about it?

They have a right to call the President and say what is going on under your government? What is going on with your minister so and so who is not doing his or her job?

They can call the minister, they can call the DGs, they can follow up, they can put that alliance and say if you do not fix this by such and such a time, we will pass a vote of no confidence in the whole cabinet.

MR MOLEFE: Chairperson, at the – if counsel agrees at
10 the end of my evidence, I would like us to do – well, counsel can tell us when to do it, but I would like us to do what we will call do connecting of the dots.

CHAIRPERSON: Yes. Yes.

MR MOLEFE: Because in all of that we can go right to the various ministers, the portfolio committees of parliament.

CHAIRPERSON: Yes.

MR MOLEFE: Speaker of Parliament.

CHAIRPERSON: Ja.

MR MOLEFE: You know, the efforts.

20 **CHAIRPERSON:** Yes.

MR MOLEFE: And then letters we wrote.

CHAIRPERSON: You wrote, yes, yes, yes.

MR MOLEFE: All of those things and then we can say but what does this mean?

CHAIRPERSON: Ja.

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MR MOLEFE: And then when we are busy with this sort of thing and the minister stands in parliament says I am dissolving this board.

CHAIRPERSON: No, no, certainly that is a very important part.

MR MOLEFE: So we will have to connect all of those at some point.

CHAIRPERSON: Ja, yes.

MR MOLEFE: Because they give a picture.

10 **CHAIRPERSON**: Yes.

MR MOLEFE: Of – and I may want to ask a tough question as well which is similar to what the Chairperson is saying.

CHAIRPERSON: Yes.

MR MOLEFE: That ...[intervenes]

CHAIRPERSON: No, no, we will do that and I will leave it to counsel to see where the right time is. It might be at the end when you have all the evidence to then raise the issue.

20 I have said publicly that I have spoken to the Speaker of Parliament and the Chairperson of the NCOP and said that I think that parliament may need to start working on the issue of how it has carried out its oversight functions over the past x number of years and be able to come before the Commission at some stage and indicate

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what is revealed by an exercise of checking.

And, in particular. I am looking at the SOEs, specific SOEs about which we have heard a lot of evidence here but also certain government departments and other functionaries to say what did they do? Did they do their job properly because it may well be that if they had done their job the way it should be done, maybe certain things might not have happened.

But it may well be that they are able to come here
10 and say look, these are our limitations in terms of mechanisms that are available to us and these are our limitations in terms of resources, we went as far as we could.

If we are in the future going to be expected to do more, certain changes must be made to enable us to do that, then that is fine but I do not think that this Commission can be said to have properly finished its job without hearing what parliament did. Thank you.

ADV SONI SC: Thank you, Chair. Mr Molefe, may I just
20 say that I am pleased you raised the issue of right at the end connecting all the dots because I just want to make this comment before we go on with the rest of your evidence.

You are in a unique position, as I see it, you have the communication with the President in regard to the

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matters you have described already which does not make too much sense and we have debated that.

Then your board is dismissed. As you have said, instead of parliament exercising oversight over the minister, the minister goes to the portfolio committee and announces the dissolution of the board before then and she is not asked why did you do – I want to raise all those things.

And then you go to the police and say but look, we
10 have got people who are involved in fraud amounting to billions of rands and they do nothing about it.

That is all contained in here and so I am pleased you have raised this question because I was going to do that but I am pleased in the sense you have also looked at the big picture.

But before we go on with your evidence, there are three matters I want to raise with you in relation to what you have said this morning.

You said the matter – one of the matters went to the
20 CC, that is the Swifambo matter, am I right?

MR MOLEFE: Yes, it did say.

CHAIRPERSON: You must tell him when you say CC, you mean Constitutional Court.

ADV SONI SC: I beg your pardon, yes. The Constitutional Court, yes. Yes, is that the judgment you

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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would just beg for indulgence for the length of time I would take to adjust first before I see the letters.

CHAIRPERSON: Yes.

MS PETERS: But I will be fine. I will stop looking at the evidence leader.

CHAIRPERSON: Yes.

MS PETERS: H'm.

CHAIRPERSON: I am sorry about that. Okay alright.

MS PETERS: Yes.

10 **CHAIRPERSON:** H'm.

ADV VAS SONI SC: So in Table 2 Ms Peters the Auditor-General says or his office says that in the financial year 2013/2014 the irregular expenditure was not R 0,1 billion. That I understand is about R 100 million. Is that correct?

MS PETERS: Correct Chair.

ADV VAS SONI SC: Then in 2014/2015, it increased to R 5.5 billion.

MS PETERS: That is correct.

CHAIRPERSON: Sorry, in which year is that now?

20 **ADV VAS SONI SC:** In 2014/2015 Chairperson. The second one from the right ...[intervenes]

CHAIRPERSON: No, the R 5 billion – zero comma five?

ADV VAS SONI SC: Five.

CHAIRPERSON: Ja. Zero comma... So that must be about R 550 million.

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ADV VAS SONI SC: R 550 million

CHAIRPERSON: Yes.

ADV VAS SONI SC: Perhaps I should use those figures, yes.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Yes. And then in 2015/2016, it increased to fifteen billion, three hundred million.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: And in 2016/2017 it increased
10 20 billion, three hundred million.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: And in 2017/2018 to 24 billion, two hundred million.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: Okay. Now what is then said at paragraph 62 is:

“The instability in the board and at PRASA’s
key management level, negatively impacted
the operations of the entity and contributed to
20 the collapse of the controlled environment.”

That is his comment.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: And then he makes a second comment that:

“Although the auditors continuously reported

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ineffective compliance monitoring processes to senior management, these deficiencies were not addressed and resulted in repeat non-compliant findings.

This included ineffective steps taken to prevent irregular, fruitless and wasteful expenditure.”

That is what is recorded there. I am just raising that.

10 **MS PETERS:** Yes, Chairperson.

ADV VAS SONI SC: Now as I understand it Ms Peters and we can go to it if you want. There were several meetings between you as Minister and the office of the Auditor-General.

MS PETERS: Yes.

ADV VAS SONI SC: During the period of your ministership.

MS PETERS: Yes, Chairperson.

20 **ADV VAS SONI SC:** These matters would have been raised with you.

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: Alright. Now ...[intervenes]

CHAIRPERSON: So... I am sorry.

ADV VAS SONI SC: Yes, Chairperson.

CHAIRPERSON: So just to make sure. You accept that

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these were the figures in terms of irregular expenditure as set out by the Auditor-General's office?

MS PETERS: They are the figures as indicated and as reflected in the meetings we had with the Auditor-General which – in which he raised concerns about the issues related to record keeping and challenges of – that most appropriate officials to account nothing available.

CHAIRPERSON: Yes.

MS PETERS: Chair, again related to this. I would request
10 - because of the fact that after all these meetings there was correspondence and communication with the board. I would request that I supplement that information.

CHAIRPERSON: Yes.

MS PETERS: With the records that – I am grateful that yesterday the office of the Minister managed to sent to my ...[intervenes]

CHAIRPERSON: Yes, okay. No, that is...

ADV VAS SONI SC: Yes.

CHAIRPERSON: No, that will be important.

20 **ADV VAS SONI SC:** You can turn to the next page Ms Peters. This is page 872. He then table – at Table 3, he deals with the instability of the PRASA Board. Now just highlight two things because – oh, see. In fact, only the three top ones affect you. You were not longer Minister from the end of March 2017.

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So the first matter he reflects on is that on the 1st of August 2014, the new board under the chairpersonship of Mr Popo Molefe was appointed but that is common cause. Is that right?

MS PETERS: Yes, Chairperson.

ADV VAS SONI SC: And then he says on the 1st of November 2016, the National Treasury representative and resigned.

CHAIRPERSON: Where are you reading from now
10 Mr Soni?

ADV VAS SONI SC: Oh, sorry. Table 3 Chairperson on page 872.

CHAIRPERSON: Oh, okay alright. Continue.

ADV VAS SONI SC: Yes. And then he says on the 8th of March, the board under the chairpersonship of Mr Molefe was dismissed. And we are going to get to that in a moment.

And then an interim board was appointed. What happened on the 10th of April, obviously, is something that
20 you must know about but namely the court made a decision of Mr Molefe's application.

And the rest of the things we need not worry about because they do not concern you and obviously the next Minister will deal with that. If I can then ask you to look at page 873 at para...[intervenes]

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MS PETERS: So sorry?

ADV VAS SONI SC: Sorry.

MS PETERS: Am I allowed to comment?

CHAIRPERSON: Ja. He can give you an opportunity to comment.

ADV VAS SONI SC: Yes.

MS PETERS: Thank you Chairperson. I would confirm that on the 1st of August 2014, the board appointed another chairpersonship of Popo Molefe. I confirm the resignation
10 of the Treasury representative.

When the board informed me. I wrote to the Minister of Finance to appoint their representative and it was upon them to submit which was later done.

And I confirm that under – on the 8th of March, under the chairpersonship of Tata Molefe, the board was dismissed. Yes, I agree. And the board were place – put in place an interim board that was chaired by Mr Allie, as indicated. I confirm that.

And despite the fact that I was not there, I do
20 note that on the 10th of April the board under chairpersonship of Tata Molefe was reinstated.

And I just want to indicate Chairperson that I still believe that in acting against the board of Tata Molefe on the 8th of March, I was correct.

And I was correct based on the fact that in the

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supplementary affidavit, you will note the length of time I took to engage the board under Tata Molefe with regard to these issues that are being raised by the Auditor-General.

As every quarter, ministers get reports on the performance of the entities. And all perusal and engagement would find the issues that might be found to be issues that need attention.

I wrote to the board. And in most instances, the board would not even respond. And Chairperson, quite a
10 number of times, throughout the period of 2016...

I will make an example. The first quarter of 2016, the board – the company performed at around 60%. The second quarter they performed at around 40%. The third quarter they performed at around 20% or 21%.

And those matters were of concern to the Portfolio Committee and to myself as the Minister and it was at that time Chairperson that the other matter that the evidence leader would raise would come to the fore.

The focus of the board, not on the core
20 responsibility of the company was of a concern to me and I raised it. Even in the meetings I had with them, there are – what we call notes or speeches - that I delivered in those meetings for the record.

And I want to indicate that ordinarily sitting back... There is a saying in life, generally, that says you

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regret more the things you did not do than the things you did.

I believe my patience with the board of Tata Molefe was over-stretched. And the other thing that was of worry to me as the Minister was the fact that the correspondence related performance issues, to matters from the Auditor-General were not getting the attention the board is supposed to get.

And at times, because it was difficult to meet the
10 full board, we would meet every time with Mr Molefe himself and he would say we will respond or complain that the administration on management is not given back the information and yet it is him who was the board based on the fact that they would have concurred.

Because when the management writes the report, they present it to the board, the board must concur with that report and then send it to the Minister so that they can then say: Yes, this is a true reflection of what transpired. And that was not happening.

20 There is correspondence that I sent to Mr Molefe that indicated even the fact that I wrote to you on this particular issue. You did not respond. I wrote to you on this particular issue. You did not respond. I wrote to you on this particular issue. You did not respond.

And I want to say to you Chairperson, if you give

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me a chance, given an opportunity I would have challenged this court's outcome because in my view it was on a procedural technicality based on the fact that probably I did not give them ample notice and all that but I still believe that my decision to remove that board at that particular time was long overdue.

CHAIRPERSON: Yes, Mr Soni.

ADV VAS SONI SC: Did you ...[intervenes]

CHAIRPERSON: Well, I – maybe I can just say and you
10 may have heard me say this and when other witnesses were given evidence about this Table 2 on page 871 that for me it is really shocking to find that for 1, 2, 3, 4, 5 – five financial years an entity's irregular expenditure year in year out was going out up astronomically.

As if somebody at PRASA had taken the decision that I am going to show them, whoever they are, that they cannot do anything. We will increase this irregular expenditure every year, every year.

I mean, you look at the financial year 2013/2014.
20 It was about R 100 million. But it then goes up in the following financial year, 2014/2015, to R 550 million.

As if that increase was not bad enough, then from R 550 million it does not go to one billion. It does not go to two billion. It does not go to three billion. It does not go to ten billion. It goes to 15-billion.

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This should have shocked everybody concerned and said this must stop! How then the following two financial years it continued to go up. It is just difficult to understand for me.

And I ask the question: Where were all of those people who were supposed to make sure that this did not happen? What were they doing?

Now obviously one must look at the management, one must look at the board, one must look at
10 the minister and I think one must look at the Cabinet, the President in the Cabinet because these things should have been brought to the attention, certainly the President's, I would imagine, to say there is a serious problem at PRASA.

But it is like nothing was being done and all concerned must have seen this astronomical increase year in year out. I mean, it is supposed to go down not up. It is like somebody knew that nobody would do anything about it or simply said they cannot touch me. I am going to just
20 continue making – increasing this irregular expenditure.

It is difficult to understand that people were aware of this and just allowed it to continue like that. Of course, you have said that you will deposed to a supplementary affidavit and that is most welcome because you have got info – correspondence that shows what you

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did on your part because that is quite important to say as Minister you became aware of this, every quarter of how the entity was performing and therefore every year. And what did you do about it?

So it is very important and I want to know also what the board of Mr Molefe did about it but I will also want to know – well, I was going to want to know what President Zuma did about it but he might not be here.

But I would like to know what the Cabinet did
10 about it. How could a state entity have these kinds of reports and the irregular expenditure just increases like this and what did everybody do about it?

So for your part it is important that during your term, because I think that this was mostly during your terms, it is important that you place before the Commission all the evidence you might have that shows what you did.

So that when judgment has to be made as to who did their job and who did not do their job about this, at least you have put your side of the story properly before
20 the Commission.

MS PETERS: Thank you Chairperson.

CHAIRPERSON: Ja, okay.

MS PETERS: Chairperson.

CHAIRPERSON: H'm?

MS PETERS: With regards to – if you look at the

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2015/2016, that was the time when we received the Auditor-General's audit. We got to start the process of the investigation, that the forensic investigation that I spoke to.

Unfortunately, the forensic investigation - I had requested from the Auditor-General coincided with the release of the Derailed Report from the Public Protector which was dealing with matters of between 2010 and 2012.

And there was a decision between myself, the
10 Auditor-General and the board chairperson as well as the office of the Chief Procurement Officer to reconcile the investigations.

But also Chairperson, in this report of 2015, to the credit of the board, they had requested the Auditor-General to reveal everything because in the previous report there would be indications that they still work on regard to this matter, with regard to this particular matter.

These were some of those contracts that were entered without proper procurement processes, those that
20 SCM procedures were either flouted or they were found to have not been regularly entered to and these were matters that were taken to the SCOPA at parliament.

You would remember, Chairperson, that at SCOPA some of these amounts would either be treated as extension of contracts, deviations and modifications and all

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those and others would be rejected and others would be either condoned and this would be the process that is not necessarily in the hands of the minister of the relevant department because the report is now released, we are engaging with the board with regard to what are you doing to make sure this matter does not recur. Thank you, Chairperson.

CHAIRPERSON: Mr Soni?

ADV VAS SONI SC: As you please, Chairperson. Now as
10 paragraph 65 on page 873 it is recorded that:

“The instability in the Group CEO position was equally troublesome with the new appointment every year and on occasion more than one per year. Further, these appointments were made in an acting capacity and only in 2018 an interim Group CEO was appointed.”

They before demonstrate the movements in appointment and I will just read it for the record, it says that:

“Mr Montana resigned in 2015 and in August 2015,
20 Mr Khena was appointed as Acting Group CEO. In July 2016 Mr Letsoalo was appointed as Acting Group CEO. February 2017 Mr Zide was appointed...”

And obviously you cannot answer for this:

“In December 2017 Mr Molepo was appointed, April

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2018, that is on the next page 874, Mr Zide was again appointed as Acting CEO and in June 2018 Mr Sithole was appointed interim Group CEO.”

Two things, are you aware of these developments, the correctness of what is here?

MS PETERS: I remember up until July 2016 and like I have indicated, February 2017 I was in hospital at that particular time when this matter was decided on and thereafter, some things that I followed from the press.

10 **ADV VAS SONI SC:** Okay, but this is from the office of the auditor general. Are you prepared to accept its accuracy?

MS PETERS: That is why, Chairperson, I say up until July 2016.

ADV VAS SONI SC: But you noted the point I made – well, that was made at paragraph 65, that the instability in regard to the appointment of a permanent CEO was flagged by the auditor general. You accept that it was flagged?

MS PETERS: I accept that because it is at all times
20 reflected in the engagements with the executing authority, Chairperson.

ADV VAS SONI SC: Now there I want to come back to what Mr Molefe says at paragraph 93, he says:

“After Mr Montana’s departure from PRASA the board sought to appoint ...[intervenes]

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CHAIRPERSON: Hang on, hang on, Mr Soni. We are changing bundles now, hey?

ADV VAS SONI SC: Yes, sorry, sorry.

CHAIRPERSON: You are going now to bundle that has got Mr Molefe's ...[intervenes]

ADV VAS SONI SC: Bundle D, SS6. Sorry, Chairperson.

CHAIRPERSON: Is it bundle D?

ADV VAS SONI SC: Bundle D, SS6, page 24, paragraph 93.

10 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: Now Mr Montana says:

“They embarked on a rigorous recruitment and interviewing process. However, Minister Peters frustrated the board’s attempt to appoint a CEO.”

And then it is added immediately thereafter:

“Instead she insisted Mr Letsoalo be appointed.”

But that was of course in July 2016. I want to now go back to the time Mr Montana left in July 2015. What was your approach to what should happen to the position of the
20 CEO? Now we know the meeting of the 20 August took place. We know Mr Montana and you have said that nothing happened thereafter. Now clearly there was a need to appoint a CEO. Do you accept that?

MS PETERS: Yes.

ADV VAS SONI SC: Mr Molefe says that you frustrated

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their attempts despite a rigorous recruitment and interviewing process. Are you aware of a recruitment and interviewing process?

MS PETERS: I am aware of it, Chairperson. I am aware of it, Chairperson.

ADV VAS SONI SC: Were you told that the board is embarking on that process?

MS PETERS: He informed me when they had concluded the process and I did know that there is a process that
10 unfolded, even the adverts were done and I knew that they are busy with that particular process.

ADV VAS SONI SC: Now I going to come to this but in parliament it was then reported that an amount of R1,7-odd million had been spent on that process. I am going to come to that but I am just recording that. Were you aware of that?

MS PETERS: I was aware of that but not the amount, Chairperson.

ADV VAS SONI SC: Now can I ask you before we go into
20 why nobody was appointed, what role does cabinet play in the appointment of CEOs of SOEs?

MS PETERS: There is a process where once a board has gone through the processed they would recommend – I do not know whether it is three names in their order and there would be a consultation process, Chairperson, and that

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consultation process culminates in the minister presenting a memo to the cabinet requesting cabinet to concur with that particular decision.

ADV VAS SONI SC: Now ...[intervenes]

CHAIRPERSON: The consultation involves who and who?

MS PETERS: It involves quite an extensive number of role-players because you would be looking at an appointment that has a bearing on other colleagues in cabinet and you would want to make sure that those
10 colleagues can then be able to give you an indication of it they have got an issue with regard to that or, alternatively, to support your recommendation in cabinet.

CHAIRPERSON: But who gets consulted by whom? Is it cabinet ministers including the President, the Deputy President?

MS PETERS: Yes, Chairperson, it would ultimately include the President and in most instances it is courtesy to include the President. Chairperson, it is important to note that as a Minister when you go and meet the
20 President or make presentation everywhere else where you were supposed to, you are supported by a team of men and women who are necessarily from the establishment or from department and entities that you are working with. So it would be important and I always used to use even my own experience as a head of government in my previous

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responsibility as Premier of the Northern Cape where you would as a Chairperson of a cabinet when a particular motivation is made. If that motivation you are fully versed with and informed about then it makes the taking of the decision or the taking of the – or the acceptance of it even easy. Even if there would have probably been others who would probably say no, but we would have preferred to get that particular individual or somebody else would then say in the cabinet that I have interviewed that person and in
10 the next interview – it is just to cross-reference and check.

CHAIRPERSON: Does that consultation involve people who are not in government?

MS PETERS: Sorry, Chairperson?

CHAIRPERSON: Does that consultation also involve people who are not in government?

MS PETERS: Not in government?

CHAIRPERSON: Ja but for example in the ruling party, the ANC?

MS PETERS: No, no, no, in the ANC the President and
20 the Deputy President would report on those particular processes, to consult.

CHAIRPERSON: Okay. So the people that consulted are basically your cabinet colleagues and the President and Deputy President?

MS PETERS: It would be the cabinet colleagues – yes,

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Chairperson, it would be cabinet colleagues, it would be the President and the Deputy President and if so feel that you – based on the fact that you are appointing somebody who would be of assistance in the implementation of a particular policy you would also be free. That was not restricted, you would be free but it would be out of courtesy. You would be free to consult other colleagues who would not necessarily be in cabinet but through a structured process.

10 **CHAIRPERSON:** And would those be people within the ruling party?

MS PETERS: Pardon?

CHAIRPERSON: Would those people, who are not in government, be within the ruling party?

MS PETERS: Yes, Chairperson, it would be wrong for me to go and consult people who are not necessarily members of the ruling party on matters that has got a bearing on the mandate that I draw from the ruling party.

CHAIRPERSON: No, no, no ...[intervenes]

20 **MS PETERS:** But the agencies and the government implement the policies and programmes of the African National Congress, which is the ruling party.

CHAIRPERSON: No, no, no, I just wanted to have a picture of the groupings of people or categories of people that get consulted and I was not necessarily you were

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consulting people who are neither in government or in the ruling party but I wanted to know whether people within the ruling party also get consulted. Okay, alright.

MS PETERS: Even with the appointment of boards.

CHAIRPERSON: Sorry?

MS PETERS: Even with appointment of boards.

CHAIRPERSON: Of the board, yes, okay. That is important. Mr Soni, do you want to – well, you can follow the line you were following.

10 **ADV VAS SONI SC:** Yes, yes.

CHAIRPERSON: But you might wish to come back to ...[intervenes]

ADV VAS SONI SC: I do want to pursue this, Chair.

CHAIRPERSON: Ja, ja.

ADV VAS SONI SC: Ms Peters, we are a country of laws, that is more or less first paragraph of a recent judgment of the Constitutional Court issued. Now in regard to the appointment of the CEO, this is what the PRASA Act says. It says that the CEO is appointed by the board in
20 consultation with the minister. It places no role on the cabinet, it gives no power to cabinet.

MS PETERS: Chairperson ...[intervenes]

CHAIRPERSON: He just wants you to comment on that. What do you have to say about that?

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MS PETERS: Chairperson, I think maybe I have not followed that particular judgment [indistinct – dropping voice] but when I got into government from the stages that I got into government, we found ...[intervenes]

ADV VAS SONI SC: Sorry, Ms Peters, I do not want to be rude. I have been asked to ask you to adjust your mic because you are not being recorded properly. Sorry.

MS PETERS: Thank you, Chair. I was saying, Chairperson, that in the history of my deployment in
10 different responsibilities of government we have always as a protocol, which is a cabinet protocol, consulted with cabinet and there is no decision because when you appoint, you are not appointing for yourself, you are appointing for South Africa. So the cabinet of – or government is in the hands of the President and the cabinet. So the cabinet resolution gives you that authority. The pronouncement would be made by the board because the board would be informed on the decision of the cabinet and, Chairperson, if you go into the records of cabinet
20 statements after every cabinet there would be an indication on the appointment and under appointment it would then reflect all those people who have been appointed in different areas. If it was wrong then it would mean that we need cabinet to review that protocol.

ADV VAS SONI SC: So there are two issues. The

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protocol is that the consultation and in a sense approval of the appointment of the CEO of an SOE must come from cabinet, forget what the minister thinks.

MS PETERS: I would not say, Chairperson, that is, is forget what the minister says and incidentally, there has not been a lot of instances where a submission of the minister was rejected and that is why I was saying the engagements with colleagues would be to just cross-check and cross-reference so that they then are able because
10 decisions would necessarily be taken on the majority decisions and if you have got a strong case you will not have anything having comebacks.

ADV VAS SONI SC: So when you say the majority of the decision are you talking about the majority of cabinet members?

MS PETERS: Ja because majority is taken in that way and the summary of the Chairperson of the meeting.

ADV VAS SONI SC: Now, Ms Peters, I am not challenging the process that is followed at this point, I am merely
20 saying that the process that seems to be followed does not reflect what the law says the powers of different institutions are.

MS PETERS: Noted, Chairperson.

ADV VAS SONI SC: And I am saying that, Ms Peters, again – and it is a submission I will make to the

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Chairperson and I am going to ask you to comment on that. One of the things about good governance is you have an independent board which makes decisions and that board can be held accountable for the decisions it takes.

Now, as the Chairperson said, when irregular expenditure increases from less than a billion rand to R20 billion in five years the persons who should be held responsible are the members of the board and that is on the basis that they take the decision.

10 The problem with what is now being suggested is that you cannot hold anybody accountable because somebody else effectively took the decisions or somebody else influenced those decisions. That is my worry about the way these matters are being dealt with and it is the submission I am going to make to the Chairperson at some stage.

MS PETERS: Chairperson, once the CEO or the board has appointed the CEO and got the concurrence of cabinet the board through the Chairperson signs a performance
20 agreement with the CEO and takes responsibility for the evaluation of the performance of the CEO who then should take responsibility for the performance of his or her subordinate and the board must be held responsible for that because they then report after everything to the minister.

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In the instance of the PRASA process the rationale was whilst we are dealing with the process of the appointment there should not be a vacuum and therefore there was this particular acting positions. Chairperson, if we have to go back to the report of the AG with regard to that spiralling irregular ...[intervenes]

CHAIRPERSON: Expenditure.

MS PETERS: Expenditure. I discussed with Mr Molefe, not Minister Molefe, Mr Molefe and we then had an
10 agreement on this particular secondment. In fact he was recommending somebody else who was in a subsidiary when in the [indistinct] 20.42 I had with him and then I said to him, your main problem here is SCM procurement issues and this irregular expenditure. You need somebody who understands finances who can help us to be able to get out of this quagmire that you find yourselves in and we discussed that.

He made the recommendation on wanting one of my advisers and I said to him no, I am directing you to the
20 point about the finances, now you want to cripple – I even jokingly said now you want to cripple my – the ministry, if you want to do that and in fact at that part ...[intervenes]

CHAIRPERSON: I am sorry, just repeat that, what did he suggest and what did you say?

MS PETERS: He was suggesting that I borrow him one of

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ADV VAS SONI SC: Now the question I want to ask you is when Mr Montana had resigned, the President had called a meeting late on a Thursday evening, or on a Thursday afternoon which finished early on Friday morning. Did nobody in cabinet from the time Mr Montana left, and he is leaving with a matter of great public debate and so on, did nobody ever raise that who is going to go, who is going to replace him at PRASA, at cabinet now?

MS PETERS: That matter was never discussed in cabinet
10 because it was not an agenda item on cabinet.

CHAIRPERSON: Sorry ... [intervenes]

MS PETERS: The one of Mr Montana's departure?

CHAIRPERSON: I may have missed something. What matter was that? I am sorry.

ADV VAS SONI SC: The fact that there is this continued vacancy ... [intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: In regard to ... [intervenes]

CHAIRPERSON: Yes.

20 **ADV VAS SONI SC:** The CEO of PRASA.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Which on Ms Peters's version is a major SOE which performs an important public function.

CHAIRPERSON: So the question was whether that issue was placed before cabinet?

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ADV VAS SONI SC: Did anybody in cabinet raise that?
That is the question I am asking.

MS PETERS: I do not understand the question
Chairperson.

CHAIRPERSON: Maybe let me ask, let me ask this.
Maybe it is going to be easier. Did the fact that the Group
Executive, Chief Executive of PRASA, Mr Montana had left
and that in the meantime no permanent CEO had been
appointed. Was the President Mr Zuma told about that?
10 Was the cabinet told about that whether it is irregular
towards that a Minister presents to cabinet or in regard to
his or her portfolio or in any other way? You, it just seems
very disturbing that you could have a situation where for so
many years the position of Group CEO of any entity is not
filled, let alone an entity as important as you told us
PRASA is. Was the President told about this? Was
cabinet told about this?

MS PETERS: Every year when the Auditor General before
he makes public his audit outcomes, he would make a
20 presentation to cabinet and one of the indicators that he
had given in one of the cabinets that I was present in
where he presented the audit outcomes, he did indicate
issue of stability at SOE levels and even in the
administration, and the President at that time impressed on
all of us to address the issue of the instability in the

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institutions that reports to us or that are directly under us. It was a general, not PRASA vacancy. Just to say there is instability in the administration, be it of entities or of departments that was raised and flagged by the Auditor General, and in fact the Auditor General went further to indicate where these type of situations are recurring, and like I say the President impressed on us can we deal with this issue of instability in SOE's, because we were not only talking about PRASA. It was a general impression created
10 or a general issue raised by the Auditor General with regard to issues of leadership in SOE's.

CHAIRPERSON: But let us leave out what the Auditor General may have, may or may not have told cabinet. Did you as Minister are responsible for PRASA, not report to the President about what was happening at PRASA and the fact that there was no Group CEO appointed for this number of years, and was this not something that you also shared with the rest of your cabinet colleagues in one or other meetings to discuss your portfolio?

20 **MS PETERS:** Chairperson, in the earlier questions that were raised with regard to the meetings, I did not give an indication on the way in which we as Ministers would used to be able to report to the President, and given an opportunity, I think in one of the documents that has already been submitted to the Commission, there would be

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something that actually points to the fact that I did report to the President in writing about these matters and if given a chance, it could serve as part of the package that is added to that supplementary document.

CHAIRPERSON: Yes, no, no you, that would be most welcome. So you did report to the President?

MS PETERS: Yes Chairperson.

CHAIRPERSON: Yes, so he would have been aware of the problems at PRASA, generally speaking?

10 **MS PETERS:** Yes Chairperson.

CHAIRPERSON: Yes. Mr Soni?

ADV VAS SONI SC: As it pleases. Now what was your own adieu towards the appointment of the CEO and I am going to narrow the ambit of your answer by saying did you want a CEO to be appointed expeditiously or for you was the length of the process did not matter?

MS PETERS: Chairperson, if I have to respond I wanted it to be done expeditiously, but there are developments that happened, like for example the request of the Auditor
20 General on my part to say the Auditor General must do the forensic audit, as well as the issue that emanated from the derailed report of the, what is this? The public protector. So there were issues that in my engagements, and unfortunately so in most instances I had the engagements with Ntate Molefe alone, without necessarily with the whole

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Board. The meeting I had with them on the 30th of June, that indicated ... [intervenes]

CHAIRPERSON: Which year is that?

MS PETERS: Pardon?

CHAIRPERSON: Which year?

MS PETERS: June 2016, which is also one of the meetings that we dealt with the issue of the need to second Letswalo to PRASA on, I think in that meeting there were a lot of issues that came to the fore, and in my
10 wisdom at the time, I thought that we needed time to deal with these particular issues, with the Board and the management that was there together with the acting CEO.

CHAIRPERSON: Are you saying you wanted the appointment of a permanent Group CEO to be made expeditiously but this did not happen because you took the view that certain issues, such as forensic investigations, needed to be done and completed first. Is that what you are saying?

MS PETERS: Not necessarily completed.

20 **CHAIRPERSON**: Yes.

MS PETERS: But I would, I want to say Chairperson at this particular moment, they were I actually used a word with Ntate Molefe at the time, that says I do not think that ... I even said to him I do not think that you and the company is ready for the new CEO. Let us deal with these

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particular issues, and we agreed with him let us deal with these particular issues, that when you appoint a CEO then you will have an indication of this is what was a problem, this is how we dealt with them and this is exactly the areas that, because Chairperson, one of the officials in PRASA once said something very interesting, that said at the time that when they emerged from SACRCC which is the predecessor to PRASA, they did not sit and build an organisation, because there was this view that they were
10 chasing the big ticket high profile type of programs and projects, and that is why underneath in PRASA there was this turmoil and this particular challenge.

CHAIRPERSON: Well, I have difficulty with that logic of what, of the position that you say you adopted. You are in effect as I understand you, saying to me and you must tell me if I misunderstand you what you are saying. You are saying there were problems at PRASA. The fact that there was no Group CEO was not good for PRASA. There should be a Group CEO as soon as possible, but you were saying
20 to Mr Molefe you are not ready, you and management or PRASA is not ready for a new CEO which happens to be in line with Mr Molefe's evidence, because he did say you served there. You say you are not ready for the Group CEO, let us have these investigations, then you can bring in a CEO. I do not follow that logic. I would think that

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when there are problems and you do not have a Group CEO, you need a Group CEO and you need a permanent Group CEO and because there are these problems, it is all the more reason why you should expedite the appointment of a Group CEO. When he or she comes, he will find PRASA in the condition in which he or she will find PRASA. He or she is the one who will prepare a report to say to the Board and to the Minister, I found PRASA in this condition. When I came on such and such a date I did investigations
10 to find out what are the problems. What are the causes to the problems. What are the solutions that I am going to apply, and then say going forward, this is my vision to make sure that these problems do not happen again. So I do not understand the logic of saying yes there are problems, yes we know we need a Group CEO expeditiously, but let us wait. Can you help me understand that logic?

MS PETERS: Now that you say it Chairperson, and they usually say hindsight is the best signs, and I realise what
20 you are saying.

CHAIRPERSON: Yes, Mr Soni?

ADV VAS SONI SC: As you please. Just on that score, so there is no debate about what your position was at that time. You have now conceded it was incorrect, but let us put that aside. I would like you to look at page 1, SH6

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HELD AT
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158 CIVIC BOULEVARD, BRAAMFONTEIN

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DAY 348



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COMMISSION OF INQUIRY INTO STATE CAPTURE

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that much you saying, Mr Soni.

ADV VAS SONI SC: Now, you might recall that I said to you, Mr Molefe's letter is that the 24th of August 2016. On the 25th of August 2015 or 2016. Mr Molefe know in an affidavit which had major repercussions on his standing in the ANC, certainly according to what appears to have happened in Parliament.

MS PETERS: Come again?

ADV VAS SONI SC: What I am saying to you, on the 25th
10 of August, Mr Molefe an affidavit in this refundable matter, which according to what appears to have happened in Parliament, had a major impact on the Parliamentarians, the ANC Parliamentarians approach to him and I am come back to that in a moment, but I want to first deal with the allegations he made on the 25th of August 2016. There contained in his replying affidavit, parts of which appear at page 259 of bundle D.

CHAIRPERSON: What is the page number?

ADV VAS SONI SC: 259, Chairperson that is the first
20 page and the because the allegations appears...[intervene]

MS PETERS: 259 of?

ADV VAS SONI SC: 259 of bundle D, that is Mr Molefe's replying affidavit. Now, I do not want to go through the whole thing, but this is a replying affidavit in the refundable matter, that is the R3.5billion contract that we

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talked about yesterday, and this is what he says if you go to page 262 he talks about what he was told by a Mr Auswell Mashaba.

Mr Mashaba told us...[intervene]

CHAIRPERSON: I am sorry; I am sorry what I have at page 259 is the first page of Mr Molefe's entire affidavit but the next page relates to Mr Mamobolo's affidavit. I do not have the other pages of Mr Molefe's affidavit that starts at page 259. So from 259, my bundle skips to 277. I do
10 not know whether I may have taken out the affidavit myself to read it and then did not replace it.

ADV VAS SONI SC: What somebody did I tell you why Chairperson.

CHAIRPERSON: Yes.

ADV VAS SONI SC: When Mr Molefe gave the affidavit we went as evidence.

CHAIRPERSON: Yes.

ADV VAS SONI SC: We went through this affidavit.

CHAIRPERSON: Yes, is there a spare one by any chance
20 and then arrangements can just be made for replacement pages. I see that we have gone past quarter past 11 but since Ms Peters has to leave by quarter to...[intervene]

ADV VAS SONI SC: Yes.

CHAIRPERSON: I thought we would take the tea break a little later.

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ADV VAS SONI SC: Yes, as you please Chair.

CHAIRPERSON: So that she can take leave and then arrangements would be made for when we can continue, okay alright. Thank you, so you said we must go to page 261, yes I am there.

ADV VAS SONI SC: 262, Chairperson.

CHAIRPERSON: 262?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay, yes.

10 **ADV VAS SONI SC:** Well, he says that:

“Mr Mashaba told him that he was aware that this refundable agenda was under investigation.”

And then on the next page he says:

“Mr Mashaba told him in addition that through his involvement that Mr Mashaba is involved with Mr Mabinde he had been in contact with a Maria Gomez who had initially contacted him telephonically.”

Then Mr Molefe says:

20 “Mr Mashaba explained that he met with Ms Gomez, Ms Gomez told him that Mr Mashaba, that she wanted money for the movement.”

Ms Gomez also told him:

“That she need the bid to supply locomotives to PRASA with values and she could not understand

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why 10% of the value of the debt could not be paid to the African National Congress. Ms Gomez was insistent that the money should go to the movement.”

In paragraph 9.11:

“Mr Mashaba explained further that Mr Mabinda had instructed him to pay some of the money received from PRASA into specific accounts without Mr Mashaba knowing who has been paid, or the reason for the payment. Mr Mashaba was insistent that he did not know the identity of the beneficiaries and he was merely informed that the money would be benefit of benefit for the movement.”

Now, when did you first become aware of these allegations?

MS PETERS: I became aware of these allegations in – through the – first it was in the public space based on the submission of Mr Molefe to the courts.

ADV VAS SONI SC: Now, what was your reaction to it?

20 **MS PETERS:** I asked him, Mr Molefe about this and then he explained that there was this matter and he is following up with the investigation, and we left it as such.

ADV VAS SONI SC: Is that the total reaction?

MS PETERS: Not the discussions between him and Mashaba just that there was Swifambo and there was

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allegations that certain amount of money from Swifambo flew in back into the African National Congress, that is what I read.

ADV VAS SONI SC: Were you concerned about, firstly, the allegations being made?

MS PETERS: I was concerned definitely Chairperson, and I think there was even an interview that I did with the Sunday Times newspaper, after I had also called on Mr Molefe to verify these stories in the papers, and he
10 confirmed to me that that is part of the investigation, and it is going to help PRASA to recoup the money.

And Chairperson earlier on when you stopped me, I was coming to these two points about this investigation, the one of Swifambo and the one of the new modernisation trains to say....[intervene]

ADV VAS SONI SC: Siyangena ...[intervenes]

MS PETERS: No, not Siyangena, Siyangena is the signalling and other things, there was this issue of - there was a finding related to the trains to be built.

20 **ADV VAS SONI SC:** Yes.

MS PETERS: And I said to him, they must ensure that the urgently deal with these matters and respond to it so that they can release. Remember Chairperson, there was going to be about R53billion investment into the country for the new trains, the factory to be build, to do the supplying

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components, and also the training of our young people with technology, I mean techniques and skills that are necessary for the rail industry.

So it was lots of investment that I said to him, we need to make sure that this one is dealt with so that the work can start. Our people are unemployed, it is affecting the data, we need to make sure that that one is unfolded. We agreed and then these others like those Swifambo and Siyangena and other others, that you are investigating, go
10 ahead and investigate this particular matter. There was no, never a time when we did not agree on the need for investigating this particular issues.

When the story about the money that flow through the ANC came, it was not a discussion, it was not well submitted in the court papers, and I even said now that this matter is an investigation, and I said, and I am still believing it what I said to the journalist at the Sunday Times. If I was the Treasurer General of the African National Congress, I would also oversight of the
20 investigation of the element and its entity with regards to this procurement.

Investigate these people who are said to have received money in the name of the African National Congress, because for me as a member of the ANC, it was not good that people go around doing whatever they do

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and later on it is said that the money sneaked to the ANC.

So the ANC had to investigate that, whether he investigated I do not know because I made a public statement that was in the Sunday Times to say, I said go ahead and investigate on your side as the ANC because if there are people who are going around making money for themselves and their families in the name of the ANC it is not, it is also incorrect because the name of the ANC is always brought into these procurements unnecessarily so
10 because certain people will do one random things, and then say I did it for the ANC, which is not true.

ADV VAS SONI SC: Now...[intervene]

CHAIRPERSON: Mr Soni I proposed that we should stop with Ms Peters evidence at half past it is in five minutes' time.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Then I take the tea break then she is released.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** I know she is available up to quarter to, but we take a tea break at half past because in any event, we are not going to finish with her evidence. So I am just mentioning so that in terms of what is left.

ADV VAS SONI SC: Yes, can I – Chairperson it may take a couple of minutes more than five, is that going to be?

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CHAIRPERSON: That is fine.

ADV VAS SONI SC: Ms Peters, can I then ask you to look at Parliamentary bundle 3, page 382 on the left hand side.

CHAIRPERSON: I take it that a couple is more than five minutes but not ten.

ADV VAS SONI SC: That I do not think so Chair.

CHAIRPERSON: Ja, I am thinking about seven or so.

ADV VAS SONI SC: Yes.

MS PETERS: The bundle?

10 **ADV VAS SONI SC:** Bundle 3, page 382.

MS PETERS: Eight?

ADV VAS SONI SC: 382.

MS PETERS: 382, yes.

ADV VAS SONI SC: Remember, Mr Molefe's affidavit is dated the 26th of August, as you have said it was widely reported in the newspapers. Now on the 21st of August 2016 this matter came up before the Portfolio Committee and this is what Mr De Freitas says about, he says:

20 "At the meeting held on the 21st of August - this is of the Portfolio Committee - the acting CEO Mr Collins Letsoalo explains that PRASA had a dysfunctional administrative system. He explained that only 20 executives were required as opposed to the current 65. He claimed that it appeared that PRASA Board members were telling themselves

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additional unauthorised remuneration, Mr Sibanda expressed concern that the Board members retain themselves.”

Now, I just want to deal with the first issue first, the one about 20 executives, as opposed is 65. Have you been made aware of that before Mr Letsoalo raised it in Parliament?

MS PETERS: This matter Chair, like I indicated was going to be probably, be the subject of the meeting of the AGM
10 because the AGM was coming. We were working towards the AGM; I have not as yet received a report with regard to these details. But one thing that I knew from the history of engagement with PRASA was that it has a blow back structure, and the executives would be just moved willy nilly from across irrespective of their competencies and whatever.

And I had requested the Board, remember Chairperson, I indicated yesterday that I had requested the Board to do a skills and competency and qualifications
20 audit, so that they could then do a better matching and placing within the organisation because there was just too many people who you did not know what they were doing, and others were all over.

And there were a lot of labour related disputes of others who were dismissed, and the Board Chairperson at

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times took a decision to say some of those who were dismissed must just be brought back and it would have needed a particular review or an organisational design type of study to be able to get to that particular point.

ADV VAS SONI SC: Then the next point that Mr De Freitas makes in this summary he says:

“Mr Ramatlakane stated that recently, there have been an extraordinary Board meeting where a resolution had been taken to dismiss Mr Letsoalo.
10 He requested PRASA and the Chairperson to appraise the Portfolio Committee developments in this regard, and that the Portfolio Committee received a copy of the Board minutes.”

Now, this is Mr De Freitas’s comment on this:

“I got the distinct impression that this had been discussed by the ANC and there was an agenda of sorts to protect Mr Letsoalo.”

You were not present at this meeting, is that correct?

MS PETERS: No Chair, I was not at the meeting.

20 **ADV VAS SONI SC:** Alright, then Mr Molefe asks the meeting if they could discuss the matter in committee, and that was refused. Now I am raising all of this in the context of what I read to you in Mr Molefe’s affidavit because if you look at the next page, page 383 on the fourth paragraph this is what is reported Mr Ramatlakane

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stated:

“That Popo Molefe had insinuated that the ANC had received R80million from PRASA.”

And then he says this was a reference to articles that had been appeared in the newspapers and he gives the whole thing. Then he says:

10 “Molefe denied that he had made such a statement stating that he had heard allegations that PRASA had paid the ANC R80million. He explained that PRASA never gave the ANC money and he had never made such claims. He indicated what the media had reported were records before the court.”

Then this is the response from Mr Ramatlakane he says:

“He had a concern that PRASA’s spent R93million on private legal firm for services.”

Now this is Mr De Freitas’s comment:

20 “This was the ANC’s attempt at deflecting from the true issue of corruption by deflecting from the real problem, it was very clear that the ANC was positioning Molefe as the enemy or the bad guy in this saga.”

Now this is a commentator who is in Parliament, of course, he is in the opposition and one would expect him to say things that do not reflect well on the ANC. But when you look at the two things that appears here, the first thing is

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that there is this story about corruption relating to this Swifambo contract from which a political party allegedly received R80million, and then R93million is spent in an investigations.

Now, does it make sense that you would concentrate on the cost of the investigations, as opposed to allegations of corruption in an R3.5billion contract?

MS PETERS: Chairperson I cannot answer for the Portfolio Committee, because I do not know the context of
10 them arriving at this point, because usually what happens is that the department and the Board would come and make their presentations, and then the questions and statements would flow from that.

So I was not there, and I cannot make a case for what happened in the Portfolio Committee.

ADV VAS SONI SC: I just want to read to you though, the second last line on...[intervene]

CHAIRPERSON: You have just gone to ten minutes.

ADV VAS SONI SC: Ja, can I just finish this Chairperson
20 and I undertake that it will be my last point I want to make.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Mr Gadebe, the ANC member on the committee suggested:

“That the committee had to approach the South African Police Service to investigate investments,

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political and business links.”

I am putting this in context and I know you are right; you cannot answer for them. I am only making the point that that is what the fallout was, from what Mr Molefe disclosed and what Werksmans investigations have been, as he said it was probably procedurally flawed but there are two issues here. Do you agree with that?

MS PETERS: Chairperson, I am unable to relate to what Honourable De Freitas is referring to here with regards to
10 the matters in the committee. Usually after the committee, the committee report would be tabled in Parliament, and what will be tabled in Parliament would be the decisions that the committee have made not the debates in the committee. So Chairperson this is a reflection on the debates in the committee and like I indicated I was not probably part of that particular meeting.

ADV VAS SONI SC: Okay Chairperson we will have to stop here.

CHAIRPERSON: Ja, we will have to stop here,
20 arrangements will be made for the Commission to hear the balance of your evidence, and everything will be done to try and make sure that that happens as soon as possible. And if there is a need to have your evidence via video link or zoom in order to expedite that that can be done. So, I will stop here. Thank you very much and thank you to Mr