

EXHIBIT

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Thibedi Ramontja



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IN THE STATE OF CAPTURE COMMISSION OF INQUIRY

AFFIDAVIT

I, the undersigned,

THIBEDI RAMONTJA

do hereby state under oath and declare as follows:

1. I am an adult male former Director-General of the Department of Mineral Resources ("DMR").
2. The facts in this affidavit are within my personal knowledge and to the best of my belief are true and correct unless converse otherwise appears.
3. I have been approached by the evidence leaders in the Commission of Inquiry into State Capture ("the Commission") with regard to two letters, one which I signed and is undated and the other one is dated 6 December 2015 emanating from Mr Matshela Koko the former Group Executive Generation of Eskom.

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4. I have been asked to give an explanation of the circumstances which led to me signing the undated letter attached hereto, marked annexure "TR1".
5. The letters deal with Eskom and Optimum mine, a coal mine.
6. During the period 2015, when I was the Director-General in the Department of Mineral Resources, as a country South Africa was faced with a crisis of supply of electricity. There were intermittent load shedding incidents which created problems for the country.
7. It is common cause that most of the electricity in South Africa is generated from coal fired power stations. Coal is therefore a critical commodity which is essential for the generation of electricity in South Africa.
8. As a government department DMR is very much concerned with the question of power supply in the country and it is also responsible for the regulation of mineral resources in the country, which includes coal.
9. The challenges at Optimum coal mine were brought to the attention of the Department around January 2015 during former Minister Adv Ngoako Ramatlhodi's tenure. The company had planned to close the mine and retrench approximately 1500 employees due to disputes they had with Eskom. The Minerals Regulation Branch of the Department led by a Deputy Director-General engaged all stakeholders in a

transparent manner. Several meetings were held amongst stakeholders to find solutions.

10. At one point I was approached by a Black led consortium to assist them to acquire Optimum mine. I did try to assist them by engaging with management of Optimum. During this period the processes of saving Optimum were left to officials to address and the Minister's involvement was minimum, if at all.
11. When Minister Mosebenzi Zwane became the Minister, the way in which the Department and the Ministry interacted changed and there was direct involvement from the Ministry in respect of Optimum mine issues. I did not have much involvement.
12. As a Department we have always intervened and directly interacted with stakeholders whenever threats of job losses occurred at the mines. Personally, I have been involved with many interventions to save jobs. For example, the Anglo-American Platinum's intention to retrench 14000 workers in January 2013. Optimum was therefore not a unique situation.
13. Government interventions are guided by the law, in this case the Mineral and Petroleum Resources Development Act and other initiatives that may be put in place as and when challenges are experienced.

14. For instance, in addressing the challenges at Optimum, we were also guided by a stakeholder agreement, known as 10-point plan, attached hereto, marked annexure "TR2". In terms of intervention 4 of the agreement, we were required to facilitate the sale of distressed mining assets to interested parties.
15. The Eskom's letter of 6 November 2015 painted a dire situation at Eskom, which required interventions. I viewed the contents of the letter as honest and genuine initiatives in a form of proposals that could address the problems at Eskom and Optimum mine.
16. As an accounting officer one always received numerous documentation in one's in-tray that required assessment of risk and decisions to be made. I assessed the risk associated with the letter and saw nothing unlawful in the letter and I signed it. I did not date the letter, as I had identified issues, I thought I would revisit.
17. The letter was taken from my office and I did not follow it as I was busy with other issues of the Department.
18. I would like to highlight that the letter was never a directive or instruction to Eskom – it could never be. Eskom does not report to the Department of Mineral Resources and there is no way that its management can accept instructions or directives from the DMR, even from the Minister of Mineral Resources.

19. Eskom reports to the Minister of Public Enterprises and can only take directives from the Minister of Public Enterprises to the Chairperson of the Board. Not even the Director- General of the Public Enterprise can give a directive to Eskom.
20. With regard to the Gupta family, who feature in the Commission, I want to state categorically that I am not an acquaintance of theirs. I never held a private meeting with them or interacted through telephone calls with them.
21. I did receive an invite to their wedding at Sun City in 2013 – I did not go as I felt uncomfortable with the invitation.
22. In and around October 2015, I informed Minister Mosebenzi Zwane that I would like to step down from the position of Director-General for health reasons.
23. On or about 6 December 2015, I received the letter from Mr Matshela Koko regarding Optimum Coal Mine Proprietary Limited which supplied coal to the Hendrina Eskom power station.
24. I have explained how I viewed the contents of the letter.
25. I cannot recall how the letter came directly to my office. What I do recall though is that a response to the letter was from the Minister's office. I did not draft the letter myself.

26. The then Minister Mosebenzi Zwane, had in my opinion familiarised himself with the key issues affecting the Department. As far as I was aware, he was fully briefed about the threat to the security of supply of electricity facing the country and the importance of a continued and uninterrupted supply of coal to the Eskom Power Stations.
27. I was satisfied that the other officials in the Department who had been advising the Minister in dealing with the situation were fully appraised of the issues and advised the Minister accordingly.
28. When I considered the content of the draft letter, I did not see anything untoward with it. The letter states that in respect of the Hendrina power station, the Department will prioritise and fast track approvals for the transfer of the Mining Right on an urgent basis, should this be lodged. As I understood Eskom was concerned that Optimum, which was supplying coal to the Hendrina power station, may either be liquidated or sold to a third party.
29. In the event that the mines would be disposed to a third party there would be a need for consent by DMR to transfer the Mining Right to the third party. Accordingly, when the letter stated that the Department would fast track approvals for the transfer should this be lodged, I understood this to mean that when the application was received in due course it would be dealt with in terms of the law.

30. As I understood the application had not yet been lodged and all Eskom was doing was to sensitise the Department about the possible going under of Optimum.
31. Due to the fact that there may be competition issues if the mine would be transferred to a third party, who would in all likelihood be another mining house, therefore I did not see anything untoward in the Department interacting and alluding to the competition commission in the letter to Eskom. The Department had committed itself to saving jobs in the industry. Any interaction with the competition commission would have taken place in a lawful and proper manner and I was therefore satisfied that there was nothing untoward in the letter referring to the competition commission.
32. The letter further addressed itself to the historical liabilities of Optimum which were estimated at R1.7 billion. The Department would be privy to certain of the liabilities. Any company or entity which embarks on mining is supposed to provide financial guarantees to the Department to make provision for finances to rehabilitate the environmental degradation which may be caused by mining.
33. I was therefore satisfied that whichever official had assisted in drawing on the information within the Department, had been satisfied with the information. The letter, in fact states that the amount would still need to be confirmed through a process which will involve the parties concerned.

34. In its letter Eskom requested that it be allowed to play an active role in providing support for the project to proceed. Any engagement between the Department and Eskom would have to be done on a lawful basis following the prescripts of whatever regulations would be applicable.
35. The DMR letter further alluded to the new owners of Optimum who would have to honour the then existing contract up to 2018, and for driving transformation.
36. The DMR letter stated that: *"consideration be made for some pre-payment to be made for up to one (1) year of coal supply, understanding the upfront capital injections to be made to ramp up production to meet coal supply requirements from these mines."*
37. I understood the letter to be referring to a proposal. As far as I understood the position, Eskom is a state-owned enterprise which falls under the legal custody of the Department of Public Enterprises. It has an independent board and whatever decision it took to either provide any upfront pre-payment, would have to be made within the corporate governance prescripts governing Eskom. The DMR has no oversight nor can it dictate to Eskom on the terms on which it wishes to enter into business relationships.

38. The letter further records as follows:

"We firmly believe that every possible angle must be considered and offered to ensure that supply is guaranteed at the contracted price for all of these critical mines, thereby averting any national crisis that we as South African can ill afford."

39. I understood that as a Department we had to play our role in ensuring that coal supply is not interrupted, thus leading to electricity supply interruptions which are very costly to the people of South Africa and its economy.

40. The letter from Eskom suggested that Optimum could be liquidated. Obviously, this would lead to job losses which it was our mandate to try and avert. This motivated me to sign the letter.

41. I do not know what happened with the issue of Optimum subsequent to my departure.

42. Insofar as to any other additional relevant information from the DMR that could provide clarity on certain issues same will be requested from the department. I have also made attempts to contact the former Deputy Director-General to obtain clarity on certain set of facts, but I have not been able to get hold of him.

43. I have decided to provide the Commission with the statement based on the information available and I humbly wish to reserve my right to amend the statement with a supplementary Affidavit in the future as and when such information becomes available.



Hemant
 Deponent

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at SANDTOOR SAPS on this the 04 day of December 2018, 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.

CS 7181211-6
Sham M.A
 Commissioner of Oaths



Annexure “TR1”



**mineral resources**

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

DMR 10

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Group Executive: Generation
Eskom Holdings
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JOHANNESBURG
2000
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Dear Mr Koko

RE: OPTIMUM COAL MINE (PTY) LTD: POWER SUPPLY TO HENDRINA POWER STATION

Receipt of your letter addressed to the Department pertaining to the intervention required from the Department, refers.

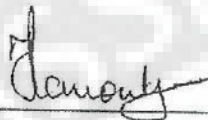
Having regard to the above, we would like to advise as follows: In respect of Hendrina power station, the Department will prioritize and fast track approvals for transfer of the Mining Right on an urgent basis, should this be lodged. We have already requested an urgent meeting with competition commission to go and plead the case and explain the urgency with which it must be treated, as it is indeed a special case, given the consequences for our country.

Financial provision due to historical liabilities at OCH level, is estimated at R1,7 billion. The amount still has to be confirmed through a process which will involve the parties concerned. We would also request for Eskom to play an active role in providing support for the project to proceed. In return for the new owners honouring the current contract up

Eskom: Hendrina

to 2018, and for driving transformation we would like to propose that consideration be made for some pre-payment to be made for up to one (1) year of coal supply, understanding the upfront capital injections to be made to ramp up production to meet coal supply requirements from these mines. We firmly believe that every possible angle must be considered and offered to ensure that supply is guaranteed at the contracted price for all of these critical mines, thereby averting any national crisis that we as South Africa can ill afford.

Kind regards



Dr T Ramontja

Director-General:

Department of Mineral Resources

Date:...../...../2015

Eskom: Hendrina

Annexure “TR2”





STAKEHOLDERS

SIGN
SO-CALLED
'JOBS PACT'

On Monday, 31 August industry stakeholders gathered in Pretoria to sign the Mining Industry Commitment to Save Jobs and Ameliorate the Impact of Job Losses, dubbed by some as a 'jobs pact'.

This is a slight misnomer as the 'pact' recognises fully that not all jobs can be preserved in current economic circumstances and that to do so would require a thriving and sustainable industry. That is what the 'pact' is aimed at achieving.

Minister of Mineral Resources, Adv Ngoako Ramathodi, briefed members of the media outlining the 10 interventions:

- 1 *Delaying the implementation of retrenchments*
- 2 *Enhancing productivity and managing cost pressures*
- 3 *Accelerating concurrent rehabilitation activities to create alternative jobs for mineworkers*
- 4 *Facilitating sales of distressed and other mining assets*
- 5 *Other alternatives to avoid job losses*
- 6 *Support for mineworkers in the event that job losses cannot be avoided*
- 7 *Utilisation of the Multi National Companies' procurement levy to also support employment opportunities for retrenched mineworkers*
- 8 *Streamlining Framework and other Enablers*
- 9 *Investment promotion and market development*
- 10 *Communication and implementation plan*

Some commentators have noted that the declaration calls for a moratorium on retrenchments currently underway or envisaged in the industry. It does not. It does mean that all stakeholders will not unreasonably withhold the

extension of the consultation period as per the Labour Relations Act to allow for the implementation of the interventions to address job losses, and that where section 189A processes are currently being facilitated, that the consulting parties will continue the consultations during the 30 days' notice period after expiry of the 60 day facilitation period or any extension thereof. Notwithstanding the above paragraph, section 52 of the MPRDA shall be equally applicable.

Speaking at the briefing, Chamber Vice President, Andile Sangqu, was positive about the agreement, recognising that when the industry faced a crisis, the various stakeholder leaders came together to find solutions to the problems at hand. "Going forward, I believe that all stakeholders can join hands to find solutions acceptable to all parties."

Commenting on the engagement, Chamber CEO Roger Baxter, Chamber indicated that these had not been easy discussions.

"The fact that we are having discussions around productivity and cost containment agreed in the declaration demonstrates that stakeholders are starting to look at the fundamental issues which have caused the current crisis.

"Pleasingly," he said, tough discussions often lead to more pragmatic results."

"As the minister and other stakeholders have recognised, job losses are not going to stop. But, together with our social partners, we will seek to limit job losses as far as this is possible, and to ameliorate the consequences of job losses.

Significant engagement is still required. The DMR will engage the Department of Finance to further discuss fiscal relief mentioned in the agreement, while also engaging with the South African Reserve Bank on platinum becoming a reserve. Task teams will also be looking into the finer details of these interventions such as how to unlock jobs in mine rehabilitation.

Participants in the agreement are the DMR, NUM, UASA, Solidarity, AMCU, SAMDA and the Chamber of Mines. AMCU did not sign the agreement as they had not received a mandate from all of their members, but they have committed to it.

USEFUL LINKS



[The agreement declaration](#)



[Chamber of Mines media statement, "Chamber of Mines signs leadership declaration with other stakeholders"](#)



[Roger Baxter interview with SABC News, 31 August 2015](#)

ANNEXURE "TR2"

- v Initiate concurrent rehabilitation where possible; and
- v Redeploy mineworkers to rehabilitation projects.

Intervention 4

Facilitate sale of distressed and other mining assets

The sale of distressed and other mining assets, that would otherwise be closed have the potential to save and even create jobs in the hands of alternative operators. This may also avoid idling of resources. Accordingly, the parties undertook to facilitate where possible, the sale of such assets to interested parties in the event of all other interventions failing. Existing and retrenched workers will be given preferential access to employment opportunities in such cases.

Intervention 5

Other alternatives to avoid job losses

A Framework in respect of the alternatives and their application in the mining sector will be developed. Alternatives to be explored including but not limited to:

- v Implementation of the training lay-off scheme;
- v (Possible) Extended leave;
- v Early retirements;
- v Moratorium on the filling of current vacancies;
- v Re-skilling employees;



v Transfers between companies and within industry.

Intervention 6

Support for mineworkers in the event that job losses cannot be avoided

v Retrenchment response teams will be deployed to assist with matters relating to UIF, counselling, placement in alternative forms of employment where possible, and with the necessary exit medical certificates that are required for alternative employment purposes;

Utilising existing mechanisms including social and labour plans (SLPs) as well as the SETAs and NSF for the re-skilling and training of retrenched employees to secure other forms of employment; and

v Assist retrenched workers to access existing support mechanisms to embark on business and entrepreneurial initiatives including through cooperatives and in other economic sectors including in agriculture.

Intervention 7

Utilisation of the Multi National Companies' procurement levy to also support employment opportunities for retrenched mineworkers

The parties identified the need to access the aforementioned socio-economic development fund by promoting the implementation of labour intensive projects that can, among others, employ retrenched mineworkers. The parties have resolved to develop a governance framework to establish and manage the fund.

Intervention 8

ANNEXURE "TR2"

Recognising the importance of the role of the regulatory environment in ensuring compliance with applicable laws and prescripts, the parties resolved to:

v Explore measures to streamline processes relating to section 52 of the MPRDA and the section 189 of the LRA in respect of downscaling in the mining industry. The parties will develop proposals in this regard;

Furthermore, enhance co-ordination in respect of the one environmental system in respect alignment of the relevant water, mining and environmental authorisation processes;

Ensure that functioning Future Forums are established at all mines to manage downscaling in a manner that avoids job losses; ensure that Future Forums as per Section 52 of the MPRDA are in place at all mines to manage downscaling in a manner that limits job losses;

v Continuously update the database to assist in the monitoring of companies that intend to shed jobs, and providing the necessary support to affected employees; and

v Compile a list of possible incentives and fiscal instruments to support mining companies that are in distress.

Intervention 9

Investment promotion and market development

Support initiatives to promote South Africa's mining industry in major international markets;

v Explore how the sector can leverage off the BRICS arrangements such as the possibility of Central Banks holding platinum as a reserve asset;