

**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 Sipiwe 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 I, 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 screenshot of which is attached as **Annexure "P"**) 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