

---

**AFFIDAVIT**

---

I, the undersigned,

**GUGILE ERNEST NKWINTI**

do hereby make oath and state that :

- 1 I am an adult male and the former Minister of the Department of Rural Development and Land Reform (“**the DRDLR**”), in which position I served for the period from August 2009, to February 2018.
  
- 2 The principle objective of this affidavit is to tender evidence for purposes of submission to the Commission of Inquiry into State Capture with regard to activities and events I encountered during my tenure as the Minister of Rural Development and Land Reform.
  
- 3 The facts set out in this affidavit are within my personal knowledge, unless stated otherwise or appears from the context, and are, to the best of my knowledge and belief, both true and correct.

- 4 To the extent that I make submissions of a legal nature in this affidavit, I do so on the basis of advice from my legal representatives.

## **INTRODUCTION AND OVERVIEW**

- 5 When I commenced my duties as Minister of the DRDLR on 1 August 2009, one of my first priorities was to visit all the DRDLR Regional Offices and get a first-hand account of the status of each region. I was also eager to understand the challenges the regions were experiencing, as well as to explore ways to improve service delivery to the communities we served.
- 6 During my first year of office, I also undertook a number of visits to various provinces to see the various projects being undertaken by the DRDLR and to interact with the beneficiaries of land grants to determine how successful they had been and what could be done to improve the process of land reform.
- 7 During these visits to the DRDLR Regional Offices, I started receiving a number of complaints and allegations from community members and beneficiaries, regarding high rates of fraud, corruption and maladministration within the DRDLR. In particular, the administration of grants awarded to beneficiaries under the Land Reform Programme of the DRDLR was identified as being susceptible to abuse, fraud and corruption. Many community members complained to me that DRDLR officials, located in the various Regional Offices would simply not do their work regarding the processing of

the DRDLR grant applications, unless '*favours*' were paid to them. Community members were also unhappy with the time taken to process their applications and complained that the only way to speed up the application process was to pay bribes to DRDLR officials. I also received reports that when a farm was acquired for beneficiaries together with its livestock, DRDLR officials would take a portion, if not all, of the livestock for themselves.

### **REQUEST FOR ASSISTANCE FROM THE SPECIAL INVESTIGATING UNIT**

8 I became increasingly concerned about the number of complaints that were being reported to me, as well as the unhappiness of the communities around the country, with the services they were receiving from my Department. Therefore, in July 2010, I took the decision to approach the Special Investigating Unit ("**SIU**") for assistance in addressing the allegations of fraud, corruption and maladministration, nationally within the DRDLR.

9 Following this request for assistance, the SIU reviewed a number of reports and other information made available to them by myself and other sources. The SIU conducted a preliminary assessment of the allegations and found that there was indeed *prima facie* evidence of serious maladministration and corruption within the DRDLR, which warranted a full scale investigation, which I, in turn, supported.

10 To this end, the Head of the SIU at the time, Mr Willie Hofmeyr, with the assistance of the DRDLR, prepared a motivation for a Proclamation

authorising the SIU to conduct a comprehensive investigation into the DRDLR Land Reform Programme. Once prepared, the SIU submitted the motivation for a proclamation to the Department of Justice and then, to the then President of the Republic of South Africa, Mr Jacob Zuma (“**the former President**”) for authorisation.

- 11 The above process finally culminated in the publication of Proclamation R.8 of 2011 in the Government Gazette on 18 February 2011, which officially authorised the SIU investigation. The SIU commenced its investigations on 1 March 2011 and identified 32 Land Reform projects, across a number of different regions, for a full-scale investigation.
- 12 The SIU’s mandate was to assist the DRDLR in identifying, investigating and redressing improprieties such as fraud, corruption and maladministration in the administration of land grants awarded under the Land Reform Programme of the DRDLR. This included the following:
  - 12.1 A complete review the DRDLR processes followed in the application and awarding of land reform grants in order to determine whether the said processes complied with the applicable legislative framework, relevant policies and prescripts;
  - 12.2 A full verification of beneficiaries and the evaluation of such beneficiaries against the relevant land reform grant criteria;
  - 12.3 A review of expenditure incurred by the DRDLR in the application and award process against the requisite financial prescripts and internal

policies;

- 12.4 Identifying procurement related irregularities in relation to the administration of land reform grants;
  - 12.5 Assessing delivery in terms of contracts concluded;
  - 12.6 Identifying corrupt practices and instances of serious maladministration;
  - 12.7 Identifying systemic weaknesses;
  - 12.8 Recovering any losses identified; and
  - 12.9 Facilitating the institution of criminal and/or civil and/or disciplinary action, where appropriate.
- 
- 13 The SIU findings of the investigations conducted into the 32 land reform projects revealed numerous improprieties, financial irregularities and criminal conduct in almost all 32 of the projects under investigation. The DRDLR then worked closely with the SIU to ensure that remedial action was taken against those it had been found were involved in misconduct.
  
  - 14 As a result of the cooperation between the DRDLR, the SIU and key law enforcement agencies, including the South African Police Services ("**SAPS**"), the National Prosecuting Authority ("**NPA**") and the Asset Forfeiture Unit

(“AFU”), the SIU and DRDLR began to make serious inroads in tackling the fraud, corruption and maladministration, which had been discovered within the DRDLR, primarily through the investigations undertaken by the SIU undertaken in terms of the above proclamation:

- 14.1 Criminal prosecutions for fraud and corruption amounting to R166 million were instituted against a number of DRDLR officials and external parties following the referral of 18 cases to the SAPS and the NPA by the SIU;
- 14.2 Losses suffered by the DRDLR as a result of fraud and corruption were recovered. In excess of R80 million in assets, including farms were seized by the AFU as proceeds of crime. All in all, a total of 32 farms were returned to the DRDLR, as a result of fraud and corruption prosecutions;
- 14.3 Savings were made through the prevention of any further payments being made and/or monies being expended on land reform projects where irregularities had been identified. In one matter alone in the Western Cape, the saving amounted to R27 million due to the SIU timeously identifying irregularities and recommending that no further funds be paid out;
- 14.4 Disciplinary action was instituted against a number of DRDLR officials. This led to dismissals and various other sanctions; and

- 14.5 The control systems in identifying beneficiaries and granting land to them were critically analysed and improved in order to further reduce fraud corruption and manipulation of the system.
- 15 With the marked success of this initial investigation, the SIU was later mandated to extend its investigation into other areas of concern within the DRDLR through the publication of further proclamations authorised by the President. Such proclamations included R53 of 2012, R7 of 2014, R599 of 2015, R24 of 2017 and R32 of 2017. These additional proclamations effectively widened the SIU's scope and terms of reference to include the investigation of irregularities pertaining to the Deeds Office and the Land Redistribution programme of the DRDLR.
- 16 These further investigations also yielded significant results and began having a positive impact on the level of fraud and corruption within the DRDLR. This, I believe, was due to the fact that the SIU and the DRDLR had developed an excellent working relationship in rooting out and combatting fraud and corruption within the DRDLR. It also led to closer cooperation between the DRDLR and the Auditor General of South Africa ("AGSA") and culminated in improved audit outcomes.
- 17 Regrettably, after the transfer of Willie Hofmeyr from the SIU to the AFU and the appointment of Advocate Vas Soni ("**Advocate Soni**") as Head of the SIU in September 2013, this all changed. Within a short period of Advocate Soni's appointment, I, inexplicably, stopped receiving reports on the progress of the

investigations which had been submitted by the DRDLR to the SIU for investigation. Instead, I was informed by Advocate Soni that he was submitting all SIU reports directly to the former President, notwithstanding the fact that it was me, in my capacity as Minister of the DRDLR, that had requested the SIU to carry out the investigations.

18 I attempted to engage Advocate Soni on the issue, but he remained resolute that all reporting on the DRDLR matters would only be to the former President. I can only assume that this instruction to leave me out of the loop came from the former President.

19 This was of concern to me as I was aware that allegations had been made that certain farms had been acquired, possibly at inflated prices, in order to fund the former President's election campaign under a project termed, "*Project Mangaung*" dealt with by me hereinbelow. I was also aware of serious averments of fraud and corruption against the Director General of the Department, Mr Petrus Mduduzi Shabane ("**Shabane**"), who seemed to have direct access to the former President, also dealt with by me in further detail below.

20 By this stage, a number of the investigations conducted by the SIU had been referred to the Hawks for full-blown criminal investigation. While the HAWKS were conducting their investigations, Shabane and I would receive regularly briefings and feedback on the status of the investigations. However, at some point, I was approached by a senior member of the HAWKS and requested

not bring Shabane to the future briefings, as he was implicated in a number of the matters under their investigation. This was of great concern to me as Shabane, in his capacity as DG of the DRDLR, was the Accounting Officer of the DRDLR. Accordingly, from this point on, the HAWKS provided feedback to me and my advisors and not to Shabane.

21 During my limited interactions with Advocate Soni, he suggested that the DRDLR adopt a focused approach to large investigations into the land reform and restitution matters. In order to achieve this objective, I agreed that the DRDLR would commission internal scoping reports, to be conducted by the departmental Forensic Investigation Division ("**FID**") into any serious allegations of impropriety. Thereafter, depending on the seriousness of the findings and outcomes of these scoping exercises, matters would be referred to the SIU for further investigation. In fact, even prior to my meeting with Advocate Soni, I had commissioned a number of internal reports into various irregularities which had come to the fore and I agreed to share these with Advocate Soni.

22 A number of scoping reports were subsequently submitted to the SIU, focussing specifically on serious maladministration and improprieties. However, to the best of my knowledge, very few of these referrals resulted in full-scale SIU investigations. As I indicated in the preceding paragraphs, the SIU no longer shared information with me and as a result, I was unable to ascertain the scope and progress of the various investigations.

- 23 A further factor contributing to the reversal of the efforts initiated by me to stamp out fraud and corruption in the DRDLR was the removal of both Willie Hofmeyr (then Head of the AFU) and General Anwar Dramat (Head of the HAWKS) from their posts.
- 24 There was also a marked reduction in the matters referred to the NPA which were prosecuted under the leadership of Advocate Shaun Abrahams (“Abrahams”) (apart from the 29 irregularly awarded land grants which had been referred to the NPA by the AFU under the leadership of Hofmeyr.) As a result of an agreement which was brokered with the AFU, these 29 farms were returned to the DRDLR for proper allocation to beneficiaries, in accordance with applicable policy prescripts. It was subsequently decided that instead of transferring these farms to the identified beneficiaries, the farms should be retained by the DRDLR and leased to the beneficiaries to combat the growing trend by beneficiaries to re-sell the farms acquired for their benefit back to the farmers, thereby defeating the whole purpose of the redistribution of the acquired land.

## **THE MANGAUNG PROJECT**

- 25 During the month of **XXX of 20XX**, whilst on official business near Polokwane in the Limpopo province, I was approached by Mr Vusi Mahlangu (“**Mahlangu**”), a Deputy Director-General in the DRDLR, who advised me that he needed to speak to me about a very urgent matter. I asked Mahlangu to meet me at the Shell garage and service station, off the N1 highway, a short distance outside Polokwane, as I was in the company of a number of other

officials at the time. Mahlangu agreed and we met at the above location later the same day.

- 26 When Mahlangu arrived at the Shell garage, he was extremely distressed and anxious. He proceeded to hand me a set documents and explained that he had been instructed by the Director-General, Shabane, Mr Muzi Twala ("**Twala**") and Sibusiso Mzobe ("**Mzobe**"), a cousin of former President Zuma, to purchase and acquire three farms on behalf of the DRDLR, through the Land Reform Programme as part of the "*Mangaung Project*." I was informed by Mahlangu that the Mangaung Project was the name given to a scheme aimed at raising funds in order to secure the former President's position as President of the African National Congress ("**ANC**") for a second term at the ANC electoral conference to be held in December 2012.
- 27 Mahlangu told me that the farms were purchased at inflated prices, substantially higher than the actual value of the farms. He explained that the "*surplus*" funds were then to be siphoned off to fund President Zuma's election campaign through various fictitious transactions.
- 28 Mahlangu was clearly nervous as he was aware of the SIU investigations and wanted it made known to me that he had been forced to conclude the transactions as he was fearful of being prosecuted in the event that the Mangaung project was exposed.

29 This was obviously of great concern to me and I clearly had a duty to act on the information that Mahlangu had shared with me. It was of further concern that:

29.1 Mzobe and Twala, who were both external parties that had nothing to do with DRDLR, could instruct Mahlangu to purchase these farms; external parties should have had no say in or influence over policy implementation or expenditure by the DRDLR; and

29.2 Shabane, as the Accounting Officer of the DRDLR who was ultimately responsible for policy implementation and expenditure by the DRDLR, must have known about the purchase of these farms, and possibly the Mangaung project.

30 On a brief perusal of the documentation handed to me, I noticed that the three farms which Mahlangu claimed he had signed-off, in his capacity as Deputy Director-General on and purchased for the Mangaung Project were the following:

30.1 Uitkyk – comprising eleven (11) farms;

30.2 Mike's Chicken – comprising ... farms ; and

30.3 Harmonie – comprising ....farms.

- 31 Although the DRDLR has the power to acquire land in terms of section 10(1)(a) of the Provision of Land and Assistance Act, 126 of 1993 and the Proactive Land Acquisition Strategy (“**PLAS**”) Version 2 of July 2007, it was readily apparent from what had been told to me that the acquisition of the aforementioned farms had not been done within the confines of the above legislation and prescripts, but rather for improper ulterior purposes, to the prejudice of the communities the Land Reform Programme was supposed to benefit.
- 32 The DRDLR Land Reform Programme, of which I was, and remain, a passionate supporter, was specifically formulated to address many of the forced removals and injustices suffered by black South Africans, both under Colonialism and the Apartheid Government. The fact that funds had been misappropriated by senior DRDLR officials, in collusion with external parties, to the detriment of this programme and its intended beneficiaries, was totally unacceptable to me. It was also of enormous concern to me that the then President may have abused his power and utilised the Land Reform Programme to further his own ends.
- 33 Accordingly, upon my return to Pretoria, I gave an instruction to the FID to immediately conduct a scoping investigation to assess the veracity of the allegations related to the acquisition of the above three farms that Mahlangu had purchased.

34 In view of the seriousness of the allegations and the fact that they involved senior officials in the Department, Shabane, with the assistance of the FID, procured the services of an external forensic investigation service provider, Deloitte, to assist with the above investigation. Their investigation revealed significant irregularities, which I will briefly highlight, as follows, in respect of each farm.

**The Uitkyk Project:**

35 The investigation revealed that with regard to the Uitkyk Project there was/were:

35.1 a lack of clear policy and weaknesses in the pre-acquisition process followed by the DRDLR in acquiring the Uitkyk farms;

35.2 numerous procedural irregularities in the selection, evaluation and approval processes;

35.3 irregularities in the beneficiary selection and beneficiary appointment processes, which ultimately led to the farm having no appointed beneficiaries;

35.4 no lease agreement and caretaker agreements in place, as was required;

- 35.5 conflicts of interests related to the officials involved in the approval process; and
  - 35.6 a possibly corrupt relationship between the former owner of the farm and a senior DRDLR official involved in the selection and approval process.
- 36 Adverse findings were made against Shabane, in his capacity as Director-General and Accounting Officer, and Mahlango regarding the numerous procedural irregularities identified. Accordingly, Deloitte recommended that disciplinary action be taken against Shabane and Mahlango and other DRDLR officials involved in the selection, evaluation and approval processes of the Uitkyk project. In addition, it was recommended that the SAPS conduct a criminal investigation into the possible corrupt relationship identified between the former owner of the farm and a senior DRDLR official.

### **The Mike's Chicken Project**

- 37 The investigation revealed with regard to the Mike's Chicken Project that there was/were, similarly:
- 37.1 a lack of clear policy and weaknesses in the pre-acquisition process followed by the DRDLR in acquiring the Mike's Chicken Farms;
  - 37.2 numerous procedural irregularities in the selection, evaluation and approval processes of the acquisition of the farms;

37.3 clear indications of irregular expenditure and lack of process which posed significant risk to the DRDLR as:

37.3.1. the deed of sale was entered into before the approval process was finalised;

37.3.2. the assets on the farm were not correctly accounted for, nor correctly transferred to the DRDLR ; and

37.3.3. no lease and caretaker agreements were concluded; and

37.4 a complete lack of a transparent and clear beneficiary selection and appointment process.

38 Again, adverse findings were made against Shabane, in his capacity as Accounting Officer, and Mahlangu, regarding the numerous procedural irregularities identified.

39 As a result of these findings, Deloitte recommended that disciplinary action be taken against Shabane and Mahlangu and other DRDLR officials involved in the selection, evaluation and approval processes of the Uitkyk project.

### **The Harmonie Project**

40 The investigation identified with regard to the Mike's Chicken Project that there was/were:

- 40.1 a lack of clear policy and weaknesses in the pre-acquisition process followed by the DRDLR in acquiring the Harmonie farms;
- 40.2 no substantiated motivation by DRDLR to acquire the farms on an urgent basis;
- 40.3 no justification for the acquisition of the farms as the Harmonie farms did not meet the needs of the region (Free State) and;
- 40.4 clear indications of irregular expenditure, posing significant risk to the DRDLR as:
  - 40.4.1. the deed of sale was entered into before the approval process was finalised;
  - 40.4.2. the assets on the farm were not correctly accounted for, nor correctly transferred to the DRDLR; and
  - 40.4.3. critical agreements, such as lease agreements and caretaker agreements, were not concluded;
- 40.5 a complete lack of a transparent and clear beneficiary selection and beneficiary appointment process; and

40.6 a number of suspicious transactions, pointing to possible criminal conduct and misappropriation of the funds from the Harmonie Project.

41 Again, certain adverse findings were made against Shabane, in his capacity as Accounting Officer, and Mahlangu regarding the numerous procedural irregularities identified.

42 As a result of these findings, Deloitte recommended that further investigation be undertaken by the SAPS and that disciplinary action be taken against Shabane and Mahlangu and other DRDLR officials involved in the selection, evaluation and approval processes of the Harmonie Project.

43 A copy of the report prepared by Deloitte in respect of these farms is annexed hereto marked "**GEN 1**". To the best of my knowledge, where criminal investigations were recommended by Deloitte in the above-mentioned matters, such matters were reported to the SAPS. I am, however, not aware whether any further action was taken by the SAPS or the prosecuting authorities in respect of these investigations.

## **THE EXPANSION OF THE INVESTIGATION**

44 Following the findings of the above investigation and the significant irregularities identified, the scope of the above investigation was extended to include a further 12 DRDLR projects. Many of these projects appeared to raise

the same concerns and risks identified during the Uitkyk, Mike's Chicken and Harmonie investigations and were thus, prioritised for investigation.

45 The further 12 investigations were conducted by the internal Forensic Investigation Department (“**FID**”) and external forensic investigators. A detailed list of all projects investigated as part of the extended scope, including the initial three matters (Uitkyk, Mike's Chicken and Harmonie), is attached hereto as **Annexure “GEN 2.”**

46 The above investigations yielded numerous additional irregularities and subsequently led to further in-depth investigations being conducted. Furthermore, more allegations began to emerge against Shabane and he was further implicated in irregularities, in his capacity as the Accounting Officer, in other projects being investigated.

47 The additional findings which emerged from these investigations were briefly as follows:

47.1 In a project known as the Endlovini matter, Mahlangu was found to have signed off on documentation in which he purported to be an authorised representative of Land Claims Commission. However, at the time, Mahlangu was heading the Land Redistribution Division and his actions were thus highly irregular, a clear misrepresentation and outside the purview of his authority. This matter led to civil litigation being instituted and to the best of my knowledge, the matter is still before the courts.

- 47.2 In the Bekendvlei matter, Mahlangu was implicated in the irregular acquisition and approval process of the Project. At the time, the DRDLR Provincial Office did not have sufficient budget to acquire the Bekendvlei farm and the National office then intervened, through Mahlangu. Mahlangu was also found to have abused his authority over various officials by exerting pressure on them to ensure the acquisition and beneficiary allocation process was approved.
- 48 I will deal with the Bekendvlei project, and how I, myself, was implicated, as well as Mahlangu's involvement therein, in further detail below.
- 49 As a result of the significant findings which emerged from the above investigations, disciplinary action was instituted against Mahlangu and a number of other DRDLR officials. However, I later learned that the charges presented at Mahlangu's disciplinary hearing only related to the Bekendvlei matter and, inexplicably, did not deal with the findings made against him by Deloitte in respect of the farms comprising the Mangaung Project.
- 50 When the Disciplinary proceedings against Mahlangu were initiated, I personally advised the Deputy President at the time, Mr Cyril Ramaphosa ("**the former Deputy President**") of these developments. I also advised him of the allegations Mahlangu had made, particularly those relating to the "*Mangaung Project*," described in the preceding paragraphs. The Deputy

President advised me to proceed with the disciplinary action against Mahlangu.

51 I later advised the ANC General Secretary at the time, Mr Gwede Mantashe (“**Mantashe**”), in writing of these developments and the Mangaung project by letter dated ..... annexed marked **Annexure “GEN 3.”** I expressly made myself available to discuss the matter further or provide clarity in respect of any queries that may have emerged from my correspondence.

52 Mantashe acknowledged receipt of my letter and requested that I provide him with five additional copies in order for him to brief the ANC top six members of the National Executive Committee (“**NEC**”). Apart from this response, I never heard anything further or received any further correspondence from the then Deputy President, Mantashe, or any other member of the top six with regard to the issues raised by me with regard to the Mangaung project.

## **THE BEKENDVLEI FARM INVESTIGATION**

53

53.1 The DRDLR has the power to acquire land in terms of section 10(1)(a) of the **Provision of Land and Assistance Act**, No 126 of 1993 and the **Proactive Land Acquisition Strategy** (“PLAS”) Version 2 of July 2007.

53.2 However, after irregularities relating to the acquisition and leasing of various farms were brought under my attention, during or about 2014 I

instructed the DRDLR's Forensic Investigation Directorate ("FID") to perform scoping investigations into the acquisition of farms, including the Bekendvlei Farm, which was bought as a going concern in terms of DRDLR's PLAS Version 2 on the acquisition of farm land to be allocated to beneficiaries.

53.3 After its scoping investigation in respect of the Bekendvlei Farm had been completed, the FID made various findings in respect of, *inter alia*, the acquisition of the Bekendvlei Farm, the recapitalisation funding in respect of the farm, the sale of the state assets, etc.

53.4 The FID found that the Bekendvlei project was initiated by the DRDLR's Head Office – not its Provincial Office, which appeared to be irregular. The FID also found that the beneficiaries, Messrs E V Present ("**Present**") and M Boshomane ("**Boshomane**"), as well as the farm, had been identified by the Department's National Office and that the beneficiaries had not been screened. It appeared further from the report that Mahlangu (the then Deputy Director-General of the DRDLR) informed Ms Sumaya Cachalia (**Director** for the Limpopo Provincial Office) ("**Cachalia**") that although the Bekendvlei project was part of a project initiated from the national office, she had to continue with the project. A copy of this scoping report is attached hereto as **Annexure "GEN 4"** (see especially paragraph 4.3.1.1).

53.5 Although the FID made no finding in the scoping report as to whether I had been involved in irregularities, I later came to learn that Boshomane, one of the beneficiaries who was interviewed by the FID, had stated to

the investigator that Present (one of the beneficiaries), had requested an amount of R2 million to be made to me for my alleged facilitation in respect of the project. This was apparently said at a stage when negotiations were still being conducted with the previous owner of the farm.

- 53.6 I deny that such a bribe was ever requested by me or that any bribe was ever paid to me. I was, moreover, cleared of any wrongdoing by the final Deloitte Forensic Investigation Report dealt with below.

#### The Draft Deloitte Forensic Investigation Report

54

- 54.1 As a result of the findings and recommendation by the FID in the aforementioned scoping report, I issued an instruction to Shabane that an external forensic investigator be appointed to conduct a formal forensic investigation into the acquisition and the management of the Bekendvlei Farm. I attach my letter of instruction hereto marked Annexure "GEN1.1"

- 54.2 A procurement process followed to appoint an external investigation service provider, pursuant to which only two potential service providers emerged, i.e. Nexus Forensic Services ("**Nexus**") and Deloitte. It was brought to my attention that in the appointment process, correspondence was received from the South African Revenue Service ("**SARS**") that led

to the elimination of Nexus from the tender process. On that basis, Deloitte (with principal investigators Gregory Rammego and Burt Botha) was appointed on 15 December 2015, nine months after my request to Shabane, to conduct the investigation.

54.3 I later discovered, after engagement with Mr Ivan Pillay (“**Pillay**”) from SARS, that the documentation relied upon to eliminate Nexus was false and did not originate from SARS. To date, I have never received a satisfactory explanation as the true origins of the falsified documentation that had led to Nexus being eliminated from the procurement process.

#### Mahlangu’s involvement in respect of the Bekendvlei Farm

55

55.1 On 13 May 2016 Mr Gregory Rammego (Deloitte’s Director: Risk Advisory) (“Rammego”) provided a draft forensic investigation report on the acquisition and management of the farm concerned to the Department. A copy of Deloitte’s draft report is attached hereto as Annexure “**GEN 5.**” Deloitte’s draft report contained findings against me and various officials of the DRDLR, including the former Director-General Shabane, and Mahlangu. These findings were made against me in the draft report without making any attempt to obtain comments from

me. This notwithstanding that I believe that Mahlangu had been requested to consult with Deloitte, but had refused.

- 55.2 The findings made against me in the Deloitte draft report were based on the fact that I had referred Present and Boshomane to Mahlangu to assist them in acquiring the farm, who had then requested Cachalia and Mr A van der Hoogen (Director: Land Acquisition & Warehousing), by way of e-mail of 10 March 2011, to prioritize the Bekendvlei project.
- 55.3 On this basis, the draft report included a finding that I was “*guilty of abusing (my) position as Minister to influence the acquisition of Bekendvlei for the purpose of allocating it to Mr Boshomane and Mr Present*”. This notwithstanding that I had not referred Present and Boshomane to Mahlungu to assist them in acquiring the farm and had never requested Mr Mahlangu to prioritize the Bekendvlei project. No supporting evidence for these two findings against me was included in the draft report.
- 55.4 In view of Deloitte’s findings against me, Rameggo recommended that I be charged with “*possible corruption in terms of section 7 of the Prevention and Combatting of Corrupt Activities Act, 12 of 2004 (as amended)*”.
- 55.5 I, however, only came to learn about these findings against me when the then Deputy Director-General: Corporate Support Services of the DRDLR, Mr E Southgate (“**Southgate**”), informed me that he discovered

a copy of the Deloitte's draft report in a postbag in his office during September 2016.

55.6 Southgate, during the same month, brought the Deloitte's draft report to the attention of Mr D Lupungela (the then Chief Director Security Management Services of the DRDLR) and Ms C Bartlett (my Special Advisor). The draft report was hereafter, submitted to a senior counsel for an analysis and an opinion which found that there had been no evidence against me in the draft report on which to make the findings against me.

Deloitte's letter dated 8 October 2016 to me

56

56.1 On 8 October 2016 Rammego requested Southgate to arrange a meeting with me in order to obtain my comments on the adverse findings that had been made against me in Deloitte's draft report before a final report was issued by them. In Rameggo's letter to Southgate he stated :

*"Deloitte has not to date found any prima facie evidence that implicates the Minister in any irregularities. However, as the draft report contained possible adverse comments made against the Minister by individual we interviewed, and that could place the Minister in a bad light if not addressed, we request an opportunity to raise these adverse comments with the Minister before a final report is issued. This will enable us to clarify any ambiguous comments currently in the draft report, and remove these, if required, before our final report is issued."*

A copy of Rammego's letter is attached hereto and marked as **Annexure "GEN 6"**.

56.2 This letter was brought to my attention on 11 October 2016.

#### Meeting with Deloitte

57

57.1 On 24 October 2016 I attended a meeting with Deloitte in order to discuss the draft report and the adverse findings against me. The meeting was held at my office.

57.2 On 2 November 2016 I responded in writing to the issues raised by Deloitte in its letter of 8 October 2016. A copy of my letter dated 2 November 2016 to Deloitte is attached hereto and marked as Annexure **"GEN 7."**

#### Deloitte's Final Forensic Report

58

58.1 Deloitte's final forensic investigation report became available on 8 November 2016. Rammego served the final report on the Director-General in terms of a covering letter dated 8 November 2016. A copy of

Deloitte's final forensic investigation report is attached hereto and marked as Annexure "GEN 8".

58.2 In terms of the outcome of Deloitte's final report no adverse findings were made against me.

## **THE DISMISSAL OF THE DEPUTY DIRECTOR GENERAL, MAHLANGU**

59

59.1 At the conclusion of the investigation by Deloitte, during the beginning of 2016 into the flagged projects referred to above, an internal disciplinary process was initiated by the DRDLR against Mahlangu.

59.2 The DRDLR served a charge sheet on Mahlangu during or about May 2016, which included eight (8) charges of misconduct, all relating to the Bekendvlei project. The reasons as to why his alleged misconduct, which had been uncovered by Deloitte in their investigations of the Uitkyk, Mike's Chicken and Harmonie projects did not form part of the internal disciplinary charges against Mahlangu are not known to me. However, the exclusion of his misconduct relating to the farms he had told me he had been instructed to acquire for the Mangaung Project to fund the former President's election campaign, is, to me, suspicious and warrants some explanation.

59.3 The disciplinary hearing against Mahlangu commenced on 16 May 2016 before Advocate M Naidoo (a practising advocate and member of the Pretoria Bar) who presided over the disciplinary hearing. On 13 June

2016, Mahlangu was found guilty on six (6) of the eight (8) charges of misconduct and was dismissed from his employment by the DRDLR. A copy of the ruling on the merits of the charges against Mahlangu dated 13 June 2016 is attached hereto and marked as **Annexure “GEN 9.”**

59.4 After Mahlangu’s dismissal from the DRDLR, I was informed that he had been appointed by the Public Protector, Advocate Mkhwebane, as the Chief Executive Officer of her office. How a person who has been found to have been involved in corrupt activity could be employed as the CEO of the office of the Public Protector, which is supposed to be the public guardian against maladministration and corruption, is beside me.

59.5 What was more disturbing to me, however, is that Mahlangu, against whom my Department had initiated proceedings, served in this position when the Public Protector made adverse findings against me dealt with below.

The Sunday Times Article and my request of 12 February 2017 to the Speaker of Parliament to refer me to the Public Protector to investigate me

60

60.1 Notwithstanding that no adverse findings against me had been made in Deloitte’s final report, the contents of the Deloitte draft report of 13 May 2016 was leaked by a person unknown to me to the Sunday Times, which article is attached hereto marked Annexure **“GEN 10”**.

- 60.2 On or about 12 February 2017 I wrote a letter to the Speaker of the National Assembly, Ms B Mbete, requesting her to refer the allegations in the Sunday Times to the Public Protector for the purpose of an investigation. A copy of my letter is attached hereto marked Annexure **“GEN 11”**.
- 60.3 A few days after the Speaker received my aforementioned letter, she called me to her office and requested me to forward the letter and documents to the Public Protector myself. She informed me that she couldn't refer the matter to the Public Protector as the Public Protector reports to her.
- 60.4 Accordingly, on 16 February 2017, I submitted a similar letter dated 12 February 2017 to the Public Protector. A copy of this letter is attached hereto and marked as Annexure **“GEN 12.”**
- 60.5 I received a letter from the Public Protector on 9 June 2017 in which I was notified that the office of the Public Protector had combined my complaint with that of the Democratic Alliance (“DA”). The Public Protector stated that she would focus on my alleged violation of paragraph 2.3(d) of the EEC. A copy of this letter is in the possession of the Public Protector (see paragraph 4.3.2.1 of the final Report). A copy of the Public Protector's response is attached marked Annexure **“GEN 13”**.
- 60.6 I responded by requesting the Public Protector to forward me the DA's complaint in order for me to ascertain its similarity with my complaint

before I could concede to the consolidation of the two complaints. I attach hereto marked as Annexure “**GEN 14**” my response to the Public Protector.

### The Special Investigating Unit

61 The Special Investigating Unit, under the leadership of Advocate Mothibi, submitted a motivation to the former President, Mr Jacob Zuma, for a proclamation to be issued in order to investigate irregularities relating to various farming projects (including the Bekendvlei project) which were acquired under the auspices of the DRDLR. I also forwarded a letter to the former President supporting the investigation by the SIU.

## **THE INVESTIGATION BY THE PUBLIC PROTECTOR**

The Public Protector’s investigation in respect of the Bekendvlei farm as provided for in the provisions of the PPA and the correspondence exchanged between me and the office of the Public Protector

62

62.1 On 17 May 2018 I informed the Speaker that since the Public Protector’s acknowledgement of receipt of my referral of the complaint to her, I had not received any response from the Public Protector. I attach a copy of

my letter to the Speaker hereto as Annexure “**GEN 15**” and a copy of proof of receipt by the Speaker of my letter as Annexure “**GEN 16.**”

62.2 On 2 April 2017, some two years and two months after my initial request for an investigation to be conducted in respect of the Bekendvlei Farm on 16 February 2017 by the Public Protector, she informed me of the outcome of her investigation, and of her possible conclusions in her section 7(9) notice dated 1 April 2017. A copy of the Public Protector’s section 7(9) notice, which I received on 2 April 2017, is attached hereto marked Annexure “**GEN 17**”.

62.3 I deal with this notice and correspondence between myself and the Office of the Public Protector hereunder.

The Public Protector’s notice in terms of section 7(9)(a) of the Act

63

63.1 The Public Protector, in her aforementioned section 7(9)(a) notice, informed me that she was busy concluding the investigation against me about my alleged violation of the provisions of the EEC in my former capacity as the Minister of the DRDLR. She stated in paragraphs 13.5.1 to 15.1.2 of her section 7(9) notice that she intended to make certain possible conclusions against me after having considered the evidence by various informants or witnesses.

- 63.2 In paragraph 16 of the same notice she stated that she was affording an opportunity to me to respond to her findings that I have abused my position in respect of the acquisition of the Bekendvlei Farm and had violated paragraphs 2.3(c) and paragraph 2.3(e) of the EEC, *“at (my) earliest convenience preferably not later than Wednesday 20 April 2019 in order to enable her to conclude the investigation and issue the report on the outcome of the investigation as soon as possible”*.
- 63.3 In paragraph 19 of her aforementioned notice the Public Protector invited me to engage with her on the Bekendvlei matter. However, no time limit was set by the Public Protector in this regard.

#### My first request for an extension

64

- 64.1 After considering the date on which I had to respond to the Public Protector’s notice, I realised that it would be impossible for me, due to my official obligations, lack of sufficient consultation with my legal team and the limited time for sourcing and collecting of historical documentation relating to the Bekendvlei project, to respond properly to the said notice by 20 April 2019.
- 64.2 Accordingly, on 16 April 2019, I forwarded a letter to the Public Protector, in which letter I requested an extension of the time within which I had to respond. I also provided the reasons for my request for the requested

extension. A copy of my request for an extension is attached hereto and marked as Annexure “**GEN 18**”.

My second request for an extension

65

- 65.1 The first opportunity which I had amidst my official obligations to consult with my attorney, Mr M Myambo of De Swardt Myambo of Pretoria (“Myambo”) and counsel was on 18 April 2019.
- 65.2 After our consultation on 18 April 2019, senior counsel informed Ms Bartlett of my office that not all the historical documentation could be collected timeously and thus a further extension until 10 May 2019 had to be requested from the Public Protector.
- 65.3 The provisional draft was submitted by senior counsel to Myambo during a consultation with the latter on 23 April 2019.
- 65.4 On 24 April 2019 I drafted and signed a second request for an extension of the time period within which I had to respond to the Public Protector’s aforementioned notice. A copy of my letter in which I explained that the extension was necessary due to my official diary pressures as a result of various public holidays, further consultations and the collection of further documents for the attention of my legal team, is attached hereto and marked as Annexure “**GEN 19**”.

- 65.5 On 25 April 2019 I attended a consultation with Myambo and senior counsel for the purpose of the further drafting of my response. Senior counsel indicated that he required further documents which were not in my possession and which were to be provided to him before he could finalise my response.
- 65.6 This second request for an extension to respond to the Public Protector's section 7(9)(a) notice was delivered by Mr Dumisani Simphiwe Barrington Lupungela (the Chief Director: Security Management Services) ("**Lupungela**"), operating in the office of the Director-General for the Department of Water and Sanitation on 26 April 2019 to Mr Godwin Kock of the Office of the Public Protector ("**Kock**"). A copy of a document in which Kock acknowledged receipt of my second request for an extension is attached hereto and marked as Annexure "**GEN 20**".
- 65.7 Lupungela received a telephone call from Kock at approximately 12h45 on 26 April 2019. The purpose of the discussion, so I was informed, was to discuss my earlier request for an extension. Lupungela informed Kock that he intended to deliver a second request for an extension to him and met Kock (Senior Investigator: EMEA) at approximately 13h30 on the same day and served the second request on Kock.
- 65.8 Kock, however, informed Lupungela that the Public Protector has refused my earlier request for an extension, but that he had unfortunately failed to forward her letter refusing such extension to me. When Lupungela mentioned my second request for an extension Kock

responded by saying that the Public Protector wanted to finalise her conclusions and her report on the Bekendvlei Farm on 30 April 2019.

65.9 Lupungela asked Kock whether he had anything in writing which would reflect the Public Protector's attitude. He responded by saying that he would fetch the Public Protector's letter and left the room. He returned to Lupungela without the letter and informed him that the Public Protector would only return to her office later that afternoon when the letter would be delivered to me. Kock informed Lupungela that he doubted that the Public Protector would agree to any of the two requests for an extension to respond to her aforementioned notice. Lupungela responded to Kock by saying that the Public Protector should consider both requests and inform my office of her decisions in writing.

65.10 A copy of the confirmatory affidavit by Dumisani Simphiwe Barrington Lupungela of these events deposed to in my review application against the findings of the Public Protector is attached hereto marked "**Annexure GEN 21**"

The Public Protector's refusal to grant an extension to me

66

66.1 During the morning of 2 May 2019 my office received a letter from the Public Protector attached hereto and marked as Annexure "**GEN 22**".

The Public Protector in her letter to me referred to my requests for extension of 16 April 2019 and 24 April 2019. She responded as follows:

*“Regrettably, I cannot accede to your request for a further extension to 10 May 2019, in which to provide your response to the notice in terms of section 7(9) of the Public Protector Act, 1994, dated 1 April 2019 as it would not be in the interest of the complainant, Mr Thomas Walters to delay the matter any further”.*  
(my accentuation).

- 66.2 At no stage was I responsible for any delay in the Public Protector’s investigation.
- 66.3 The Public Protector’s refusal to grant the requested extension is not only in conflict with statutory provisions referred to hereunder, but is extremely unreasonable and irrational considering the fact that she only approached me for the first time with possible conclusions approximately 26 months after I had requested her to conduct an investigation in respect of the Bekendvlei Farm. Her request, which I had received on 2 April 2019, to respond to her notice by 20 April 2019, was extremely unfair, irrational and unreasonable in the light of the fact that I had to wait for approximately 26 months after I had requested her to conduct her investigation. No reason was supplied by the Public Protector as to why it would not be in the interest of Mr Thomas Walters, who had laid the complaint on behalf of the DA, to wait for my response until 10 May 2019.
- 66.4 At approximately 11h30 on 2 May 2019, Myambo responded to the Public Protector’s refusal to grant me the requested extensions by her letter of even date. I attach a copy of Myambo’s letter hereto marked

Annexure “**GEN 23.**” In this letter, the Public Protector was requested to provide my attorneys with an undertaking not to finalise and/or publish her final investigation report prior to revisiting her refusal of my request for an extension. She was informed that should the requested undertaking not be forwarded to his office by 16h30 on the same day, the High Court of South Africa would be approached for urgent relief on the following day (in other words on 3 May 2019). Myambo, however, did not received any response from the Office of the Public Protector by 16h30 on 2 May 2019 or at any time thereafter.

The Public Protector’s refusal to grant me an opportunity to engage with her

67

67.1 As indicated hereabove, the Public Protector in her letter dated 1 April 2019 invited me to engage with her. I had provided dates on which I was available to meet with her in both my letters dated 16 April 2019 as well as 24 April 2019.

67.2 However, the Public Protector ignored my indication to her that I was available for engagement with her and never sought to engage with me on the Benkendvlei farm.

The Public Protector's Final Report

68

- 68.1 Despite the request from my attorney, Myambo, on 2 May 2019 to the Public Protector to provide an undertaking that she would not finalise her investigation before I had the opportunity to respond, her final Report was delivered to my office on 2 May 2019. This report was delivered under a covering letter addressed to me signed by her on 30 April 2019. A copy of the covering letter is attached hereto as Annexure "**GEN 24.**" The Final Report by the Public Protector was purportedly signed by her on 3 May 2019.
- 68.2 Amongst the documents delivered to me together with the Public Protector's Final Report was a copy of a letter addressed to His Excellency, President M.C. Ramaphosa, the President of the Republic of South Africa (second respondent). A copy of this letter, dated 30 April 2019, is attached hereto and marked as Annexure "**GEN 25.**"
- 68.3 The final Report contained, *inter alia*, a finding that I had violated paragraphs 3.2(c) and 3.2(e) of the EEC.
- 68.4 These findings are not correct and were made without granting me the opportunity to submit a response to the Public Protector's section 7(9) notice and without granting me an opportunity to engage with her on the dates which I had provided to her in both my requests for an extension of time to respond to her provisional findings against me.

The media briefing by the Public Protector and the urgent application brought by me

69

- 69.1 A document from which it appeared that the Public Protector intended to hold a media briefing at 12h00 on Monday 6 May 2019 came to my attention on 2 May 2019. A copy of this document is attached hereto and marked as Annexure “**GEN 26.**”
- 69.2 This document indicated that the Public Protector intended to release her investigation reports at her office in Pretoria to the media.
- 69.3 I believed that there was a strong likelihood that the aforementioned report relating to the Bekendvlei Farm would also be released to the media at the media briefing on 6 May 2019, thus prejudicing me.
- 69.4 Accordingly, on [REDACTED] I initiated an urgent application under case number 27609/2019 against the Public Protector served on her office on 3 May 2019, in which application I indicated that the Court would be approached at 18h00 on the same day for relief, amongst other, to interdict the Public Protector from making her Final Report known to third parties at the media briefing scheduled by her.
- 69.5 The Public Protector indicated in a notice of opposition that my urgent application would be opposed. However, Justice Sardiwalla, during the evening of 3 May 2019, granted the relief which I had requested. A copy

of the interim order granted dated 3 May 2019 under case No 27609/2019 is attached hereto marked **Annexure “GEN 27.”**

69.6 The urgent application was argued on 6 May 2019 and the presiding judge handed down his order, attached hereto as **Annexure “GEN 28”**, on 9 May 2019.

69.7 In terms of this order under case No 27609/2019, I was put on terms to launch a review application against the Public Protector’s findings within a period of one month, calculated from the date of the order (9 May 2019).

My review application against the Public Protector

70

70.1 I subsequently brought an application to review the Public Protector’s findings against me on the advice on my attorneys and Senior Counsel under case number [REDACTED] on the grounds that her findings against me were, *inter alia*, biased, irrational and were fundamentally flawed; *a fortiori*, it was averred that the Public Protector’s findings were made without granting me a reasonable opportunity to respond to her findings against me, in breach of the fundamental *audi alteram* principle of administrative justice and in breach of the Promotion of Administrative Justice Act and the Constitution. This matter is currently still before the court and has to date, not been finalised.

70.2 Whilst I do not intend to canvass all the grounds for review in this affidavit, one of the key concerns to me and my legal team was the role that Mahlangu, who had been dismissed by my Department as a result of his role in the Bekendvlei project, played in the Public Protector's investigation against me with regard to my averred role in this self-same project.

70.3 Evidence that my concerns were warranted appears from the following facts and circumstances:

70.3.1. It appears from the Public Protector's Final Report that she relied directly on information which she has obtained from Mahlangu. In my view, the evidence provided to her is not credible and ought to have been corroborated.

70.3.2. I say this because, apart from Mahlangu's obvious bias and clear conflict of interest, much of the information provided by Mahlangu to the Public Protector was in conflict with the evidence adduced by him during his disciplinary hearing. Considering the conflicting versions provided by Mahlangu, he cannot be regarded as a reliable or credible witness. A copy of the transcript of his disciplinary proceedings is annexed marked **Annexure "GEN 29."**

70.3.3. Significantly, during the course of his disciplinary hearing, Mahlangu denied that I ever pressurised him into the

acquisition of the Bekendvlei farm, or any other related matters.

70.4 The Public Protector's reliance and acceptance of the information which she obtained from Mahlangu, without obtaining the record of Mahlangu's disciplinary hearing in terms of which he was dismissed for irregularities, constitutes a crucial oversight, which in my view reflects on and compromises the integrity of her investigation.

70.5 Moreover, the Public Protector's acceptance of Mahlangu's evidence against me, without considering his direct involvement in the acquisition of the Bekendvlei Farm, for which he was dismissed, is in my view, indicative of her bias in her findings against me.

70.6 This is particularly so when one has regard to her refusal to afford me an extension to deal with the averments made by Mahlangu against me.

70.7 As I have said, my review application against the Public Protector is still pending.

## **THE DISCIPLINARY PROCEEDINGS AGAINST THE DIRECTOR GENERAL: SHABANE**

71

71.1 As part of the investigations conducted by Deloitte into allegations of irregularities pertaining to the acquisition of a number of farms under the

DRDLR Land Reform Programme, numerous irregularities were identified which involved Shabane. In the reports prepared by Deloitte dealing with the Mikes Chicken, Uitkyk, Harmonie, Bambani and Bekendvlei Projects, recommendations were made that disciplinary proceedings be instituted against Shabane, in his capacity as the Director-General and Accounting Officer of the DRDLR.

71.2 I believed that there was sufficient evidence against Shabane to initiate disciplinary proceedings against him, which was sufficiently serious to warrant his immediate suspension pending the outcome of such proceedings, especially given his position as the Accounting Officer of the DRDLR.

71.3 On 30 November 2016, I hand delivered a copy of my intention to suspend Shabane to the then Acting President, Mr Ramaphosa, in the absence of the former President, whom I briefed on the matter. The former President was on an official visit to Cuba at the time to attend the funeral of Fidel Castro and was thus, not available to authorise Shabane's suspension.

71.4 During the meeting, the then acting President perused the copy of my intention to suspend Shabane. The acting President then instructed me to continue with the proceedings and with Shabane's suspension, which I had clearly stated would be effective immediately pending the outcome of the disciplinary proceedings against him.

- 71.5 Shabane was subsequently suspended on 8 December 2016, as authorised by the then Acting President.
- 71.6 On the same day, 30 November 2016, at Cape Town, in the presence of the Department's two Deputy Ministers (M Skwatsha and DM Mashego-Dlamini), I handed a notice of intention to suspend Shabane to him and invited him to submit reasons, within 48 hours, as to why he should not be suspended. A copy of this notice attached hereto and marked as Annexure "**GEN 30.**"
- 71.7 In response, Shabane proceeded to ask me whether I had received the draft Deloitte report on Bekendvlei, as it implicated me. I informed Shabane that this was not the appropriate time to discuss the Bekendvlei matter and advised him that it was not the purpose of the meeting.
- 71.8 On 23 January 2017, I appointed Advocate Nazeer Cassim (SC) of the Johannesburg Bar as the Chairperson of the disciplinary proceedings against Shabane. The initial charge sheet contained six charges, all based on "*financial misconduct*" as defined in Section 81 read with Section 38 of the Public Finance Management Act, 1 of 1999, ("**the PFMA**") and, in the alternative, misconduct as identified in Annexure "A" to Chapter 7 of the Senior Management Service: Public Service Handbook ("**SMS Handbook**").
- 71.9 It was later brought to my attention that Shabane had corresponded directly with the then President after he had been suspended. In support thereof, I attach copies of two letters from the Shabane to the former

President dated 17 December 2016 and 18 January 2017 hereto respectively as Annexures "**GEN 31**" and "**GEN 32.**"

71.10 The former President, Zuma, in a letter dated 27 January 2017, attached hereto as Annexure "**GEN 33,**" informed me that it had been brought to his attention that I had initiated disciplinary action against Shabane. The President further stated that the power to institute a disciplinary enquiry against a Head of a Department was vested in him in terms of Chapter 8 of the SMS Handbook and that the Minister of the Department of Public Service and Administration ("**DPSA**") had to first be consulted in order for me to do this.

71.11 Consequently, on 31 January 2017, I informed the former Minister of the DPSA, Minister N Ramatlhodi ("**Ramatlhodi**") of my intention to take disciplinary steps against Shabane. A copy of my letter to Ramatlhodi is attached hereto marked Annexure "**GEN 35.**"

71.12 I was quite surprised that the former President had sought to intervene in this matter. It was apparent from the above correspondence that Shabane had been in direct contact with the former President in an attempt to prevent me from proceeding with his disciplinary hearing. It also seemed strange to me that the former President Zuma appeared to have taken such a firm view on the matter and sought to prevent the disciplinary process against Shabane proceeding, without first getting an understanding of the nature and extent of the evidence against

Shabane from me. He had not sought to consult with me or request information from me concerning my reasons for suspending Shabane before addressing the above correspondence to me.

71.13 Shabane's disciplinary hearing nevertheless commenced on 2 February 2017, but was postponed by the Chairperson Adv Cassim SC, at the request of the initiators.

71.14 However, on 13 February 2017 I received a referral letter from the Head of the SIU, Advocate JL Mothibi, recommending that I take disciplinary steps against Shabane on different charges relating to financial misconduct pertaining to a contract with a service provider, Gijima AST ("**Gijima**"). A copy of the referral letter (without its annexures) is attached hereto and marked as Annexure **GEN 35.**"

71.15 The charge sheet against Shabane was later amended to include the further charges of "*financial misconduct*" emanating from irregularities relating to the Gijima investigation undertaken by the SIU. The additional charges mainly comprised alleged transgressions of Section 38 of the PFMA by Shabane and were also extremely serious.

71.16 On 14 February 2017, a letter under my signature, dated the 31st of January 2017 was hand delivered to the office of the former President. A copy of my letter is attached hereto as Annexure "**GEN 36.**" In the letter I informed the former President that I had informed the Acting President Ramaphosa on 30 November 2016 of my intention to suspend the

Shabane “*pending the outcome of a preliminary investigation and/or disciplinary hearing*” against him.”

The urgent application brought by Shabane against me

72

- 72.1 On 15 June 2017, Shabane brought an urgent court application in which he attempted to obtain an interdict against me to preclude me from continuing with the disciplinary proceedings against him.
- 72.2 On 20 June 2017, I met with the former President and one of his legal advisors, Advocate Boniswe Makhene, at his offices in Cape Town at the request of the former President. At the commencement of the meeting, the former President informed me that I was going to lose the urgent application brought by Shabane which would negatively reflect upon the State as I had not obtained the consent of the DPSA or him before I had taken the decision to suspend Shabane. He thus recommended that I not continue with the proceedings against Shabane.
- 72.3 Advocate Makhene informed me that the President was unable to ratify the disciplinary proceedings which I had set in motion against Shabane as these had been initiated prior to a Presidential Minute being obtained from the President. I advised Advocate Makhene that Shabane's misconduct related to not only transgressions in terms of the Public Service Act (PSA), but also, as per the referral of the SIU, to

transgressions in terms of section 84 of the PFMA and I was, therefore, according to legal advice obtained, not in a position to unilaterally withdraw the disciplinary charges against Shabane, as the PFMA places a duty on the Executive Officer to act in such instances.

72.4 At some stage hereafter, the exact date I cannot recall, I became seriously ill and had to be hospitalised. While in hospital, I received a telephone call from the then Deputy President Ramaphosa. The then Deputy President Ramaphosa requested me to withdraw the action against Shabane as he was in trouble with the former President regarding the matter. He did not go into the details of what he meant by “trouble,” but merely explained that my decision to suspend Shabane had caused a big problem for him.

72.5 I explained to the then Deputy President Ramaphosa that I understood the predicament he found himself in, but that I could not unilaterally withdraw the action against Shabane (for the same reasons previously stated). I even indicated that I would be prepared to “go home” (be dismissed ) over this matter. The then Deputy President Ramaphosa appeared to be quite shocked by this and did not pursue the matter further with me after that.

72.6 On 23 June 2017, legal representatives of the DRDLR met with a delegation of legal advisors of the Presidency at the Union Buildings at Pretoria, at the request of the Office of the Presidency. At this meeting, Advocate Makhene repeated her contention that the former President was unable to ratify the disciplinary proceedings which I had instituted

against Shabane as the proceedings had been initiated before a Presidential Minute had been provided to me. The option suggested to the Department's representatives was that the disciplinary proceedings against Shabane be withdrawn.

72.7 When Counsel briefed on behalf of the Department stated that this could not be done, one of the Presidency's legal advisors requested Counsel to ask me to reconsider my stance on continuing with disciplinary proceedings against the Shabane and to withdraw my opposition to Shabane's urgent application. I, however, refused to accede to this request and was becoming increasingly concerned by the extent to which the Presidency had sought to interfere with Shabane's disciplinary process. It appeared to me from the above that the former President was intent on protecting Shabane.

72.8 On 28 June 2017, the Honourable Mr Justice Fabricius of the Gauteng Division, Pretoria struck Shabane's urgent application from the roll due to a lack of urgency, with costs.

#### The resumption of the disciplinary proceedings against Shabane

73

73.1 The disciplinary hearing before Advocate Cassim SC accordingly resumed on 4 July 2017. Counsel appearing on behalf of Shabane

informed Advocate Cassim SC that his client, Shabane, was not prepared to participate in the disciplinary hearing.

73.2 The hearing on the merits continued on 4 July 2017 in the absence of the Shabane and was finalised on 6 July 2017. On 6 July 2017, Advocate Cassim SC found Shabane guilty on seven charges of the amended charge sheet. A copy of Advocate Cassim SC's ruling on the merits is attached to the hereto as Annexure "**GEN 38**." After hearing evidence on Shabane's personnel file by Southgate, and after considering a written affidavit from me, Advocate Cassim SC summarily dismissed Shabane. A copy of Cassim SC's ruling on the appropriate sanction is attached hereto marked Annexure "**GEN 39**".

73.3 I informed the former President on 12 July 2017 of the outcome of the disciplinary hearing against the Shabane and advised the former President of my intention to implement the decision of the Chairperson of the disciplinary Inquiry. A copy of my letter is attached hereto and marked as Annexure "**GEN 40**".

73.4 On 21 July 2017, acting Minister, T W Nxesi, (who was acting in my position after I was hospitalised and put on medical leave) informed Shabane in writing that his contract of employment was terminated.

## THE LABOUR COURT PROCEEDINGS INITIATED BY SHABANE

74

- 74.1 Shabane initiated proceedings in the Labour Court, arguing that I, as Minister, lacked the authority to discipline him. The Labour Court, however, dismissed Shabane's application and he was unsuccessful in his attempt to be reinstated.
- 74.2 Shabane then appealed the matter. Although he was granted leave to take his case to the Labour Appeal Court by Judge GN Moshwana, the ruling noted that he had little prospect of success.
- 74.3 Before the matter could be heard in the Labour Appeal Court, the current President, Mr Ramaphosa, enacted Presidential Minute No 37 of 2019 on 26 February 2019, which effectively resulted in a settlement being reached between Shabane and former Land Affairs Minister, Mr Maite Nkoane-Mashabane, as well as the former Minister of Public Service and Administration, Ayanda Dlodlo.
- 74.4 In terms of this Settlement Agreement, all decisions relating to Shabane's suspension, the guilty findings of the disciplinary hearing in July 2017 and the sanction of dismissal were to be set aside as unlawful and invalid. As a result of this, despite all the findings of misconduct against Shabane, he was reinstated as Director-General and I understand that he resumed his duties on 2 September 2019. A copy of the Settlement Agreement is annexed marked "**GEN 40.**"

74.5 This Settlement Agreement was concluded without my knowledge or consent, notwithstanding that I had been cited in the proceedings in my personal capacity and costs had been sought personally against me and, notwithstanding that it had been declared in the Settlement Agreement that I had acted unlawfully in proceeding against Shabane, with which finding I do not agree.

74.6 I have been advised that the decision taken not to proceed with the Labour Appeal Court proceedings against Shabane was misguided, particularly as both the Chairman of his disciplinary proceedings and the Labour Court had decided against Shabane. I have been advised that the probabilities were overwhelming that the Labour Court would have ruled in favour of the Department. This notwithstanding, it was agreed that not only should Shabane be reinstated with full pay and benefits from the date of his suspension, but also his legal costs should be paid by the Department. I am advised that it is unprecedented that legal costs are paid in these circumstances.

74.7 I was somewhat surprised and, and frankly rather disappointed, that the settlement had been brokered pursuant to a Presidential Minute issued by the current President, particularly as I believe him to be a man of integrity and he had, himself, authorised me to proceed with disciplinary proceedings against Shabane.

74.8 I was subsequently advised by my attorney and counsel after a meeting at the Union Buildings with the current President's legal advisors to discuss the settlement, that the current President's motivation for not

proceeding was strategic and was not based on any belief that the charges against Shabane were not warranted.

74.9 This, I was informed by my legal team, was because the current President was concerned that the conflicting judgments on whether a Presidential minute is required before a Minister may suspend a DG or DDG may have been decided by the Labour Appeal Court in favour of the approach taken by me in the proceedings, which was not an approach favoured by the current President.

74.10 In this respect, I have been informed that the current President favoured the approach taken in *Apleni v President of the Republic of South Africa and Another* (65757/2017) [2017] ZAGPPHC 656; [2018] 1 All SA 728 (GP) (25 October 2017) where it was found that a Minister may only dismiss a DG if the power has been delegated to him/her by Proclamation by the President. For convenience, a copy of this judgment is annexed marked "**GEN 34**".

74.11 However, in the proceedings brought by Shabane in the Labour Court to review the decision taken by me to suspend and institute disciplinary proceedings against Shabane, GN Moshwane J found that properly construed, section 12 of the Public Service Act, a Minister does have the power to dismiss a DG. A copy of this judgment is annexed marked "**GEN 35**."

74.12 It is disappointing to me that the current President adopted this approach, as it has meant that, in the face of his avowed intent to rid the

country of the corruption, he has allowed Shabane to return as DG of the DRDLR in the face of serious findings of significant irregularities and possible corruption having been made against him.

## **ATTEMPTS BY THE FORMER PRESIDENT TO MISAPPROPRIATE FUNDS FROM THE DRDLR FOR HIS MASIBAMBISANE PROJECT AND THE INVOLVEMENT OF SHABANE**

75

- 75.1 My run-in with the former President over my decision to suspend Shabane and proceed with disciplinary proceedings against him was not the only matter in respect of which we ended up at logger-heads.
- 75.2 During or about XXX, the former President invited me, as the Minister of Land Affairs, as well the Minister of Agriculture and other Ministers to Nkandla. During the meeting, the former President introduced us to his “*Masibambisane Rural Development Initiative*,” also known as the Masibambisane Project.
- 75.3 The former President was the Chairperson and co-founder of the Masibambisane Project in the Nkandla/Mlalazi area in KwaZulu-Natal which is aimed at eradicating hunger and poverty in rural areas through the creation of farming initiatives to enable rural households to produce their own food. Mr Sibusiso “Deebo” Mzobe (“**Mzobe**”), the former

President's cousin, was also extensively involved in the Masibambisane Project and was the Deputy Chairperson.

75.4 During the course of the meeting, which included a large number of community members, the former President requested the Ministers who were present to publicly pledge financial support for the project. The President openly stated that he did not want to hear about the PFMA and wanted funds from the Departments represented at the meeting to be allocated to the project.

75.5 Although some of the Ministers pledged support for the project and even committed funding, I was extremely uncomfortable with the situation in which I had been placed by the former President. When it was my turn to speak, I reminded the former President and the Deputy Chairperson, Mzobe, that although President Zuma was Chairperson of the Masibambisane Project, he was also the chairperson of the PFMA, when sitting as President in Pretoria; it was in that capacity that the former President was obliged to guard the PFMA and public spending very closely. I further stated that the only way I could support the Masibambisane Project with funding from my Department was within the confines of the PFMA and prescripts governing public spending by my Department.

75.6 A short while after the aforementioned visit, I was again called to Inkandla by the former President. On this occasion the former President raised issues relating to a fencing project that the Masibambisane Project wished to pursue. The former President required me to commit

additional funding to the project so that this fencing project could be pursued.

75.7 I again advised the former President that I was compelled to act within the law and adhere to the prescripts governing public spending. As such, I was not able to give the former President a commitment that I would allocate funding to the project. I made it clear to him that I had a duty to ensure public funds were allocated responsibly, and within the parameters of the law. The former President was visibly irritated by my refusal to “*play ball*” with him, but I nevertheless left Nkandla without committing to provide any funding for the fencing project.

75.8 Sometime after this, during or about 20XX, the Chief of the Mthembu invited me to an event to celebrate the “*Ncorah Irrigation Scheme*” in the Eastern Cape. This was a project that was part of the Masibambisane initiative. Minister Tina Joemat-Petterson, who was one of the attendees, also invited the former President to the event.

75.9 Unbeknown to me, I was the guest of honour at the event. This was because the Mayor of the District Municipality informed me that the money for the project, some approximately R5 million, had been provided by the DRDLR. I was not aware that such funding had been provided by my Department and was concerned that the correct processes were not followed. This was particularly so as the Ncorah Irrigation Scheme was not aligned with the strategic objectives of the DRDLR and I could, thus, not see any justification for funds being allocated to the project by the DRDLR.

75.10 It was clear that Shabane, as the Accounting Officer, would have had to sign-off and approve the funding of this project. Although I would meet quarterly with Shabane to discuss implementation of projects and areas of spending by the DRDLR, at no stage during any of these meetings did Shabane disclose that funds were being allocated to the Masibambisane Project. I was thus, very concerned that funds were being allocated to the Masibambisane Project by my Department without my knowledge.

75.11 Shortly after this, I was invited to Dutywa in the Eastern Cape to attend another function that involved the Masibambisane Project promoted by the Mayor, Zoleka Capa. At the function, the Chief Director of DRDLR in the Eastern Cape approached me and asked me why I was standing like a guest at the event. She informed him that it was funds in the amount of R95 million from the DRDLR that had made the project possible.

75.12 I was again very surprised to hear that funds had been allocated to the Masibambisane Project, without my knowledge. I was also concerned about how the R95 million was spent, as it appeared to me that much of the equipment and machinery on display, such as tractors and other plant equipment, were very old and outdated and had in fact been donated by me years previously when I was the Minister of Rural Development.

75.13 Sometime hereafter, it was reported on the front page of the City Press that the DRDLR had pledged R350 million to another Masibambisane Project in Mpumalanga. Although I did not attend the event, I later learnt

that both the former President and Minister Joemat-Petterson attended the launch event.

75.14 Following the revelations in the Eastern Cape and the City Press article, I met with the relevant functionaries in the DRDLR and requested an explanation as to how and why the funds had been allocated to the Masibambisane Project without my knowledge. Deputy Director-General, Mr Moshe Swartz (“**DDG Swartz**”), who was in attendance, confirmed that the funds were indeed allocated and spent on the above projects and attempted to defend the allocation of funds to the Masibambisane Project.

75.15 I was very concerned as I could not see any legitimate reason for DRDLR funds to have been allocated to the Masibambisane Projects. I therefore instructed DDG Swartz to go home for a week and to think about whether he still wanted to work at the DRDLR, whilst I considered whether any further action against him should be taken. I also required an accounting from him on how the money had been allocated and spent on the projects. I issued strict instructions that all funding to the Masibambisane Project should be suspended until further notice.

75.16 After sending DDG Swartz home, I was summoned to a one-on-one meeting with the former President in Cape Town. At the meeting, the former President confronted me on what he termed the “*suspension*” of DDG Swartz and my decision to suspend all DRDLR funding to Masibambisane projects. I indicated to the former President that this was indeed correct and added that I was not going to allow corruption to

be perpetrated in his name. I informed the former President that I was steadfast in my decision and was prepared to “*take the fall for it.*”

75.17 The former President appeared to be taken aback and immediately backed down on the issue. His whole attitude and demeanour changed and he changed the subject of discussion completely. The former President then introduced me to Mr Mashinini, who was the liaison officer for rural development in the President’s office. When this introduction was done, he indicated that our business for the day had been concluded.

75.18 I, however, took the opportunity to advise the former President that his cousin, Mr Mzobe, was interfering in the affairs of the DRDLR and was even using the former President’s name to put undue pressure on DRDLR officials to make decisions promoted by him. It had been brought to my attention that Mzobe would even attend senior management meetings at the DRDLR with the Director-General, Shabane at which he would attempt to influence decisions on which projects to allocate funds to. I was informed by senior officials that if they questioned Mzobe’s presence at these meetings, Shabane would threaten them with their jobs and careers, which was of great concern to me, which is why I sought to address this issue with the former President.

75.19 I had been made aware of many more such instances and that allegations were beginning to emerge that Mr Mzobe was controlling Shabane and exercising undue influence over the Department. This was

particularly concerning as Mahlangu had also advised me that Mzobe was one of the individuals who had put pressure on him to acquire the Uitkyk, Mike's Chicken and Harmonie farms for Project Mangaung.

75.20 I, accordingly, requested the former President to call a meeting with Mr Mzobe and instruct him to stop interfering in the affairs of the DRDLR. He agreed, without even asking me for any further details about the nature of the interference I was alluding to.

75.21 Shortly hereafter, the former President called me to a meeting at his office in Pretoria with Mzobe at which he instructed him to stop interfering in the affairs of the DRDLR. I informed him and the former President that the DRDLR would never be involved in any of Minister Joemat-Petterson's (Department of Agriculture) programmes again. The former President was very angry, but appeared to accept my position. However, as he was leaving, he told me that he knew who at the Department was using his name. The President, however, did not disclose the name of the person he was referring to and left the meeting.

75.22 Later, at a meeting of the National Executive Committee of the ANC in Rustenburg, the former President told the meeting that he had co-founded Masibambisane as an initiative to uplift rural communities. He added that funding from Departments had been stopped following allegations that the Masibambisane Project was corrupt. Although he did not refer to me directly, I knew that the comments were directed at me and I could see that he was angry about the funds being suspended by my Department to the Masibambisane Project.

75.23 I later learnt that the Treasurer of Masibambisane, Mr Alex Meti ("**Meti**"), had been appointed in Shabane's office at the DRDLR. It was not clear to me what position he held or how he was appointed, but I subsequently learned that he was working in a position where he could influence which projects to fund and the amount of such funding. It was clear that he had secured the funding by the DRDLR of the Masibambisane Projects which I had not been made aware of.

75.24 I was very concerned that Meti, who was involved in the Masibambisane Project and was clearly conflicted, appeared to have influence over which projects should be funded by the DRDLR. Accordingly, when Shabane sought to renew his contract, I refused to do so.

75.25 My concerns also led me to initiate an investigation into how the funds were allocated to the Masibambisane Projects. I soon discovered that funds destined for Masibambisane Projects, in the region of approximately R350 million, were paid through the Independent Development Trust ("**IDT**") and not through normal transparent processes. This raised alarm bells for me, particularly as:

75.25.1. There was no clear and justifiable reason for the funds to be paid through the IDT. In fact the IDT charged the DRDLR a transaction fee percentage to handle the allocated payments when there was no need for the funds to have been paid through them at all;

75.25.2. By transferring the funds to the IDT for allocation to the Masibambisane Projects:

75.25.2.1. the prescribed policies and procedures applicable to funding of this nature could be circumvented; and

75.25.2.2. the DRDLR, and the Auditor General, was not able to trace how the funds were ultimately spent;

75.25.3. Once the funds had been paid over to the IDT, the DRDLR effectively lost control over how and to whom the funds paid were allocated.

75.25.4. This made it relatively easy for the funds to be diverted to persons or entities not associated with the intended beneficiary without detection; and

75.25.5. In this manner, the Masibambisane Projects could be utilised as a slush fund for nefarious and corrupt purposes.

75.26 In view of my misgivings, I requested the Chief Financial Officer of the DRDLR to look into the matter and she later confirmed that the allocation of DRDLR funding through the IDT was indeed irregular. As a result, I took the necessary steps to ensure that all DRDLR payments through the IDT were stopped with immediate effect.

75.27 I believe that these steps taken by me to root out corruption in the DRDLR - which necessitated disciplinary proceedings being taken against the DDG, Mahlangu (who had procured the farms for the Manguang Project) and the DG, Shabane, and to put a stop to the funding of the Masibambisane Projects, precipitated the decision by the former President to redeploy me to the Department of Water and Sanitation when in a Cabinet reshuffle occurred in 2017.

## CONCLUSION

76

76.1 In conclusion, I wish to state that I have, in my capacity as Minister of the DRDLR, done everything in my power to combat corruption. Where my integrity has been impugned, I have reported myself to Parliament, the Public Protector, SIU and relevant law enforcement agencies. I have also requested the Public Protector to conduct a lifestyle audit into my private affairs. I remain resolute that no evidence of corruption or impropriety will be found against me as I am a man of integrity and principle and am neither corrupt nor corruptible .

76.2 I have spent my life fighting for the freedom of our people and fundamentally believe in land redistribution. I was tasked with establishing the DRDLR in..... when I was appointed Minister of the DRDLR by former President Mbeki as no such department existed. I had previously been appointed by President Mandela as the Speaker of Parliament in which position I served for ... years.

- 76.3 I am passionate about land reform and land redistribution and that, as my function as Minister, it was my job not to be served, but to serve. It was extremely important to me that the Land Reform Programmes initiated by me were a success and that I rooted out corruption and public servants not prepared to do their job without being paid a bribe.
- 76.4 It was only after I commenced forensic investigations into the farms which formed part of the Mangaung project, objected to utilising my Department's budget to fund former President Zuma's Masibambisane Projects and I proceeded against Shabane that I was removed from the Department and processes were set afoot to implicate me in wrong doing.
- 76.5 I believe that this had been directly as a result of the State Capture by the former President of the DRDLR for his own purposes.
- 76.6 I am an honest and honourable man. The allegations made against me have been extremely hurtful to me, particularly as no-one in my party with whom I have served for so many years and was imprisoned on Robin Island, have spoken out in defence of me.
- 76.7 It saddens me that my anti-corruption stance has been the cause of a targeted campaign against me.
- 76.8 A new investigation has been instituted by the Public Protector against me involving the so-called 50/50 project implemented by me, for which criticism has been levelled at me.

- 76.9 This is a project initiated by me which was sanctioned by the ANC at its electoral conference at ..... during ..... and is envisaged in the Freedom Charter, which requires that the land be allocated to those who work it.
- 76.10 I initiated this project in order to combat the rising trend which saw expropriated land being immediately resold by the communities to which it had been allocated, either to the farmer from whom it had been repossessed or third parties immediately after the land was acquired for their benefit. To prevent this, I took a decision that the DRDLR should retain the land and lease it to the beneficiaries instead of transferring it to the intended beneficiaries.
- 76.11 However, experience revealed that all too often the community to whom the farms were allocated lacked the necessary skills and experience to successfully run the farms allocated to them and often, what was once a profitable farm ended up derelict and unable to sustain the community it was supposed to benefit.
- 76.12 In order to redress this I formulated the 50/50 project pursuant to which the farmer and the workers became 50/50 partners on the farm after it had been repossessed. This encouraged the farmer to remain on the farm for a minimum period of 5 years to ensure that the requisite skills were transferred to the labourers, who could then run the farm, with or without the farmer, as a successful concern. I am at a loss as to why I am now facing criticism for this initiative.

76.13 It is, however, of no surprise to me that since the Settlement Agreement with Shabane was reached and Shabane has regained control of the DRDLR following his reinstatement as the DG, he has caused forensic investigations to be conducted into the projects initiated by me. It is readily apparent that these investigations are part of the fight-back campaign against me and serve to protect the former President and Shabane from scrutiny by discrediting me.

76.14 Despite the averments of corruption against me, I wish the Commission to know that I did not use my position as Minister of the DRDLR to enrich myself or my family, or to acquire for myself large tracts of land, as has been the want of far too many government Ministers. On the contrary, I bought my first small holding of land in the Eastern Cape during..... with money I had saved and on which I had only ... head of cattle. Thereafter, I acquired a second piece of land, for which I hopelessly overpaid, to provide additional grazing for my herd of cattle which had by then grown to ....., which I financed. All in all, I now only own .... hectares of land, all bought and paid for by me from my salary. I live in a modest home in Kenton on Sea, of which I am extremely proud. These are the assets I have accumulated through all my years of service to the government, the people of South Africa and the ANC.

---

**GUGILE ERNEST NKWINTI**

SIGNED and SWORN to at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2020  
by the Deponent who stated that:

- 1 He knows and understands the contents of the declaration; and
- 2 He has no objection to taking the prescribed oath; and
- 3 He considers the prescribed oath as binding on his conscience;

And Government Notice Regulation 1258 as amended by the Government Notice Regulation 1648, Government Notice Regulation 1428 and Government Notice Regulation 773 was fully complied with.

---

**COMMISSIONER OF OATH**

**FULL NAMES:**

**BUSINESS ADDRESS:**

**AREA:**

**DESIGNATION:**