

**IN THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF
STATE CAPTURE**

BEFORE THE CHAIRMAN, DEPUTY CHIEF JUSTICE RAYMOND ZONDO

**STATEMENT OF THE CHAIRMAN OF THE TRANSNET BOARD OF
DIRECTORS**

I, the undersigned

POPO SIMON MOLEFE

do hereby make oath and say that:

1. I am the Chairman of the Board of Transnet SOC Limited ("Transnet"). I was appointed by the Minister of Public Enterprises, Mr Pravin Gordhan ("Minister Gordhan") in this capacity on 23 May 2018. I have been requested by the Commission of Inquiry Into Allegations of State Capture ("the Commission") to present this statement and to explain the allegations of state capture that have been levelled against Transnet. I do so in my capacity as Chairman and leader of the Transnet Board of Directors ("the Board").
2. In this statement I set out the problems that the new Board discovered after its appointment, to the extent that it has managed to do so. I also informs the Commission of the remedial steps that the new Board has taken since its appointment.



3. I hasten to state that I have personal knowledge of the happenings prior to my appointment to the Board. The acting Group Chief Executive, Mr Tau Morwe ("Morwe") and the acting Group Chief Financial Officer, Mr Mohammed Mahomed ("Mahomed") may in their statements allude to events they have personal knowledge of, given their long experience at Transnet.

4. **PERSONAL BELIEF**

- 4.1 I would like to believe that I was appointed to lead Transnet because of my firm commitment to good governance, ethical leadership, the responsible use of public funds and courage to confront malfeasance.
- 4.2 For approximately five decades of my life, I fought against injustice, oppression and exploitation in favour of human dignity and equal rights for all.
- 4.3 The cornerstone of my belief system is the Freedom Charter, which was drawn up by South African democrats of all races and represents their deepest aspirations when and states (among other things) that the wealth of the country shall be shared amongst all.
- 4.4 The Freedom Charter most definitely does not state that the wealth of the country shall be shared by a small handful of thieves and crooks.

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- 4.5 Accordingly, I considered my appointment a rare opportunity to make a contribution in turning the fortunes of Transnet and of our country at a very critical moment in our history.

5. **ROLE OF TRANSNET IN THE ECONOMY**

- 5.1 Transnet has a complex role to fulfil within the national logistics system. As the custodian of ports, rail and pipelines, Transnet's principal objective is the optimal development of the country's freight system. South Africa cannot afford for Transnet to collapse because it drives the South African economy through the transporting of coal necessary for the generation of electricity and the haulage of other vital goods. It performs an equally critical role in the Southern African and the rest of the continent.
- 5.2 Transnet, as a state-owned company ("SOC"), is a key implementing agent of the Developmental State and must positively contribute to achieving the objectives of the State which includes job creation, skills development, industrial capability building, regional integration, energy efficiency and economic transformation.
- 5.3 As the custodian of ports, rail and pipelines Transnet has a responsibility to optimise the country's logistics system.

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6. **NEW DAWN**

6.1 On 15 February 2018, President Cyril Ramaphosa was sworn in as the President of the Republic of South Africa. His swearing in, ushered in a “New Dawn” in South Africa. The New Dawn was a recognition of the untold damage to critical public institutions and a resolute to rid them of all malfeasance that caused their systemic weakening and, to begin the arduous task of rebuilding them.

6.2 President Cyril Ramaphosa in his 2018 State of the Nation Address spelt out these challenges and urgent tasks:

6.2.1 “Many of our state-owned enterprises are experiencing severe financial, operation and governance challenges, which has impacted on the performance of the economy and placed pressure on the fiscus. “We will change the way that boards are appointed so that only people with expertise, experience and integrity serve in these vital positions”. This is the year in which we will turn the tide of corruption in our public institutions”.

6.2.2 In an attempt to rid the state-owned enterprises of the malfeasance that was rampant in the preceding years, President Ramaphosa made various changes to his Cabinet through the Cabinet reshuffle process. On or about 26 February 2018 President Ramaphosa appointed



Minister Gordhan as the Minister of Public Enterprises.

Minister Gordhan is responsible for SOE's and made the appointments set out below.

7. **APPOINTMENT OF THE BOARD**

7.1 Following the appointment of Minister Gordhan, particularly, on 23 May 2018, I was appointed the chairman of the Board and at the same time the Minister appointed eleven other non-executive.

7.2 The non-executive directors who were appointed are Mpho Letlape, Louis von Zeuner, Ursula Fikelepi, Dimakatso Matshoga, Ramasela Ganda, Edward Kieswetter, Aluwani Ramabulana, Flolisani Mufamadi, Vivien McMenamin (who has since resigned), Oupa Motaung, and Gratitude Ramphaka.

7.3 At the time of our appointment, Mr Mohammed Mahomed had already been appointed on 15 May 2018 as the Acting Chief Financial Officer ("ACFO") of Transnet. He took over from Mr Garry Pita ("Mr Pita") who resigned in April 2018. Mr Morwe was appointed as the acting Group Chief Executive at Transnet on 1 November 2018.

8. **THE ROLE OF THE BOARD**

8.1 The Board is principally responsible for directing and overseeing the affairs of Transnet, balancing the interests of shareholders and



stakeholders, and ensuring Transnet's long-term economic, social and environmental sustainability. This responsibility includes it being the deemed Board of the Transnet National Ports Authority in terms of the National Ports Act. The Board, through its Chairman, also serves as the Shareholder of Transnet International Holdings SOC Ltd, a wholly owned subsidiary of Transnet SOC Ltd, incorporated on 29 August 2017 with the express mandate of exploring investment opportunities in Africa and beyond.

- 8.2 It further ensures that adequate budget planning processes are in place to advance Transnet's mandate by providing an oversight role over Transnet's socio-economic programs. The Board is further tasked with ensuring that Transnet is able to achieve its statutory and commercial objectives by directing and approving Transnet's strategic and operational objectives, and by assessing its performance against targets outlined in the Shareholder's Compact.
- 8.3 The Board has a duty to ensure that Transnet complies with all legislative and regulatory requirements, including the provisions of the Companies Act, the Public Finance Management Act ("PFMA") and the King IV Report. These laws, rules, codes and standards should be interpreted in the context of the whole compliance universe applicable to the Company. Where required, the Board determines legislative priorities and, in instances of conflict in legislation, the PFMA prevails.



8.4 In sum, the Board remains accountable for leading the organisation ethically and effectively. It reports to the Shareholder Representative being the Minister of Public Enterprises.

9. **STATE CAPTURE**

9.1 We have now been inundated with numerous instances of how key institutions in different spheres of the state have been captured for nefarious ends.

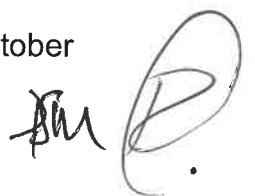
9.2 There is a discernible pattern. Key positions are first filled by individuals who have the veneer of professionalism and possess the appropriate experience.

9.3 They lodge themselves in the vital positions such as CEO, CFO, procurement and the Treasury. From these vantage points, they are then able to manipulate people, processes and systems to their ends and, for the advancement of the agenda of looting.

9.4 They create parallel processes that do not come under scrutiny as they collude among themselves, weaken governance systems, focus on high-value tenders, recruit reputable consultancies to embellish their work.

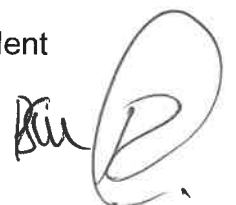
9.5 All that I have described above has occurred at Transnet.

9.6 On or about November 2016 the office of the Public Protector of South Africa released a report (No: 6 of 2016/17) dated 14 October

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2016 titled “State of Capture” report. This is a report based on the Public protector’s *“investigation into alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Ministers and directors of State-Owned Enterprises resulting in improper and possibly corrupt award of State contracts and benefits to the Gupta family’s businesses”*. The Public Protector’s report was the first document that highlighted in clear detail possible capture of various government departments and state-owned companies.

- 9.7 Following the release of the Public Protector’s report various newspapers started reporting on numerous allegations of state capture involving many individuals and state functionaries who were alleged to have had links with the Gupta family and who had allegedly aided the Gupta family in capturing the Ministers, heads of state-owned institutions and government officials.
- 9.8 In May 2017, the Public Affairs Research Institute (PARI) published a ground-breaking study of state capture titled *“Betrayal of the Promise: How South Africa was Stolen”*. It would form the basis of further public engagement on the issue.
- 9.9 On or about June 2017, Scorpio, the Daily Maverick’s newly launched investigative unit, and amaBhungane an independent

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investigative non-profit organisation, started publishing stories from a much wider trove. This consisted of a few hundred gigabytes of information containing between 100,000 and 200,000 unique e-mails and numerous other documents, which they called the #GuptaLeaks. According to these newspapers, this electronic data was physically located on a hard drive, and consisted of hundreds of thousands of Gupta-linked emails that detail the extent of the family's role in state capture.

- 9.10 The emails include alleged correspondence between the Gupta family members, their associates, together with leading government officials and officials from state-owned enterprises. These emails were leaked to the media which resulted in exposés in various newspapers explosive #GuptaLeaks reporting. The Commission is in possession of the hard drives as well as copies.

10. **WHAT THE NEW BOARD FOUND**

- 10.1 Upon commencing our duties as the Board of Transnet, we were presented with the forensic reports of both Werkmans and Mncedisi Ndlovu and Sedumedi Attorneys ("MNS"). Both reports were presented to us on 13 June 2018.
- 10.2 It is not an exaggeration to state that the Board was astonished by the widespread corruption and wilful disregard of the rules.

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- 10.3 As the Board settled into its duties, it became clear that Transnet was in a state of total paralysis. Therefore, there is absolutely no doubt in my mind, or in the mind of any member of the board, that what we found when we came into office was nothing less than a horror show.
- 10.4 The ability of the Board to tackle these issues was not immediately possible and was negatively affected by the following:
- 10.4.1 a culture of secrecy which made Transnet officials resistant to providing the Board with the requested information (oral or documentary);
 - 10.4.2 the Executive and Management actively discouraged Transnet staff from cooperating with the new Board; and
 - 10.4.3 employees lived in fear, always scared to be seen talking to the new directors or visitors to the Company.
- 10.5 The three persons who were identified as being the primary architects and implementers of state capture at Transnet are Mr Brian Molefe ("Molefe"), Mr Anoj Singh ("Singh") and Mr Siyabonga Gama ("Gama"). These officials were appointed under the hand of former Minister of Public Enterprises, Minister Malusi Gigaba ("Minister Gigaba"). They gave free reign to Mr Iqbal Sharma

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("Sharma") who was the Chairman of the board's Acquisition and Disposals Committee (BADC).

10.6 As a result of the influence of the aforementioned officials and others who colluded with them at Transnet, Transnet was characterised by:

10.6.1 a pattern of denial of state capture within Transnet;

10.6.2 non-compliance with the prescribed procurement practices; and

10.6.3 a collapse in the functioning of governance structures.

10.7 We were confronted with the reality that some of the key architects of the broad state capture project had effectively turned Transnet into their piggybank by exploiting procurement as an avenue for unlawfully diverting funds by procuring at inflated prices or in paying for advisory services where no services had been rendered.

10.8 Certain members of Transnet Management committed themselves to unlawfully deriving financial wealth at Transnet's expense rather than to provide an efficient state-owned freight and logistics business.

10.9 They built a model of state capture and corruption founded on the following three basic pillars, they:

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- 10.9.1 employed individuals who were interested in personally benefitting at the expense of Transnet. Employees who did not support their agenda were dismissed, transferred or rendered redundant;
 - 10.9.2 flouted decision-making and procurement processes or implemented new systems in order to facilitate state capture; and
 - 10.9.3 enforced reprisals in respect of whistle-blowers and any other persons who attempted to speak out.
- 10.10 It was evident that the previous Board had devoted significant time and resources to the aspect of procurement and had not maintained proper corporate governance.
- 10.11 One of the primary tasks of the new Board was (and still is) to investigate the extent of abuse of procurement process at Transnet and to make sure that we clean up the mess as much as possible.
- 10.12 It is against backdrop that the Board started reviewing what is colloquially known as High Value Tenders within Transnet. What follows is a high-level summary of some of the tenders that the Board reviewed and which the Commission took interest in:

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Procurement of Locomotives

10.12.1 In the recent past, Transnet procured 95, 100 as well as 1 064 locomotives. Various procurement irregularities were identified by the investigators in respect of each of these procurement events. I deal with each of them briefly below.

95 Locomotives

10.12.2 The investigations revealed:

10.12.2.1 improper engagements with China South Rail (“CSR”) before and after the Tender notice was Issued;

10.12.2.2 the irregular changes to the evaluation criteria that benefitted CSR; and

10.12.2.3 failure to levy delay penalties under circumstances where it should have.

10.12.3 All of which lays credence to a reasonable apprehension that Transnet was biased in favour of CSR.

Acquisition of 100 Locomotives

10.12.4 The following irregularities were identified in respect of the above acquisition:



10.12.4.1 the confinement of 100 locomotives to CSR

was not in compliance with the Procurement Policy Manual ("PPM") as it did not meet the requirement of urgency, standardisation, and highly specialised goods as prescribed;

10.12.4.2 the CSR proposal did not meet the objectives of confinement as set out in the memorandum of 21 January 2014 approved by the Transnet board of directors;

10.12.4.3 the acquisition cost escalated from R3.8 billion to R4.4 billion. The memorandum submitted by Mr B Molefe, and recommended by Messrs A Singh and S Gama, justifying the increased cost of R969 million unjustifiably inflated the factors that contributed to the increase. As a result, Transnet overpaid by at least R3.47 million per locomotive and at most, R6.2 million per locomotive; and

10.12.4.4 Messrs B Molefe, S Gama, A Singh and T Jiyane, failed in their fiduciary duties in the acquisition of 100 locomotives from CSR.

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1064 Locomotives

10.12.5 The investigations found:

10.12.5.1 the Request For Proposals ("RFPs") did not comply with the Preferential Procurement Policy Framework Act;

10.12.5.2 that Transnet unlawfully deviated from the evaluations process when evaluating technical compliance;

10.12.5.3 that Transnet did not track Local Production and Content threshold as the prices changed during post tender negotiations with the effect that three of the four bidders awarded did not meet the threshold;

10.12.5.4 contrary to Transnet negotiation strategy, the post tender negotiating team permitted the bidders to price for the split in batches thus causing Transnet to incur an additional R2.7 billion in the total estimated cost; and

10.12.5.5 that the relationship between CSR and Essa has tainted the procurement event with corruption.

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Relocation

10.12.6 During July 2015, a year and four months after the conclusion of the locomotives Locomotive Supply Agreements ("LSAs"), Transnet approved the "relocation" costs of Bombardier Transport ("BT") and China North Rail ("CNR") amounting to R618, 457 125.00, and R647, 181 494.00, respectively.

10.12.7 Transnet's investigations have uncovered that:

10.12.7.1 there was no actual relocation of either BT or CNR;

10.12.7.2 Neither BT or CSR presented substantiated proposals epoch

10.12.7.3 the "relocation" costs approved by Transnet were not interrogated;

10.12.7.4 there was a suspicious agreement concluded between CNR and BEX, who assisted CNR in the computation of the costs; and



10.12.7.5 the variation orders to the two Locomotive Supply Agreements were not handled with the required care, skill and diligence required by *inter alia*, the Companies Act, PFMA and the PPM;

10.12.8 Transnet appointed a railway logistics expert: Loliwe Rail Solutions (Pty) Ltd ("Loliwe") to conduct an assessment of *inter alia*, the reasonableness of the relocation costs accepted by Transnet.

10.12.9 In summary, Loliwe found that:

10.12.9.1 there was no relocation of either BT and CNR;

10.12.9.2 the variation orders were inflated intentionally by the OEMs and inadequately evaluated by Transnet prior to concluding the approval and amendment of the contracts;

10.12.9.3 there is no justification for either the direct or indirect costs presented by BT and CNR;

10.12.9.4 it was improper for Transnet to have agreed to lump sums for the relocation;

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10.12.9.5 the approval of the direct and indirect costs was done without the presentation of valid and substantiated documentation; and

10.12.9.6 the process followed in the approval of the relocation costs was not in accordance with the standard contract management protocol.

10.12.10 The investigations found that Mr Siyabonga Gama's approval of relocation costs without apprising himself of the circumstances surrounding the amount, may have caused Transnet to incur fruitless and wasteful expenditure.

10.12.11 Our investigators recommend that BT and CNR be directed to provide a statement and debatement of the funds paid in relation to "relocation". Transnet is inquiring into whether the variation orders of the two LSAs were contrary to public policy and whether as a result can be declared unlawful and be set aside.

T-SYSTEMS

10.12.12 On 22 February 2017, Transnet awarded an IT Data Services tender to T-Systems as a second highest scoring

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bidder, as Transnet held a view that there were objective criteria justifying such an award.

10.12.13 Transnet's decision to award the tender to T-Systems and not Gijima was based on the fact that Transnet believed that the risks identified by Gartner Consultants, post BAFO assessment, constituted objective criteria.

10.12.14 According to the report, there was no reasonable basis for Transnet not to have awarded the tender to Gijima. The previous Board was of the view that the identified risks constituted objective criteria, for departing from the requirement to award the tender to the highest scoring bidder (Gijima), was not justifiable for the reasons advanced.

The Stanley Shane influence

10.12.15 The audio recording of the meeting of the BADC held in February 2017, indicate that the procurement process was simply a sham to perpetuate the continued appointment to T-Systems.

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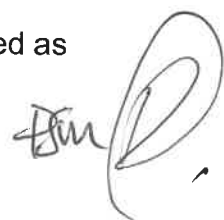
11. **REMEDIAL**

Establishment of Committees

- 11.1 The Board established ad hoc committees, the 1 064 Locomotives Board Steering Committee, comprising Audit Committee members and the Board Chairperson.
- 11.2 The Board Steering Committee oversees the implementation of the recommendations contained in the MNS and Fundudzi Reports.

Addressing financial and process abuses

- 11.3 In terms of section 34(1) of the Prevention and Combating of Corrupt Activities Act, the Board has reported certain alleged wrongdoings to the Directorate of Priority Crimes Investigations on 21 November 2018.
- 11.4 During April 2018, the President by Proclamation appointed The Special Investigating Unit (SIU) to investigating contracts tender irregularities within Transnet and Eskom. The Board has since appointed the SIU to investigate the matters appearing in annexure "E".
- 11.5 By way of a letter dated 28 February 2019, the SIU provided us with a progress report in which it is inter alia stated that "[t]he SIU anticipates that civil action will be initiated soon." I attach marked as "E" a copy of the SIU letter.

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Suspensions and Dismissals

11.6 Several Transnet executives and senior managers have been dismissed and/or suspended, these include:

Siyabonga Gama

11.6.1 Transnet former Group Chief Executive, Mr Siyabonga Gama was dismissed 21 October 2018. Mr Gama challenged his dismissal at the Labour Court. His application was dismissed with Costs. Transnet has referred its bill of costs for taxation. Once taxed, Transnet will recover the costs as order by the Labour Court.

11.6.2 At the end of 2018, Transnet wrote to the Transnet Retirement Fund requesting that the Fund to withhold Mr Gama's pension fund. Following the Fund's Administration Committee meeting scheduled for 20 February 2019, Transnet was advised that the Fund had withheld Mr Gama's pension benefits.

Thamsanqa Jiyane

11.6.3 Transnet Engineering Chief Executive, Thamsanqa Jiyane, ("Jiyane") was suspended in September 2018. Mr Jiyane's disciplinary hearing commenced on 31 January 2019.



Lindiwe Mdletshe

- 11.6.4 Senior Manager Supply Chain Services at TFR, Mdletshe was suspended in September 2018. Ms Mdletshe's hearing sat on 19 February 2019 and is ongoing.

Edward Thomas

- 11.6.5 Group Chief Supply Chain Officer, Edward Thomas was suspended in October 2018. A date has been arranged with the presiding officer and the matter will be heard on 18 March 2019.

Phetolo Ramosebudi

- 11.6.6 Group Treasurer, Phetolo Ramosebudi, resigned after being served with a notice of intention to suspend him in November 2018. At the end of 2018, Transnet wrote to the Transnet Retirement Fund requesting that the Fund to withhold Mr Ramosebudi's pension fund. Following the Fund's Administration Committee meeting scheduled for 20 February 2019, Transnet was advised that the Fund had withheld Mr Ramosebudi's pension benefits.

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Thabo Lebelo

- 11.6.7 Transnet Property Chief Executive Thabo Lebelo resigned after being served with notice of intention to suspend him in November 2018.

Civil action

- 11.7 Our legal team has instituted multiple actions against persons (natural and juristic) who have been found to have either been paid without just cause or colluded in the payment of those persons.
- 11.8 What follows is high-level summary of all the civil action Transnet has taken to date to recover its losses.

Regiments Capital (Pty) Ltd.

- 11.8.1 We have instituted two actions against Regiments. The claims are for the amount of R189 240 000, 00 and R79 230 000. 00 respectively. Both claims relate to the unjustified overpayments.
- 11.8.2 Following difficult negotiations led by MNS, Regiments has tendered an amount that we consider reasonable but has not been accepted as parties are negotiating the fine print.

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Trillian Asset Management

11.8.3 Transnet has instituted four claims against Trillian. The claims are for varying amounts totalling the sum of R145 920 000, 00. The amount of R145 920 000, 00 is computed as follows:

11.8.3.1 R93 480 000, 00 for monies paid without just cause for work purportedly executed by Trillian as Lead Arranger of the U\$1 billion ZAR equivalent club loan;

11.8.3.2 R41 040 000, 00 paid without cause when work was not done in relation to the property optimization structure; and

11.8.3.3 R11 400 000,00 for monies paid when work was not done in relation to a proposal for financial structuring advisory services.

Mr Siyabonga Gama.

11.8.4 We have issued and served multiple summonses on Mr Gama. The claims are for varying amounts totalling the sum of R323 760 000, 00. The amount of R323 760 000, 00 is computed as follows:

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11.8.4.1 R93 480 000, 00 for monies paid without just cause for work purportedly executed by Trillian as Lead Arranger of the U\$1 billion ZAR equivalent club loan;

11.8.4.2 R41 040 000, 00 paid without cause when work was not done by Trillian in relation to the property optimization structure; and

11.8.4.3 R189 240 000, 00 for monies paid to Regiments without just cause as a result of purported funding and financial advisory services rendered.

Mr Brian Molefe

11.8.5 Summons for the recovery of the amount of R79 230, 000, 00 have been issued under case number 44359/2018 against Mr Molefe and two others.

11.8.6 The claim relates the unjustified overpayments made to Regiments for advisory work done during post tender negotiations.

Mr Anoj Singh

11.8.7 Transnet has also issued and served multiple summonses on Mr Singh. The claims are for varying amounts totalling



the sum of R303 510 000, 00. The amount of R303 510 000, 00 is computed as follows:

11.8.7.1 R41 040 000, 00 paid without cause when work was not done by Trillian in relation to the property optimization structure;

11.8.7.2 R189 240 000, 00 for monies paid to Regiments without just cause as a result of purported funding and financial advisory services rendered; and

11.8.7.3 The amount of R79 230, 000, 00 paid to Regiments. The claim relates the unjustified overpayments.

Mr Garry Pita

11.8.8 Mr Pita has also been served with multiple summonses. The claims against are for varying amounts totalling the sum of R335 160 000, 00. The amount of R335 160 000, 00 is computed as follows:

11.8.8.1 R93 480 000, 00 for monies paid without just cause for work purportedly executed by Trillian as Lead Arranger of the U\$1 billion ZAR equivalent club loan;

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11.8.8.2 R41 040 000, 00 paid without cause when work was not done by Trillian in relation to the property optimization structure;

11.8.8.3 R11 400 000, 00 for monies paid when work was not done in relation to a proposal from Trillian for financial structuring advisory services; and

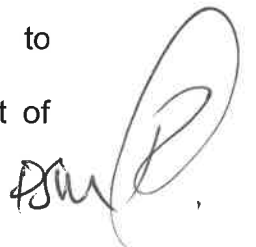
11.8.8.4 R189 240 000 for monies paid to Regiments without just cause as a result of purported funding and financial advisory services rendered.

Mr Phetolo Ramosebudi

11.8.9 Claims are for varying amounts totalling the sum of R282 720 000, 00 have been instituted against Mr Ramosebudi. The amount of R282 720 000, 00 is computed as follows:

11.8.9.1 R93 480 000, 00 for monies paid without just cause for work purportedly executed by Trillian as Lead Arranger of the U\$1 billion ZAR equivalent club loan; and

11.8.9.2 R189 240 000, 00 for monies paid to Regiments without just cause as a result of



purported funding and financial advisory services rendered.

Mr Edward Thomas

11.8.10 A claim for the recovery of the amount of R11 400 000. 00 has been instituted against Mr Thomas.

11.8.11 The amount relates to monies paid to Trillian when work was not done. At the time, Trillian had mere presented a proposal for financial structuring advisory services.

Contractual action

11.9 We have won an early victory against one of the OEMs, by recovering R618 million from CSR. The amount was paid unjustifiably to CSR for start-up costs and the delivery of certain tools and rotatables relating to a maintenance agreement for the new locomotives.

Negotiations with the suppliers of the 1064 locomotives

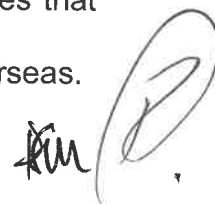
11.10 Based on irregularities in the procurement of 1064 Locomotives and non-compliance with section 54(2) of the PFMA as well as fraud and corruption in the award of the tender to CSR, the Board took a resolution to institute court proceedings to:

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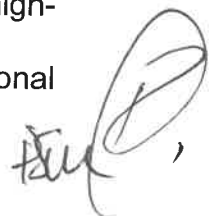
- 11.11 declare the procurement process which culminated in the award of the 1064 Locomotives tenders to the four OEMs irregular;
- 11.12 seek an appropriate relief on how the Locomotives Supply Agreements ("LSAs") must be dealt with in view of the procurement process being declared irregular
- 11.13 The Board adopted a differentiated approach to deal with the contracts concluded with the OEMs based on business needs and legal considerations, to each of the contracts.
- 11.14 Transnet is therefore currently engaging with the four OEMs with the assistance of MNS to approach the court jointly to declare the awarding of the contracts irregular and seek an appropriate relief on how the contracts must be dealt with in view of the procurement being declared irregular.

12. THE DIRE CONSEQUENCES THAT WOULD HAVE ENSUED IF TRANSNET HAD COLLAPSED

- 12.1 Transnet is the largest and most crucial part of the freight logistics chain that delivers goods to each and every South African and to other parts of the continent. Every day Transnet delivers thousands of tons of goods around South Africa and across the continent, through its pipelines and both to and from its ports. It moves that cargo on to ships for export while it unloads goods from overseas.

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- 12.2 Transnet is made up of five operating divisions, namely, Transnet Freight Rail (TFR), Transnet Rail Engineering (TRE), Transnet National Ports Authority (TNPA), Transnet Port Terminals (TPT) and Transnet Pipelines (TPL).
- 12.3 Although Transnet is fully owned by the South African government, however, it operates as a corporate entity which supports and contributes to the country's freight logistics network. It aims at developing South African industry, reducing the cost of doing business, while at the same time operating efficiently and profitably.
- 12.4 Given the centrality of Transnet in the economy of the country, the region, its collapse would have had a devastating effect not only on the country but on the region and SADC as well.
- 12.5 It is for these reasons that the Board made every effort in its first three months of office, to ensure that the lenders do not recall their loans. This was equally to protect the sovereignty of the country's rating, which is necessary for the overall economic sustainability of the country.
- 12.6 The significance of Transnet's infrastructure is unmatched in the region and the continent at large. Transnet pipelines consists of the fuel and gas pipeline business, which pumps and manages the storage of petroleum and gas products through its network of high-pressure, long distance pipelines. In particular, Transnet's national



Multipurpose Pipeline (NMPP) plays a significant role in the transportation of petroleum all over the country. If Transnet had collapsed inadequate fuel would be delivered in any part of the country and some parts of the continent.

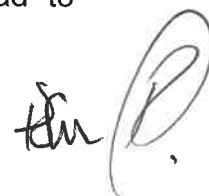
12.7 The importance of Transnet's freight business in the transportation of goods in South Africa and many parts of the African continent are a further indication of Transnet's centrality in the economy. It was apparent that Transnet's operations are to the economy what the heart and lungs are to the human body. The human body dies when these two vital organs become dysfunctional. A dysfunctional Transnet means a dysfunctional economy.

12.8 If one has regard to the precarious financial situation in which entities such as Denel and Eskom find themselves in, it is implicit that the consequences would have been disastrous had Transnet collapsed.

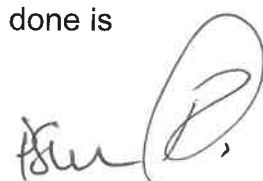
12.9 Having regard to the aforesaid, it is clear that the clean up of corruption has to be immediate and without delay

13. CONCLUDING REMARKS

13.1 We believe that our approach rescued the company from its perilous state and is gradually getting it back on the road to recovery.

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- 13.2 This process has neither been cheap nor easy. We have teams of forensic investigators working on cases. We have regular meetings with law enforcement agencies such as the Special Investigations Unit and the Hawks to identify and prosecute all implicated persons. And we have legal advisors who are preparing to institute civil claims against those who benefited from theft, corruption and conspiracy.
- 13.3 In the period following our appointment, we believe that we are making good progress. An additional R618-million has been refunded to Transnet by CSR.
- 13.4 In some cases, we have successfully blocked implicated Transnet officials from receiving their Transnet pensions until we have completed the process of recovering what is due to Transnet.
- 13.5 Having said all this, though, it is clear that our work is by no means done. Every day, we seem to uncover new layers of corruption and discover new networks that have been put in place to siphon money out of Transnet and its suppliers. This accentuates the fact that claws of corruption are long, its roots deep and its tentacles wide. To root out corruption will require all round mobilization of the society.
- 13.6 We also see increasing evidence that the corrupt networks are fighting back, or preparing to fight back. But what this has done is to strengthen our resolve.

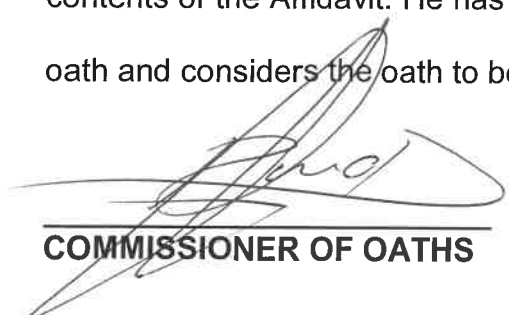
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13.7 As a result of the strong political leadership of our President and our Minister, the commitment of the board, the resolve of the Transnet officials committed to good governance and the goodwill of civil society as well as the South African public, we are gradually moving the company from chaos to stability. From stability to sustainable growth.

13.8 We have new structures and procedures in place to ensure good governance and proper accountability for the management of public funds, and we are already seeing the results. What remains a challenge is the building and entrenchment of ethical leadership underpinned by a new organization and values of service to society.


DR POPO SIMON MOLEFE

Signed before me at ILLOVO on this 18th day of APRIL 2019. The deponent has acknowledged that he understands the contents of the Affidavit. He has no objection against taking the prescribed oath and considers the oath to be binding on his conscience.


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