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# **PARLIAMENTARY OVERSIGHT**

## **EXHIBIT ZZ 6**

**DAPHNE ZUKISWA  
RANTHO**



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

2<sup>nd</sup> floor, Hillside House  
17 Empire Road,  
Parktown  
Johannesburg  
2193  
Tel: (010) 214 to 0651  
Email: [inquiries@sastatecapture.org.za](mailto:inquiries@sastatecapture.org.za)  
Website: [www.sastatecapture.org.za](http://www.sastatecapture.org.za)

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

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**AFFIDAVIT BY MS DAPHNE ZUKISWA RANTHO**

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I, the undersigned,

**DAPHNE ZUKISWA RANTHO**

do hereby make oath and state as follows:

1. I am an adult female.
  
2. Save where otherwise stated, or where it may otherwise appear from the content hereof, the facts deposed to in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
  
3. **PURPOSE OF THIS AFFIDAVIT**
  - 3.1. I make this affidavit in order to assist the Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State (the Commission), which was established in terms of the Constitution of the Republic of South Africa, 1996.

- 3.2. I have been requested to set out my experiences on the question of parliamentary oversight in relation to allegations of corruption or fraud in the public sector or of state capture.

#### **4. PROFESSIONAL AND POLITICAL HISTORY**

- 4.1. From 1992 to 2009 I was a full-time teacher.
- 4.2. I have been a member of the African National Congress (ANC) since 1986. In 1999, I was elected as chairperson of the Joe Gqabi branch of the ANC Women's League (which includes Aliwal North and certain other towns in the Eastern Cape) and held that position until 2009. I served as the secretary of the Ncumisa Kondlo branch of the South African Communist Party, from 2007 to 2009. From 2012 to 2013 I served as a member of the ANC's Joe Gqabi Regional Executive Committee (REC) and from 2013 to 2018 on the ANC's Eastern Cape Provincial Executive Council (PEC).

#### **5. MY TERM IN THE NATIONAL COUNCIL OF PROVINCES (2009 – 2014)**

- 5.1. After the 2009 general elections, I was appointed as an ANC delegate from the Eastern Cape to the National Council of Provinces (NCOP). This appointment had the support of the above REC and the PEC.
- 5.2. I served in the NCOP for the duration of the Fourth Parliament (from 7 May 2009 to 21 April 2014). During this period I was the ANC's provincial Whip for the Eastern Cape.

- 5.3. During my tenure in the NCOP, I served on various select committees falling within the Social <sup>D.Z.R.</sup> ~~Development~~ cluster. I do not recall any significant state capture or corruption issues being the subject of meetings of these committees.
- 5.4. ANC delegates to the NCOP form part of, and attend the meetings of, the ANC's parliamentary caucus. During the course of the Fourth Parliament there was, to my recollection, very little if any discussion in caucus meetings about allegations that had been raised from time to time in press reports of corruption or improper influence over state owned companies or the like. Caucus meetings mainly dealt with issues decided on by the whippers to be the subject of formal agendas for the various parliamentary committees or structures.
- 5.5. The prevailing ethos within the caucus was that allegations of improper influence, corruption or the like did not merit discussion within the caucus, unless or until they were either established by a court of law or had been proved by concrete evidence. Such allegations were, to my knowledge, therefore discussed by back-bench Members of Parliament (MP's) of the ruling party only privately and informally, if they were discussed by them at all. I have no knowledge as to whether they were discussed in the Cabinet or in the ANC's National Executive Committee (NEC) or National Working Committee (NWC).

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5.6. So, for example, the following allegations which were reported in the media were not, to the best of my recollection, discussed in the ANC caucus (nor, so far as I know, were they discussed in any select or portfolio committees):

5.6.1. The allegations in the Sunday Times of 27 February 2011 reported under the heading "*Ministers shiver when summoned to family's home*". The article referred to a claim that the Gupta brothers wielded so much power that they often summoned cabinet ministers and senior government officials to their family compound in Saxonwold, Johannesburg. It claimed that a revolt was brewing in the ANC and its alliance partners against the influence of the Gupta family over President Jacob Zuma and his government. It claimed that a member of the NWC had said: "*The concern is that these people (the Guptas) now have influence in the appointment of CEOs and chairmen of state-owned entities ...*". It reported a claim that the Guptas telephoned at least three deputy ministers and told them they were to be promoted days before president Zuma announced his cabinet reshuffle. A copy of this report is annexed marked

"ZR1".

5.6.2. A claim, reported in the Sunday Times of 30 January 2011, a copy of which is annexed hereto marked "ZR2", that it was "becoming common for the Guptas to issue directives".

- 5.6.3. The allegations in a report by India's "Economic Times" of 3 March 2011 (a copy of which is annexed marked "ZR3") that the Guptas had influenced President Zuma to appoint two close friends of theirs (Messrs B. Molefe and Zim) to top positions.
- 5.6.4. Claims in several reports published between August and October 2011 to the effect that Mr Mbalula had told an NEC meeting, attended by President Zuma, that he had learned about his forthcoming appointment as a minister from the Guptas, two weeks before this had been publicly announced. I annex copies thereof marked "ZR4a" to "ZR4c".
- 5.7. My attention has been drawn to a press report of 11 March 2011 in the Business Day (see annexure "ZR5") in which it was reported that ANC's NWC had taken the view that there was no undue influence by the Guptas on government; that the claims to this effect were based on racism; and that the NWC would not be investigating the claims.
- 5.8. I do not recall that these issues were debated within the caucus, nor do I recall any transparent discussion of these issues by the party's leadership with its MP's.
- 5.9. To the best of my recollection there were no attempts by ANC MP's to investigate these claims in Parliament, including the claims of undue

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influence in the appointment of CEOs and chairpersons of state owned entities, claims which – if true – implied that these entities may have been rendered vulnerable to capture and/or corruption.

5.10. I have been informed by a member of the Commission's staff that a word search of the extensive electronic records of the Parliamentary Monitoring Group (PMG) reveals that the first time any reference was made in a recorded parliamentary meeting to alleged influence by members of the Gupta family was a comment by a COPE MP in a debate in the National Assembly on 26 February 2013<sup>1</sup>. This does not surprise me. I cannot recall any indication within the ANC caucus of any intention to raise the Gupta issue before the famous Waterkloof incident in March 2013.

5.11. I have been led to understand that evidence has already been led before the Commission as to what occurred in Parliament in relation to the Waterkloof incident and I do not propose to deal with this issue in any detail, save to observe that I believe that, from the time of this incident, opposition MPs raised allegations not infrequently of improper influence on the part of the Guptas, e.g. in relation to The New Age and in relation to the State Security Agency (SSA) investigation into undue influence by the Guptas that had allegedly been stopped by the relevant minister.

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<sup>1</sup> Mr J D Killian (COPE): "Who benefits most from a dysfunctional SABC, where good governance practices are flouted with impunity? Only the ruling party and their inner circle, including the Gupta family, who will now run the 24-hour news channel after the SABC could not convince the Minister of Finance that they had the money and people to do so."

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5.12. My attention has been drawn to press reports published in March 2013 concerning a claim that the Guptas offered a R500 000 bribe to Mr Vuyisile Kona, then chairperson and acting CEO of SAA (see e.g. the Sunday Times report of 17 March 2013, annexure “ZR6a”, and the Mail & Guardian report of 22 March 2013, annexure “ZR6b”). During the period I served in the NCOP I did not have any special interest in SAA and do not recall this report or this alleged incident. I have however been informed by a member of the Commission’s staff that no reference can be found on the PMG website to this allegation being raised or investigated in Parliament (prior to it being alluded years later by Ms Natasha Mazzone of the DA in a debate in the National Assembly on 26 April 2016). This does not surprise me. I do not recall it being raised in the caucus and it is not the sort of claim which, in my experience, would be expected to be investigated by a portfolio committee during this period. As I have already said, the dominant view expressed in the caucus was that it was not for MP’s to probe allegations made in the press which were not “proved”.

**6. MY TERM IN THE NATIONAL ASSEMBLY (2014-2019)**

- 6.1. In May 2014, I was elected as a Member of Parliament for the ANC in the National Assembly. I served in this capacity from 10 May 2014 to until 7 May 2019.
- 6.2. I was deployed to the Portfolio Committee on Public Enterprises (PCPE), and appointed to serve as ANC Whip in the said Committee.

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In addition to this, I was appointed to serve in the Economic Development Portfolio Committee and in the Joint Committee on Ethics and Members' Interests.

- 6.3. At the time that I joined the PCPE, Minister Lynne Brown (Minister Brown) was the Minister of Public Enterprises and Ms Dipuo Letsatsi-Duba was the Chairperson of the Committee.
- 6.4. Following Former President Zuma's cabinet reshuffle on 31 March 2017, Ms Letsatsi-Duba was appointed as Deputy Minister of Public Service and Administration and thereafter as State Security Minister. Shortly after she was initially promoted I was appointed as Acting Chairperson of the PCPE.
- 6.5. I was serving in this capacity when, as referred to below, the PCPE decided in June 2017 to conduct an inquiry into Eskom.
- 6.6. In October 2017, the ANC appointed Ms Lungi Mnganga-Gcabashe as the Committee's new Chairperson. I remained the ANC Whip of the Committee. Despite Ms Mnganga-Gcabashe's appointment, I was retained by the PCPE as chair of the Eskom inquiry until it adopted its report in November 2018.
- 6.7. Before dealing with that inquiry, I wish, firstly, to make a few comments about portfolio committees and, secondly, to deal with some issues which arose in the period between May 2014 and June 2017.

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## 7. PORTFOLIO COMMITTEES

7.1. Section 55(2) of the Constitution obliges the National Assembly to “*provide for mechanisms*” (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and (b) to maintain oversight of the exercise of national executive authority, including implementation for legislation; and any organ of state.

7.2. Section 56 of the Constitution provides:

*“The National Assembly or any of its committees may—*

- (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;*
- (b) require any person or institution to report to it;*
- (c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and*
- (d) receive petitions, representations or submissions from any interested persons or institutions.”*

7.3. Portfolio committees are established under the Rules of the National Assembly. The current edition of these rules is the 9<sup>th</sup> edition, adopted on 26 May 2016. This edition replaced the 8<sup>th</sup> edition, which took effect in February 2014.

7.4. The general powers of committees of the National Assembly are set out in rule 167 of the 9<sup>th</sup> edition. This corresponds with rule 138 in the 8<sup>th</sup> edition. For convenience I annex copies of these two rules as annexures “**ZR7a**” and “**ZR7b**”. Both empower a committee *inter alia* to

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summon any person to appear before it to give evidence on oath or affirmation and to conduct public hearings.

- 7.5. Rule 227 of the 9<sup>th</sup> edition prescribes the functions of a portfolio committee. This corresponds with rule 201 in the 8<sup>th</sup> edition. For convenience I also annex copies of these two rules marked “**ZR8a**” and “**ZR8b**”. Both provide *inter alia* that a portfolio committee must “*maintain oversight*” of the exercise within its portfolio of national executive authority and any executive organ of State falling within its portfolio; and may monitor, investigate, enquire into and make recommendations concerning any such organ of state.
- 7.6. Rule 154 of the 9<sup>th</sup> edition of the rules (like rule 125 in the 8<sup>th</sup> edition) provides that parties are entitled to be represented in committees in substantially the same proportion as the proportion in which they are represented in the Assembly. The governing party, the ANC, has majority representation in the Assembly and therefore has majority representation in all the portfolio committees.
- 7.7. The PCPE had eleven members, six members from the ANC, two from the Democratic Alliance, one from the Inkatha Freedom Party, one from the United Democratic Movement, and one from the Economic Freedom Fighters.

- 7.8. Because it had and has a majority of the members in the PCPE, the ANC has been and is in a position to determine what its decisions or recommendations will be.
- 7.9. As with the other portfolio committees, the ANC had its own PCPE caucus, known as its “study group”, in which it decided on positions to be adopted by the ANC within the PCPE.
- 7.10. Rule 158 (9<sup>th</sup> edition) provides for the election by each committee of one of its members as its chairperson.
- 7.11. The ANC’s majority representation in Parliament and in all committees enables it to determine who will be elected as chairpersons of committees. With the exception of the Standing Committee on Public Accounts (SCOPA), the chairpersons have all been ANC appointees. Decisions as to who the chairpersons of the committees will be are conveyed to the ANC’s caucus in Parliament by Luthuli House, on the basis, I presume, of decisions taken by the ANC’s deployment committee.
- 7.12. Rule 158(2) (9<sup>th</sup> edition) prescribes the powers of the chairperson. First and foremost, the chairperson presides at meetings, subject to directions of the committee and subject to the rules. In principle all members of the committee should be able to speak freely and to participate in any decision-making process. Chairpersons can however exercise a considerable influence over the conduct of meetings of

committees. They also tend to develop a relationship with the minister of the department their committee oversees. This can affect the manner in which oversight meetings are run.

- 7.13. MP's on a portfolio committee generally have limited influence over the agendas for its meetings. There is an annual cycle of meetings for each committee which needs to be adhered to (e.g. over budgets for, or reports from, the departments/entities over which the committee has jurisdiction).
- 7.14. From the commencement of the Fifth Parliament, the PCPE exercised oversight over the Department of Public Enterprises (the Department) as well as the following entities: Eskom, Denel, Transnet, South African Airways (SAA), South African Express Airways, SAFCOL and Alexkor. (During the course of the Fifth Parliament, SAA was moved to the oversight of the Treasury, and therefore to the oversight of a different portfolio committee). Meetings needed to take place in respect of all these entities at different times of the year.
- 7.15. Dates for meetings are generally set well in advance and the documentation to be considered at the meeting is supposed to be distributed in good time for it to be considered in advance. It is therefore unusual for MPs to be afforded an opportunity to probe allegations recently reported in the press relating to entities in respect of which they exercise oversight.

- 7.16. Frequently the overseen departments or entities only furnish the document or report to be considered at a meeting of a committee very shortly before, or sometimes even at, the meeting concerned. This obviously makes it difficult to evaluate what is reported and to put probing questions.
- 7.17. After completion of a presentation to a committee, members are usually afforded an opportunity to take turns to each ask questions which they wish to pose. After they have all posed their various questions, the presenter is usually afforded an opportunity to answer all the questions together. Sometimes adequate time is not afforded to enable all questions to be answered. The presenter is also sometimes afforded leeway to determine which questions to really address and which to skirt over. When questions are directly addressed, there is sometimes not an adequate opportunity for probing follow up questions.
- 7.18. The net result is that, when difficult questions are raised, ordinary committee meetings do not always elicit satisfactory and complete answers. (The position is different when a committee decides – as the PCPE eventually did – to conduct a public hearing, under rule 167 (d)).
- 7.19. Portfolio committees exercising oversight typically meet with the responsible minister, director-general, and chairperson, board members and/or senior executives of overseen entities, who tend to defend the record of the overseen entities. Committees are by and large dependent on the veracity and reliability of answers they get to

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any questions they put. They have limited research assistance and their members sometimes lack real specialist expertise.

## 8. OVERSIGHT BY THE PCPE DURING MAY 2014 TO JUNE 2017

- 8.1. At the end of each 5-year Parliament, each portfolio committee prepares a report on its activities, the challenges emerging and its recommendations on issues for follow up, colloquially referred to as its "legacy report". I annex hereto marked "ZR9" the PCPE's legacy report in respect of the 4<sup>th</sup> Parliament (i.e. the period before I joined this committee). I point out that it states at paragraph 4 that "challenges" emerging in some of the state-owned companies in that period included the financial sustainability of certain entities (SAA, SA Express Airways, Alexkor, Safcol and Denel Aerostructures) and instability in the Eskom leadership. I also point out the recommendations in paragraph 5, none of which related to any concern at the time about state capture, corruption or the like.
- 8.2. Over the few years that I was on the PCPE and prior to May 2017 (when, it decided to commence its public hearing in terms of rule 167(d)), the PCPE engaged on a regular basis with the Minister, the Department, the office of the Auditor General of South Africa (AGSA) and the leadership of the state owned companies over which it exercised oversight. A representative of the Commission has gone through the PMG's reports on the PCPE over this period and extracted, into the format of a schedule (annexed hereto marked "ZR10"), reports

on the main engagements of relevance. The focus is on engagements in respect of Transnet, Eskom, Denel and SAA, particularly as regards alleged irregular expenditure, procurement issues, board appointments or instability and other issues which might be of interest to the Commission.

- 8.3. My own experience is that the records prepared by the PMG are considerably more detailed and generally more useful than the relatively cursory and formalistic minutes kept by the committee's secretariat.
- 8.4. It will be evident from the schedule that, whilst there were quite a few oversight engagements and whilst in some of these engagements legitimate oversight concerns were expressed, the issue of state capture was not really addressed and little effective oversight took place in respect of allegations of fraud or corruption or other comparable misconduct.
- 8.5. My attention has been drawn to certain press reports from 2014 to 2016 which suggested that, during that period, all was not well as regards the governance and procurement functions of the major state-owned companies falling under the Department. I shall refer to these and to the extent to which, as best I recall, the PCPE responded to these reports during this period.

8.6. In July 2014, i.e. very soon after the commencement of the Fifth Parliament, there were several press reports which brought into question the manner in which Transnet had allocated a R50 bn tender to supply 1064 locomotives. For example a report was published in the Mail and Guardian on 3 July 2014 (see annexure "ZR11") which alleged that Mr Iqbal Sharma (Sharma), chairperson of Transnet's board tender committee which had decided on the award of this tender, had joined forces with the Gupta family and Mr Duduzane Zuma in a move that put them in pole position to benefit from key subcontracts. Reference was made to VR Laser Services, a likely subcontractor allegedly connected to Mr Salim Essa and the Gupta family, and it was alleged that Sharma had a concealed indirect interest in this business. As referred to in the report, it had been preceded by a report three weeks earlier that the National Union of Metalworkers of South Africa (NUMSA) had submitted a complaint to the Public Protector about the way in which Transnet had structured, adjudicated and awarded the locomotive tender.

8.7. I do not recall any discussion about this report but I do recall that the Committee asked at a meeting for an explanation as to a very substantial increase (many billions of Rands) in the agreed total purchase price of the locomotives. The answer received was given by the then Transnet CEO, Mr Brian Molefe, who said, as I recall, that this was due to the delay in the commencement of the contract and the risk of associated foreign exchange movements. I have since been led to understand that, in the circumstances, this was not an acceptable

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explanation but the Committee had no information at the time which in my view then justified rejecting this explanation.

8.8. I also recall that NUMSA's complaint in respect of this tender was raised in a meeting with, amongst others, the then Minister, Ms Lynn Brown. I recall that Ms Brown assured the Committee that the Department would carry out an investigation in respect of these complaints and report back on its findings. To the best of my knowledge, no such report was subsequently furnished by the Department, and no follow-up on the issue was made by the PCPE.

8.9. Another report to which my attention has been drawn is a report published by AmaBhungane on 31 July 2015 (see annexure "ZR12") which raised grounds for concern about the award of a major contract by Transnet. The report referred to a R2bn contract between Transnet and Neotel and disclosed that Neotel's auditors had blown the whistle on an arrangement by Neotel to pay a "success fee" of up to R100m in respect of this contract a company, Homix (Pty) Ltd. It was alleged that Homix was linked to the Gupta family and the suspicion raised was that this may have been an improper kick-back.

8.10. I actually have no recollection of this press report. It raises issues that seem to me to be quite complex. To the best of my recollection, there was no attempt by the PCPE to probe these allegations. With the benefit of hindsight, I think this would have been advisable. This is the sort of report which I think researchers advising the PCPE should be

required to monitor and advise the committee on. I do not recall receiving any such advice. I also do not think that any researchers are mandated by the PCPE to look for such information and to advise the committee on issues that should be probed by it.

8.11. Another article drawn to my attention is a report of 24 March 2016 in the Mail & Guardian that a former Eskom director had asserted – possibly with a measure of implied exaggeration – that “*The entire Eskom board was appointed by the Guptas!*”. A copy of the said article is annexed hereto and marked “**ZR13**”.

8.12. I believe that, when taken together with all the other information which was coming to light by this time, an article like this ought to have prompted the PCPE to inquire vigorously into the possibility of undue influence by the Guptas over Eskom and the boards of other entities like Transnet and Denel.

8.13. By this time (March 2016), a host of allegations had been made public, including the following :

- Mcebisi Jonas’s claim, reported in the Sunday Times on 13 March 2016 and confirmed by his public statement of 16 March 2016, that the Guptas had offered him a R600m bribe in October 2015 if he would take the post of finance minister and do their bidding, which he said he had refused;

- An allegation that the person then appointed instead of him as the new finance minister in early December 2015, Mr Des Van Rooyen, was accompanied to his new post on his appointment by Gupta-linked aides (reported in African Confidential in February 2016);
- Vytjie Mentor's allegation (e.g. during an interview on Power FM on 18 March 2016) that in 2010 she had been offered Barbara Hogan's job as minister of public enterprises by the Guptas if she co-operated with them in assisting Jet Airways to replace SAA on the Mumbai route; and
- Barbara Hogan's allegation that there "were definitely sinister forces" operating behind her back when she was Minister of Public Enterprises until October 2010 (News 24 article of 17 March 2016) and that she too had faced pressure regarding Jet Airways (interview on Cape Talk on the same date).

8.14. The PCPE did not inquire effectively into the above allegations nor into allegations of improper or undue influence over the procurement decisions of Transnet or Eskom until after June the following year. That is not to say that no questions at all were pursued in this regard.

8.15. I refer for example to the summary in the schedule as regards the PCPE meeting on 31 August 2016 where pointed questions were

raised, mainly by opposition members, in respect of the Eskom pre-payments to the Gupta-linked Tegeta Exploration and Resources.

8.16. My attention has also been drawn to an article in the Mail & Guardian of 5 February 2016 headlined "Guptas conquer state arms firm Denel" (annexure "ZR14"). This dealt with a joint venture which had recently been announced (known as Denel Asia) between Denel and a company identified as VR Laser Asia. The article labelled it as "Laser's Gupta joint venture". (The article enjoyed attention in the Public Protector's November 2016 "State of Capture" report (at pp 60-65).) I have also been reminded of the Treasury's public announcement on 14 April 2016 that such a joint venture would need, but did not yet have, its approval.

8.17. As the above schedule shows, there were some attempts to engage with Denel about this affair. At the PCPE meeting on 20 April 2016, Ms Mazzone of the DA proposed that the Guptas be summoned by the Committee to account on this project, but the Committee decided instead to engage with the board of Denel. The matter was discussed with Denel at PCPE meetings on 4 May 2016 and 7 September 2016. Denel stoutly defended its dealings with VR Laser Asia. The Denel chairperson, Mr Mantsha, said that the sole shareholder in VR Laser India and the majority shareholder in VR Laser South Africa was Mr Salim Essa, a business partner of the Guptas. The allegation that Denel had been "captured" by the Guptas was denied. No real attempt

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was made to probe the Denel board's version of events. I think the feeling (at least amongst the ANC members) was that, though the joint venture had apparently been entered into without Treasury approval, there was not much that the PCPE could do about that.

8.18. Whilst I accept that the following factors would not justify a failure on the part of the PCPE to exercise adequate oversight, I nonetheless believe they had a bearing on why so little was done in regard to allegations of state capture or the like by the PCPE before mid-2017:

8.18.1. As referred to above, Parliament and its portfolio committees follow quite a rigid annual cycle, which does not allow portfolio committees flexibility to investigate publicly made allegations;

8.18.2. 2016 was a local election year and Members of Parliament were actively engaged in this period in preparing for these elections; and

8.18.3. Political and leadership pressures can inhibit portfolio committee members from probing certain politically sensitive issues. Members of Parliament who refuse to toe the line can end up being removed from Parliament by their party. As I will refer to below, when the PCPE decided in June 2017 to conduct its public hearing, its ANC members came under considerable pressure to toe the line. I believe that the fact that I am no longer a Member of Parliament – and that only

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two of the ANC's 2014-2019 PCPE study group are still Members – may illustrate the point.

## 9. THE PROCESS RESULTING IN THE ESKOM INQUIRY

- 9.1. On 2 November 2016, the Former Public Protector, Adv. Thuli Madonsela, released her *State of Capture* report, which was the culmination of the investigation by the Office of the Public Protector into allegations made to her, from March 2016, of improper and unethical conduct by the President and other state functionaries.
- 9.2. The report included allegations of abuse by Mr Brian Molefe of his position at Eskom to benefit the Gupta family in the awarding of contracts. On 11 November 2016, stung by the contents of the report and its possible implications for Eskom, Mr Molefe announced his resignation from Eskom with effect from 1 January 2017.
- 9.3. Mr Molefe reportedly thereafter submitted a request to Eskom for an early retirement, which request was granted. This effectively permitted Mr Molefe to go on retirement from age 50.
- 9.4. In consequence of Mr Molefe's purported early retirement, he elected to receive one-third of his retirement benefits as a lump sum pay-out.

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- 9.5. On 23 February 2017, Mr. Molefe joined the National Assembly as a Member of Parliament, representing the ANC.
- 9.6. On 16 April 2017, the Sunday Times reported that Mr Molefe had received a R30.1 million pension pay-out. In this regard, I annex hereto, marked "ZR15" a copy of a Sunday Times article, dated 16 April 2017.
- 9.7. Several sectors of society were up in arms and found this very disconcerting. Mr Molefe's pension was considered to be unjustifiably high and possibly illegal.
- 9.8. On 14 May 2017 Mr Molefe resigned from Parliament and on 15 May 2017 he returned to Eskom to resume his duties as Chief Executive Officer.
- 9.9. On 23 May 2017, reacting to the public disquiet, the PCPE convened an urgent meeting and invited Minister Brown and the board of Eskom to explain the circumstances of Mr Molefe's resignation, retirement, pension, leave and re-appointment. I annex hereto marked "ZR16" a copy of the PMG summary of this meeting.
- 9.10. As I mentioned above, I was by this time the acting chairperson of the PCPE. It also bears mention that Mr Pravin Gordhan, the former finance minister, joined the PCPE as a back-bench MP with effect from this meeting.

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- 9.11. Minister Brown claimed that she had remained in the dark for months about Mr Molefe's application for early retirement. She maintained that she operated under the assumption that Mr Molefe had resigned and had not retired. Mr Ben Ngubane, the chairperson of the Eskom board attempted to invoke the *sub-judice* rule, given that there was a case then pending before the High Court about the matter. Members of the Committee referred to legal advice received that the *sub-judice* rule could be used as an excuse not to give a full and proper account to Parliament.
- 9.12. The PCPE found the answers received to be unsatisfactory. Reference was made to the alleged links between Mr Molefe and the Gupta family and to the allegations of state capture and the like which were in the public domain, including those in the Public Protector's "State of Capture" report. An allegation was made that Eskom was being captured for the benefit of a few. Reference was made to the committee's powers under rule 167 to summon any person and to conduct public hearing. It decided, in principle and without any dissent, that the PCPE should undertake an inquiry, not only as regards Mr Molefe's pension but also as to the suitability of the Eskom board to continue leading the enterprise. It was envisaged that the inquiry to be conducted would be similar to the parliamentary inquiry into the South African Broadcasting Corporation which had recently taken place. (I have been informed that that inquiry was instituted on 3 November 2016, per a resolution of the National Assembly.)

9.13. The PCPE formally unanimously resolved on 21 June 2017 to institute the inquiry. By then it had received the letter dated 15 June 2017 from Mr Frolick referred to below.

9.14. In my view the following factors contributed to the decision of the PCPE to commence the inquiry:

9.14.1. The Constitutional Court's *Nkandla*<sup>2</sup> judgment, handed down on 31 March 2016, in which the Court made clear that Members of Parliament have not only the power but also the duty to hold the Executive to account. This was widely welcomed by those Members of Parliament who were keen to advance proper oversight over the Executive.

9.14.2. The decision of the National Assembly in November 2016 to establish the Ad Hoc Committee on the SABC Board, to inquire into the fitness of the SABC board. This inquiry served as an important precedent for the PCPE, in that it demonstrated that it was possible: 1) for an inquiry of this type to be instituted; 2) to use Parliament to engage, pursue and investigate issues of corruption; and 3) for portfolio committees to seek and obtain an appropriate budget, research facilities and external assistance for purposes of conducting an inquiry.

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<sup>2</sup> *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016) (*Nkandla* judgment).

- 9.14.3. The widespread public outcry on the publication from about the beginning of June 2017 of the so-called *Gupta Leaks* (a trove of emails allegedly implicating the Gupta family in state capture).
- 9.15. The publication of the *Gupta Leaks* apparently led Mr Cedric Frolick, the House Chairperson for Committees and Oversight in the National Assembly (often referred to as the “Chair of Chairs”) to issue directives to certain portfolio committees to investigate allegations in the *Gupta Leaks* relevant to their committees. In this regard I annex hereto marked “**ZR17a**” to “**ZR17c**” copies of virtually identical letters dated 15 June 2017 from Mr Frolick to the chairpersons of the portfolio committees on public enterprises, home affairs and transport. In each case the committee concerned was requested to investigate the allegations of state capture that had appeared in the media over recent weeks and to report any findings, where applicable, to the National Assembly as a matter of urgency.
- 9.16. I am not sure whether a similar letter was also sent to the chairperson of the portfolio committee on mineral resources. I attach marked “**ZR18**” a letter dated 23 August 2017 to that chairperson, referring to state capture allegations and the possible investigation thereof.
- 9.17. Whilst members of the ANC’s PCPE “study group” supported the idea of instituting an inquiry, there was a push to scupper the inquiry from a

substantial number of members in the ANC parliamentary caucus, who argued that the inquiry would cause divisions and would taint the integrity of the ANC. Of particular concern to some members of the caucus was the risk to the reputation of the party. These views were openly communicated to me in clear and emphatic terms.

- 9.18. However, the then Chief Whip, Mr Jackson Mthembu, supported and encouraged the PCPE to continue with the inquiry. He assured us that there was support for the inquiry from influential members within the ANC's leadership.

## 10. THE ESKOM INQUIRY

- 10.1. In or around June 2017, the PCPE requested Mr Frolick to make available the additional resources that were needed in order to carry out the investigation. The PCPE also requested that, in view of his experience and performance in the SABC *ad hoc* inquiry, Adv. Ntuthuzelo Vanara be appointed as the inquiry's evidence leader. The PCPE further requested external researchers, an additional secretary and a content advisor.
- 10.2. Adv. Vanara was made available and certain additional resources were also made available.
- 10.3. On Adv. Vanara's advice, the Committee decided to broaden the scope of the inquiry and to investigate allegations of state capture and corruption not only in Eskom, but also in Transnet and Denel.

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- 10.4. It was decided to deal first with the allegations concerning Eskom. As it turned out, the Eskom inquiry took longer to complete than had been foreseen and, as will be referred to below, it was ultimately decided not to pursue the inquiry into Transnet and Denel but to leave investigation of these entities to the Commission.
- 10.5. Adv. Vanara conducted interviews between June and October 2017. During this period, he examined relevant documents, assessed the relevance of potential witnesses and collected as much information as possible. The public hearing officially commenced on 17 October 2017.
- 10.6. Uncovering state capture and investigating the mismanagement of state funds was no easy feat. It was a difficult task that required considerable research capacity. Much to my regret, Parliament did not in my view allocate adequate resources. In addition, the researchers that the Committee had, conducted research that barely went beyond their normal practice of only assessing material volunteered to them by the overseen entities. This lack of adequate research support resulted in the Committee struggling immensely.

## 11. THREATS AND ACTS OF INTIMIDATION

- 11.1. In or around June/July 2017, my husband was – so he later told me – followed whilst driving my Toyota RAV in Aliwal North by a suspicious vehicle. He overtook the vehicle, but it kept following him until it

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cornered him. He then stopped and confronted the occupants of the vehicle and asked them what they wanted. They told him that they had been following the wrong car, then they drove off. Attempts to trace the vehicle did not yield any positive results, as it turned out that the registration number was false.

- 11.2. Shortly before the PCPE inquiry started its hearings, I received a call from Adv. Vanara, who requested that we meet at a safe place as he wanted to inform me of intimidation that he had been subjected to. I recall very vividly that when we met, Adv. Vanara was moved to tears. He told me that then State Security Minister, Bongani Bongo, had approached him and demanded that he step down as the evidence leader and collapse the probe into the inquiry. This incident was brought to the Speaker's attention.
- 11.3. Around November 2017, my son was – as he later told me – accosted coming from a rugby practice session in Aliwal North with his friends and confronted by unidentified men who said to him: "Your mother is making our lives difficult," before speeding off in a car.
- 11.4. I found the aforementioned incidents unnerving and was concerned for my and my family's safety. They were reported to the Speaker of Parliament and I requested protection. I was advised by the security team of Parliament that investigations would be made. I was however, never offered any protection.

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- 11.5. I should note at this point that some ANC caucus members made attempts to stop the inquiry. Some of them approached the Public Protector to try to get her assistance to stop the inquiry, arguing that its work would duplicate work to be done by the commission yet to be appointed by the President. I am not aware of any response by her to this. When the issue was raised in the caucus, the chief whip reprimanded these members as they had not been authorised to do this by the ANC.
- 11.6. On 25 January 2018, the appointment of the Commission and its terms of reference were published in the Government Gazette.
- 11.7. An argument was again raised in the caucus that the PCPE should not duplicate the work to be done by the Commission.
- 11.8. The PCPE disagreed, noting that the Commission had not yet started its hearings, and resolved to continue. We felt that the evidence before, and findings of, the PCPE could be of assistance to the Commission in due course.
- 11.9. However our inquiry into Eskom took longer than we expected and took up until the end of 2018. 2019 was an election year and we ultimately decided to leave the intended investigation of Transnet and Denel to the Commission.

## 12. RELEASE OF THE REPORT

- 12.1. During March or April 2018, an interim report was released by the PCPE affording implicated individuals an opportunity to comment and correct any errors.
- 12.2. On 28 November 2018, the PCPE unanimously adopted, with amendments, the report.
- 12.3. The National Executive Committee had sight of the report before it was released.
- 12.4. The PCPE resolved to hand over the report, together with the documentation and the entire record of evidence collected in the course of the inquiry, to the Commission, for further investigation.
- 12.5. I believe that the Commission has already had an opportunity to read and consider our report. There is therefore little need for me to explain in any detail what it concluded and what material was passed on to the Commission for further investigation. Perhaps it suffices to say that, in 2018, the report found possible contraventions of legislation, regulations and processes. It found (in paragraph 2.9) that it was *“patently clear that there was undue influence by private individuals and*

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*companies over the appointment of Eskom Board members as well as some procurement decisions". It thereby vindicated to an extent allegations which had (as referred to above) first been made in the press from as early as 2011. It is in my view regrettable that these allegations were not properly investigated by Parliament at an earlier stage.*

- 12.6. I think that it may also assist the Commission for me to quote from paragraph 1.5 of the Committee's report as regards the conditions that the Committee worked under (the correctness of which I confirm insofar as the matters referred to lie within my knowledge):

**" 1.5 Conditions that the Committee worked under**

- 1.5.1 *Parliament and by extension the Committee, have both the power and the duty to hold the Executive and State organs to account and to ensure that their constitutional and statutory obligations are properly executed. This responsibility is an incident of the rule of law and the constitutional values of accountability, responsiveness and openness.*
- 1.5.2 *The Committee has carried out its oversight work despite facing some hostility and attempts aimed at obstructing it.*
- 1.5.3 *There were several attempts by persons and organisations to undermine the authority and function of the Committee. These attempts included baseless legal challenges, attempts to delay and subvert investigations by providing irrelevant or incorrect information, public smear campaigns targeting the Committee and its members and threats to the personal security of Committee members, witnesses and their families.*

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- 1.5.4 *Letters to this effect were received from: Black First Land First (2) (who called the Inquiry a “witch hunt”), Mr Brian Molefe’s lawyers (1), Eskom (3), Gupta family’s lawyers (2), Mr Atul Gupta’s Lawyers (1), Dr Baldwin “Ben” Ngubane (1), Mr Duduzane Zuma (1), Mr Matshela Koko’s Lawyers (1), Minister Lynne Brown (2), Minister Malusi Gigaba (1).*
- 1.5.5 *Threats to personal safety and security were made by anonymous parties against:*
- *Inquiry Chairperson, Ms Zukiswa Rantho, including an anonymous threat made to her child that “your mother is making life difficult for us”;*
  - *Committee member, Ms Natasha Mazzone, whose car and documents were tampered with;*
- and*
- *Evidence leader Advocate Ntuthuzelo Vanara.*
- 1.5.6 *Witnesses appearing before the Committee, including Ms Suzanne Daniels and Mr Abram Masango, also testified to having been intimidated.*
- 1.5.7 *Attempts were allegedly also made by the erstwhile State Security Minister Bongani Bongo to offer a bribe to Advocate Vanara with a blank cheque to try to derail the work of this Committee.*
- 1.5.8 *Despite the fact that invitations were duly served on the following persons requesting them to testify in the Inquiry, Ms Dudu Myeni, and Messrs Duduzane Zuma, Rajesh “Tony” Gupta, Atul Gupta and Ajay Gupta failed to appear in Parliament without sufficient cause. “*

### 13. VOTES OF NO CONFIDENCE

- 13.1. It is public knowledge that, during the period referred to above, a series of votes of no confidence in President Zuma were proposed by opposition parties but defeated when put to the vote.

- 13.2. In each instance the ANC caucus was told by the ANC leadership that the party had decided not to support the vote of no confidence and its MPs were instructed to vote against the motion. For example, I recall that before the last such vote (on or about 8 August 2017) the ANC's then secretary general, Mr Gwede Mantashe, attended the caucus meeting. He said that there was a standing decision by the National Executive Committee against the removal of the President and instructed us to vote against the motion.
- 13.3. I believe that members of the ANC sent on its behalf to represent it in Parliament are duty bound to adhere to decisions of the party and instructions like these.
- 13.4. I feel that the decision by ANC members of the PCPE to press on with the Eskom inquiry in the face of opposition from members of the ANC caucus is different because, as I have mentioned above, I was told by the then chief whip that there was support from influential members of the ANC's leadership. There was also no decision by the ANC as an organisation that the inquiry should not proceed.

#### 14. CLOSING REMARKS

- 14.1. I was not surprised that I was not selected for inclusion on the ANC's list for the 2019 general election. I felt at the time that the PCPE inquiry

was being conducted that this would probably be a career limiting move.

- 14.2. I cannot say how or why it came about that I was not re-selected for inclusion on the list. A candidate needs the support of at least five branches, which I had. The procedure is for the matter then to go to the relevant REC and thereafter to the relevant PEC. The REC which had supported my appointment to the NCOP and then my inclusion on the list of candidates for the 2014 election did not support my inclusion on the list of candidates for the 2019 election. I have no personal knowledge as to what explains this decision.
- 14.3. I therefore found myself unemployed and back in Aliwal North for some time after the 2019 elections. Fortunately I am now once again employed.

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**DAPHNE ZUKISWA RANTHO**

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I **HEREBY CERTIFY** that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn before me at Jamestown on this 11 day of **JUNE 2020**, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

 CAPT.  
N.J. SWARTBOOI

**COMMISSIONER OF OATHS**

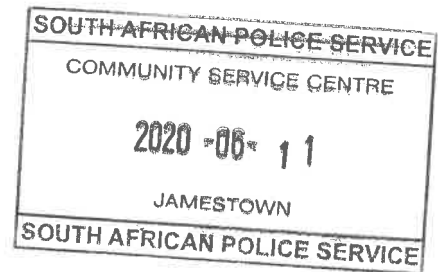
Full Names: NTSOKOLE JOSEPH SWARTBOOI

Office: NO. 1

Business Address: 3 ALI WAL STREET

JAMESTOWN

CAPTAIN SAPS



# **ANNEXURE “ZR1”**

ZR1-37

East London  
**Zuma faces ANC revolt over Guptas**

MOIPONE MALEFANE, MZILIKAZI wa AFRIKA, NKULULEKO NCANA and STEPHAN HOFSTATTER

1,184 words

27 February 2011

The Sunday Times

SUNTIM

MainBody

English

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Ministers 'shiver' when summoned to family's home

AREVOLT is brewing within the ANC and its alliance partners against the influence of the Gupta family over President Jacob Zuma and his government.

The anger has become so widespread that some of Zuma's traditional backers are privately intimating that the controversy could hamper his bid for a second term as president.

Members of top ANC leadership structures — the National Working Committee and the "top six" party officials — recently raised concerns about senior appointments that were made in the government and at parastatals with the party's deployment committee being sidelined.

The Sunday Times understands that the Guptas' role in influencing the appointment of CEOs and chairmen in key state-owned enterprises was recently raised at an NWC meeting and will be formerly discussed at its next gathering in a week's time. This will pave the way for the powerful ANC National Executive Committee to probe the matter at its sitting in March.

A member of the working committee who attended the most recent meeting said: "The concern is that these people (the Guptas) now have influence in the appointment of CEOs and chairmen of state-owned entities which then means the ANC has lost its way and (its) influence in those crucial deployments.

"They can't be allowed to plunge the country into a crisis because we defeated money in Polokwane — real money." He was referring to wealthy backers of former president Thabo Mbeki.

Then, at the top-six meeting last Monday, deployment committee members revealed that new **Transnet** CEO Brian Molefe, believed to be favoured by the **Guptas**, had been appointed by the cabinet without their say.

The Gupta brothers — Atul, Ajay and Rajesh, also known as Tony — are said to wield so much power that they often summon cabinet ministers and senior government officials to their family compound in Saxonwold, Johannesburg.

An ANC Youth League leader this week accused the brothers, who hail from India, of "colonising this country" and "amassing resources" unapologetically.

Other accusations levelled at the Guptas are that they:

& x95; Telephoned at least three deputy ministers and told them they were to be promoted days before Zuma announced his cabinet reshuffle;

& x95; Phoned several ministers to assure them that their jobs were secure ahead of Zuma's announcement;

& x95; Bragged about their influence, telling one ANC premier he was "fortunate" they went to his office to see him — as many other public officials had to meet them at the Guptas' home;

& x95; Pressured several top government officials at the government communications section, and directors of communications at various departments, to place advertisements in their newspaper, the New Age;

& x95; Used their political muscle to exclude Mandumo Investment Holdings from the controversial R9-billion deal with steel giant ArcelorMittal and replaced it with Ayigobi — a consortium that included Zuma's son Duduzane;

& x95; Were said to be the only people with "a pass code", which gave them direct access to the president during his visit to the UK; and

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& x95; Tried to impose one of their personal assistants, Mandisa Makinana, as an ANC candidate for Johannesburg's ward 117 — which includes the suburbs of Saxonwold and Parkhurst.

The Guptas, through family spokesman Gary Naidoo, dismissed the allegations as “rubbish” and said they were an attempt to “denigrate” Zuma and his office.

“Suggestions that any member of the family is able to influence President Zuma or any of his cabinet ministers around issues of policy or process sound so far-fetched that we cannot believe or understand how any right-thinking South Africa can even suggest it ... It certainly smacks of a supremacist approach to believe that those elected to govern are not able to do so and could be subject to a high level of undue influence,” Naidoo said.

But politically connected business heavyweights and ANC alliance insiders told the Sunday Times that the Guptas were brought into the inner circle of the country's political elite in 2006, when an empowerment consortium made up of Lazarus Zim's Afripalm and Tokyo Sexwale's Mvelaphanda bought a stake in the family's Sahara Computers company.

The Guptas are said to be at loggerheads with ANC national chairman Baleka Mbete, treasurer-general Mathews Phosa and four other leading ANC figures.

Their fight with Mbete stems from the ArcelorMittal steel deal — the ANC chairman led the rival Mandumo Investment Holdings consortium — while Phosa is said to have fallen out with the family when he refused to accept their offer to transport Zuma for free in their private jet ahead of the 2009 elections.

A senior ANC leader said Phosa had refused for fear that the Guptas could be “the next Schabir Shaik case”.

The ANC official said: “Why did they want the ANC to use their jet for free? Look at how they are (controlling) everyone.”

A member of the working committee claimed ministers feared the family, believing they had too much influence over Zuma.

“People are scared of them and they are called to their house all the time ... (The Guptas) are known to be the president's people, and that is why even ministers will shiver.”

Another top ANC leader said: “You must see the way they treat ministers.” He said that when the Guptas made requests, they implied that these had been cleared by Zuma.

One politician described Atul Gupta as a “bull in a china shop saying ‘I have power from above (from Zuma)’”.

“They are like cats — you never know where they sh\*t until you step in it,” he said.

A high-ranking ANC leader said only Zuma could put an end to “the Gupta rampage” by telling them to stop issuing instructions to ministers in his name.

Party spokesman Keith Khoza said: “The ANC is not commenting on the matter.”

ANC alliance partner Cosatu is also upset, announcing it would commission “independent research” to investigate allegations that the Guptas were “plundering” South Africa's economy. The trade union federation also intends probing whether the family employed “underhanded means and political influence” to advance their business interests.

The Cosatu statement followed a heated Central Executive Committee meeting on Wednesday when angry affiliates accused the Guptas of using political influence to clinch multibillion-rand business deals.

“Polokwane was to do away with the use of state machinery to benefit a few individuals, but we see a continuation — where it is just the Guptas and the president's kids (benefiting) ... All these things are happening under Zuma's leadership and he is not raising them. This is sending a bad message,” said a unionist who was at the CEC meeting.

A member of the ANC deployment committee said committee members should share the blame for the Guptas' growing influence as they did not meet to discuss deployments.

“The process was that the ANC would look at names for senior and strategic positions in government. That has not been happening since last year.”

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# ANNEXURE “ZR2”

ZR2-39

Analysis 1

**Zuma must remember integrity in the face of SA's Guptarisation**

Mondli Makhanya

866 words

30 January 2011

The Sunday Times

SUNTIM

Sport

English

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The Guptas' influence is remarkable, seeing they arrived in SA only in the 1990s

FIRST it was a whisper. Then it became a chorus of whispers. Then it was spoken in hushed tones. Now it is openly and loudly spoken about in political and business circles.

The issue at hand here is the Guptarisation of South Africa.

This is a phenomenon we have seen creeping up on us over the past few years. It is a phenomenon we ignore at our peril.

Since President Jacob Zuma's ascension to power in 2009 the **Gupta** family, which had been on the sidelines of political influence, suddenly moved to the epicentre. Their inability to occupy centre stage in the Mandela and Mbeki years was not for lack of trying. They tried their best to sidle up to Thabo Mbeki in his capacity as deputy president and then later as head of state. But even their intimacy with a senior government leader with close proximity to Mbeki did not help much. They scored here, they scored there.

It was only when the said senior leader became a turncoat and threw his lot in with Zuma that the Guptas' political penetration success rate shot up.

Today you can count the Guptas, owners of the Sahara Group, among South Africa's most influential families.

It is a remarkable achievement for a family that arrived in South Africa only in the mid-1990s and proceeded to build a business based on unremarkable computers. The Guptas have since expanded their empire and are now significant players in mining and other industries.

Their generosity towards South Africa's first family has been admirable. These first-class patriots have made sure the first family is not found wanting.

The president's daughter has a cushy executive job at Sahara and even sits on the board. The president's son is a close business partner of this family and together they have landed lucrative deals. The son even lives in a mansion bought for him by the family through some complicated transaction. He is also well looked after in terms of his material needs.

The head of state is a close friend of this family and regularly pops by their Saxonwold, Johannesburg, estate for tea and who knows what else.

According to decision-makers in government, it is becoming common to receive a directive from this family (or is it perhaps from people pretending to be members of this family?) with the stern message that it comes from the very top. This, it is said, has on occasion led to some questionable decisions being taken.

Businessmen who have accompanied our head of state on foreign visits often come back complaining about the preferential access the Guptas and their associates receive from the main man. With furrows of frustration on their foreheads, they rant about how this family has created a new inner sanctum.

I must emphasise that this lowly newspaperman is by no means implying the existence of a corrupt relationship between the president and his new friends. No corruption has ever been alleged.

What does exist is a problematic relationship that has echoes of an association Zuma had before he became president. We all know how a relationship that may have started as a harmless liaison spiralled into one of dependency. The Schabir Shaik court record tells a graphic tale about how a master/servant dynamic developed, with Zuma waltzing to Shaik's every symphony.

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That relationship became corrupt as Zuma used his political office and party standing to cut Shaik short-cuts. It is all there in the gripping court testimony and in Judge Hillary Squires's judgment. Zuma presumably read the judgment closely. It boggles the mind how he would not have learnt lessons then as to how to avoid becoming a servant again.

More so given that he is now a head of state who, in his inauguration speech, urged that "we must hold ourselves to the highest standards of service, probity and integrity". On that day he also pledged to "commit myself to the service of our nation with dedication, commitment, discipline, integrity, hard work and passion".

Note the repeated use of the word integrity.

Politicians and people who wield the sort of influence Zuma does will be sought out by businessmen who seek to nudge decisions and craft policies in their favour. They will be wined, dined and feted and made to feel like gods by these businessmen. Their families will be looked after and schemes will be devised to coat this "looking after" with a veneer of legitimacy.

I must again emphasise that this lowly newspaperman is NOT alleging a corrupt relationship on the part of the president and his new friends. For all we know it is simply a case of individuals taking a great liking to each other and of one side feeling it is their patriotic duty to be good to the president and his family.

But Zuma must be mindful of how such relationships can compromise his promise to the nation that he would, at all times, act with integrity.

Document SUNTIM0020110131e71u0004d

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# ANNEXURE “ZR3”

5/30/2020

Guptas influenced Zuma for grabbing deals: Reports - The Economic Times

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Guptas influenced Zuma for grabbing deals: Reports

An Indian-origin business family in South Africa is facing allegations of influencing some of President Jacob Zuma's top appointments and grabbing deals by dropping his name.

PTI | Last Updated: Mar 03, 2011, 03:07 PM IST

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JOHANNESBURG: An Indian-origin business family in South Africa is facing allegations of influencing some of President Jacob Zuma's top appointments and grabbing deals by dropping his name.

While Zuma's office has dismissed the suggestions of undue influence, there had been an increasing call for a probe into dealings that the Gupta family has engaged in recent years together with Zuma's son Duduzane.

The Guptas have denied the allegations and said they are open to any probe by the country's largest trades union, Cosatu.

Among the allegations is that companies, in which the Guptas and Duduzane Zuma are partners, are receiving preferential treatment.

There were also claims that the Gupta family had influenced Zuma to appoint two of their close friends to top positions.

Brian Molefe was appointed as chief executive at parastatal transport giant, Transnet, and Lazarus Zim as Board Chairman of telecoms operator, Telkom.

The latest allegations, featured in several newspapers in the past week, are that the Guptas will benefit from the government's multi-billion rand infrastructure programme with China Railway Corporation and a planned steel production plant in partnership with SAIL of India.

Cosatu spokesman Patrick Craven confirmed that union representatives had met with Ajay Gupta, Duduzane Zuma and businessman Jagdish Parekh at the Guptas' request yesterday and that they had offered to open up all their books for inspection by the independent investigators to be appointed by the union.

"They gave Cosatu a file giving details of all their companies, which the federation will now

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D.Z.R. NIS

5/30/2020

Guptas influenced Zuma for grabbing deals: Reports - The Economic Times

study and appoint a person to follow up whatever information may be necessary," Craven said.

"They claim that the Gupta family never took a single cent from government, never tendered or won a government tender, never received any mining license and never received a single cent from the Public Investment Corporation," he said.

"(The Guptas) have never ever asked the President to open doors for them in any way. On the contrary they are being harassed and cannot get a loan from any bank. The Industrial Development Corporation regard them as PEP (politically exposed persons) and want to slap them with a 10 per cent surcharge. They say that all doors are closing."

Commenting on the alleged benefits to the Guptas from the Chinese and Indian deals, Craven said: "The family only had a Memorandum of Understanding with an Indian company to explore the possibility of opening a steel company; the story that they stand to benefit by R23 billion is not true.

"Similarly there was only a MOU with a Chinese company - the Chinese Rail Commuter Corporation. The story that they stand to benefit from a Rs 500 million investment is not true.

"Both the Indian and Chinese companies are likely to withdraw from South Africa due to the negative publicity."

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# ANNEXURE “ZR4a”

ZR4a-44

Analysis 2

**Zuma wins NEC battle, but war goes on underground**

Moipone Malefane

1,159 words

28 August 2011

The Sunday Times

SUNTIM

Sport

English

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Words were not minced at the party's extraordinary meeting, writes

Cabinet minister said he feared the meeting could be used to 'gather intelligence'

Zuma, Mantashe stand to gain most from a ban on discussing succession

TWO related developments over the past fortnight have demonstrated President Jacob Zuma's determination to reinforce discipline within the ANC and ensure his re-election as party leader in December next year.

In an unprecedented move, Zuma last weekend convened a four-day meeting of the party's national executive committee where the only item on the agenda was his political report.

The idea was for each of the 86 ANC NEC members — over the four days they would spend at the St George Hotel in Irene, Pretoria — to talk candidly about what they believe needs to be fixed in the party as it approaches its 100th birthday.

By all accounts, the meeting did not disappoint.

A cabinet minister, for instance, told the meeting — in Zuma's presence — that it was true that the Gupta brothers had known beforehand of the president's plan to reshuffle his cabinet in October last year. He told of how one of the brothers had informed him, days before changes were announced, that Zuma would promote someone who was a deputy minister at the time to a full ministerial post.

According to NEC members, who cannot be named as only official spokesmen are permitted to speak to the media about internal party meetings, a number of members complained that Zuma was ostracising them — even though they had played leading roles in elevating him to power.

One seasoned politician, who also serves in Zuma's cabinet, is said to have told the meeting that he feared it could be used as "intelligence-gathering" — and that views expressed there might be used against some in future.

A number of NEC members expressed concern about the existence of the "ANC chairmen's forum" — an informal structure of provincial chairmen who meet regularly to discuss internal party issues.

The NEC members wanted the forum disbanded as it was not a structure recognised by the ANC constitution.

But Zuma defended the existence of this forum, reminding the NEC of the crucial role it had played in ensuring discipline during the party's national general council held in Durban last year.

It was also this forum that had convinced the ANC Youth League to apologise and withdraw its statement that it would work towards toppling Botswana's government.

Briefly mentioned, but not fully discussed by the NEC meeting, was the second development.

On Friday, a few hours before the NEC meeting began, Luthuli House had announced that it had charged wayward youth league president Julius Malema and his spokesman, Floyd Shivambu, with ill-discipline and "sowing divisions within the ranks" of the ruling party (See Shivambu's article on Page 7 of Review).

Malema received his summons to appear before the ANC national disciplinary committee — which is chaired by the deputy Minister of Science and Technology, Derek Hanekom — literally as he took his seat among other NEC members that Friday.

It was a dramatic moment, one that prompted his sympathisers in the NEC to request that the charges be discussed by the meeting. But party bosses would not budge. They said the matter was before the NDC and could not be debated.

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The disciplinary case had been brought before the NDC by, among others, Zuma; Deputy President Kgalema Motlanthe; secretary-general Gwede Mantashe; his deputy, Thandi Modise; national chairman Baleka Mbete and treasurer Mathews Phosa.

Malema had hoped that the NEC would overrule the officials and decide that the Botswana debacle — the basis of the charges against him — be handled politically by the ANC and its league.

It is testimony to the power and support Zuma continues to command in the party's highest decision-making structure that the majority of the NEC decided the Malema issue should not be discussed.

He scored other important victories, including fending off a campaign by party structures in Gauteng, KwaZulu-Natal, Limpopo and the youth league to open the leadership succession debate.

In his opening address to the meeting, Zuma argued that allowing members to discuss who they wanted to lead the party after December next year would derail government and party programmes.

"The problem with opening such debates is that we then stop concentrating on the work before us," Zuma said.

At a post-NEC meeting press conference held on Tuesday, Mantashe said party leaders had agreed that discussing the issue would be premature and warned that steps would be taken against those who defied the order.

"The special NEC has directed all our structures, including the leagues and provinces, to desist from engaging in any discussion that seeks to undermine the established nomination procedures and practices for electing ANC leadership.

"Any continuation on the part of any person or any structure to undermine the constitution regarding this matter will henceforth be construed as defiance and violation of standing ANC practices and procedures," he said.

Zuma and Mantashe have been targets of a campaign, led mainly by youth league members, to have them replaced by Motlanthe and Minister of Sport **Fikile Mbalula** in their respective posts at the next national conference.

They stand to gain more than anyone from the NEC ban on leadership succession discussions.

Mantashe told reporters that the ban was imposed to avoid the infighting that threatened to split the party ahead of its conference in Polokwane, Limpopo, in 2007.

"We analysed all the conferences of the ANC and concluded that Polokwane was a disaster. We cannot allow that to repeat itself again," he said.

With a number of heads of state expected to attend next year's national conference, which will be held in Mangaung in the Free State, the party fears intense jostling for position at the conference could embarrass it.

But, while Zuma and Mantashe may have won the battle at NEC level, the war is far from over. Afraid of being hauled before the NDC, those who want leadership changes will probably change their strategy and conduct an underground lobbying campaign.

While the NEC banned the discussion of possible leadership candidates, it did — after insistence from some provinces — agree that "the evaluation of performance of all leadership structures should be on an ongoing experience".

This means members may still assess Zuma's performance in office — without pronouncing on whether he should be re-elected.

Zuma would have left the NEC meeting on its last day satisfied that he was still in control and that the greatest threat to his re-election — Malema — had little influence within the ANC.

But as the leadership battle between Zuma and then president Thabo Mbeki ahead of Polokwane demonstrated, winning the hearts and minds of the party's rank and file matters much more than scoring victories at NEC level.

Document SUNTIM0020110829e78s0004f

#### Search Summary

Text	Fikile Mbalula
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N.J.S.

# **ANNEXURE “ZR4b”**

ZR4b-46

News

**Mbalula turns on Zuma**

NORMAN MASUNGWINI, NGWAKO MALATJI and MZWANDILE kaBIZOKWAKHE

698 words

4 September 2011

Sunday World

SUNDW

Sunday World

English

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Tears flow as sports minister pleads for JuJu

NORMAN MASUNGWINI, NGWAKO MALATJI and MZWANDILE kaBIZOKWAKHE

A tearful Minister of Sport and Recreation, **Fikile Mbalula**, launched a blistering attack on President Jacob Zuma two weeks ago, accusing him of turning his back on the people who put him into power.

Sunday World has established that deputy minister of Public Service and Administration Ayanda Dlodlo also experienced Mbalula's wrath during a tense ANC national executive committee meeting in Tshwane, where Mbalula single-handedly took on Zuma on behalf of embattled ANC Youth League president Julius Malema.

ANC sources privy to the NEC discussions tell Sunday World that Mbalula accused Dlodlo of being a back-stabber after she tried to defend Zuma.

Mbalula was allegedly angry with the president about the charges brought against Malema.

While Mbalula was repressing Zuma, Dlodlo allegedly interjected, much to Mbalula's disgust.

He allegedly accused her of hypocrisy. He is said to have told her she always calls him "to complain about the president".

"Have you told the president what you always tell me (about him)?" Mbalula allegedly asked Dlodlo.

The spat occurred as Mbalula was pleading with Zuma to reconsider charging Malema for bringing the party into disrepute.

Sunday World is told Mbalula asked him why he had turned his back on the people who fought for him when he was in trouble.

The fight between Mbalula and Zuma represents the unravelling of the anti-Thabo Mbeki coalition that propelled Zuma into power at the December 2007 Polokwane conference.

Mbalula was at the forefront of the alliance that pushed Mbeki out of office in favour of Zuma.

When he became president, Zuma rewarded him with a deputy ministerial position in the police portfolio and later promoted him to his current full cabinet position.

Dlodlo was also integral to the Zuma alliance. She was Zuma's parliamentary counsellor before being appointed to her current position.

A source who attended the meeting says the NEC members were stunned into silence as Mbalula vented his anger. Mbalula and Malema have a close friendship and Malema is behind a campaign to unseat ANC secretary-general Gwede Mantashe and replace him with Mbalula.

According to a source, Mbalula became so emotional at the meeting that tears streamed down his face.

Asked whether the ANC had taken any steps to repress what Mbalula said, ANC spokesperson Jackson Mthembu said: "I can't speak about a ghost story. The ANC hasn't even released a statement on those allegations."

The Mail & Guardian reported last week that – during the same meeting – Mbalula accused the president of allowing outside forces, such as the Gupta family, to run the ANC and the government on his behalf.

Mbalula allegedly told Zuma he knew about his appointment as minister of sports and recreation through the Guptas, two weeks before Zuma made the announcement.

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Mbalula refused to comment when approached on Friday.

Dlodlo was forwarded questions on the story through her private secretary. It was confirmed to Sunday World on Friday that she had received them but she hadn't responded at the time of going to press.

ANC spokesperson Keith Khoza said yesterday the person who leaked the information to the media was mischievous. He said the spat never happened.

"Had it even happened, NEC discussions are supposed to be confidential and therefore anyone who leaks such discussions is ill-disciplined. Mbalula and Dlodlo are deeply upset about this because it did not happen.

"The ANC wants to dismiss such allegations as lies. This was clearly not said in the interest of the ANC and is calculated to undermine its unity," said Khoza.

A few minutes later Mantashe made a rare call to this newspaper and threatened to take the newspaper to the Press Ombudsman should the story be published.

nmasungwinin@sundayworld.co.za; malatjin@sundayworld.co.za; mzwandile@sundayworld.co.za

DEFENDING JUJU: Sport and Recreation Minister **Fikile Mbalula** became extremely emotional

RANTED AT: Ayanda Dlodlo made the mistake of defending Zuma. Picture by James Oatway

BATTERED: President Jacob Zuma was the recipient of Mbalula's wrath

Document SUNDW00020110905e7940000x

#### Search Summary

Text	Fikile Mbalula
Date	01/09/2011 to 30/09/2011
Source	All Sources
Author	All Authors
Company	All Companies
Subject	All Subjects
Industry	All Industries
Region	All Regions
Language	English
Results Found	214
Timestamp	31 May 2020 21:04

# **ANNEXURE “ZR4c”**

ZR4c-48



### Has Mbalula Become the ANC's Latest Political Icarus? [opinion]

by Chris Vick

1,899 words

31 October 2011

17:38

All Africa

AFNWS

English

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Oct 31, 2011 (iMaverick/All Africa Global Media via COMTEX) -- Two weeks ago, the only thing on Sports Minister **Fikile Mbalula's** mind was probably who was threatening to kill him for investigating who really runs South African cricket. A week ago, his attention would have shifted to wondering why the promise of him becoming police minister had not materialised because of ANC in-fighting. Today, he could use his political sense and join the dots and work out why a burst condom is causing him so much trouble - and earns him headlines such as "Mbalula in sex scandal".

**Fikile Mbalula**, simply put, has become the latest political Icarus to fly too close to the sun.

On the face of it, the fact that he impregnated someone who may have a history of blackmailing political leaders should be of little consequence. Particularly to a media that is trying to present itself as being responsible, sober-minded and objective in the midst of conversations around a media appeals tribunal and which recognises that the closer we get to the ANC's Mangaung conference, the more we're going to experience what comedian Loyiso Gola describes as "ANC manga-manga business" (dodgy shit, for the uninformed).

After all, extra-marital affairs are no novelty when it comes to politicians. Nor, truth be told, are they a novelty when it comes to journalists and editors. So why the moral outrage at this dose of hanky-panky, replete with burst condoms, furtive SMSes and townhouse trysts. And why is it suddenly so newsworthy?

Thus Jacques Rousseau's comment in a tweet on Sunday afternoon, which was retweeted by Business Day editor Peter Bruce: "I'm quite surprised to find that knowing Mbalula is an unfaithful husband is in my (i.e. the public) interest."

City Press' front-page rationale for breaking the "sex scandal" was that Mbalula's behaviour "directly contradicts comments made by him at a World Aids Day gathering at which Mbalula appealed to the youth to be faithful to their partners".

In an interview outside court on Saturday afternoon - where they had fended off an attempted Mbalula interdict - City Press staff told etv that Mbalula was a role model for the youth and should be exposed for having been hypocritical about not using a condom.

Well done, City Press, for finding us a politician who is a hypocrite.

The problem was that rival newspaper Sunday World had a slightly different angle: that Mbalula was the victim of someone with a history of "doing the Mbalula", and that her past victims included former presidential spokesman Zizi Kodwa and unnamed others. She had, Sunday World claimed, demanded R40,000 to go away and had seemingly touted her story around town before City Press took the bait.

But was City Press "had"? Were they sold a line by an extortionist? The newspaper's leadership will probably have to spend an inordinate amount of time in coming days clarifying their decision to publish. Stand by, 702

In dealing with the decision to publish, City Press will have to post-mortem the story from all angles, not just from the salacious "gotcha" point of view they seem to have applied so far.

Among other things, and with the beautiful benefit of hindsight, they may have to ask:

Did they know that there are other examples of the person in question having tried to blackmail politicians? Sunday World and the Sunday Times, for example, seemed to have little difficulty finding people such as Kodwa to say that the woman had also tried to embarrass them. What is their formal response to the suggestion that they paid the woman for information? Sunday World, for example, published a lengthy email from the woman to Sunday Times journalist Mzilikazi waAfrica in which she asked for advice on how to deal

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with the situation. Included in the email is the sentence: "I hv been receiving calls from someone claiming to be from City Press saying I shld sell them my story". Were they being spun by people who are opposed to Mbalula's ambitions, or did those people help to trigger getting this issue into the public domain? Crucially, did City Press factor in the possibility that this is part of a concerted campaign to discredit Mbalula at a time when he is not only eyeing a senior post in the ANC leadership, but is cracking down on manga-manga business in South African sport? If they did, should City Press not have put this context into at least one of the several articles they published -knowing how the media has been used in the past to make or break potential leaders, and knowing that the ANC elective conference dominates the current political discourse? Did they comply with the "new" Press Code which was published earlier this month (seemingly to convince the ANC that media is more self-critical and circumspect about what it reports, and when)? In particular, does it meet the criteria in section five, which states that the press "shall exercise exceptional care and consideration in matters involving dignity and reputation, bearing in mind that any right to privacy may be overridden on only by a legitimate public interest"? Is hypocrisy, for example, in the public interest?

Sunday World and the Sunday Times probably have a few questions to answer themselves - for example, why did the Sunday Times hide behind an abridged version of Sunday World's story and not run their own article particularly given that an email was sent by the woman in question to one of their journalists? And does Sunday World not run the risk of being seen to whitewash the issue for Mbalula?

As Angela Quintal, former editor of The Mercury who is taking up the editorship of The Witness this week, puts it: "The facts may differ, but [there are] some similarities with the Sunday all those years ago when different JZ/Kwezi versions appeared in papers" a reference to the speed with which the Mbeki and Zuma spin machines went into action when allegations of rape were first made against Jacob Zuma.

There is no doubt that the media will face some stern tests in coming months with the release of the Donen Commission report, the reopening of the arms deal and who knows what manner of personal or political scandal dropping out of the next tree.

Ultimately, journalists are going to have to consistently ask themselves what the motives are of the people who blow whistles in their face.

And they will do well to remember the case of deputy president Kgalema Motlanthe, whose own reputation was dragged through the mud a couple of years ago when the Sunday Independent suddenly revealed details of a "love affair" and then backed down once the motives of some of those involved became clear.

Because at the back of all this, there's a broader, political question: why would anyone want to pick on **Fikile Mbalula**?

The recent Cabinet reshuffle provides a useful reference point.

The ANC NEC was recently provided with testimony that members of the Gupta family had clear knowledge and insight into the 2010 Zuma Cabinet reshuffle. In a frank review of the state of the movement, some NEC members told, for example, how the Guptas had informed them who was going to be moved, and who wasn't, several days before the reshuffle actually took place.

The 2011 Zuma Cabinet reshuffle also has the hallmarks of Gupta knowledge: the family-owned New Age published an accurate prediction on the morning of the day it was announced. And, from a close reading of this week's Sunday World, it appears that the reshuffle was supposed to include the movement of Mbalula to the powerful position of police minister but that this was blocked due to some unexplained "internal pressure".

But why would someone want to block the advancement of one of the most energetic, focussed and assertive young members of the ANC's leadership cadre?

Firstly, Mbalula has an extremely close relationship with Julius Malema, man of the moment, who threw down the mother of all gauntlets with his march on the Union Buildings this week. So if you strike Mbalula, you strike Malema.

Secondly, Mbalula is the most articulate challenger to Zuma's point man in Luthuli House, Gwede Mantashe, and is by default key to driving the campaign against a second Zuma term.

Thirdly, he is beginning to crack down on corruption and stick his nose in an area that Zuma's friends, the Gupta family, might prefer he left alone: South African cricket, replete with allegations of corruption which can be traced back to the deal - brokered by the Guptas - to host the Indian Premier League.

The Mail & Guardian alluded to the nexus of these struggles a couple of weeks ago, when deputy editor Rapule Tabane commented as follows:

"When our reporters decided to dig deeper into Sports Minister **Fikile Mbalula's** affairs and his interactions with Cricket South Africa this week, they stumbled on a familiar player in our body politic: the Gupta family.

"It was a bit of a surprise finding in this unfamiliar terrain, but the information pointed to the family's interest and influence in the administration of sport and its not-so-great relationship with Mbalula.

"But the name was there all right and, suddenly, an inquiry into some cricket administrators who did not want their finances probed had ANC Mangaung 2012 connotations."

The conclusion made by Tabane a protege of Haffajee during her time as Mail & Guardian editor is that "the era of innuendo, hinting and allegations has recently gone into overdrive"

So are we seeing a resurgence of dirty tricks? Are we seeing a resurgence of the hand of the Guptas? Or are we seeing both - and is Mbalula the Icarus who flew too close to the Gupta sun?

The answer may lie in Tabane's column, where he observes:

"Recently, when National Intelligence Agency head Gibson Njenje had a fall-out with Intelligence Minister Siyabonga Cwele and subsequently announced that he was quitting the agency, it emerged he was uncomfortable that he was being asked to spy on political opponents of the dominant faction of the ruling party.

"It also came to light that the people who had complained about him to the President were none other than the Guptas "

Maybe the woman he burst a condom with did have genuine motives in asking for R40,000 to go away.

Maybe it is time someone blew the whistle on the philandering activities of South African politicians because maybe Mbalula's part-time lover is right when she says: "Certain government officials promise young girls business in return 4 sexual favours."

Maybe it's unacceptable that a minister has sex with someone while he's briefly estranged from his wife and that he "could be used to sleeping around without protection & forgetting about them".

Maybe it's time other politicians learnt a lesson from all of this when it comes to their sexual conduct and favours.

But maybe it's also time we took a step back, looked at a potentially salacious lead story from all angles, and asked those basic journalistic questions: Who? What? Where? When? How? And, most importantly, Why?.  
DM

Document AFNWS00020111031e7av001bm

#### Search Summary

Text	Fikile Mbalula
Date	31/10/2011 to 31/10/2011
Source	All Africa - All sources
Author	All Authors
Company	All Companies
Subject	All Subjects
Industry	All Industries
Region	All Regions
Language	English
Results Found	1
Timestamp	31 May 2020 21:08

# **ANNEXURE “ZR5”**

ZR5-51

# BusinessDay

News

**ANC tackles lists, party conflicts at indaba**

SAM MKOKELI

640 words

11 March 2011

Business Day

MEWBUD

Business Day

English

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Political Editor

THE African National Congress's (ANC's) national executive committee is expected to deal with the conflicts that have divided the party's leaders, at a three-day meeting starting in Tshwane today.

Finalising the party's list of candidates for the local government elections would top the agenda, ANC spokesman Brian Sokutu said yesterday.

Regional leaders have spent this week finalising their lists, which would be ratified by the national executive committee.

The ANC's list process, with communities invited to participate in vetting candidates for the first time, has been dogged by controversy, with some members claiming regional leaders put their own preferred candidates on lists.

In a heated moment last month, Eastern Cape ANC secretary Oscar Mabuyane was assaulted by party members unhappy with the process.

Two groups in the Eastern Cape were this week preparing to interdict the ANC from accepting the regional list of candidates.

Mr Sokutu discouraged members from approaching the courts, which he said was prohibited by the ANC's constitution. Conflicts should be resolved within party structures, he said.

There have been several protests in recent weeks at the ANC's Luthuli House headquarters in Johannesburg by branch members complaining about the nomination process.

Members from Tshwane picketed Luthuli House this week. Residents of Ermelo, in Mpumalanga, staged violent protests last month to reject nominees on the list, and threatened not to vote in the May 18 elections.

Mr Sokutu said the ANC's biggest challenge with the list process was that some of its members wanted to push & at all costs & to become councillors. Those who were not nominated organised protests.

He said national executive committee members would vet the regional lists and decide on mayoral candidates.

Regional lists had three candidates for a mayoral position, and three for each ward.

After they were vetted, the lists would be forwarded to the Independent Electoral Commission.

The meeting of the national executive committee was also expected to reflect on Planning Minister Trevor Manuel's rebuke of chief government spokesman Jimmy Manyi, for his comments about the & oversupply & of coloured people in the Western Cape.

Mr Manuel was isolated when the ANC's national working committee and Minister in the Presidency Collins Chabane backed Mr Manyi this week.

ANC secretary-general Gwede Mantashe said on Monday Mr Manuel had behaved like a & free agent & when he wrote a stinging open letter to Mr Manyi.

The row between Mr Manyi and Mr Manuel followed the publication of four amendments to labour laws, including one on employment equity which raised fears of job losses among minority racial groups.

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The row could harm the ANC's election campaign in the Western Cape, where the party is unlikely to beat the Democratic Alliance.

Mr Sokutu said complaints by ANC leaders that the Gupta family business was controlling President Jacob Zuma's government would not be dealt with by the committee.

He said the national working committee had sufficiently dealt with the issue, and determined that there was no **undue influence** by the family on the government. Mr Mantashe said the Gupta brothers were picked on because & they are not white enough& The family emigrated to SA from India.

But this issue may yet be raised by members of the national executive. The complaints have been quashed in the national working committee — the ANC's most powerful body outside its conference — by a group linked to Mr Zuma, but could be used by those who fancy a leadership change to campaign against Mr Zuma and Mr Mantashe.

The ANC Youth League is campaigning to install its former president, Fikile Mbalula, as secretary-general in party elections to be held next December.

mkokelis@bdfm.co.za

Document MEWBUD0020110311e73b0000f

#### Search Summary

Text	ANC's NWC SAME Guptas on government OR undue influence OR racism
Date	01/03/2011 to 11/03/2011
Source	Mail & Guardian Online (South Africa) Or Business Day (South Africa)
Author	All Authors
Company	All Companies
Subject	All Subjects
Industry	All Industries
Region	All Regions
Language	English
Results Found	20
Timestamp	29 May 2020 20:09

# ANNEXURE “ZR6a”

ZR6a-53

Express Main  
**Guptas tried to 'buy' SAA boss**

SABELO SKITI  
1,227 words  
17 March 2013  
The Sunday Times

SUNTIM  
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National carrier drawn into Zuma backers' shady dealings

'No, my brother, you can't just give half a million for nothing ... is this the Lotto?'

#### **GUPTAS TRIED TO BUY SAA BOSS**

**FIRE** **South African Airways** chairman Vuyisile Kona was allegedly offered R500000 by a member of the powerful **Gupta** family just weeks after he took up the driving seat at the airline.

Kona was invited to a meeting at the Guptas' Saxonwold, Johannesburg, home on October 29 last year by Siyabonga Mahlangu — "special counsel" and adviser to Public Enterprises Minister Malusi Gigaba.

Mahlangu, who yesterday said he "reserved his rights", confirmed introducing Kona to Sahara, a Gupta company, but denied any knowledge of the cash offer.

The Sunday Times has been told that Mahlangu sat through the 40-minute meeting during which the younger Gupta brother, Rajesh, also known as Tony, made the offer.

Also present at the meeting were a son of President Jacob Zuma, Duduzane Zuma, and Tshepiso Magashule, a son of Free State premier Ace Magashule.

Zuma could not be reached for comment. Magashule yesterday "recalled" the meeting, but denied knowledge of an offer to Kona.

He said: "No, my brother, you can't just give half a million for nothing ... is this the Lotto or what? SportStake? I remember the meeting. I was there."

The Sunday Times has spoken to several additional sources who had knowledge of the meeting.

Upon arrival at the meeting, Mahlangu introduced Kona to "our brother", Tony Gupta.

The group shared a cup of Indian tea and Kona was congratulated on his appointment — at that stage he was chairman and acting CEO, following the departure of Siza Mzimela on October 8.

Then Gupta allegedly told him they were "brothers," that "times were tough" and there was R100000 available for him.

Kona asked what this was for and told Gupta that he did not need the money. Gupta allegedly upped the offer to R500000.

Kona told at least one confidante afterwards that Mahlangu had called him to a "stakeholder meeting" and that he was stunned by what transpired at the meeting.

He had asked Gupta what the money was for, said "no" and left, leaving Mahlangu behind. Several sources said Kona had been to the Gupta house only once.

Repeated attempts to speak to Kona were unsuccessful, but it has been established that he confided in a senior board colleague, Dudu Myeni, at the time. Myeni replaced him as acting chairman on December 7.

When rumours of the meeting began to leak, Mahlangu is said to have chastised Kona for having spoken to Myeni about it.

In an SMS on November 27 he told Kona: "Uyangithengisa [you are selling me out]. Why did you let her know that u knew where she was going. U will compromise the mission."

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Mahlangu, who sounded surprised when contacted by the Sunday Times on Friday, asked for questions to be e-mailed to him. Yesterday he denied being party to a meeting where any illegal activities were discussed and said he reserved his rights.

In a written response, he said he received requests to facilitate meetings between business and parastatal executives in the normal course of his job.

"Any insinuation that I would ... facilitate meetings for these persons other than in the course of my work and the lawful discharge of my duties is unfounded," he writes.

"For the record, Sahara is a significant user of air travel services, which include those of SAA and other airlines. I introduced Mr Kona and Sahara to each other in that context and no other.

"The meeting took place within the context of an existing contract between SAA and Sahara cognisant of certain impending significant additional travel business that SAA could secure from Sahara in the short term," Mahlangu writes.

He says this deal predated Kona's appointment to the board of SAA and his tenure as acting CEO.

In response to a question about why he had chastised Kona, Mahlangu writes: "As a new CEO, Mr Kona routinely asked for — and received — my advice, none of which could reasonably be construed as chastisement."

A spokesman for the **Gupta** family, Gary Naidoo, said the Sunday Times had not given them enough time to respond and added: "The meeting was about how the various group companies could switch business from other service providers to **SAA**. Since the meeting, we have now started moving our business to **SAA** and this plan has not changed despite Mr Kona's departure. From that meeting, Mr Kona set up several meetings with several other executives at **SAA** to take forward the discussions on our corporate travel.

"There may be some confusion in your mind around monies paid, as around R400000 was paid by one of our group companies to SAA's corporate account via our travel agent for travel services provided."

In January, the Mail & Guardian reported that Mahlangu was a key player in a controversial newspaper sale deal involving parastatals and the Gupta-owned The New Age. In that report he denied putting pressure on state-owned entities in this regard.

SAA spokesman Tlali Tlali said the airline would not comment on the matter, pending the outcome of its investigation of Kona because "any substantive comment on the allegations could affect the integrity of a process that has yet to be concluded".

Gigaba's office declined to comment. Spokesman Mayihlome Tshwete said: "If you want clarity, Siyabonga [Mahlangu] will address that."

Tshwete confirmed that Kona was suspended after asking the minister to be reinstated as chairman of the board. "The minister felt his presence there would not have a good effect on the board."

Gigaba, in an earlier interview, dismissed concerns about the state of parastatals under his leadership as "gossip and rumours". He said SAA was the only parastatal experiencing "governance and financial problems", which, he said, would be addressed by the end of the month.

"The problems at SAA are the only ones you can point to as this sign that the portfolio is disintegrating. The rest is rumour and gossip."

He said a new SAA CEO would be appointed at the end of the month.

The Prevention and Combating of Corruption Act makes it a crime for anyone to directly or indirectly give, agree to give or offer any other person gratification in the form of money, donations, gifts or loans to induce dishonest or biased behaviour.

A spokesman for Corruption Watch who had no knowledge of the meeting said the offer of the money was "grossly inappropriate". "If this situation is true, then under the act there is a case to answer. There is a very strong section that has actually never been prosecuted, which compels both civil servants in this instance to report this matter."

In February 2011, the Sunday Times reported that senior ANC officials had raised concern over the fact that the Gupta brothers, Atul, Ajay and Rajesh/Tony, were said to wield so much power that they often summoned cabinet ministers and senior government officials to their Saxonwold home.

At the time, one ANC premier told the Sunday Times that he was "fortunate" that the brothers made the trip to his office to see him — because many other public officials had to meet them at their home. — Additional reporting by Sibongakonke Shoba

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# **ANNEXURE “ZR6b”**

ZR6b-56

**R10bn contract behind the dogfight at SAA**

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The Airbus tender was approved by SAA's board – but this put it at odds with a distinctly unimpressed ministry.

A huge South African Airways tender, worth at least R10-billion, appears to be at the heart of the destructive battle to control the airline's board and executive.

And questions have been raised about how an extraordinary meeting held in Johannesburg at the Saxonwold compound of the Gupta family – involving the airline's acting chief executive as well as the special adviser to Minister of Public Enterprises Malusi Gigaba – fed into that battle.

SAA's management has been wracked by instability since September 2012, when the majority of the board, led by former chair Cheryl Carolus, resigned over a breakdown in its relationship with Gigaba. Chief executive Siza Mzimela and some of her key lieutenants followed in early October.

The Mail & Guardian can reveal that SAA's fleet committee selected the new Airbus A350 over Boeing's long-haul offering in a recommendation to the SAA board in late August – and that the outgoing board gave a nod to the choice.

SAA insiders say it is this decision that appears to have precipitated events that blocked the Airbus bid – and have left SAA's top structure in disarray.

"The previous board accepted the recommendation from the fleet committee," said one well-placed source. "That's when events started melting down – after the shareholder [the minister] was advised of SAA's view on the bids. There was a sense that the minister's office was quite shocked the process had progressed so far."

If the minister was surprised, he should not have been. The new fuel-efficient long-haul fleet was central to a detailed turnaround plan that Carolus's board had prepared.

High fuel costs are punishing SAA, especially in relation to the older generation Airbus A340-600s it has on an expensive long lease.

Graphic: John McCann

Securing the right aircraft quickly was key to the turnaround strategy.

According to an aviation source, the delay created by SAA's board upheaval means SAA has lost the production slot offered by Airbus during its bid. Now any new decision about the bids may be influenced by the consideration that delivery by Airbus could be up to a year later than initially planned.

Said an SAA manager: "If you look at what's happened, you have to ask yourself if we would have had such big problems if the ministry had concurred with the choice of Airbus."

The minister's version

Department of public enterprises spokesperson Mayihlome Tshwete said the "reality" was that the Carolus board "only met 30% of its key performance indicators, the most important of those being financial management".

He said the department had not seen a "detailed turnaround" plan.

Tshwete confirmed that the fleet committee had made a recommendation to the board to procure from Airbus, but denied that the minister was aware of this preference.

"The department was concerned that there was no long-term strategy that had been shared with it that informed the fleet renewal programme," he said.

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"This is the reason that the programme is being revised: to be aligned with the long-term strategy that is being developed."

But the ministry's explanation why the procurement process was placed on hold is called into question by allegations of a disturbing pattern of interference in procurement matters – and by the events surrounding the arrival and sudden departure of acting chief executive Vuyisile Kona.

#### The Gupta factor

The Sunday Times this week revealed detailed allegations about the meeting held at the Saxonwold compound on October 29.

Kona, who had previously left SAA under a cloud but had been enthusiastically endorsed by Gigaba and brought back as chair of the board when Carolus left, attended the meeting. At the time of the meeting Kona was in a very powerful position because, as both board chairperson and acting chief executive, the separation of powers at the airline had in effect disappeared.

Siyabonga Mahlangu, the special legal counsel to Gigaba, had invited Kona to the Gupta meeting.

Gigaba's friendship with the Guptas is well known, but according to a source familiar with the ministry, Mahlangu is a power broker who is also close to the family.

Responding to a question about the frequency of the special adviser's meetings with the Gupta family, Tshwete answered with a question: "Mahlangu wouldn't be able to provide you the number of times he meets other business people, why is this different?"

Also present on October 29 were Rajesh "Tony" Gupta, the most unctuous of the Gupta brothers, as well as President Jacob Zuma's son Duduzane and the son of Free State Premier Ace Magashule, Tshepiso.

The Airbus A350 was selected by SAA's fleet committee over Boeing's long-haul offering in a recommendation to the national airline's board in late August. (Stephane Mahe, Reuters)

Tony and Duduzane are directors of Mabengela Investments, and Tshepiso lists Mabengela as his employer.

#### Empowerment deal

Mabengela appears to be the vehicle for the Zuma family's empowerment by the Gupta family.

Mabengela was to have been the vehicle for Duduzane's share in the aborted R9-billion ArcelorMittal empowerment deal and it owns the R4-million Saxonwold house where Duduzane reportedly lives.

Another Gupta company, Confident Concept, owns a Saxonwold home worth R3.2-million, where Magashule lives.

Neither Duduzane nor Tshepiso could be reached for comment this week.

According to the Sunday Times Tony made an offer to make R100 000 available to Kona and then upped it to R500 000. The report didn't specify what the money was for, but said Kona refused and later spoke to board colleague Dudu Myeni about the meeting.

Both Mahlangu and a spokesperson for the **Gupta** family said the meeting was about how various companies that the **Gupta** family controlled could switch their corporate travel business to **SAA** and that nothing unlawful was discussed.

Gupta group spokesperson Gary Naidoo said they had issued a demand to the Sunday Times for a retraction and apology.

#### Credible

Given that the **Guptas'** Oakbay Investments owns just under 5% of **SAA's** rival Comair this explanation is barely credible.

A senior source at Comair confirmed that Atul Gupta was still on the board and that if there was any intention to transfer business away from Comair "we would have heard about it".

Stranger still was a text message that Mahlangu sent to Kona on November 27 last year in which he reportedly told Kona: "Uyangithengisa [you are selling me out]. Why did you let her know that u knew where she was going. U will compromise the mission."

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# **ANNEXURE “ZR7a”**

**ZR7a-58**

- (5) If a committee reports on a matter other than a matter mentioned in Subrule (1)(a) and is of the view that its report, or a specific matter mentioned in the report, should be considered by the Assembly, it may make a request to that effect in the report.

**167. General powers**

For the purposes of performing its functions a committee may, subject to the Constitution, legislation, the other provisions of these rules and resolutions of the Assembly —

- (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
- (b) receive petitions, representations or submissions from interested persons or institutions;
- (c) permit oral evidence on petitions, representations, submissions and any other matter before the committee;
- (d) conduct public hearings;
- (e) consult any Assembly or Council committee or subcommittee, or any joint committee or subcommittee;
- (f) determine its own working arrangements;
- (g) meet at a venue determined by it, which may be a venue beyond the seat of Parliament;
- (h) meet on any day and at any time, including —
  - (i) on a day which is not a working day,
  - (ii) on a day on which the Assembly is not sitting,
  - (iii) at a time when the Assembly is sitting, or
  - (iv) during a recess; and
- (i) exercise any other powers assigned to it by the Constitution, legislation, the other provisions of these rules or resolutions of the Assembly.

# **ANNEXURE “ZR7b”**

ZR7b-59

- (3) A report of a committee —
- (a) must be submitted to the Assembly by the chairperson or another member of the committee designated by the committee; and
  - (b) may request that the chairperson or another member of the committee designated by the committee introduces or explains the report in the Assembly.
- (4) A committee may not submit a minority report except where provided for in these Rules.
- (5) If a committee reports on a matter other than a matter mentioned in Subrule (1)(a) and is of the view that its report, or a specific matter mentioned in the report, should be considered by the Assembly, it may make a request to that effect in the report.

#### 138. General powers

For the purposes of performing its functions a committee may, subject to the Constitution, legislation, the other provisions of these Rules and resolutions of the Assembly —

- (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
- (b) receive petitions, representations or submissions from interested persons or institutions;
- (c) conduct public hearings;
- (d) permit oral evidence on petitions, representations, submissions and any other matter before the committee;
- (e) determine its own procedure;
- (f) meet at a venue determined by it, which may be a venue beyond the seat of Parliament;
- (g) meet on any day and at any time, including —
  - (i) on a day which is not a working day;
  - (ii) on a day on which the Assembly is not sitting;
  - (iii) at a time when the Assembly is sitting; or
  - (iv) during a recess;

- (h) exercise any other powers assigned to it by the Constitution, legislation, the other provisions of these Rules or resolutions of the Assembly.

**138A. Prior to a witness giving evidence before a House or committee, the member presiding shall inform the witness as follows:**

“Please be informed that by law you are required to answer fully and satisfactorily all the questions lawfully put to you, or to produce any document that you are required to produce, in connection with the subject matter of the enquiry, notwithstanding the fact that the answer or the document could incriminate you or expose you to criminal or civil proceedings, or damages. You are, however, protected in that evidence given under oath or affirmation before a House or committee may not be used against you in any court or place outside Parliament, except in criminal proceedings concerning a charge of perjury or a charge relating to the evidence or documents required in these proceedings.”

*[Rule 138A inserted, 13 September 2005]*

**139. Conferring powers of committees**

- (1) A committee may confer with any other committee of the Assembly.
- (2) Committees must confer —
  - (a) if the Assembly instructs them to confer; or
  - (b) during a recess, if the Speaker, with the concurrence of the Chief Whip, instructs them to confer.
- (3) When committees meet to confer the respective chairpersons of the committees co-chair the meeting.
- (4) Committees conferring in terms of Subrule (1) may report jointly, subject to the provisions of Rule 202(2).

*[Rule 139 (4) inserted, 21 November 2008]*

# **ANNEXURE “ZR8a”**

**ZR8a-61****Part 10: Portfolio committees****225. Establishment**

The Speaker acting with the concurrence of the Rules Committee must —

- (a) establish a range of portfolio committees;
- (b) assign a portfolio of government affairs to each committee; and
- (c) determine a name for each committee.

**226. Composition**

A portfolio committee consists of the number of Assembly members that the Speaker may determine with the concurrence of the Rules Committee in each case, subject to the provisions of Rule 154.

**227. Functions**

- (1) A portfolio committee —
  - (a) must deal with Bills and other matters falling within its portfolio as are referred to it in terms of the Constitution, legislation, these rules, the Joint Rules or by resolution of the Assembly;
  - (b) must maintain oversight of —
    - (i) the exercise within its portfolio of national executive authority, including the implementation of legislation,
    - (ii) any executive organ of state falling within its portfolio,
    - (iii) any constitutional institution falling within its portfolio, and
    - (iv) any other body or institution in respect of which oversight was assigned to it;

- (c) may monitor, investigate, enquire into and make recommendations concerning any such executive organ of state, constitutional institution or other body or institution, including the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, staff and policies of such organ of state, institution or other body or institution;
  - (d) may consult and liaise with any executive organ of state or constitutional institution; and
  - (e) must perform any other functions, tasks or duties assigned to it in terms of the Constitution, legislation, these rules, the Joint Rules or resolutions of the Assembly, including functions, tasks and duties concerning parliamentary oversight or supervision of such executive organs of state, constitutional institutions or other bodies or institutions.
- (2) Bills and amendments to Bills referred to a portfolio committee must be considered by it in accordance with Chapter 13 of these rules and Chapter 3 of the Joint Rules.
- (3) If there is doubt which portfolio committee must deal with a specific matter, the Speaker in consultation with the Chief Whip must decide the question, subject to any directions of the Rules Committee or a resolution of the Assembly.

## 228. Decisions

- (1) A question before a portfolio committee is decided when a quorum in terms of Rule 162(2) is present and there is agreement among the majority of the members present.
- (2) A question before two or more conferring Assembly committees is decided when a majority of members of each of the conferring committees is present and there is agreement on the question between the conferring committees.

# **ANNEXURE “ZR8b”**

ZR8b-63

**Part 9: Portfolio committees****199. Establishment**

The Speaker acting with the concurrence of the Rules Committee must —

- a) establish a range of portfolio committees;
- b) assign a portfolio of government affairs to each committee; and
- c) determine a name for each committee.

**200. Composition**

- (1) A portfolio committee consists of the number of Assembly members that the Speaker may determine with the concurrence of the Rules Committee in each case.
- (2) A portfolio committee must have no fewer than 13 and no more than 40 members.

*[Rule 200(2) amended, 25 October 2005]*

**201. Functions**

- (1) A portfolio committee —
  - (a) must deal with bills and other matters falling within its portfolio as are referred to it in terms of the Constitution, legislation, these Rules, the Joint Rules or by resolution of the Assembly;
  - (b) must maintain oversight of —
    - (i) the exercise within its portfolio of national executive authority, including the implementation of legislation;
    - (ii) any executive organ of State falling within its portfolio;
    - (iii) any constitutional institution falling within its portfolio; and
    - (iv) any other body or institution in respect of which oversight was assigned to it;

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- (c) may monitor, investigate, enquire into and make recommendations concerning any such executive organ of state, constitutional institution or other body or institution, including the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, staff and policies of such organ of state, institution or other body or institution;
  - (d) may consult and liaise with any executive organ of State or constitutional institution; and
  - (e) must perform any other functions, tasks or duties assigned to it in terms of the Constitution, legislation, these Rules, the Joint Rules or resolutions of the Assembly, including functions, tasks and duties concerning parliamentary oversight or supervision of such executive organs of state, constitutional institutions or other bodies or institutions.
- (2) Bills and amendments to bills referred to a portfolio committee must be considered by it in accordance with Chapter 13 of these Rules and Chapter 3 of the Joint Rules.
- (3) If there is doubt which portfolio committee must deal with a specific matter, the Speaker in consultation with the Chief Whip must decide the question, subject to any directions of the Rules Committee or a resolution of the Assembly.

#### **202. Decisions**

- (1) A question before a portfolio committee is decided when a quorum in terms of Rule 133 is present and there is agreement among the majority of the members present.
- (2) A question before two or more conferring Assembly committees is decided when a majority of members of each of the conferring committees is present and there is agreement on the question between the conferring committees.

*[Rule 202 substituted, 21 November 2008]*

# **ANNEXURE “ZR9”**

ZR9-65

**Report of the Portfolio Committee on Public Enterprises on its activities undertaken during the 4th Parliament (May 2009 – March 2014), dated 11 March 2014**

**Key highlights**

**1. Reflection on committee programme per year and on whether the objectives of such programmes were achieved**

The Committee had annual plans for the five year term of Parliament which consisted of briefings and oversight visits. The Committee had no legislation referred to it for the term of Parliament; hence the Committee had not planned any public hearings. The Committee implemented all the activities and achieved its goals that it had set at the beginning of the term, which was to ensure that state-owned companies advance the developmental objectives of government and are financially sustainable.

For the current term of Parliament, the mandate of the Department of Public Enterprises remained a distinct one from other Departments of government. The mandate of the department was to act as a shareholder on behalf of the state in all state-owned companies (SOCs). The Portfolio Committee ensured that the mandate of the department was aligned to the developmental goals of government. Furthermore within this term the Committee ensured that there was stability in the boards and management of state-owned companies and that the entities were financially sustainable.

**1.1 Presidential Review Committee on state-owned companies**

During the 4th term the president of the Republic of South Africa established a Presidential Review Committee (PRC) to do a holistic review of all state-owned companies in all spheres of government. The scope of the review included amongst others: the policy framework of state-owned companies, the viability and funding of SOCs, the role of SOCs in a developmental state, standardisation of reporting and accounting processes and remuneration standards. In light of this review, there were many policy issues that were put on abeyance in anticipation of the recommendations of this Committee. The Presidential Review Committee has completed its work and has reported to the President. The Portfolio Committee has interacted with the PRC during the review process, and they subsequently briefed the Portfolio Committee on the final recommendations.

**2. Committee's focus areas during the 4<sup>th</sup> Parliament**

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The Committee in the 4th term had a very robust oversight programme, within which the Committee visited all state-owned companies.

- Ensure adherence to legislative frameworks and best corporate governance principles by state-owned companies
- Oversee the implementation of the infrastructure build programme by state-owned companies
- Ensure that the infrastructure programme yielded the intended result in terms of the following economic spin offs: job creation, skills development, and promotion of local industries, beneficiation and a positive impact on the socio economic conditions of the adjacent communities.

### 3. Key areas for future work

- Enhancement of mechanisms to monitor performance of entities
- Non adherence to labour legislation by contractors at Medupi Power Station and other mega-projects
- Implementation of SAA Long Term Turnaround Strategy
- Long term procurement and fleet acquisition plans
- Recommendations of the Presidential Review Committee on state-owned companies
- Implementation of the Market Demand Strategy of Transnet

### 4. Key challenges emerging

These are some of the challenges that are emerging in some of the state-owned companies:

- Financial sustainability of certain entities (SAA, SA Express Airways, Alexkor, Safcol and Denel Aerostructures).
- Absence of Electronic Communications Services (ECS) Licence at Broadband Infraco.
- Threat posed by the National Ports Act No 12 of 2005 which allowed for competition from the private sector. The Act imposed obligatory competitive processes to allocate the port operations, thus making Transnet Port Terminals to compete with private sector operators.
- The Deeds of Settlement posed challenges to Alexkor.
- Cost escalations and delays in infrastructure projects (Medupi and Transnet Pipeline).
- Loss making and weak balance sheet of South African Airways.
- High rate of diamond theft at Alexkor.
- Instability in the Eskom leadership (resignation of Group Chief Executive Officer and the absence of Chief Financial Officer).

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**5. Recommendations**

The Committee recommends the following should be done:

- Monitor the security of supply of electricity and the maintenance of power stations.
- Ensure the completion of the construction of the coal powered station (Kusile and Medupi)
- Ensure that Broadband InfraCo receives the Electronic Communications Services Licence
- Ensure that the National Ports Act is reviewed to avert the potential threat to the mandate of Transnet Ports Terminals
- Review the deeds of settlement and the management arrangement of the Pooling and Sharing Joint Venture
- Monitor the implementation of the South African Airways Long Term Turnaround Strategy and ensure that the implementation plan has measurable targets with timeframes
- Support the energy saving initiative of Eskom through the 49M campaign
- Ensure the repealing of the Aventura Act

**1. Introduction**

**1.1 Department/s and Entities falling within the committee's portfolio**

**a) Department of Public Enterprises**

Core mandate/strategic objectives

The Department of Public Enterprises has a vision to drive investment and transformation in the Department's portfolio of State Owned Companies (SOC), their customers and suppliers so as to unlock growth, drive industrialisation, create jobs and develop skills.

The Department has set goals of contributing to Outcome 6:

- Ensuring reliable generation, distribution and transmission of electricity.

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- Ensuring the maintenance and strategic expansion of our road and rail and operational efficiency, capacity and competitiveness of our sea ports.
- Ensure contribution to other outcomes on: decent employment through inclusive growth and rural development.

**b) Entities:**

The following entities listed below report under the Department of Public Enterprises.

Name of Entity	Role of Entity
<b>Alexkor</b>	Committed to the profitable and sustainable development of mineral and natural resources for the economic benefit of the Namaqualand region and all its stakeholders
<b>Broadband Infraco</b>	Provides affordable access to long-distance telecommunications network infrastructure and broadband telecommunications connectivity services in South Africa
<b>Denel</b>	Operates in the military aerospace and landward defence environment
<b>Eskom Holdings Limited (Eskom)</b>	Generates, transmits and distributes electricity to industrial, mining, commercial, agricultural and residential customers and redistributors
<b>South African Airways (SAA)</b>	The national airline carrier delivering sustainable profits and growth through world-class service to customers internally and externally
<b>South African Forestry Company Limited</b>	Dedicated to growing its business in the forestry and forest products industry.
<b>Transnet Limited</b>	A focused freight transport company, delivering integrated, efficient, safe, reliable and cost-effective services to promote economic growth in South Africa.

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Name of Entity	Role of Entity
<b>South African Express Airways</b>	A regional airline which operates predominantly on routes which are secondary in South Africa and the region.
<b>Pebble Bed Modular Reactor</b>	The entity was a nuclear energy project which has been discontinued, and the company is undergoing care and maintenance under Eskom.

**1.2 Functions of committee:**

Parliamentary committees are mandated to:

- Monitor the financial and non-financial performance of government departments and their entities to ensure that national objectives are met.
- Process and pass legislation.
- Facilitate public participation in Parliament relating to issues of oversight and legislation.

**1.3 Method of work of the committee**

The Committee held a strategic planning session at the beginning of the term of Parliament. Where at the Committee developed a strategic plan that was informed by the broader policy imperatives and priorities of government of the five years. The Committee identified instruments that it will use to conduct oversight, these included: Briefings by entities, scrutinising of annual reports, interaction with the Auditor General and robust oversight visits. During oversight visits the Committee interacted with workers, labour representatives, local business representative and the relevant stakeholders, in order to assess the impact of the SOCs on communities. The Chairperson established a Management Committee which comprised of the Chairperson, Whip of the ANC and all the support staff of the Committee. The role of the management committee was to implement resolutions of the Portfolio Committee.

**1.3.1 Capacity Building**

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The Department of Public Enterprises held an annual capacity building workshop, known as Autumn School, for the Portfolio Committee on Public Enterprises. The purpose of these sessions was to familiarise the Committee with the global environment, challenges, policy environment and the industries within which the different state-owned companies operate. The Autumn Schools enhanced the oversight work of the Committee.

**1.4 Purpose of the report**

The purpose of this report is to provide an account on the work of the Portfolio Committee Public Enterprises work during the 4<sup>th</sup> Parliament and to inform the members of the new Parliament of key outstanding issues pertaining to the oversight and legislative programme of the Department of Public Enterprises and its entities.

This report provides an overview of the activities the committee undertook during the 4<sup>th</sup> Parliament, the outcome of key activities, as well as any challenges that emerged during the period under review and issues that should be considered for follow up during the 5<sup>th</sup> Parliament. It summarises the key issues for follow-up and concludes with recommendations to strengthen operational and procedural processes to enhance the committee's oversight and legislative roles in future.

**2. Key statistics**

The table below provides an overview of the number of meetings held, legislation and international agreements processed and the number of oversight trips and study tours undertaken by the committee, as well as any statutory appointments the committee made, during the 4<sup>th</sup> Parliament:

Activity	2009/10	2010/11	2011/12	2012/13	2013/14	Total
Meetings held	14	31	28	23	29	125
Legislation processed	0	0	0	0	0	0
Oversight trips undertaken	4	2	6	8	7	27
Study tours undertaken	0	1	0	0	0	1
International agreements processed	0	0	0	0	0	0
Statutory appointments made	0	0	0	0	0	0

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Activity	2009/10	2010/11	2011/12	2012/13	2013/14	Total
Interventions considered	0	0	0	0	0	0
Petitions considered	0	0	0	0	0	0

**3. Stakeholders**

The Committee's stakeholders are the following:

- Members of Parliament
- Minister and Deputy Minister of Public Enterprises
- Department of Public Enterprises
- Policy Departments of state-owned companies
- Regulatory bodies of state-owned companies
- Chairpersons and Executives of all SOCs
- The media and the Parliamentary Monitoring Group
- General Members of the Public
- Office of the Auditor-General

**4. Briefings and/or public hearings**

The Committee invited state-owned companies to brief the Committee on issues that required urgent attention and to report on progress that has been made in advancing the developmental objectives of government. The briefings also included the tabling of strategic plans and annual performance plans, annual reports, financial statements and quarterly reports. The Committee reported on the annual reports of the Department of Public Enterprises and its state-owned companies. During the fourth term the Committee did not have any public hearings, as the Committee did not process any legislation.

**5. Legislation**

For the period under review, the Committee did not process any legislation.

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6. Oversight trips undertaken

The following oversight trips were undertaken:

Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
16 – 19 Nov 2009	<p>Transnet: Pipeline and Transnet Rail Engineering Warehouse (Gauteng Province).</p> <p>PBMR: Phelindaba plant (Pretoria)</p> <p>SAA: OR Tambo International Airport and SAA headquarters</p> <p>Eskom: Medupi and Matimba power Stations (Limpopo)</p>	<p>To familiarize the Committee with the operational sites of State Owned Companies.</p> <p>To follow up on issues emanating from the annual reports, to address complaints received from the PE Regional Chamber of Commerce regarding the adverse effects of the manganese terminal and tank farms on the environment.</p>	<p>The Department of Public Enterprises should convene a meeting with Department of Trade and Industry to discuss the issue of cargo dues, which were identified by DTI as being very high in South African ports compared to international counterparts.</p> <p>Transnet should consider to embark on a national skills campaign, conducting training for other SOE's and ensuring that young people were self employed and become entrepreneurs.</p>	<p>The Portfolio Committee on Trade and Industry held a colloquium on the impact of administered prices on the manufacturing sector. All affected stakeholders participated, however there is no progress that has been made in addressing the tariff problems through legislation. The Department of Public Enterprises has included skills development in the shareholder compacts of SOCs.</p>	<p>- The completion of the Transnet Pipeline</p> <p>- High cargo dues/ Port tariffs</p> <p>- Non- Compliance of contractors at Medupi power station with legislative framework, and under-performance against targets and sub standard workmanship.</p> <p>- Ensure completion of Medupi</p>	<p>Report adopted.</p>

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
18 – 19 May 2010	Alexkor in Alexander Bay in Northern Cape	To familiarize the Committee on the challenges facing the entity and to assess progress made regarding the Pooling and Sharing Joint Venture.	The Committee resolved that CPA should forward a plan on how the money for education and other funds would be spend, and how much money had been accrued on the unused funds. The information should reach the Committee by 19 June 2010.	The Minister has appointed Mr Brian Dames as GCEO in 2010 and has brought stability in the board and management of Eskom.	Mr Dames has resigned, and a new GCEO and CFO should be appointed	Report adopted.
24 June 2011	Denel Aero-structures, Pretoria	To investigate the challenges faced by the underperforming and loss-making Denel Saab Aero-structures	Noting the financial difficulties of DSA, Denel should provide the Committee with a progress report on its restructuring by 28 October 2011; The Department of Public Enterprises should submit a	Denel has successfully restructured the Aero-structures Division. National Treasury recapitalised Denel, and the company had since recovered and	- An oversight visit to Alexkor to assess the progress made in the Pooling and Sharing Joint Venture (PSJV). - Review of the Deeds of Settlement (DoS) of Alexkor - Non compliance of the PSJV with the PFMA - Meeting with the Department of Defence and Military Veterans regarding lack of orders by SANDF.	Report adopted.

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
		<p>(DSA), this is a division of the Denel Group.</p>	<p>written report on the reasons why Denel had not received the amount it required for the restructuring;</p> <p>The Denel Group Chief Executive Officer and top management should be present in future oversight visits of the Committee; and</p> <p>DTA should make a deliberate effort to recruit learners from rural communities;</p>	<p>was on a healthy and profitable growth path.</p> <p>The leadership of Denel has a very healthy relationship with the Committee, and have since honoured all invitations.</p>	<p>- The financial sustainability of Denel Aero-structures</p>	
<p>29 Nov - 2 Dec 2011</p>	<p>South African Airways, Broadband Infraco, Department of Public Enterprises and Safcol</p>	<p>To familiarise the Committee with the challenges facing the Department and its state-owned companies. Furthermore to assess the contributions that SOCs make to</p>	<p>The department should ensure an enabling legislative environment for Broadband Infraco to deliver on its public mandate as intended by the Broadband Infraco Act No 33 of 2007.</p>	<p>To date Broadband Infraco has not received an Electronic Communications License (ECS), however the company has been allowed to partner with an international company for access to the ECS license.</p>	<p>Meeting with the Minister of Communications to advocate for a policy directive to ensure the issuing of ECS license to Broadband Infraco</p>	<p>Report adopted.</p>

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
		<p>the immediate communities.</p>	<p>Safcol should renovate the houses of workers and ensure that the sanitary facilities were in working order. Safcol should construct recreation facilities for the children who stayed in Safcol villages. The committee would expect a progress report on the implementation of these recommendations by the end of March 2012.</p>	<p>Safcol has delivered on all the recommendations and have reported to the Committee, and continued to invest in the communities where it operates.</p>	<p>Safcol has developed a social responsibility plan which assists in building timber frame structures for early childhood development centres, primary schools and recreation centres.</p>	
<p>5 - 8 June 2012</p>	<p>South African Express Airways, Medupi and Kusile power station and</p>	<p>To look at the impact of Eskom on communities in terms of job</p>	<p>The department should consider better premises conducive for the work of the department. Furthermore, the signage on the premises should be improved to ensure that the department is clearly identifiable and accessible to the public.</p>	<p>The Department only occupied two levels in the building, hence was not allowed for signage. The Department of Public Works have not yet resolved the office space for DPE but the discussions were ongoing.</p>	<p>The Department has since expanded and still requires adequate office space.</p>	<p>Report adopted.</p>

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
	Kusile (Lephalale and Witbank	creation and skills development. To assess challenges faced by South African Express Airways, and progress of Infrastructure build projects such as power station constructions Gauteng, Limpopo and Mpumalanga	governance of SAX and requested the board to be thorough in the execution of its duties, so that the incident of incorrect financial statements did not reoccur. It further resolved that SAX should address all the concerns that have been raised by the customers and employees and should improve its customer service. SAX should keep the Portfolio Committee informed timeously of the developments within the company.	Express Airways which has been working tirelessly to turnaround the company. The board has reported on mechanisms introduced to improve internal controls and compliance with legislative compliance.	Turnaround Strategy of SAA - ensure unity and stability in the boards of SAA and SAX	
		Eskom should not give contracts to companies that do not adhere to labour legislation and treat workers as sub-human beings. It was ultimately responsible for the workers employed by the contractors, because Eskom is the custodian of the project.	Eskom has reviewed the Project Labour Agreement and replaced it with a Partnership Agreement, which governs the relations between labour and contractors. It has further enhanced monitoring mechanisms on construction site to ensure contractors comply with legislation.	The monitoring of performance of some contractors and sub-contractors was still sub-standard and contributed to the delays of the construction of the Medupi Power Station.		

Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
		<p>Eskom should ensure that the subcontractors are paid on time and are given the necessary support and training.</p>	<p>Eskom has a Competitive Supplier Development Programme to increase the competitiveness, capacity and capability of the South African supply base where</p>	<p>Assess the impact of the Competitive Supplier Development Programme on Black women owned and youth owned enterprises.</p>	<p>Report adopted</p>	

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
19 – 22 July 2012	Transnet Phelophepa Health Train (Northern Cape), South African Airways (Gauteng), Port of Ngqura ( Eastern Cape) and Port of Richards Bay (Kwazulu-Natal)	<p>- To look at the impact of these Transnet on communities in terms of job creation and skills development.</p> <p>- To assess challenges faced by South African Airways and progress of the infrastructure build projects undertaken by Transnet (Port of Richards Bay and the Port of Ngqura).</p> <p>- To assess the effectiveness and challenges of the developmental project of Transnet (Phelophepa Health Train)</p>	<p>Port of Richards Bay: The union should be involved in the development of the skills development plan to ensure that it was linked to the personal development plans of employees. Transnet should provide workers with protective clothing, especially for dust, and should consult operators when procuring equipment in order to purchase machinery which is user friendly, effective and economical.</p>	<p>Transnet has instructed the management of Richards Bay to develop a social investment plan and has reported to the Committee with regards to progress made in providing safety equipment to workers and the replacement of aging machinery.</p>	<p>- Expansion of the Transnet Phelophepa Health Train through more investments</p> <p>- Promotion of intra-trade among SOCs (Prasa and Transnet, Denel and Armscor etc)</p>	
		<p>The Committee resolved that SAA Cargo should supply employees with dust masks to prevent infections until such time that the facility is upgraded. The management of SAA should address the concerns raised by the employees, organised labour and customers listed in this report and provide feedback to the Committee by 30 September 2012.</p>	<p>SAA has reported to the Committee that it has addressed the concerns of the workers. Relations with organised labour had since improved because the new board consulted with organised labour during the development of the Long Term Turnaround Strategy.</p>	<p>- improve relations between management of SOCs and communities, local businesses and organised labour.</p>		

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
1 - 2 Aug 2012	Port of Cape Town and Saldanha	To assess progress of the infrastructure projects, and the impact the projects had on the immediate communities in terms of job creation, skills development and localisation.	<p>The Minister of Public Enterprises should ensure that Transnet:</p> <ul style="list-style-type: none"> <li>- promotes port careers to the rural areas of Kwazulu-Natal and not only recruit in urban areas includes organised labour in the Provincial economic Council.</li> <li>- Forwards the report of the socio-economic study to the Committee when it has been completed.</li> <li>- Keeps the Committee informed of the decisions on the dig-out port and the Salisbury Island expansion projects.</li> <li>- Forwards detailed information regarding employment equity and transformation indicators.</li> </ul> <p>The management of the Port of Saldanha should develop a corporate social investment programme that will focus on advancing the developmental objectives of government such as, providing skills development and bursary opportunities for young people in the community and improve the socio-economic</p>	<p>The Minister has met with the business community of Saldanha Bay in order to improve relations and promote local businesses. The port has since developed a forum for labour and local business can participate and benefit from the development at the port.</p>	<p>- Ensure the successful completion of the expansion of the Durban Port and the Dig Out project at the old Durban Airport. Ensure the economic spin offs for the adjacent communities, local business and beneficiation.</p>	Report adopted
			<p>The management of the Port of Saldanha should develop a corporate social investment programme that will focus on the developmental objectives of government.</p>	<p>The Port of Saldanha has developed corporate social investment programme which focus on the developmental objectives of government.</p>	<p>Follow up Oversight visit to the port to assess progress made in empowering local businesses and investment in skills and education.</p>	

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
26 - 29 Nov 2012	South African Airways and Denel Overberg Test Range	The aim of the visit was to meet the newly appointed boards of SAA and South African Airways.	<p>conditions of the adjacent communities.</p> <p>The Minister of Public Enterprises should:</p> <p>Engage with the Minister of Transport to review the airport taxes, landing, parking and handling fees that are charged by ACSA as they had a negative impact on SAA.</p> <p>Ensure that the board and executive of SAA embark on an outreach programme to market the brand, encourage ambassadors, Members of Parliament and South Africans to fly SAA.</p> <p>Ensure that there is openness and transparency in the governance of the airline in order to enhance mutual relation between the board, management, staff and organised labour.</p> <p>Ensure that a strategy is developed to improve public perception and public confidence in the airline.</p> <p>Ensure that the airline changed the manner it conducted its</p>	<p>The matters of airport taxes, parking and handling fees have not been dealt with.</p> <p>The board of SAA has consulted with all stakeholders during the development of the Long Term Turnaround Strategy.</p> <p>The strategy includes strategies to improve cost efficiencies and profit maximisation.</p>	<p>- Ensure the reduction of the following administrative prices: airport taxes, parking and handling fees and port tariffs.</p> <p>- Drive to improve public perception about SAA</p> <p>- encourage Members of Parliament to use SAA as a preferred airline.</p>	Report adopted

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
30 July 2013	Denel Pretoria Metal Pressings	To assess the defence capabilities and performance of the Denel Overberg Test Range.	<p>business in order to improve efficiency and its services. Ensure that the board submit a quarterly report on progress regarding the turnaround strategy to the Committee.</p> <p>The Minister of Public Enterprises should ensure that Denel:</p> <ul style="list-style-type: none"> <li>- embarks on educational programmes and promotes the services and careers in rural areas of South Africa.</li> <li>- partners with the communities on joint ventures to improve community involvement and relations.</li> <li>- makes a concerted effort to recruit women and develop a capacity building programme to retain them.</li> </ul> <p>The Committee further recommended that the Minister of Public Enterprises should consider engaging with the Minister of Defence and Military Veterans regarding possibilities of the South African National Defence Force placing long term contracts to ensure the sustainability of Denel PMP.</p>	Denel has implemented and improved its programmes to support schools and young people with maths and science and training of Engineers.	Engagement with the Minister of Defence and Military Veterans regarding possibilities of the South African National Defence Force placing long term contracts to ensure the sustainability of Denel PMP and other divisions of Denel.	Report adopted

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
25 – 26 July 2013	Medupi power Station (Lephalale)	To assess progress that has been made in the construction of the Power Station since the last oversight visit of the Committee, establish the reasons for the delay in construction and the impact of the new labour agreements.	<p>The Minister of Public Enterprises should ensure that Eskom:</p> <ul style="list-style-type: none"> <li>- resolves the outstanding issues for the completion of the Partnership Agreement (Site Specific Agreements between organised labour and contractors, in order to improve relations and governance problems on site.</li> <li>- intensifies monitoring and inspection on the quality of work and on time performance of all contractors.</li> <li>- ensures that there are harsher penalties for under-performance and non-delivery of contractors.</li> <li>- improves communication with the public as well as stakeholders. When something happens at Medupi, Eskom should be the first to inform the public and not the media, as that was how information got distorted.</li> <li>- Initiate action against those workers who caused the damage to property and injury to people on the 24 July 2013, and ensure that there are consequences for workers who caused this.</li> </ul>	<p>Recommendations implemented in total. Progress has been made in resolving issues that are in the Partnership Agreement. Eskom has introduced a system to claim against contractors fail to deliver on their contractual obligations. Furthermore Eskom has enhanced monitoring at the sites of construction.</p>	<ul style="list-style-type: none"> <li>- ensure the successful completion of Medupi, Kusile and Ingula power stations.</li> <li>- Ensure increase participation and oversight by Eskom on the construction site in order to avert non compliance, strikes and delays.</li> <li>- improve monitoring of contractors.</li> <li>- ensure harsher penalties for non delivery of contractual obligations.</li> </ul>	

Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
			<p>The Minister of Public Enterprises should ensure that contractors:</p> <ul style="list-style-type: none"> <li>-adhere to labour legislation and treat workers with respect;</li> <li>-perform their duties with the highest level of ethical and professional standards; and</li> <li>-deliver on the performance targets and are penalised severely for non performance.</li> </ul> <p>The Minister of Public Enterprises should ensure that labour:</p> <ul style="list-style-type: none"> <li>- does not delay this project any further and action be taken against those workers who have caused damage to property and injury to people.</li> </ul>			
1-2 Aug 2013	Port of Durban	To assess progress that has been made in improving efficiencies and capacity of the port.	<p>The Minister of Public Enterprises should ensure that Transnet:</p> <ul style="list-style-type: none"> <li>- Promotes port careers to the rural areas of Kwazulu-Natal and not only recruit in urban areas.</li> <li>- Includes organised labour in the Provincial economic Council.</li> <li>- forwards the report of the socio-economic study to the Committee when it has been completed.</li> </ul>	A report has been sent to the Portfolio Committee on progress that has been made regarding the recommendations of the Committee.	Address the adverse impact of the National Ports Act, 2005 (Act No 12 of 2005)	Report adopted

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
			<ul style="list-style-type: none"> <li>- Keeps the Committee informed of the decisions on the dig-out port and the Salisbury Island expansion projects.</li> <li>- Forwards detailed information regarding employment equity and transformation indicators.</li> <li>- The Minister of Public Enterprises should consider: Addressing the adverse impact of the Ports Act as raised by organised labour in this report.</li> </ul>			
4 – 6 Feb 2014	Department of Public Enterprises, South African Airways, Denel Land Systems and Denel Aviation.	to assess: <ul style="list-style-type: none"> <li>- Progress that has been made in the implementation of the turnaround strategy of South African Airways;</li> <li>- Progress that has been made in the construction of the Ingula hydro power station;</li> <li>- Progress that the Department</li> </ul>	The Minister of Public Enterprises should ensure that: <ul style="list-style-type: none"> <li>- the Deeds of Settlement was reviewed as it posed a threat to corporate governance and contravened legislative framework, especially the PFMA.</li> <li>- initiate investigations into community trusts and ensure that they are accountable to the community.</li> </ul> For Safcol: <ul style="list-style-type: none"> <li>- Investigates using timber structures as an alternative for Human settlements;</li> </ul>		<ul style="list-style-type: none"> <li>- Addressing the minority shareholding of Safcol.</li> <li>- Addressing the slow pace of resolving the land claims with the Department of Rural Development and Land Reform.</li> </ul>	

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
		<p>of Public Enterprises has made on the following issues: - developing a strategy for Safcol and resolving the land claims backlog, - progress made in developing the broadband policy and the ECS license for Infracor</p> <p>- status of the Pulling and Sharing Joint Venture and update of the dual mandate of Alexkor.</p>	<ul style="list-style-type: none"> <li>- Identifies a niche market and other alternative products to diversify its product range;</li> <li>- Ensures that the money invested in IFLOMA was well spent, and should improve oversight over the operations;</li> <li>- Performs an analysis of the cost of timber frame structures versus brick and mortar buildings; so as to encourage communities to invest in timber frame crèches and other social structures.</li> <li>- Partners with disaster management agencies to replace lost homes with timber frame structures;</li> </ul> <p>For Broadband Infracor:</p> <ul style="list-style-type: none"> <li>- there is a conducive policy environment for Broadband Infracor to enable the company to execute its developmental mandate through an ECS license.</li> <li>- continue with engagements with the Minister of Communications to ensure that a policy directive was issued with regard to a need for</li> </ul>		<p>Make follow up with the Minister of Communications to ensure that a policy directive is issued with regard to the issuing of an ECS license for Infracor.</p>	

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
			<p>an ECS license for Broadband Infraco.</p> <p>For SAA:</p> <ul style="list-style-type: none"> <li>- the board of SAA develops timeframes and costed measurable objectives for the LTTs in order to enable the Portfolio Committee to assess progress and conduct its oversight.</li> <li>- the Management of SAA respond and act on the complaints of the employees as stated in this report.</li> <li>- the board of SAA should investigate whether there were any compensation due to SAA from the transfer of assets to Airports Company of South Africa.</li> <li>- the Management of SAA should reconsider the decision to have the domestic and international departures at the same counter.</li> <li>- that SAA becomes a financially sustainable state-owned company that adheres to its developmental mandate.</li> </ul>		<ul style="list-style-type: none"> <li>- Ensure that SAA implements the long term turnaround strategy and reports quarterly on progress.</li> </ul>	

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Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report

**a) Challenges emerging**

The following challenges emerged during the oversight visit:

- The infrastructure projects are significant in size and complexity
- The complexity of infrastructure projects required specialist and scarce skills which were not readily available in the country
- Some contractors employed at Medupi power station were not adhering to labour legislation of the country
- Some contractors were not delivering quality work and some were fraudulently certifying their work
- Poor Inter-governmental co-operation, between departments and entities and across most SOCs
- Poor monitoring of projects such as Medupi, hence some contractors performed sub-standard work

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- PPPFA needs to be relooked at for public entities, this needs to be addressed by National Treasury and Department of Public Enterprises
- Need for a "whole of state" aviation policy framework, monitor implementation
- The adverse impact of the National Ports Act No 12 of 2005

**b) Issues for follow-up**

The 5<sup>th</sup> Parliament should consider following up on the following concerns that arose:

- The issuing of ECS license for Broadband Infraco
- Ensuring the finalisation of SAFCOL land claims
- Monitor the implementation of SAA long-term turnaround strategy
- Monitor the Eskom build-programme, especially Medupi, Kusile and Ingula
- Need to monitor Eskom's maintenance programme, as it has knock on effects on the capacity of energy supply
- Monitor the Market Demand Strategy of Transnet
- Address the challenges facing Alexkor, ensure the implementation of the business strategy into coal, and review the Deeds of Settlement
- Ensure the Financial Sustainability of SAA, SAX and Alexkor is improved
- Monitor the implementation of the recommendations of the Presidential Review Committee

**7. Study tours undertaken**

The following study tours were undertaken:

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Date	Places Visited	Objective	Lessons Learned	Status of Report
22 July – 1 Aug 2011	Venezuela and Brazil	To study developmental roles of SOEs in the economy, governance model of SOEs and how Parliament and the executive exercise their oversight responsibilities.	The Committee learned the following: - Developmental role of state-owned companies in the economy. - Values and principles that govern state-owned enterprises. - Corporate governance models used in Brazil and Venezuela in terms of accounting and reporting. - The role of each state-owned company in terms of advancing the developmental objectives of government (health, education, human settlements, recreation, jobs etc).	Report adopted

<p><b>a) Challenges emerging</b></p> <p>The following challenges emerged during the study tours:</p> <p>Venezuela has only one official language that is used, which is Spanish. That was a challenge as all the documents and presentations were in Spanish. However the support staff managed to capture deliberations through the assistance of an interpreter.</p>
<p><b>b) Issues for follow-up</b></p> <p>The 5<sup>th</sup> Parliament should consider following up on the following concerns that arose:</p>

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- Consider pursuing the lessons learned in Venezuela in terms of the developmental mandate of state-owned companies;
- Consider pursuing the recommendations of the Committee with regards to the lessons learned.

**8. International Agreements:**

The Committee did not process any international agreements during the 4th term of Parliament.

**9. Statutory appointments**

Not Applicable

**10. Interventions**

Not Applicable

**11. Petitions**

Not Applicable

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**12. Summary of outstanding issues relating to the department/entities that the committee has been grappling with**

The following key issues are outstanding from the committee's activities during the 4<sup>th</sup> Parliament:

Responsibility	Issue(s)
Departments of Public Enterprises and Communications (DPE and DoC)	Issuing of Electronic Communications Service License to Broadband Infraco.
Department of Rural Development and Land Reform and DPE	Resolution of SAFCOL claims and SAFCOL strategy.
South African Airways	Needs to submit a breakdown of targets and performance indicators for the LTTS.
Department of Public Enterprises	Needs to submit the shareholder compacts to the Committee once signed to help the Committee monitor the performance of the entities timeously.
Mpumalanga COGTA	To resolve land occupations and issue of building on state land by communities without proper approvals.
DPE and Safcol	To closely monitor and manage IFLOMA.
Alexkor	To monitor and address diamond theft in Alexander Bay.
Department of Public Enterprises	To review the deeds of settlement in order to capacitate Alexkor with more responsibility.
Department of Public Enterprises	To continuously monitor the new strategy for Alexkor and further needs in executing the strategy.
Portfolio Committee on Public Enterprises	To visit Alexander Bay township to assess the impact Alexkor made in the area.
SANDF, SAPS and DIRCO	The committee should visit the operating entity and assess it operations.
SAA	Need to support Denel on its initiatives to market some of its products
	It is crucial that SAA becomes a commercially and financially viable national airline, both in terms of its management and operations.

### 13. Recommendations

During the 5th Parliament the Portfolio Committee should consider the following:

- Ensure that State-owned companies should have an increased presence and involvement on the construction sites to enhance oversight over contractors, especially at the Medupi Power Station.
- Monitor the actions by a group representing pensioners who are filing a lawsuit against Transnet.
- Monitor the implementation of the Long Term Turnaround Strategy of SAA through regular briefings and oversight visits.
- Ensure continued support to Denel in particular with the development its Hoefyster project.
- To ensure support to Denel through collaboration between SANDF, SAPS and DIRCO in order to remain competitive especially with regards to Denel Pretoria Metal Pressing business unit.
- Monitor the turnaround of SA Express Airways and ensure compliance with reporting requirements.
- Ensure that the Department of Rural Development and Land Reform resolve outstanding land claims at Safcol
- To support efforts for developing a new role of Alexkor.
- To ensure that Broadband Infraco acquire its ECS licence.

### 14. Committee strategic plan

The Committee had a strategic planning workshop in the beginning of the 4th term. The Committee adopted the five priorities of government as the five key focus areas in exercising oversight over state-owned companies. In ensuring that state-owned companies advanced these objectives, the Committee looked at the following areas during the 4th term: creation of skills and jobs, promotion and development of local businesses, beneficiation and the social impact on the adjacent communities where these companies operate.

The strategic plan also ensured that the Committee interacted with the following stakeholders during its oversight visits: organised labour to assess the conditions of workers, the local authority to ensure that there was a healthy co-operative relationship with the SOC, representative of local businesses to ensure that they benefit from the infrastructure programmes, and interaction with the employees of state-owned companies.

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# **ANNEXURE “ZR10”**

ZR10<sup>1</sup>-94

## Portfolio Committee on Public Enterprises search

23 May 2014 - 23 May 2017

Date	Title of Meeting	Relevant abstract found on the PMG website
14 October 2014 Chairperson: Ms D Rantho (ANC) (Acting)	Audit outcomes of Department of Public Enterprises: AGSA briefing	<p>The Members expressed concern about lack of effective leadership in SAA and wanted to know whether there was assistance that was given to the entity in order to address poor performance. Was the Auditor-General of South Africa (AGSA) performing audits for Mango or only focused to SAA? One Member asked if there are measures in place to curb irregular expenditures in entities like SAFCOL (R60 million), ESKOM (R22 million) and Transnet (R49 million?). What was the kind of fraud that was investigated on SAFCOL? They also noted that some of the targets set by the entities were unrealistic and asked whether the internal auditors are used effectively to address this problem. The AGSA provided the responses to the questions asked by the Members.</p> <p>Mr N Singh (IFP): What are the measures in place to curb irregular expenditures in entities like SAFCOL (R60 million), ESKOM (R22 million) and Transnet (R49 million?). What was the kind of fraud investigated to SAFCOL? It was worrying that most of the entities spend all their funds without meeting the predetermined objectives.</p>
15 October 2014 Chairperson: Ms D Rantho (ANC)	Department of Public Enterprises on its 2013/14 Annual Report	<p>The Portfolio Committee received a briefing from the Department of Public Enterprises (DPE/Department) on its 2013/14 Annual Report. It was noted that the DPE was the government shareholder representative with oversight responsibility for eight State Owned Companies (SOCs): These were: Eskom, Denel, Safcol, Broadband Infracore, Alexkor, Transnet, South African Airways and South African Express Airways.</p> <p>DPE reported that in this year there had been irregular expenditure, amounting to R711 000, which was incurred when three quotations were not obtained. Disciplinary processes were in progress. Fruitless expenditure amounting to R530 000 was also incurred, when one portion of the BRICS Summit that DPE hosted in the 2012 financial year had to be cancelled, but it was explained that this was due to another Department failing to track invitations properly.</p>

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		<p>Ms N Michael (DA) was confused with the figure of R711 000 of irregular expenditure, which was said to be due to non-compliance, and did not understand how non-compliance would result in irregular expenditure, because there was no explanation in the report. She asked whether action was taken against any individual, and whether any action was taken against those responsible for the cancellation of the BRICS summit.</p> <p>Ms Yoliswa Makhasi, Deputy Director General: Corporate Management, DPE, answered the questions on the fruitless expenditure. She noted that the amount of R530 000 was due as part of BRICS commitments made to South Africa during the previous financial year, 2012/13, when South Africa hosted the BRICS Summit. There was a session of Heads of Departments which took place in preparation for the Ministerial session, and at the last minute, the Ministerial session was cancelled, because two days before that event it was discovered that most of the Ministers were not able to attend, despite the fact that DPE had relied upon the Department of International Relations and Cooperation to issue the invitations and do the follow ups. It was not possible to do anything other than cancel, but that cancellation resulted in the fruitless expenditure of about R527 000.</p>
29 October 2014 Chairperson: Ms D Letsatsi- Duba (ANC)	Denel on its 2013/14 Annual Report	In the Annual Report tabled in Parliament, Denel had provided the Committee with a comprehensive overview of the activities, achievements and challenges experienced by the Organisation. One of the achievements highlighted was that Denel recorded a profit for the fourth successive year. Members were really impressed with the laudable work being carried out by Denel. Denel was one of the success stories of the Department of Public Enterprises and had improved greatly from what it used to be – an ailing company to a good company.
25 February 2015 Chairperson: Ms D Letsatsi- Duba (ANC)	State-owned Companies performance: Department of Public Enterprises update on implementation of Auditor-General recommendations	<p>Key points raised were that The Department of Public Enterprises was the sole shareholder of some of the country's largest SOCs in the country, including Eskom, Denel and Transnet. The collective asset value for DPE's SOCs was over R770 billion, with Eskom and Transnet accounting for R740 billion of that. Red flags had been raised over the financial sustainability of Eskom and SAA. This had required intervention and the issuing of government guarantees.</p> <p>Attention had to be paid to improve corporate governance in respect of Supply Chain Management, irregular and wasteful expenditure and criminality. There had to be a focus on consequence management and a commitment to improving</p>

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		<p>a culture of accountability and responsibility and minimising abuse of power.</p> <p>Mr P Morapela (EFF) asked for more information on what was needed to improve the performance of Transnet.</p> <p>Ms P van Damme (DA) noted that from the presentation the situation looked depressing. Nothing had changed; it was the same broken record. She charged that the Minister had not appeared to account to the Committee on the state of affairs in the SOCs. She said the profit versus the revenue base was quite low. Was this a concern? SA Express Airways (SAX) was in ICU; it had not submitted its annual report, there had not been an AGM. Should SAX be submitted to National Treasury as well?</p>
<p>25 March 2015</p> <p>Chairperson: Ms D Letsatsi-Duba (ANC)</p>	<p>Department of Public Enterprises Strategic and Annual Performance Plan 2015/16, in presence of Minister</p>	<p>The Minister Lynne Brown gave an overview of the six State Owned Companies (SOCs) - Transnet, Eskom, SA Express, Denel, South African Forestry Company (SAFCOL) and Alexkor - and outlined their challenges, with a focus on the challenges of Transnet and Eskom, which had recently been the subject of media reports.</p> <p>Ms N Mazoli wanted to know the turn on date for Kusile. She indicated that a report in the <i>Business Day</i> indicated that irregular tenders and procurement were behind the suspension of the three Board executives and asked for further clarity from the Minister in this regard.</p> <p>Speaking to Eskom issues, the Minister noted that the Board was made up of people who had been chairpersons of various institutions, or who had run large institutions and overseen large departments, like Absa Bank. There were a number of skilled people within the Board. However the relationship between Board members still needed to be built because the Board was relatively new. She had been quite impressed with the Board so far. The Board had not yet taken a decision whether to retain the Chairperson of the Board. There was no struggle of power within the Board, the Board was largely united, and it was also too young to be split by factions.</p> <p>Mr Morapela said the Minister needed to take more responsibility for the problems faced by Eskom, rather than to say the problems were inherited. He also felt that the Minister must acknowledge that there were serious problems within the Board, with which the Chief Executive Officer had been involved for only six months. The Minister had to be bold enough to give direction, and where things were going wrong, these needed to be acknowledged.</p>

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<p>22 April 2015 Chairperson: Ms D Letsatsi-Duba (ANC)</p>	<p>Eskom feedback on the challenges facing it</p>	<p>Questions and concerns raised by Members included:</p> <ul style="list-style-type: none"> <li>- Governance instability which included the suspension of the four executive members of the board</li> <li>- Delays in the build programme</li> <li>- Labour unrest</li> <li>- Maintenance backlog</li> <li>- Load shedding</li> <li>- Financial stability of Eskom</li> <li>- Municipal debt, particularly that of Soweto</li> <li>- Eskom's proposed tariff hike of 25%</li> <li>- The role of Independent Power Producers (IPPs) in reducing the electricity burden on Eskom</li> <li>- Skills capacity challenges within Eskom</li> <li>- Excessive bonuses and salary increases of Eskom top executive</li> <li>- Contingency measures should a national blackout occur</li> <li>- Update on the five point plan and the war room.</li> <li>- Eskom's strategies for improving the company's credit rating.</li> </ul> <p>Mr Brain Molefe (Chief Executive Officer, Eskom) explained that the purpose of the meeting was to have an interaction with the Eskom Board on the challenges facing the company, which include governance instability, operational performance such as the delays in the build programme, labour unrest and load shedding, financial challenges and issues of maintenance.</p> <p>Mr N Singh (IFP) said fundamental issues needed to be addressed at Eskom and the Committee was there to see how it could make meaningful contributions to address the challenges. Some of the questions Eskom needed to answer were: For how long would there be load shedding? Was there a possibility of stage four load shedding (national blackout) on the cards? Was there a plan in place to deal with a national blackout should it occur? What process was followed for the suspension of the four board members, why were they suspended? Was there enough money at Eskom to deal with all the issues? Was there enough skills capacity within Eskom to deal with maintenance on a daily basis? He argued that there was chronic mismanagement within Eskom at certain levels of management. There were allegations that certain managers had their "fingers in the cookie jar" particularly in the issuing of tenders; was the Board aware of these allegations? The country has been delinquent with maintenance; who was responsible for this backlog, who were the managers responsible for conducting maintenance these last 20 years and what disciplinary measures were in place to address this incompetence? What plans were in</p>
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		<p>place to assure investors that things at Eskom would turn around and that the country would resume normality?</p> <p>Mr R Tseli (ANC) asked about the progress Eskom had made in dealing with the R5 billion municipal debt. What were the terms of reference for the investigation of the four suspended board members? What was the procurement strategy for securing new coal mining contracts? To what extent did Eskom oversee labour relations contracts between the contractors and their employees?</p> <p>On the suspension of the four board members, Mr Molefe’s understanding was that investigators have been appointed and Eskom was waiting for their report. It was only when the report was available that there could be a clearer picture of what transpired prior the suspension.</p> <p>Eskom would not be able to respond to the allegation about managers having their “fingers in the cookie jar”; the allegation did not have sufficient details for Eskom to act on it. If there were any specific details, Eskom had a toll-free number where any problems could be reported anonymously. Members were encouraged to provide specific information on which Eskom could act on. A lot has been said on maintenance delinquency.</p>
<p>13 May 2015 Chairperson: Ms D Letsatsi- Duba (ANC)</p>	<p>South African Express Airways 2013/14 Annual Report &amp; 2014/5 performance targets; Committee Report on DPE Budget</p>	<p>The South African Express Airways (SAX) gave a briefing on its 2013/14 Annual Report and on the company’s performance targets for 2014/15. The financial statements for SAX were tabled late due to financial troubles. With the help of the Department of Public Enterprises and the National Treasury, SAX was able to get guarantees in March 2015 to satisfy its auditors that it was a going concern and allow finalisation of its 2013/14 financial statements. It had a R206m net loss compared to R62m net loss in 2012/13. SAX assured the Committee that this was a one-time occurrence and it would not be repeated. DPE and National Treasury were imposing strict conditions on SAX to ensure that the company was not wasting money.</p> <p>Mr R Tseli (ANC) commended the company for the 20% black pilots it had. However the Auditor General had given SAX a qualified report. What plans were in place to ensure that the matters raised by the Auditor-General were attended to? How long would it take for SAX to receive an unqualified report?</p> <p>Mr Mark Shelley, Chief Financial Officer, SAX , explained that for the 2013/14 financial year SAX had a reported revenue of over R 2.5 billion and a net loss of about R 206 million. A 11% financial increase however had been</p>

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		<p>experienced. On the other hand, the airline lost 3% of its passengers and cargo was reduced by 13% from the previous year due to contracting challenges and ground transportation competition. He explained that SA Express has discontinued certain non profitable routes, rationalised its network, and has implemented a reduced schedule to optimise passenger load factors and enhance asset utilization. The key issues with the balance sheet were: undercapitalization, high investment in inventories which tied up cash flow, continued erosion of equity and higher than acceptable gearing and debt levels.</p> <p>Mr Ntshanga, SAX Chief Executive Officer commented that SAX's strategic role was to be profitable and there are various initiatives in place already. SAX was therefore not expecting to deliver late annual financial statements again due to it not being a going concern. He said SAX was committed to ensuring that by 2016 the company received an unqualified audit opinion.</p>
<p>17 June 2015</p> <p>Chairperson: Ms D Letsatsi- Duba (ANC)</p>	<p>Road to Rail Strategy: Transnet progress report</p>	<p>Transnet Freight Rail (TFR) briefed the Portfolio Committee on Public Enterprises on the progress made in the implementation of the road-to-rail strategy to date. Some of the challenges experienced by TFR on accelerated growth in the road to rail strategy were mainly due to the failure of locomotives. Some of the locomotives were very old. However, the fleet was being improved, and 150 of the 1 064 new locomotives which had been ordered, had arrived.</p> <p>Members commended Transnet for the good work being done, especially around job creation.</p>
<p>12 August 2015</p> <p>Chairperson: Ms D Letsatsi- Duba (ANC)</p>	<p>Transnet on Africa Strategy</p>	<p>Mr R Tseli (ANC) said there had been a constant change of ministers of transport and Director Generals in the Department of Transport, and asked for comment on whether this was considered a risk.</p> <p>Mr N Kwankwa (UDM) said political instability affected risk and investment. He asked that more clarity be given on the pipeline projects. He asked also how much revenue the Africa strategy was expected to generate.</p> <p>Mr Gama said political tension and instability were risks and the most important role of all was keeping political stability in balance. There were many commercial credit insurance institutions available, but all of them had the potential that an investor might not get all money invested back.</p>
<p>09 September 2015</p> <p>Chairperson: Ms D Rantho</p>	<p>State-owned companies corporate governance challenges: progress report;</p>	<p>Members asked when would the Minister ensure that the Board of Eskom appointed executives on a full time basis? Why had bonuses been paid out to Eskom executives when the company had been seriously under-performing? Why was the DPE not arranging press conferences to talk about</p>

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<p>(ANC) (Acting)</p>	<p>Department of Public Enterprises 1st Quarter 2015/16 performance</p>	<p>how well companies such as Denel and Alexkor were doing? When was the position of Director General going to be filled permanently? How was the DPE responding to SOCs which were not following, or properly implementing, legislation? Did the DPE have competent people to deal with recommendations from the Auditor General? How had the recent strike at Medupi impacted the running of the project?</p> <p>Ms Lynne Brown, Minister, Department of Public Enterprises (DPE) said it was unfortunate that the Committee met at the same time as Cabinet, as this made it very difficult for her to participate.</p> <p>Ms N Mazzone (DA) said the Committee needed to ensure that on a day when the Minister was available, the meetings should not be on the day when Cabinet was also sitting. The Committee liked having the Minister around and it was not fair to the Minister.</p> <p>The Chairperson also raised a concern around when permanent executives would be appointed to the Eskom Board. Was there no timeframe for the executive to be in an acting position? She said SOCs were very important to the economic development of the country and more focus should be paid to those which were performing well.</p> <p>Ms G Nobanda (ANC) said the explanation that historical issues were the reason for the financial under-performance at SA Express was not acceptable. It had been 20 years after democracy, and the government needed to move away from always blaming history. By now the DPE should have identified the exact problems at SA Express and come up with a roadmap for solutions to the challenges. The DPE needed to improve its communication strategy, as not much of the good work which other SOCs were doing was being put into the public space. For example, the work which Alexkor was doing around job creation was very good, and it needed to be highlighted. The DPE was not clear on targets. On Denel, she asked what was being done to improve targets.</p> <p>Mr Tseli referred to the SOCs which were not performing, and said it could not be business as usual. One of the recommendations the Committee had made was that a forum for all the SOCs should be established, so that the SOCs which were doing well could share their best practice methods, especially in the area of financial management. Too much emphasis was being put on the SOCs which were not doing well. What was the gender balance between the SOCs, especially at top management level? From the Committee's oversight visit to Koeberg, the DPE was doing</p>
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		<p>very well with the safety measures put in place at the nuclear plant. Eskom should be commended for the work which it was doing at Koeberg.</p> <p>Ms Mazzone said most of the time the Committee was disappointed with what was presented to it regarding SOCs. The Committee had had a meeting with SA Express, and Members had been delighted to congratulate them on its miraculous turnaround. Was the DPE facilitating meetings between SA Express and other SOCs so that best practices could be exchanged? What had happened at SA Express was what the Committee wanted to see at all SOCs, moving forward. Eskom, however, remained a massive concern. It had met only 51% of its performance targets. This was incredibly poor, and was something the Committee had to worry about. In the integrated report for 2014/15, R51 million had been allocated to fruitless and wasteful expenditure. This was completely unacceptable, and the Committee needed to take a firm stance, both as a Portfolio Committee and as a Ministry. People needed to be fired and held to account. Eskom had also experienced a drop in income from R7 billion to R3 billion, which had been blamed on the diesel and gas turbines. The Committee wanted to see these contracts, to see exactly what was being paid to whom. It was completely misleading for the DPE to say no bonuses had been paid at Eskom, as the integrated report stated that R10.8 million of long-term incentive bonuses had been paid out -- R1.4 million per executive. On wasteful expenditure, she said as much as there was a need to do consequence management, there needed to be a healthy balance between the Board, the Executive and junior management.</p> <p>Ms Mokololo: With regard to the increase in wasteful expenditure, this was one of the key drivers where Eskom was improving on its consequence management. Such issues needed to be dealt with expediently.</p>
<p>14 October 2015 Chairperson: Ms D Letsatsi-Duba (ANC)</p>	<p>Department of Public Enterprises on its 2014/15 Annual Report &amp; 1st Quarter 2015/16 performance, with Minister &amp; Deputy Minister &amp; Auditor-General</p>	<p>The Minister of Public Enterprises delivered an opening address where she noted:</p> <ul style="list-style-type: none"> <li>- 2015 was the first year that SOCs in the DPE had been trading their own balance sheets, despite what was in the public domain around DENEL.</li> <li>- The combined infrastructure spend by Transnet and Eskom had amounted to R86 billion.</li> <li>- The investments of SOCs continued to increase in a very depressed economic environment employing around 120 000 people in the country full time.</li> </ul>

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		<p>- The localisation of expenditure by SOCs had also gained momentum with significant resourcing from local industry. 1800MW had been sourced from local Independent Power Producers (IPPs) in the 2014/15 FY.</p> <p>- Cabinet had approved a R23 billion support package to Eskom to support the financial sustainability of the entity which grew. Eskom had been able to raise R49 billion to finance its own operations.</p> <p>- The improvement in oversight of SOCs had ensured a decline in the number of companies registering losses.</p> <p>- The value of assets in the DPE portfolio had increased from R720 billion between Eskom and Transnet in 2013/14 to just beyond R812 billion in 2014/15.</p> <p>- The change in mandate of the DPE and the movement of BroadBand Infraco (BBI) to the Department of Telecommunications and Postal Services (DTPS) and South African Airways (SAA) the National Treasury (NT) had had a negative on DPE performance. The Minister noted a need to look at DPE's adjustment to change.</p> <p>The Chairperson wanted clarity on whether there was any Departmental strategy in dealing with the perceived or real high levels of corruption at SOCs, especially DENEL and Eskom.</p> <p>Minister Brown replied that:</p> <p>The perceived high level of corruption, whether real or perceived, was dealt with in the following manner: When DPE was aware that corruption was clearly occurring, that matter was followed up rigorously;</p> <p>On the SOC transfers, SAA challenges had been quite substantial in terms of their finances. It had been transferred out of DPE to National Treasury and Broadband Infraco (BBI) had moved to the Department of Telecommunications (DTPS).</p> <p>She was not satisfied with the amount of oversight DPE was able to do and she certainly wanted to do more oversight in SOCs. However, as DPE they were trying to strengthen their own tools and the fact is that some of the SOCs have met some of their targets - whether it was the balancing of their sheets or stabilising boards and ensuring a positive company image in the public domain. Minister Brown felt that the DPE had grown its own timber in ensuring that some of those targets had been met.</p> <p>She had been informed about the suspension of the senior officials at DENEL before that had been actioned but not</p>
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		<p>formally which was why she had not made any formal comment on the matter.</p> <p><u>Auditor-General South Africa (AGSA) on Public Enterprises portfolio 2014/15 audit outcomes:</u></p> <p>Mr Sybrand Struwig, AGSA Senior Manager, provided the briefing and some of the key points included:</p> <p><u><i>Irregular expenditure / Fruitless and wasteful expenditure</i></u></p> <p>Irregular expenditure in the entire DPE portfolio amounted to R103 201 813. Fruitless and wasteful expenditure totalled R24 329 000 with SAFCOL and SAX being the biggest contributors to both totals.</p> <p><u><i>Root causes that needed to be addressed</i></u></p> <p>Slow response by management had been one of the top three root causes for audit findings for the portfolio in the past two years. Audit action plans were still being inadequate and their implementation was not monitored. There was also no improvement in assurance provided by management and no improvement in basic internal controls. Senior management did not take immediate consequence action and hold officials accountable for not adhering to the implemented internal controls</p> <p>Ms Mazzone asked what AGSA meant when it reported that Eskom had an unqualified opinion in financial statements and no findings on predetermined objectives whilst the recorded irregular expenditure for Eskom alone, had gone to R713 million. She enumerated the figures for fruitless and wasteful expenditure for both Eskom and Transnet noting that the numbers were quite large. Was AGSA equally concerned with such large amounts for irregular and fruitless and wasteful expenditure? How was it that Eskom had no findings?</p> <p>Ms D Rantho (ANC) asked if DPE had presented a turnaround strategy to remedy the challenges identified by AGSA. Could it also clarify what it meant by proper recording as presented in the outcomes? Had AGSA since seen any changes in internal auditing at DPE in terms of quarterly reporting or any other strategy AGSA would have proposed to DPE to use to improve its record keeping?</p> <p>Mr Morapela agreed with Ms Mazzone's concerns as to the irreconcilability of what the figures were saying about Eskom and Transnet versus the unqualified opinions both</p>
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		<p>SOCs obtained.</p> <p>Mr N Kwankwa (UDM) asked to what extent can audit committees in SOC's assist in improving the audit outcomes, especially if audit opinions are stagnant and unchanged year-on-year?</p> <p>Mr Singh supported Mr Kwankwa's comment about the effectiveness of audit committees. For example, the Committee had found in a recent oversight visit to Ekurhuleni municipality that its audit committee was so effective that the adverse findings from AGSA had been addressed through regular contact with AGSA. How did AGSA assess whether oversight responsibility at DPE or its SOC's needed intervention or was adequate? What criteria were used?</p> <p>Mr Struwig replied that AGSA's audit process was divided into the three areas as presented in the report and they were audited independently of each other. (1) AGSA reported whether the financial statements were supported by relevant information which was adequate to support the figures reported. An unqualified opinion there meant that AGSA found that the disclosure notes and the reported figures were speaking to each other and there were no material misstatements. (2) The quality of the performance report spoke to the predetermined objectives or the shareholders compact for entities and commitments by the DPE. From the reports on the achievement of those objectives, AGSA would then audit whether the commitments had been useful and measurable. It would also audit whether commitments were credible, accurate and complete. No findings in that regard meant that AGSA was satisfied with the quality of the performance report. (3) Compliance with legislation was where AGSA audited whether the key laws were complied with by DPE and its entities. The PFMA had stipulations that SOC's had to prevent irregular and wasteful expenditure. If such expenditure was incurred, then AGSA had to report it as non-compliance finding.</p> <p>Mr Struwig explained that in the case of Eskom, AGSA was satisfied that the financial statements were supported by relevant information which was adequate to support the figures reported and that the indicators for the predetermined objectives had been useful and measurable, credible, accurate and complete. Therefore the fact that Eskom had incurred irregular expenditure was a compliance matter which it had reported. Thus, Eskom received an unqualified audit opinion with a compliance finding.</p>
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<p>28 October 2015</p> <p>Chairperson: Ms D Letsatsi-Duba (ANC)</p>	<p>Denel on its 2014/15 Annual Report; Public Enterprise Budget Review and Recommendations Report</p>	<p>The Denel Group was seen as a success story by moving from a state of decline to an entity that had achieved far above the set targets, increased sales by 28%, and increased its profit by R270 million during the year under review. This came to the attention of the Portfolio Committee when the entity presented its annual report and financial statements for the 2014/15 financial years. The entity had continued to improve on historic results through restructuring and turnaround interventions. Denel had posted profits for five consecutive years.</p>
<p>04 November 2015</p> <p>Chairperson: Ms D Letsatsi-Duba (ANC)</p>	<p>Eskom on its 2014/15 Annual report</p>	<p>The Eskom briefing was led by Dr Ben Ngubane, Chairman of the Board, and by Mr Brian Molefe, Eskom's Chief Executive Officer. The Board emphasised its commitment to re-energising Eskom and to creating growth and value for the shareholder and the nation. All previous "acting" positions within Eskom's executive were filled permanently. Of the four executives suspended, one was reinstated and three resigned. The Board indicated that the purpose of the investigation was not to find any wrongdoing with the officials but rather to put aside officials who could have an impact on the elicitation of information from their sections. No formal charge was laid against any of the officials.</p> <p>Despite these achievements, Eskom's financial health was still under strain; this was driven by a number of factors such as inappropriate returns on assets over a sustained period due to above-inflation cost increases, declining sales revenue, ageing generation fleet, increased unplanned maintenance from breakdowns of ageing plans, limited opportunity for planned maintenance, declining electricity volumes, increased electricity costs, reduced headcount within the entity, escalating municipal debt especially in Soweto and the deteriorating balance sheet which was funded through borrowings.</p> <p>Mr Molefe talked to the Public Finance Management Act (PFMA) and said that Eskom's fruitless and wasteful expenditure was R51 million, losses through criminal conduct were R102 million. Total irregular expenditure was R712 million, of that R4 million was condoned leaving the remaining irregular expenditure at R708 million; R418 million of that was waiting to be condoned. Eskom was committed to preventing irregular expenditure by embarking on various initiatives to achieve sustainable results. Some of the initiatives included updating the PFMA procedure, presenting to Operating Division Exco members, migrating all contracts into a single repository, forensic data analysis and fraud resistance assessments and compliance. On maintenance and load shedding, Eskom was committed to conducting maintenance with little or no load shedding.</p>

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	<p>According to the planned maintenance schedule there would be no load shedding until 30 April 2016. So far there has been no load shedding for 50 days.</p> <p>Dr Ngubane concluded that creating stability was critical to re-energising and growing the company. Eskom was on a path to financial recovery and financial sustainability through driving internal efficiency and cost saving through the business productivity programme (BPP), managing focus on the PFMA compliance and through the successful execution of the R237 billion borrowing plan.</p> <p>Ms N Mazzone (DA): There had also been mention of the low quality of coal being procured by Eskom; why was Eskom procuring sub-standard coal and how was this being addressed? The amount brought to light by the Auditor General for fruitless and irregular expenditure was high and unacceptable. Eskom was wasting the millions it had requested from the National Energy Regulator of South Africa (Nersa). Could Eskom explain the noncompliance on the deal between Eskom and The New Age Media? What was the amount for?</p> <p>Mr N Singh (IFP) referred to the breakfasts hosted by The New Age Media where Eskom was the main sponsor; how much did this cost and what benefit did Eskom receive from sponsoring such an event? The Annual Report said that an independent inquiry was conducted into the four Eskom executives who were suspended; could an update be provided to the Committee on the outcome of the inquiry?</p> <p>Mr Singh said according to the findings of the Auditor General there has been an increase in irregular expenditure at Eskom, it increased from R354 million to R606 million between 2014 and 2015. What internal controls measures were in place to deal with such incidents? Eskom received a loan from [an] international credit company; was this a German company? The increasing debt from municipalities was a serious concern; R10 billion was outstanding from local government and R1.3 billion was owed by public entities. What measures were in place to get the defaulting municipalities and public entities to pay Eskom the money?</p> <p>Mr Molefe responded to the question on coal quality; Eskom checked its coal by sending it to laboratories, these laboratories then gave Eskom reports on the quality of the coal. The coal was checked before it went to the generators. However in certain instances there have been disputes about the testing methodologies of the laboratories and whether the results were correct; in those instances coal was sent to the</p>
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		<p>South Africa Bureau of Standards for checking. Eskom took reasonable steps to ensure that the coal which went into their generators was of good quality. Eskom used to have its own laboratories but they were closed down and privatised. Reviving some of these labs was under discussion, to improve Eskom's internal capacity to improve coal quality.</p> <p>Mr Singh, Eskom CFO, said it was regrettable that there has been an increase in fruitless and irregular expenditure however that was as a direct result of the fact that management has taken a concerted effort to look at improving the controls environment and setting up initiatives against fraud and corruption. Eskom was committed to curbing this trend through various initiatives. A number of incidents which led to criminal misconduct have decreased. On the questions of The New Age Media an amount of R4 million to The New Age Media was listed as irregular expenditure because of the authority who awarded the contract. The amount was subsequently rectified and condoned by the Board.</p> <p>Mr Molefe said the incident around The New Age Media took place during the 2015 financial year and was rectified during that financial year. Eskom found it odd that the auditors said the amount of R4 million needed to be reported on as irregular, as it was subsequently condoned by the Board. On road to rail the benefits such as reducing traffic on the road were for the whole country. This would also provide Eskom with a cheaper mode of transporting coal to power stations. Transnet has been performing exceptionally well in this area and Eskom hoped to continue having a beneficial relationship with Transnet. Transnet has bought additional locomotives and part of these would make it possible for Eskom to increase transportation of coal on rail. On the four Board members who were suspended, three have subsequently resigned and one has been reinstated. He noted that the irregular expenditure of R712 million was for the period 1 April 2014 to 31 March 2015; to be fair the Chief Financial Officer only came to Eskom in September 2015. He assured the Committee that the Chief Financial Officer was working very hard to ensure that irregular and wasteful expenditure were not repeated in 2015/16.</p>
<p>24 February 2016</p> <p>Chairperson: Ms D Letsatsi- Duba (ANC)</p>	<p>Transnet on its 2014/15 Annual Report and financial statements</p>	<p>Mr R Tseli (ANC): He would like to see Transnet do better in reducing its irregular expenditure, and asked how this happened in the first place.</p> <p>The Chairperson noted the concern expressed by the Auditor-General (AG) on the company's non-compliance with regulations. One of the main reasons for this Committee's oversight was to ensure that there was not</p>

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		<p>fruitless and wasteful expenditure. She wanted the reasons why the target on research and innovation was not met. She urged it to work on a strategy to eradicating economic turbulence.</p> <p>Mr Pita (Group Chief Financial Officer, Transnet) said the irregular expenditures were mostly due to contract values being exceeded. The company is working hard to prevent a recurrence of this – and it had, amongst other initiatives, engaged in roll-out of Public Finance Management Act training to all operating divisions, done forensic data analytics, engaged in knowledge sharing with entities, and conducted compliance review and training on standard operational procedures at operating divisions.</p>
<p>20 April 2016</p> <p>Chairperson: Ms D Letsatsi- Duba (ANC)</p>	<p>Alexkor on its 2014/15 Annual Report; Committee Report on Public Enterprise Strategic Plan &amp; Budget</p>	<p>The Chairperson said that she had received a letter from Ms Mazzone requesting the Committee to summon the Guptas to come to the Committee and account on Denel's Asia-Africa laser project. After seeking legal advice from Parliament's legal advisors, she had been informed that it was not permissible for a Portfolio Committee to summon a member of the public to account in this manner.</p> <p>Ms Mazzone: There were allegations from Transnet, Eskom, Denel and South African Express Airways, and the amounts were not small. The laser deal alone amounted to R10 billion.</p> <p>The Chairperson said there had been other disturbing developments at Denel, with the firing of its CEO. She proposed that the Committee invite the board of Denel during the week of 4 May 2016 on the CEO and laser contract issues.</p> <p>After a discussion on the legality of summoning the Guptas to Parliament to answer questions around their relationships with SOCs, it was agreed to defer any action until the Committee had had the opportunity to invite the board of Denel to discuss the matter, particularly with regard to the laser contract issue.</p>
<p>11 May 2016</p> <p>Chairperson: Ms D Letsatsi- Duba (ANC)</p>	<p>Denel board on VR Laser Asia and suspension of its executives</p>	<p>The Chairperson stated the agenda of the day was to interact with Denel board members to address certain matters which had been the subject of speculation in the media for some time.</p> <p>On the ownership of VR Laser South Africa, Denel's Acting Chief Financial Officer, Mr Odwa Mhlwana stated that contrary to media reports, Mr Rajesh Gupta owns only 25.1% equity shares which make him a minority shareholder. The majority of the shares are owned by Mr</p>

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		<p>Salin Essa who owns Elgasove (Pty) Ltd. Aerohaven Trading (Pty) Ltd owned by Ms Ragauan owns 10% shares. He debunked media reports which stated that VR Laser is getting R10 billion from the Badger Vehicle Project. The total amount which will accrue to VR Laser from that project is R400 million. According to Mr Mhlwana, VR Laser is the cheapest and technically strongest partner available for that project.</p> <p>Mr Mantsha, Denel Board Chairperson, talked about the suspension of the former Group CEO, Group CFO and Group Company Secretary who were suspended with effect from 23 September 2015. The cause of the suspension was a result of the LSSA transaction which compromised the liquidity of Denel. They borrowed from two financial institutions and played them against each other, ignoring the instructions of the shareholder. They renegotiated the terms of the funds borrowed without the approval of the Denel Board. R455 million was borrowed from Nedbank with an agreement that the loan would be repaid within a five year period but these executives ignored the shareholder and renegotiated this loan to be paid back within six months placing Denel in a precarious financial position, compromising the liquidity of Denel. Denel is proceeding with disciplinary action against two of the officials, of which the proceedings had already commenced. The Denel Board has decided not to recommend to the Minister the renewal of the former CEO's contract of employment which was to expire on 31 January 2017.</p> <p>Ms D Rantho (ANC): Talking about the companies that make up the VR Laser South Africa, she asked if there were any illegal agreements between the companies and Denel.</p> <p>Ms N Mazzone (DA) stated that the suspension of the former CEO had cost South Africa R3.4 million because he was paid out the full sum of his term which was supposed to end in January 2017. Commenting on the suspension of the executives, she insisted that a fair hearing was not conducted before their dismissal since the Minister herself had said she was not consulted before the action was taken. It was worrying for Denel to insist that proper consultation was done before the actions were taken. Ms Mazzone was surprised that the former CEO renegotiated the repayment terms of the loan from five years to five months. She felt there was something that was not being said by Denel. Also on the suspension of the former CEO, she noted the new joint venture was formed right after that was done. She insisted it was illegal irrespective of how Denel interpreted the PFMA.</p>
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		<p>She based her judgement on comments made by Finance Minister Gordhan. She concluded the Minister could not be lying. The previous Denel Board wrote to the Committee absolving itself from the formation of the new joint venture since the present Board had said it was the idea of the former Board to form Denel Asia. She therefore demanded answers to questions on the formation of Denel Asia, the suspension of the executives and asked if there were any direct links between any members of the Board and the Guptas.</p> <p>Mr Mantsha: Denel is not involved in any illegal activities and it is very vigilant to ensure that its marketing team and joint venture partner is not involved in any corrupt practices.</p> <p>The Chairperson stated that another meeting would be arranged for a better engagement on all the issues raised.</p>
<p>31 August 2016</p> <p>Chairperson: Ms D Rantho (ANC) (Acting)</p>	<p>Eskom on its 2015/16 Annual Report and pressing matters</p>	<p>Mr N Nkwankwa (UDM) indicated that the Committee could not just deal with the annual report of Eskom and pretend as if there were no media reports about the contract given to the Gupta-linked Tegeta Exploration and Resources.</p> <p>Mr N Singh (IFP) said that representatives from Eskom's external auditors should have been present to answer questions. It would be appropriate for the Committee to cancel the meeting until they were present.</p> <p>Dr L Luyenge (ANC) proposed that the meeting should go ahead as this meeting was part of the Committee programme in dealing with annual reports. This was not to disregard the issues raised by Members.</p> <p>The Acting Chairperson proposed that the solution could be for the Committee to invite Eskom to be part of the meeting scheduled for next week with National Treasury and Denel. The Committee should indeed go ahead with the meeting as it would not be appropriate to tamper with the programme of Parliament. There is no doubt that everyone is interested in knowing what is going on with the Department's State-Owned Entities (SOEs) especially those that are always in the media. Eskom should adjust its programme to be able to be part of the meeting next week.</p> <p>Mr Singh: The audit report had expressed concern over the leadership of the entity, where it stated that "the public entity's executive management did not exercise adequate oversight responsibility regarding compliance with applicable laws and regulations which resulted in fruitless and irregular expenditure". This statement made it clear that there is something wrong with the management of Eskom in</p>

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		<p>executing its oversight mandate. It was concerning to see that there had been massive performance bonuses especially since the auditors had raised concern about Eskom's leadership. Did the Board have a policy in place on performance bonuses?</p> <p>Mr Singh requested that the Committee should be briefed on the pre-payment to the Gupta-linked Tegeta Exploration and Resources on the coal contracts. It would be interesting to hear about the impact of the non-granting of the requested increase in the electricity tariffs on its financial viability and sustainability moving forward. Municipal debt was still a vexing problem as municipalities owed Eskom. What kind of sustainable plan is in place to deal with the municipal electricity debt? It would be unfair to blame communities for the ineffectual municipalities and the relationship between Eskom and municipalities. The Committee should be briefed on what had given rise to the cost increase for the Ingula project from R8.6 billion to R26 billion.</p> <p>Mr Rawula added that the public is aware that the Guptas had had the monopoly over the business deals given by Eskom and its many service providers. Tegeta Exploration and Resources indeed proved that there had been a preferential treatment given to the Guptas. Eskom should come out clear and explain whether the prepaid arrangement was a normal practice or confirm the allegations that the Group Chief Executive Officer had been bending backwards when it came to the Guptas. Mr Molefe had been quoted as defending the Guptas and even stated that the "Guptas had been subjected to a kangaroo court". Eskom's refusal to comply with Treasury regulations showed that the leadership of the entity was being petty and recklessly utilising public funds.</p> <p>Mr N Nkwankwa (UDM) stated that it was clear from the ruling party that there is scramble for the control of SOEs and what Members are interested in is to ascertain whether Eskom was part and parcel of that scramble. The matter of prepayment to the Gupta-linked Tegeta Exploration and Resources was indeed also a matter of primary concern to South Africans.</p> <p>Dr Ngubane (Chairperson: Eskom) responded: The next scheduled Eskom board meeting is 21 September 2016 and this was where the matter of the coal contracts was to be discussed including the submission of the coal contracts with Tegeta Exploration and Resources. There is absolutely no intent from Eskom to be uncooperative about the request made by Treasury as there is nothing to hide. He said it must</p>
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		<p>be made clear that he has full confidence in the Group Chief Executive Officer of Eskom in all the decisions that had been taken.</p> <p>It is unfair to portray Eskom as being captured – this was “a total nonsense”. The state was captured in 1948 when the National Party came to power. There are contracts at Eskom that had lasted for 40 years and were approved by the National Party government. The shareholders sitting in London benefited massively from the sweat of our miners. There is a need to be clear when talking about “state capture” as this was still unclear at the moment. Eskom is committed to fostering transformation. Eskom is intending not to renew contracts coming from the five big companies when they end and this is to give an opportunity to small Black-owned and women-owned miners as part of the duty stipulated in the National Development Plan (NDP).</p> <p>Mr Molefe replied that the objection from Members seemed to be that Eskom should not have done any business with Tegeta Exploration and Resources at all. However, there is not a single person to come forward and say the deal with Tegeta should not have been done as it would not benefit Eskom. The concern about sub-standard coal being provided by Tegeta had no substance at all as the coal was tested at the South African Bureau of Standards (SABS). The employees that had described the coal provided by Tegeta as substandard after it was tested by SABS, were suspended. It is still unclear why the employees described the coal as substandard while SABS had found otherwise. It seemed that doing business with Gupta-linked Tegeta was the only problem. It would require Eskom to blacklist Tegeta in order not to conduct any business with the company in the future and there is a process in the PFMA for blacklisting the suppliers. Eskom would be required to provide cogent reasons for blacklisting Tegeta. It seemed as if Members are blemishing Tegeta based on gossip and innuendos and this was exactly like a kangaroo court.</p> <p>Mr Molefe explained that everyone had judged the Guptas as having done something wrong without actually going through the judiciary process for proving guilt or innocence. It is quite clear that the Guptas had not been found guilty of anything or broken any of our constitutional laws. Eskom could not blacklist the Gupta family primarily based on the fact that their aeroplane landed in Waterkloof. Eskom would still consider any bid by the Guptas if they want to do business with it as the Constitution is clear that everyone should be treated equally. It looked as if people are now</p>
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		found guilty without any evidence of wrongdoing and some are presumed guilty until proven innocent.
07 September 2016  Chairperson: Ms D Letsatsi-Duba (ANC) and Ms E Prins (ANC, Western Cape)	Denel Asia: Denel Board, National Treasury & Department of Public Enterprises briefing	<p>The Chairperson said that the Minister of Public Enterprises, Ms Lynne Brown, and the Minister of Finance, Mr Pravin Gordhan, had forwarded their apologies for not attending the meeting, as they had to attend a Cabinet meeting. The Committee had also been unable to get the previous board members of Denel to attend the meeting, although it had been insisting that they brief Members on the matter of Denel Asia.</p> <p>Ms N Mazzone (DA) said that the Committee had requested a meeting with Denel, and this had been followed by the meeting which had taken place on 11 May 2016. Agreement had been reached that the matter of Denel Asia was an issue of national importance, so it had been decided that there should be a joint meeting with the Select Committee on Public Enterprises and Communications. The Committee had also requested that National Treasury (NT), Denel, the previous boards members and the relevant ministers should be present at the joint meeting, as this was to publicly and transparently clear out all the outstanding issues or scandals in regard to VR Laser Asia. It would be a complete waste of time for Denel to come to make a presentation at this meeting if Treasury or all the relevant ministers were absent, as the very reason for this meeting was to get to the truth on all the accusations involving the Treasury, the Ministry, Denel and the previous board members.</p> <p>Ms L Mathys (EFF, Gauteng) commented that it would be completely unproductive for the Committee to continue with the meeting while all the relevant stakeholders were not present at the meeting. The previous board members should be compelled to be part of the meeting, as this was a matter of public interest and it had been going on for ages. The Committee should rather get a date when all the relevant stakeholder could be present.</p> <p>Mr Daniel Mantsha (Chairperson: Denel) said that Denel had been the focus of intense media reporting in recent weeks. The main topics had been the formation of a joint venture to establish Denel Asia with VR Laser Asia, and the suspension of employees.</p> <p>Mr Odwa Mhlwana, Chief Financial Officer: Denel Vehicle systems, referred to the ownership of VR Laser South Africa, and said that contrary to media reports, Mr Rajesh Gupta owned only 25.1% of the equity shares, which made him a minority shareholder. The majority of the shares were owned by Mr Salim Essa, who owned Elgasove (Pty) Ltd.</p>

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		<p>Aerohaven Trading (Pty) Ltd, owned by Ms Ragauan owned 10% of the shares. He debunked media reports which stated that VR Laser was getting R10 billion from the Badger Vehicle Project. The total amount which would accrue to VR Laser from that project was R400 million. According to Mr Mhlwana, VR Laser was the cheapest and technically strongest partner available for that project.</p> <p>Mr Daniel Mantsha (Chairperson: Denel): It had to be emphasised that the Gupta family did not hold shares in the joint venture. The rumours that the Guptas were shareholders in Denel Asia were false. Not one of them was a shareholder. It was not true that Denel had been 'captured' by the Guptas. However, Mr Mantsha did not deny that Mr Salim Essa, a business partner of the Guptas, was the sole shareholder of VR Laser India and the majority shareholder of VR Laser South Africa.</p> <p>Mr Parkies said that the Committee should reject any attempt that was aimed at tarnishing the image of Parliament. The issue of Denel Asia was indeed a matter of public interest, but also a sensitive matter. It was unclear if there was any specific reason why the Department had not gone into detail in explaining all the processes that had been followed in the establishment of Denel Asia in conjunction with VR Laser Asia. He requested more information on the people who had been involved in the Denel Asia deal, as this had not been clearly explained in the presentation. What was the contract duration that Denel had signed with VR Laser Asia? It would be important for the Committee to have clearly explained whether the decision to make a deal with VR Laser Asia had been based on a recommendation from the United Nations (UN) or the scientific assessment that had been done by Denel.</p> <p>Mr Zwelakhe Ntshepe, Acting Chief Executive Officer, said that Denel had approached more than four potential partners before settling on a deal with the controversial Gupta-linked company VR Laser as a partner for a joint venture to penetrate the Asian market. He had been with Denel for 21 years and this experience was probably one of the reasons why the Board had decided to choose him for the position of Acting CEO. The contract duration with VR Laser Asia was about ten years, with the aim of producing about 264 military vehicles. The urgency of the Board in concluding and accepting deemed approval was because of limited time, and Denel had already missed out on other opportunities because of this limitation. Denel had approached the NCACC, as this was required by law, and it was aware of the operation of joint venture.</p>
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<p>14 September 2016</p> <p>Chairperson: Ms D Letsatsi-Duba (ANC)</p>	<p>Transnet on its 2015/16 Annual Report</p>	<p>Ms D Rantho (ANC) complained about the late arrival of the presentation, as this had disadvantaged Members in terms of adequately engaging with the presentation.</p> <p>Ms G Nobanda (ANC) asked about the measures that had been taken to correct the problem of irregular and fruitless expenditure, as noted by the Auditor-General (AG). It would be interesting to hear how the global economic slowdown had affected Transnet's Africa strategy. What was being done to correct the concerns that had been highlighted by the AG in regard to the difficulty to measure the performance indicators of Transnet?</p> <p>Mr Yusuf Mohamed, General Manager: Office of the Chief Financial Officer (CFO), Transnet, said the issue around the key performance and audit performance information was not the fact that the results were being questioned by the Audit Committee, but rather that the definition of key performance indicators (KPIs), and this had formed the basis of Transnet's agreement with its shareholder in terms of the shareholder compact. Transnet would be working on the revised KPIs as from the current financial year in order to rectify the concerns that had been flagged by the audit committee on the definition of the KPIs.</p> <p>In relation to the issues that had been raised in relations to the Public Finance Management Act (PFMA), there had been a total of 19 interventions that Transnet had put in place since 2012. Twelve of these interventions had been completed, while seven were still on track. The category of PFMA issues that had been found was focused particularly on criminal conduct in the context of the R50 billion tender to build 1 000 locomotives to replace the parastatal's ageing fleet, and the biggest issue here was fraud. The audit processes of Transnet were not designed to detect collusion and these three items of fraud had been as a result of collusive activity between various departments, as well some of the suppliers.</p>
<p>26 October 2016</p> <p>Chairperson: Ms D Letsatsi-Duba (ANC)</p>	<p>Denel on its 2015/16 Annual Report; Public Enterprises Budget Review and Recommendations Report</p>	<p>Mr R Tseli (ANC) wanted to know how long it was going to take to correct irregular expenditure, and what had led to the unacceptable 23% under-expenditure.</p> <p>Mr Mhlwana, Acting Chief Financial Officer:</p> <p>Denel said they had applied for exemption, and it had been made clear to Treasury that by March 2016, everything would be put in place. The entity was sitting in a position where they had a growing business but with only one source of funding, and that was the commercial banks. The entity could no longer borrow. They were trying to juggle and</p>

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		<p>reprioritise. The entity was severely under-funded and with the little they had, they had to see what they could do. The challenge was always to do more.</p>
<p>08 March 2017</p> <p>Chairperson: Ms Letsatsi-Duba (ANC)</p>	<p>Minister of Public Enterprises update on SOE performance</p>	<p>Ms Mazzone (DA), stated that members must address “the elephant in the room”: the state of capture report, which levelled serious allegations and identified worrying problems, such as violations, collusions, and corruption. She demanded the DPE tell members what steps are being taken to hold the accused to account. Furthermore, she wished to know how this will be prevented in the future. She requested Minister Brown give her own independent judgments of the allegations in the state of capture report as it relates to the operation of SOEs (particularly Eskom).</p> <p>She continued by raising a point of SOE sponsorships; specifically, referencing Eskom and their sponsoring of breakfast for the New Age. She argues that money must remain within, and spent to in such a way that the consumer is not left with a burden in terms of pricing for essentials like electricity – prices of essentials must be at its lowest cost. She also referenced the R850 000 of sponsorship by Eskom and Transnet to the Progressive Professionals Forum. She requested the Minister give her opinion on ongoing sponsorships.</p> <p>In reference to Denel: she stated that the truth behind the scandal of Denel Asia must be uncovered. She explained that some members of the committee have tried to arrange a meeting with the board of Denel and treasury, but it has not yet materialized. She asked the Minister if she would be willing to chair the meeting if it is eventually arranged – where people will be testifying under oath.</p> <p>Mr Singh (IFP) spoke of the state of capture report, and mentioned that he was glad that the Minister had earlier this year expressed her wish for a commission of enquiry, and her hope that the President would put through the motion and appoint the commission; Mr Singh asked if the Minister has taken any further steps in persuading the President to put the process in motion.</p> <p>Minister Brown: With regards to the public protector report and the PFMA violations, it remains her view that there should be an enquiry, and that all the matter must be brought to the table. However, she acknowledges that it is the President prerogative to appoint a commission of enquiry; as such, she has not done anything after the release of the report other than wait for the President to act on it.</p>

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<p>03 May 2017</p> <p>Chairperson: Ms D Rantho (ANC) (Acting)</p>	<p>Committee Programme and State Owned Companies status reports</p>	<p>The Acting Chairperson noted that the Minister of Public Enterprises had ruled that no pay-out would be made to the former Chief Executive Officer of Eskom, Mr Molefe, since he had resigned.</p>
<p>10 May 2017</p> <p>Chairperson: Ms Z Rantho (ANC) (Acting)</p>	<p>Department of Public Enterprises on its Annual Performance Plan</p>	<p>Mr M Dlamini (EFF) said Eskom had a perennial problem of compromised leadership as the previous CEO had been found to have questionable dealings through the State Capture report of the Public Protector (PP) the acting-CEO had recently been found to have awarded tenders to a company where his daughter-in-law had a stake. There currently was no communication from DPE as to what consequences there had been for either of the CEOs and from that it could be seen that the Committee wanted Eskom to regress. Was there any probe into the Acting-CEO?</p>
<p>23 May 2017</p> <p>Chairperson: Ms Z Rantho (ANC) (Acting)</p>	<p>Minister of Public Enterprises and Eskom Board on reappointment of Brian Molefe as GCEO; with Deputy Minister present</p>	<p>The Acting Chairperson outlined that the rationale for the urgent meeting stemmed from Members wishing to discuss the recently reappointed CEO of Eskom, Mr Brian Molefe. Mr Molefe had been a Member of Parliament for the past few weeks but had recently returned to become the CEO of Eskom again. There was unanimous agreement in last week's Committee meeting that an urgent engagement was required with the Minister, Eskom Board and Department of Public Enterprises to explain to Members what was happening in Eskom regarding Mr Molefe's reappointment. Members were unclear on why Mr Molefe was reappointed when the post of CEO of Eskom was advertised, if Mr Molefe retired, was retrenched, if he resigned or stepped down.</p> <p>Ms Lynne Brown, Minister of the Department of Public Enterprises, began by outlining [that] she submitted her affidavit to court with regard to the Mr Molefe matter. She instructed her legal team to withdraw her opposition to Part A of the relief sought i.e. she set aside her appointment of Mr Molefe. She nonetheless deposed an affidavit as she believed the information she had will assist the court in determining its decision. Her initial advice was to oppose Part A on the basis that she neither appointed nor reinstated Mr Molefe, as well as on the basis of advice from Eskom's Board that it obtained an opinion from a Senior Counsel Advocate on its handling of the matter.</p> <p>The Minister, having had the opportunity to properly appraise the issues, decided to abide by the court's decision on the legality of Mr Molefe's return to Eskom. When the</p>

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Eskom's Board approached her to inform her of its decision to bring Mr Molefe back, she said she would support it on the proviso that it was legal. She also made this point repeatedly when addressing media on the matter, though, curiously, none of them thought it worthy of reporting.

With regard to Part B of the motion, which sought to stop Mr Molefe from conducting any work at Eskom, she reserved her rights. One of the issues that the court will have to decide was a technical one relating to Eskom's Memoranda of Incorporation (MOI). Eskom is governed by various pieces of legislation, including the Eskom Conversion Act, 13 of 2001. Section 6 (2) of the Act required the Minister, from time to time, to publish memoranda and articles of association. Two different MOIs were relevant to Mr Molefe's situation - one passed and adopted before his arrival at Eskom and the other during his tenure. Material differences between the two documents included that the 2014 version did not require the Minister to be noted as a party to the employment agreement of the Group Chief Executive (noting the Minister was required in the 2016 version) and the 2014 document did not provide the Minister with the power to remove the Chief Executive (as the 2016 version did).

The executive employment contract concluded by Mr Molefe and Dr Ben Ngubane (Chairperson of the Eskom Board) in March 2016 was concluded in terms of the 2014 agreement – this contract did not have to be shown to the Minister.

Minister Brown said that when Mr Molefe quit Eskom in November 2016, she was under the impression he resigned – she wished him well and was sorry to hear he resigned. She was not aware that he applied for early retirement – this she only learned in April 2017 after reading in the media, that Mr Molefe was receiving a R30 million pay-out from Eskom, and asking Eskom's Board to make a more prudent deal. Again, on Eskom's legal argument that Mr Molefe was appointed under the terms of the 2014 MOI, the early retirement agreement did not have to be shown to the Minister.

On 11 May 2017, after taking advice from a senior counsel, the Eskom Board reverted to the Minister with options on the proposed R30 million payout to Mr Molefe. As a courtesy, the Board indicated to her its preference was for consensual rescission of Mr Molefe's early retirement and that it was willing to accept Mr Molefe back as Group Chief Executive. She said she would support the Board's decision providing it was legal. As she told the media, she believed

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		<p>Eskom would obtain more value from having Mr Molefe at work than simply paying out R30 million.</p> <p>The Minister did not expect that society would universally welcome news of Mr Molefe's return to Eskom following allegations levelled against him in the Public Protector's <i>State of Capture</i> report. But nor did she anticipate the level of vitriol.</p> <p>Ms N Mazzone (DA): The Committee could not accept what it as being told as it just could not be truthful. She found it difficult to believe Minister Brown, as the stakeholder and chief overseer of Eskom, would not have know[n] Mr Molefe applied for early retirement – there must be some kind of relationship between the Minister and Dr Ngubane and so she failed to understand or believe that the Minister did not know Mr Molefe took early retirement, if that was in fact what he did. The entire country understood that Mr Molefe resigned and then became a Member of Parliament – one could not be sworn in as a Member of Parliament if still a CEO of a state company and was simply on unpaid leave. These things did not make sense and SA had every right to be furious of the situation it found itself in.</p> <p>Ms Mazzone said R30 million was a lot of money to be paid out to anyone – in fact it was an obscene amount of money. R7.7 million annual salary was an obscene salary to be paid. How much of the R30 million was paid to Mr Molefe? Would the Minister provide the document detailing the payment of the R30 million, how it was brought about and how it was calculated? Actuaries doing their own assessment on how much should be paid for 18 months employment, even given Mr Molefe's previous employment, said the amount should be around R2.8 million.</p> <p>Mr M Gungubele (ANC) said the credibility of Eskom was essential and good governance contributed to that credibility – this affected the country economically especially in light of junk status. There was a question mark around Mr Molefe and it had not been cleared. The Eskom Board was working on the belief that that question mark might go but it existed. The Public Protector had a view of Mr Molefe – the President applied for review of that view but the view created a question mark around Mr Molefe which had not been cleared. Under what pressure was the Minister to hire someone in such a strategic institution on whose head there was a question mark which had not been cleared? The Minister had been a chair of boards, a leader in government and a track record – with good governance in her system,</p>
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		<p>how could she hire somebody to lead an institution with this question mark which had not been cleared? What about the effect of the credibility of SA of the decision taken by the Minister? The basis of the reappointment of Mr Molefe must be exposed and understood – the basis on which the decision was taken was of public interest. He was curious of the statement made by the Minister that she had an impression that Mr Molefe resigned – how could the Minister be operating on impression with such a strategic person at such a high level? Was due diligence done to test legality of the R30 million payment? If so, the Committee needed to see the agreement for the R30 million. To what extent were the oversight powers of the Minister irrelevant when the Eskom Board acted, apparently, illegally? He was curious to hear the answers to pertinent questions posed by the Committee thus far.</p> <p>Mr Singh was pleased to see the parliamentary legal advisors arrived. The whole issue went beyond the matter of a court case, beyond Mr Molefe and beyond Eskom – at the heart of the matter was good governance in the country. In so saying, he was in no way clearer on an explanation for the situation at hand. There were so many simple unanswered questions such as, did Mr Molefe resign? Was he on unpaid leave? Who accepted his resignation? Was HR present? Why was the position of CEO advertised if Mr Molefe did not resign? Did Mr Molefe commit perjury when sworn in as a MP? Was the ANC implicit in this? Was the party aware Mr Molefe did not resign from Eskom and was receiving benefit from a state organ? These were matters for the Committee to investigate. While there was a norm in SA, as correctly stated by the Minister, that one was innocent until proven guilty, there was no process to test whether Mr Molefe was engaged in any shenanigans while at Eskom. <i>The State of Capture</i> report indicated there was prima facie evidence of wrongdoing with Oakbay and Tegeta but this also went to the heart of the problem of people using SOEs as cash-cows and personal ATMs at the expense of taxpayers. The President had still not presented a case before the Public Protector on whether or not he was contesting, and in which way, the recommendations of the <i>State of Capture</i> report. In a pointed question to the President in Parliament, the President said he would not initiate a commission of inquiry into the on goings at Eskom. The credibility of the Minister was at stake – she needed to tell the Committee if there was any influence of anybody in the matter clouding her judgement?</p>
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		<p>The Chairperson:</p> <p>She assumed that as CEO, Mr Molefe was the “main man” in terms of running the operations of Eskom – if this main man left the job, how could the Minister only find out about it after the fact? If a CEO left a company, the oversight authority should be the first person to know that individual left. Reasons for resignation were also important to find out especially if it was the CEO. Mr Molefe then became a MP which was a permanent job. Were the processes taken by the Board through this entire saga legal? Were they documented? All documents surrounding the process needed to be provided to the Committee to assess if decisions taken were constitutionally sound. The fact that the Minister said she would support a commission of inquiry into Eskom showed she knew all was not well with the entity which therefore prompted the need for an inquiry – did the Minister still support this? The Committee supported a commission of inquiry. All documents requested by the Committee needed to be provided as soon as possible because the matter would continue to be pursued by the Committee – rule 167 empowered the Committee to summon anyone to it. With these rights, the Committee was expected to serve the people of SA. Members only wanted the truth so that they could face communities on the issue. She worked as a member of the SA Police Service for 48 years, as a Lieutenant, but the money she received was less than R2 million when she retired. How could an individual work for 18 months and receive R30 million? This needed to be explained legally.</p> <p>The Minister began responding to questions posed by Members. The ANC top six usually engaged with deployees and she considered the engagement normal in that respect. She and the Deputy Minister presented to the top six where there was long discussion. The two were then sent back and it was said the matter would have to be sorted out between the Minister, President and Deputy President. A committee was then comprised to look at legal opinions of Eskom and the Department, subject them to an objective legal opinion and then make a decision. The Minister did not make the appointment of Mr Molefe at all – Mr Molefe was appointed in terms of the 2014 MOI. In that MOI, the Minister was not required to be noted as a party to the employment agreement of Group CEO. She reminded the Committee she was appointed Minister in 2014. In the 2016 MOI, it was required the Minister be noted as a party to the contract of employment between Eskom and Group CEO. Her affidavit was done under oath so if she lied in the affidavit it would</p>
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*M.J.S*

		<p>mean the end of her career as a public representative and personal credibility. She reiterated she believed Mr Molefe resigned – as said earlier in the meeting, she said she was sad to see Mr Molefe go but wished him well. The first time she saw about the R30 million in the newspaper was the first time she learnt about the resignation. This was because Eskom thought it was acting in terms of the 2014 MOI – the issue was that there was about three months difference between the 2014 MOI, Mr Molefe’s resignation, his reappointment and the 2016 MOI. The court would have to address itself to this matter and she would agree with whatever the court decided.</p> <p>In terms of the process of governance in the Department of Public Enterprises (DPE), she reminded Members the Department was initially established as the Department of Privatisation many years ago. The Department had within its ambit six SOEs. Much of what existed currently came from historical arrangements. The Department had a shareholder compact that was an agreement drawn between the Minister and any one of the SOEs. This compact was reviewed annually externally by the Auditor-General of SA or the audit company for that SOE. There were consequences if less than 60% of the targets were met. This was quite an intensive engagement through which the SOEs were governed. There was also the Companies Act where a MOI for each of the SOEs was drawn up. The MOI also dealt with issues like the appointment of CEOs, other operational matters within the company, significance and materiality and various levels of decision making for the Minister and Board. How SOEs were run was very carefully legislated. All SOEs, except for Denel, had their own legislation. This legislation could be improved but the current process was to deal with governance matters in relation to the State Owned Companies Reform process which was chaired by the Deputy President. There were governance problems within the SOEs along with other problems to be dealt with. The idea was to have an overarching Shareholder Management Bill – it had taken a long time for this Bill to come about but it had just been submitted to Cabinet and all Ministers were now responding to it. The idea was to stop the fragmentation in SOEs seen over the years. It would also standardise procedures. SOEs could do much better in terms of governance. SOEs have been the backbone and hard mettle of the SA economy especially Transnet and Eskom.</p> <p>There are 42 000 workers in Eskom and the Board appointed Mr Koko and she supported that. Mr Koko had since been asked to take leave while the Cliffe Dekker Hofmeyr investigation, into all the Sunday Times newspapers, was complete – this report was due quite soon. There was</p>
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		<p>currently a leadership gap in Eskom – after Mr Molefe left, that gap was very prominent. In the past seven to eight months there were many occurrences at Eskom – whilst Eskom had incredible technical skills from engineers, nuclear physicists and others, there was no requisite leadership in Eskom and this was her current concern.</p> <p>Eskom is very important to SA because it generated 95% of the country’s electricity. There was a question mark around Mr Molefe – he would never be cleared until there was an investigation into the <i>State of Capture</i> report. Mr Molefe could not however clear himself. The Minister did want an investigation into procurement at Eskom – the Department had already drawn up its terms of reference but this was separate to whatever Parliament decided. There was an agreement for the investigation to involve the Special Investigating Unit (SIU), which had already conducted a number of investigations into Eskom. The investigation would have to include a number of inconclusive investigations conducted over the years and the current matter of Mr Molefe and procurement at Eskom.</p> <p>The Minister was very conscious of the Powers, Privileges and Immunities of Parliament Act – she was conscious of the fact that she was a Member of Parliament governed by the Powers, Privileges and Immunities of Parliament Act. The Minister was the one to inform the President that Eskom Board would be reinstating Mr Molefe, as was the norm. She also told the ANC top six. The Minister stated that she did not receive any instruction to reinstate Mr Molefe. Perhaps the Minister should have allowed Mr Molefe to litigate on the matter of the R30 million. When the Minister told Eskom to renegotiate, there were four options on the table, (1) alternative pension proposal (not possible because it would change the pension fund rule) (2) settlement payment (the Minister was not happy about this as it would be a golden handshake) (3) Mr Molefe to resign with settlement (if there was no agreement on that, the matter would go to court) (4) rescind based on the fact that the Minister did not want the R30 million paid out and Mr Molefe would then remain CEO of Eskom. The Board preferred the option of rescinding was based on the request of the Minister i.e. Mr Molefe remained CEO of Eskom. The Minister made it clear she would only support this option if it was legal.</p> <p>The Board assured the Minister, based on the strength of the legal advice received by Eskom, and also communicated with the Minister, which she had no reason to doubt, that the status quo would have to be reverted to once the contract of early retirement was mutually rescinded on the basis of an error – this was contained in the affidavit of the Minister.</p>
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		<p>The Minister, Mr Molefe and Eskom were subjected to court proceedings. The Minister hoped the court process would bring greater clarity on the matters – the court sits on 30 May 2017. In terms of governance processes between the Minister and Eskom Board and who determined, in terms of significance and materiality, at what level decisions were taken, this was a public document like the MOI was. If anyone knew of any untoward behaviour in the SOEs, actively involving any Board members or executives in corrupt activities, this should be reported – there was an obligation to report such matters to the necessary authorities. In terms of the inquiry, the Minister wanted to lift all issues out of Eskom and to know the conclusion of all investigation reports. This process would get all the issues Eskom could possibly have into the public space.</p>
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# **ANNEXURE “ZR11”**

5/30/2020

Transnet tender boss's R50-billion double game - The Mail &amp; Guardian

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ZR11-125

## Transnet tender boss's R50-billion double game

Vinayak Bhardwaj Author Sam Sole Author Sam Sole 3 Jul 2014



*Chairperson of Transnet's board tender committee Iqbal Sharma.*

The man who presided over Transnet's R50-billion tender for locomotives has joined forces with the Gupta family and President Jacob Zuma's son, Duduzane, in a move that potentially puts them in pole position to benefit from key subcontracts.

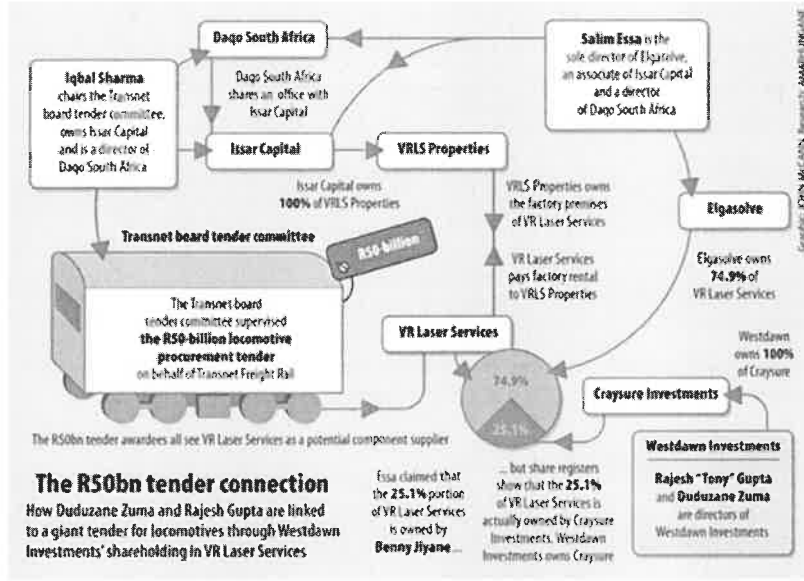
Iqbal Sharma, chairperson of Transnet's board tender committee, entered into negotiations in December to buy a Gauteng engineering firm, VR Laser Services, that produces steel plate components for heavy vehicle bodies.

In February, a company in which Rajesh Gupta and Duduzane Zuma are partners acquired their stake in VR Laser – an interest they have endeavoured to keep hidden.

Throughout this period, Sharma was overseeing the locomotive tender process. He tied up his acquisition of his part of VR Laser a matter of weeks before Transnet announced the main tender winners in March.

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This week, Sharma denied owing his position at Transnet to Gupta string-pulling. He also denied any conflict of interest, claiming that VR Laser did not do – and had no intention of doing - business with Transnet. He said he had bought the property company that owns VR Laser's premises, but not VR Laser itself.

**Key visit**

However, amaBhungane has established that, as Sharma was putting the finishing touches to both the tender and his acquisition of the property holding company linked to VR Laser, each of the four multinational train manufacturing companies that would later win a slice of the locomotive supply contract visited the engineering company's premises to assess the possibility of subcontracting work to VR Laser.

The winning bidders are required by state procurement policy to source up to 60% of their locomotive components from South African subcontractors, placing VR Laser in a highly advantageous position.

The company bills itself as "a complete one-stop fabrication facility for the manufacture of all types of vehicle hulls for any original equipment manufacturer".

Sharma is a director of the Transnet board and chairs the board subcommittee that oversees the company's tender processes and approves tender recommendations.

Transnet announced the main tender award on March 17. Unusually, they split the contract between four major train builders – China South Rail, Bombardier, General Electric and China North Rail.

The parastatal declared the R50-billion transaction to be "South Africa's single biggest infrastructure investment initiative by a corporate".

**Concerns over tender**

The *Mail & Guardian* reported three weeks ago that the National Union of Metalworkers of SA (Numsa) had submitted a report to the public protector, raising concerns about the way Transnet structured, adjudicated and awarded the locomotive tender.

The report states that government's policy of localisation and job creation had, in the case of the Transnet locomotive tender, been abused by "the implementation of opaque and underhand

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business dealings to line the pockets of a selected minority business and political elite”.

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Before his appointment to the Transnet board in December 2010, Sharma headed a unit at the department of trade and industry set up to boost imports and exports.

It was in this role that he reportedly first met the Guptas, who had positioned themselves as increasingly important conduits for Indian investment in South Africa.

Far from being a grey cog in the government machine, Sharma's marriage to a Bollywood actress has on occasion landed him in the gossip pages of the Indian tabloid press.

He was later appointed to the Transnet board, and *Business Day* and the *M&G* reported that then public enterprises minister Malusi Gigaba tried, but failed, to have him appointed board chairperson in June 2011.

It was reported that the Cabinet had vetoed Sharma's appointment on the grounds that he was too close to the Guptas.

This reflected growing concern about the Guptas' perceived influence over appointments to key positions in state-owned companies, stemming in part from reports about the family's business partnership with Duduzane Zuma.

#### **Quiet appointment**

Sharma admitted to the *M&G* at the time that he was a friend of the Gupta family, but said he had no business associations with them.

Transnet would later create a new structure, formally called the board acquisitions and disposals committee, to supervise the planned pipeline of future large-scale infrastructure spending.

Sharma was quietly appointed to chair this committee.

Previously, Transnet's individual subsidiaries had supervised their own procurement processes. The newly created board oversight committee, which Sharma chaired, took over the supervision of all tenders worth more than R2.5-billion.

Transnet invited proposals for the R50-billion locomotive tender in October last year.

While it was being decided, Sharma and his business associate Salim Essa approached VR Laser and offered to purchase the company.

The sale was agreed on in December for an undisclosed sum. Share registers show that it was finalised in the weeks immediately before the tender award in March.

#### **Distancing themselves**

In a move possibly designed to create distance between Sharma and the day-to-day operations of VR Laser – perhaps to ward off accusations of a direct conflict with his Transnet role – a company owned by Essa purchased VR Laser.

Through his investment company Sharma bought a related company, VRLS Properties, which owns the two factory premises where VR Laser operates.

Both Sharma and Essa sought to distance themselves from one another this week – but the facts suggest real proximity (see “Facts tell a story” below).

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Essa and Sharma were also both evasive when asked who owns VR Laser, the operational side of the business. Both claimed it was solely owned by Essa, but then Essa conceded he had inherited the previous owner's empowerment partner, Benny Jiyane, as a minority shareholder.

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Jiyane confirmed this, saying he had opted not to sell his 25% stake in the business.

### Enter the Guptas and Duduzane

But amaBhungane has obtained a share register for VR Laser showing that Jiyane ceded his stake to Craysure Investments in February this year. Further share registers show that Craysure is 100% owned by Westdown Investments, the Gupta-owned company that trades as JIC Mining.

Duduzane Zuma partners the Guptas in Westdown. He did not respond to questions.

Like Essa and Sharma before him, Jiyane first played dumb about the Gupta-Duduzane stake.

When challenged by the evidence, Jiyane changed his tune, saying he "intended to sell" to Craysure subject to "certain confidential conditions", which would only be realised within a year.

Only then did Jiyane concede that he had in fact been dealing with the Guptas, saying: "I think Craysure has something to do with Sahara."

Sahara, a computer supplier, is one of the better-known Gupta-owned companies.

After attempts to maintain the secrecy surrounding the Gupta-Duduzane stake in VR Laser failed, Sharma lashed out at amaBhungane.

Without mentioning the Guptas by name, he said: "Your continued targeting of a single family is frankly boring and tiresome."

Westdown chief executive Jacques Roux echoed Sharma: "We have become accustomed to the continuous and unfounded attacks by your newspaper on our shareholders and our business."

### Contradictions

Sharma was explicit on one point, however: neither VR Laser nor the investment company that owns VRLS Properties "has done or is doing or contemplating doing business with Transnet". On both counts, he was contradicted by the testimony of sources in the know, who include VR Laser people, both past and present.

VR Laser's original owners foresaw the potential of the upcoming government infrastructure spend, including locomotive procurement by Transnet, to grow the company's revenue.

In a 2008 interview with *Engineering News*, VR Laser's then empowerment partner Jiyane was quoted as saying that VR Laser was "expecting a significant amount of business from Transnet off the back of the company's [Transnet's] refurbishment programme, which would run into a significant cash flow over the next 15 years".

Jiyane, who still works at VR Laser, told amaBhungane this week that the company was a registered supplier to Transnet of precision laser-cut steel components for the upkeep of the existing locomotive fleet.

Transnet later confirmed that VR Laser "has performed services" worth a total of R1-million for Transnet Engineering since 2006.

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**Circling the subcontracts**

Jiyane also revealed that all four companies that would later win a slice of Transnet's new locomotive tender had visited VR Laser's factory between December 2013 and January, to evaluate them as potential local suppliers.

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The tenderers' bids were at that time under consideration by Transnet, presided over at the apex of the tender process by Sharma himself. Sharma had conducted sale negotiations with VR Laser's former owner in December.

His close associate, Essa, finalised his purchase of the operational part of VR Laser in February, and Sharma tied up his acquisition of the property-owning side of the company in March.

Two weeks later, Transnet announced the four companies that had won the R50-billion main tender.

Transnet spokesperson Mboniso Sigonyela said that Sharma "has declared all his interests for the current year as required".

Sigonyela later clarified that the company Sharma declared was in fact his investment company, and not VRLS Properties.

Pressed for clarity on Transnet's disclosure policy, Sigonyela said: "Transnet requires that a director declares the legal entity which owns assets. The director only needs to declare those assets when they deal directly with Transnet.

"We believe that there is no conflict of interest as Mr Sharma does not own shares in VR Laser."

**Facts tell a story of documented proximity**

Iqbal Sharma claimed this week that "I have no direct or indirect relationship with VR Laser Services" – Salim Essa's company.

The facts suggest otherwise:

- John van Reenen, one of VR Laser's founding co-owners, confirmed that Sharma had bought VRLS Properties and that Essa had bought the operational side, VR Laser Services. However, Van Reenen recalled that during initial purchase negotiations Sharma represented both companies. "It was always made quite clear to me that he [Sharma] had this associate [Essa], who would be taking over the steel company, and that Sharma was negotiating on Essa's behalf."
- Essa has previously been profiled as one of the "leaders" of Sharma's investment company, Issar Capital, which owns VRLS Properties. A screen grab of the Issar Capital website, taken in May last year, shows that Essa was then directly involved with Sharma in Issar Capital. Essa no longer appears on this website. Given this back story, Essa was strangely evasive about his connection with Sharma, claiming not to know who owned VRLS Properties. On being told that Issar Capital owns the property company, Essa said he had "heard of the name" and then hurriedly excused himself from the call. He did not respond to further written questions.
- Sharma and Essa are co-directors in another business, solar panel manufacturing company Daqo South Africa, since November 2012. Daqo is headquartered in Issar Capital's Sandton office.
- They are also co-directors in a third company, National Agricultural Development Project, since December 2012. This company is not located at Issar Capital. Incidentally, the company's share register shows that Sharma and Essa each acquired a shareholding in National Agricultural

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Development Project from Gupta-owned companies on the same day in November last year. – amaBhungane reporters

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Vinayak Bhardwaj Author

Guest Author

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Sam Sole Author

Guest Author



Sam Sole

Sam Sole works from South Africa. Journalist and managing partner of the amaBhungane Centre for Investigative Journalism. Digging dirt, fertilising democracy. Sam Sole has over 17731 followers on Twitter.

Tags

Duduzane Zuma

Gupta Family

Iqbal Sharma

Salim Essa

Stefaans Brimmer

Transnet

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### ConCourt settles the law on the public protector and interim...

The Constitutional Court said it welcomed robust debate but criticised the populist rhetoric in the battle between Busisiwe Mkhwebane and Minister Pravin Gordhan  
**Franny Rabkin**

POLITICS

### Where is the deputy president?

David Mabuza is hard at work — it's just not taking place in the public eye. The rumblings and discussion in the ANC are about factions in the ruling party, succession and ousting him  
**Paddy Harper, Athandiwe Saba & Sabelo Skiti**

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# **ANNEXURE “ZR12”**

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## 'Kickback' scandal engulfs Transnet

NEWSFLASH: Neotel confirms CEO and CFO have taken special leave pending an investigation of suspected commission payments in Transnet contracts.

31 July 2015 - AmaBhungane

*On Friday, Neotel confirmed to amaBhungane that its chief executive and chief financial officers were on special leave pending an investigation into the payment of "commissions" to clinch Transnet contracts. Read chief corporate services officer Tracy Cohen's full statement [here](#).*

**Telecoms firm Neotel paid tens of millions of rands in "commissions" to the letterbox company Homix to clinch deals worth R2-billion plus from Transnet. Now Neotel's board has reported the payments to the police as possible bribery. The unfolding scandal has possible implications for Vodacom's proposed takeover of Neotel. Embroiled in the transactions is Transnet finance boss Anoj Singh, who has also been tasked to save Eskom's, and a former "Gupta man", Ashok Naryan. AmaBhungane's Stefaans Bramber, Sam Sole, Tabelo Timse and Lionel Faull went in search of Homix and answers from Transnet, Neotel, Singh and Narayan.**

Twenty minutes north of Neotel's capacious headquarters in Midrand lies downtown Wierda Park, an unkempt precinct of discount shops and squat office blocks.

On the first floor of one block, a plain blue door is in a corner abutting a toilet entrance. A notice on the door identifies the occupant as Homix (Pty) Ltd, but informs those in search of its services – identified only as "applying thought" – that it has moved on, "relocating to Midrand".

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- **Transnet responds, to 'cut ties' with the M&G**

The two firms could not be more unlike. Neotel is a national telecoms provider boasting R3.9-billion turnover. Homix, amaBhungane discovered in recent weeks, is virtually unknowable, its directors untraceable, or unwilling to comment.

But Neotel's top managers approved paying Homix tens of millions for no apparent work.

#### **Auditors' alarm**

Neotel's auditors, Deloitte, first blew the whistle to Neotel's board of directors in April.

Deloitte correspondence seen by amaBhungane questions the "commerciality" of R91-million in fees – more than R100-million including VAT – payable to Homix.

Neotel, Deloitte says, remitted R30-million to Homix in April last year and R36-million in February this year. Another R25-million was agreed but not yet paid. Each was in respect of contracts being secured with Transnet, a key Neotel customer.

Deloitte also reported the matter to the Independent Regulatory Board of Auditors (IRBA), as required by legislation regulating the auditing profession when an unlawful act or omission is suspected.

Neotel's board was duty-bound to commission a law firm to investigate it. It also self-reported the payments to the police as required under the Prevention and Combating of Corrupt Activities Act when bribery is suspected.

IRBA chief executive Bernard Agulhas this week said Deloitte stood by their suspicion in a second report, after the Neotel board had provided feedback on its investigation, and believed that the irregularity was "continuing – that it hasn't been addressed [by Neotel]".

This may complicate Vodacom's R7-billion planned takeover of Neotel, which hinges on Competition Tribunal hearings at the end of the year. Competitors Telkom, MTN and Cell C oppose the tie-up, fearing Vodacom will gain an unfair advantage in the mobile spectrum wars.

Vodacom's British parent, Vodafone, is subject to foreign anti-bribery laws and may find it difficult to absorb a company with a serious, unresolved compliance problem.

Transnet this week denied any involvement in the Homix payments, and said the telecoms contract it awarded to Neotel "met all our stringent governance requirements" and was reviewed by its independent auditors. "There is therefore no basis for suggesting impropriety or breach of our governance procedures."

Neotel said that, to the best of their knowledge, the investigation commissioned by the board made "no finding of corruption or illegal activities undertaken by any current employees of Neotel".

"However, the investigation has identified some control gaps, and plans have been put in place to tighten the processes and controls to ensure such gaps do not re-occur. Compliance with the company's policies, procedures, internal controls and corporate governance is presently the subject of investigation and possible action, if required, by the board."

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### **Trail to nowhere**

The Deloitte correspondence suggests Neotel management approved the Homix payments despite not knowing “who this entity is”.

AmaBhungane’s attempts to learn more about Homix were rewarded with little success. Conclusion: the company appears to be a letterbox – a front for persons undeclared.

The trail starts at Homix’s registered address in Mayfair West, Johannesburg. Property records show that the boxy little home was owned by Yakub Bhikhu and his wife until 2012, the year Homix was registered. A neighbour said Bhikhu moved out perhaps a year ago.

Company records list Bhikhu as Homix’s only active director. But he appears not to have made any initial success of it. Court records show Standard Bank obtained a R108 000 debt judgment against him in September 2013, a year after the company was formed.

A second director, Taufique Hasware, is listed as having resigned, effective in September last year. Many calls to numbers associated with him went unanswered. At one, a resident said he had rented a room but “shifted from here – he said he would go overseas”.

Another belonged to a carpet dealer who said Hasware had left his employ perhaps six months ago, and would we like to buy a carpet?

A third person listed as a former director of Homix claimed not to know the company. He said he suspected he was added as a director when he needed a loan, despite being blacklisted. He went to a Wierda Park office where he was told he might be helped “if I register a company”. He filled in forms but got no loan.

Which brings us back to the blue door on the first floor in Wierda Park. Letting records show Hasware and Bhikhu signed Homix’s lease last September. A year’s rent – about R45 000 – was paid upfront. The company’s business was given as “administration”.

Not much appears to have happened behind that door, though. Neighbouring office workers said they knew nothing about the company. One said after Homix moved in, the door generally remained shut. An “Indian gentleman” came in perhaps twice a week after hours, “two months at a stretch”. The “relocating to Midrand” sign went up months ago. “Strange,” she said.

After trying for the better part of a week, amaBhungane finally reached a man who identified himself as Bhikhu on a cellphone number provided on the “relocating” sign. On being told that we were looking at possible corruption involving Homix, he said: “We’re reserving our right not to issue any comment at the moment.”

He agreed to accept emailed questions, but did not respond.

### **Transnet billions**

The prize that caused all the trouble is a master service agreement to provide Transnet with a suite of telecom services worth hundreds of millions a year. Neotel got the contract for an initial five years when it bought Transnet’s in-house provider, Transtel, in 2008.

At the end of 2013, Transnet put the master agreement out to tender. It was provisionally awarded to a competitor, T-Systems, but the latter withdrew by

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agreement some months later, an insider said, when it became apparent its solutions were inappropriate.

In April 2014, during this hiatus, Neotel paid its first R30-million to Homix. The Deloitte correspondence identifies the payment as relating to routers and other equipment that Neotel sold to Transnet.

Transnet is understood to have paid Neotel about R300-million for the equipment. Neotel's payment to Homix equals a 10% "commission".

In August 2014, Transnet notified Neotel that it was the new preferred bidder for the master agreement and that negotiations should be concluded before Christmas.

By early December, individuals close to the negotiations have claimed, Transnet became intransigent without clear reason. To protect sources, they cannot be identified.

A week later, they said, Neotel's chief executive, Sunil Joshi, met Transnet's chief financial officer, Anoj Singh, to whom the state-owned entity's procurement structures reported. After the meeting, Joshi allegedly asked his staff to approach Homix again.

A "success fee" was agreed with Homix – 2% of the R1.8-billion value of the master agreement with Transnet, equating to R36-million, plus R25-million in respect of a related agreement to sell assets to Transnet. Within hours, Transnet was ready to resume negotiations.

The next day, a Saturday, representatives from both sides met and resolved remaining issues – without any overt assistance from Homix. The master agreement was signed before Christmas.

#### **Ex-Gupta man shows his hand**

When Neotel's board commissioned a law firm in April to investigate tens of millions in fees – apparent "kickbacks" – to letterbox firm Homix, one Ashok Narayan emerged from the woodwork.

Narayan claimed he was Homix's chief executive and, it is said, attempted to convince investigators that it had provided Neotel with services commensurate with the fees.

Narayan appears to be a man of some dexterity. His LinkedIn profile identifies him as the managing director of a Dubai company, the Marketing Quotient, since April 2014 – a clear overlap with his stated position at Homix.

He is also a man of some connectivity. A 2013 LinkedIn profile, which went offline in recent days, identified him as the then managing director of Sahara Systems, a business owned by the influential Gupta family. Before that, he held the same position at Sahara Computers in Botswana.

In June 2013, when amaBhungane visited the controversial Vrede Dairy in the Free State, also linked to the Gupta family, Narayan was known to farmers in the area as someone associated with the dairy and who had bought cows for it.

Linkway Trading, a Gupta company in which Narayan was a director, had been a "project consultant" for the dairy in its early stages, the family confirmed at the time.

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**Overseas 'at the moment'**

Now the Guptas have distanced themselves from their association with Narayan – and from Homix.

Family spokesperson Gary Naidoo said: "We can confirm that Mr Narayan was employed by Sahara Systems, but left our employ three years ago. He also resigned any directorships within our group of companies three years ago. We can also state categorically that no executive within our company has any relationship with Homix."

When amaBhungane visited the Sahara offices this week, a security guard was familiar with Narayan's name but said he had not seen him for some months.

A Sahara executive accepted an envelope on Narayan's behalf, promising to scan and email the contents. He said Narayan was overseas "at the moment".

AmaBhungane also visited the Dubai offices of the Marketing Quotient, the company Narayan's LinkedIn profile says he manages. It appears to do sales for Etisalat, one of two mobile phone providers in the United Arab Emirates.

Aman Berlashker, whose business card describes him as "vice-president – sales", did not appear to know his managing director very well. He said Narayan was in South Africa the previous week and was currently in India.

Narayan did not respond to requests for comment through the company. – *Additional reporting by Louise Redvers in Dubai*

**What role did Eskom's new Mr Fix-it play?**

Anoj Singh, Transnet's chief financial officer, is celebrated for raising billions towards the state-owned entity's infrastructure programme, which includes the acquisition of 1 064 new locomotives.

Now he is expected to perform greater miracles at Eskom, to which he has been seconded for six months. The utility is struggling to raise debt for new power stations to get the lights back on.

Singh's alleged role when Neotel closed a R1.8?billion deal to provide Transnet with five years' telecom services may give pause for thought. Neotel, its auditors said in correspondence seen by amaBhungane, paid a 2% "success fee" to a letterbox company, Homix, to secure the deal – or R36?million.

A further R25-million, apparently not yet paid, was promised to Homix to secure the related sale of Neotel assets to Transnet.

The auditors questioned whether Homix had brought actual value to Neotel's negotiations with Transnet – code, perhaps, for a suspicion that the fees were kickbacks.

Individuals close to the negotiations between Neotel and Transnet have claimed that Transnet became inexplicably intransigent last December, when a pre-Christmas deadline for the conclusion of the R1.8?billion contract loomed.

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During the stalled negotiations, they alleged, Singh met personally at least twice with Neotel representatives. After he had a one-on-one with Neotel chief executive Sunil Joshi, the latter allegedly asked his staff to make contact with Homix.

Once the "success fee" had been agreed with Homix, Singh allegedly signalled Transnet's readiness to resume negotiations, which were swiftly concluded.

The individuals also allege that, in late February this year, Transnet had not yet paid Neotel for its January and February services. Neotel was told that Singh had blocked the payment. By that time, Neotel had not yet paid Homix its R36?million fee.

The issue was resolved when Transnet paid Neotel, which paid Homix.

Transnet, replying to questions sent to it and Singh this week, denied Singh was "party to Neotel's actions relating to Homix" or that there was any factual basis for the allegations against him.

It said: "The issues you raise are normal operational decisions that [chief financial officers] deal with on a daily basis in the execution of their duties. In this case, however, we would like to point out that the delay you may have been referring to had nothing to do with Neotel's suppliers [Homix], but was as a result of our normal operational issues and processes."

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# ANNEXURE “ZR13”

5/30/2020

Evidence of state capture mounts - The Mail &amp; Guardian

NATIONAL

ZR13-139

## Evidence of state capture mounts

Sam Sole Author Sam Sole 24 Mar 2016



Family and friends: Ajay and Atul Gupta

“The entire Eskom board was appointed by the Guptas!” a former Eskom director told us this week.

That was surely an exaggeration, but the web of influence that we expose in this edition gives some inkling as to why the former director might believe so.

- Read: The ‘Gupta owned’ state enterprises

It certainly shows a network of people, grouped around key individuals with demonstrable connections to the Saxonwold family, who dominate the board of Eskom and, to a lesser extent, Transnet.

The information we disclose is not proof of “state capture”, but it will sharpen the concerns of those worried about the undue influence of the Gupta family, adding bit by bit to what we know and what we suspect.

We trust the information will be followed up by the two probes so far announced: the public protector’s investigation into whether President Jacob Zuma breached the Executive Members’ Ethics Act through his relationship with the Gupta family, and the ANC’s own internal inquiry, led by secretary general Gwede Mantashe.

The ANC national executive committee’s decision to allow Mantashe to conduct a probe was an important victory for the faction of the party that is attempting to curb the excesses of Zuma and his allies, including the Guptas.

For, although the party cannot admit it openly, it is Zuma who has really been the locus and driving force of state capture.

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Evidence of state capture mounts - The Mail &amp; Guardian

Our exposé will hopefully also encourage more people with inside information to come forward to join Deputy Finance Minister Mcebisi Jonas, former ANC MP Vytjie Mentor and ex-government communications chief Themba Maseko.

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There appears to be a queue forming. Former energy minister Ben Martins has indicated he will brief Mantashe and, as the former point man on Zuma's nuclear ambitions, he will no doubt have a lot to say.

And the country's top retired intelligence and military figures have added their voices to the call for an investigation.

As we report today, three former top spies and the ex-South African National Defence Force chief, Siphwe Nyanda, are among 25 Umkhonto weSizwe stalwarts calling for an independent commission of inquiry to investigate "all claims of undue influence, especially by the Gupta family, on the ANC and on the state".

Nyanda said: "There are many people that we think should come forward and give evidence."

The voices of those, such as Nyanda, whose ANC credentials cannot be questioned, are vital.

That's because the Guptas and the Zuma faction in the party have mounted a sophisticated spin campaign, aimed at convincing their supporters that questions about the Guptas are driven by "white capital" that fears being displaced.

White business barons such as Johann Rupert can and do exert influence on the government, but there is simply no equivalence with the picture of state capture that is beginning to emerge around Zuma and his cronies.

*\* Got a tip-off for us about this story? Click here.*



**The M&G Centre for Investigative Journalism (amaBhungane) produced this story. All views are ours. See [www.amabhungane.co.za](http://www.amabhungane.co.za) for our stories, activities and funding sources.**

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Guest Author

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Sam Sole

Sam Sole works from South Africa. Journalist and managing partner of the amaBhungane Centre for Investigative Journalism. Digging dirt, fertilising democracy. Sam Sole has over 17731 followers on Twitter.

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ConCourt settles the law on the public protector and interim...

The Constitutional Court said it welcomed robust debate but criticised the populist rhetoric in the battle between Busisiwe Mkhwebane and Minister Pravin Gordhan  
*Franny Rabkin*

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Where is the deputy president?

David Mabuza is hard at work — it's just not taking place in the public eye. The rumblings and discussion in the ANC are about factions in the ruling party, succession and ousting him  
*Paddy Harper, Athandiwe Saba & Sabelo Skiti*

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# **ANNEXURE “ZR14”**

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Guptas conquer state arms firm Denel - The Mail &amp; Guardian


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Family and friends: Ajay and Atul Gupta

*Stefaans Brümmer, Sam Sole & Craig McKune*

The Guptas have done it again – this time by teaming up with state-owned arms manufacturer Denel to profit from the sale of its products in the East.

Denel announced the formation of joint venture company Denel Asia last week but did not identify the controversial family as shareholders by name.

The family's latest success in appropriating state opportunity comes amid a revolt in the ruling alliance about their influence in high places.

Following the ANC executive's annual lekgotla last week, party secretary general Gwede Mantashe reportedly said that a "warning came out very strongly" against the "capture" of state-owned enterprises by "people outside the state".

Recent controversies include the acquisition of Optimum Coal, an Eskom supplier, by a Gupta company. Optimum's owner, Glencore, agreed to sell after the power utility squeezed Optimum financially and Mineral Resources Minister Mosebenzi Zwane visited Glencore's Swiss headquarters at the same time as a Gupta delegation.

Eskom has denied it influenced the sale, saying a R2.5-billion fine it imposed on Optimum for poor quality coal was provided for in their contract. Zwane's spokesperson has said the minister's visit to Switzerland was according to his policy of engaging with stakeholders and to avoid job losses.

There are similar claims, though, of unfair play paving the way to the Denel deal – in this instance over the bodies of officials who might have opposed it.

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Several sources sympathetic to the three have indicated that there is a strong suspicion they were removed to clear the way for the deal. Denel says they were suspended for their roles in an unrelated matter.

Announcing the joint venture, Denel said in a press release last week Thursday that Denel Asia, headquartered in Hong Kong, would help Denel “find new markets for our world-class products, especially in the fields of artillery, armoured vehicles, missiles and unmanned aerial vehicles”.

Denel Asia would “focus its marketing attention on countries such as India, Singapore, Cambodia, Indonesia, Pakistan, Vietnam and the Philippines who have all announced their intentions to embark on major new defence acquisitions”.

Denel’s joint venture partner in the company was identified as “VR Laser, a company with 20 years extensive experience [in] defence and technology in South Africa”. Denel also said that VR Laser had “a good understanding” of the target “markets and opportunities”.

Denel did not answer amaBhungane questions this week about Denel Asia’s ownership breakdown. But Hong Kong corporate records show that it was founded on January 29 with Denel holding 51% and VR Laser Asia 49%.

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### *Value of VR Laser*

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VR Laser Asia was registered in Hong Kong after the Gupta family and associates acquired VR Laser Services, a Boksburg engineering firm, two years ago – another deal that attracted controversy (see “VR Laser and the Guptas” below).

VR Laser Services specialises in steel cutting and processing. Its only apparent exposure to the defence industry is as supplier of components such as armour plate and armoured vehicle hulls. And although the Guptas themselves have done business in at least India and Singapore, VR Laser Services’ own footprint is local.

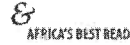
Denel did not answer amaBhungane questions probing the value of VR Laser’s contribution and the possibility that the Guptas would profit from Denel sales without contributing to them. The questions included:

- What value would VR Laser bring to the joint venture given its apparently limited experience in defence marketing and limited exposure to the Denel product range, which extends well beyond armoured vehicles?
- Would Denel Asia have the exclusive right to market Denel products in the target countries or would Denel and its other subsidiaries also have the right to market there?

Momentum for the joint venture appears to have built after Public Enterprises Minister Lynne Brown appointed a new Denel board in late July. She retained only one member of the outgoing board, Johannes “Sparks” Motseki, “for purposes of continuity”.

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### ***“Suspended in respect of their roles” in acquisition***

Denel did not answer directly whether Motseki had recused himself from making decisions about the joint venture, but said: “Mr J Motseki has fiduciary duty to act in the best interest of Denel and has never influenced Denel to do business with any persons that he knows in whatever capacity.”

Among the new board’s first acts, in September, was to suspend Denel chief executive Riaz Saloojee, chief financial officer Fikile Mhlontlo and company secretary Elizabeth Africa. No formal reasons were given at the time.

Denel this week said Saloojee and Mhlontlo were “suspended in respect [of] their roles in the acquisition of LSSA [Land Systems South Africa] by Denel, where Denel paid R855-million, of which Denel business was negatively affected. The disciplinary process is under way.”

Denel bought LSSA, an armoured vehicle manufacturer, from arms multinational BAE Systems before the new board’s appointment.

There are questions, however, about the strength of the charges against the officials. One legal and one other source acquainted with the matter this week said disciplinary hearings have not commenced but that an informal mediation process was about to start.

The three officials said they were precluded from commenting. Their attorney, Zarina Walele, also declined comment.

Gupta family spokesman Gary Naidoo failed to respond to questions by the time of going to press. VR Laser chief executive Pieter van der Merwe did not return calls or respond to questions emailed both to the firm and to Naidoo for VR Laser’s attention.

Motseki did not return calls. – *Additional reporting by James Wood.*

## **VR Laser and the Guptas**

VR Laser Services first came to wider public attention in July 2014 in an amaBhungane story headlined: “Transnet tender boss’s R50-billion double game”.

The story outlined how a friend of the Guptas, Iqbal Sharma, had obtained an interest in the company while it was in pole position to benefit from subcontracts in Transnet’s R50-billion tender for locomotives. At the same time, he was chairing the Transnet committee that oversaw the tender process.

Sharma denied any conflict of interest and took amaBhungane to the press ombudsman, but his complaint was dismissed.

At the time, a key part of the story was that the Guptas’ interest in VR Laser was not initially disclosed. Westdawn Investments, a Gupta contract mining company, better known as JIC Mining Services, took a 25% stake in VR Laser Services, and Salim Essa, another Gupta business associate,

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address as the family's business partner Sam Sole and Stefano Brümmer



*Kamal Singhal. Picture: Twitter*

## Joint venture not approved by ministers

Denel launched its Gupta joint venture, Denel Asia, without approval from the finance and public enterprises ministers as required.

Public Enterprises Minister Lynne Brown's spokesperson, Colin Cruywagen, said on Thursday: "Minister Brown gave pre-approval with strict conditions that included a viability study and a due diligence on the transaction. There are still other conditions to be met before final approval can be granted."

Pressed whether the minister, who represents the government as Denel's only shareholder, was concerned about the launch of the deal, Cruywagen would only say: "Interactions between the minister and the board are confidential. For questions about operational matters of Denel, I refer you to Denel and the board."

The treasury's spokesperson, Phumza Macanda, said Denel's application seeking Finance Minister Pravin Gordhan's approval had been received but the treasury "is still processing it". She said Denel required both ministers' approval under the Public Finance Management Act as "it is a significant transaction" for Denel and in line with government guarantee conditions. Denel did not respond to urgent questions on Thursday whether it and its board exceeded their authority. – *Craig McKune and Stefaans Brümmer*

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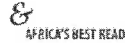
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**Paddy Harper**

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### SANDF inquiry clears soldiers of the death of Collins Khosa

The board of inquiry also found that it was Khosa and his brother-in-law Thabiso Muvhango who caused the altercation with the defence force members  
**Franny Rabkin**

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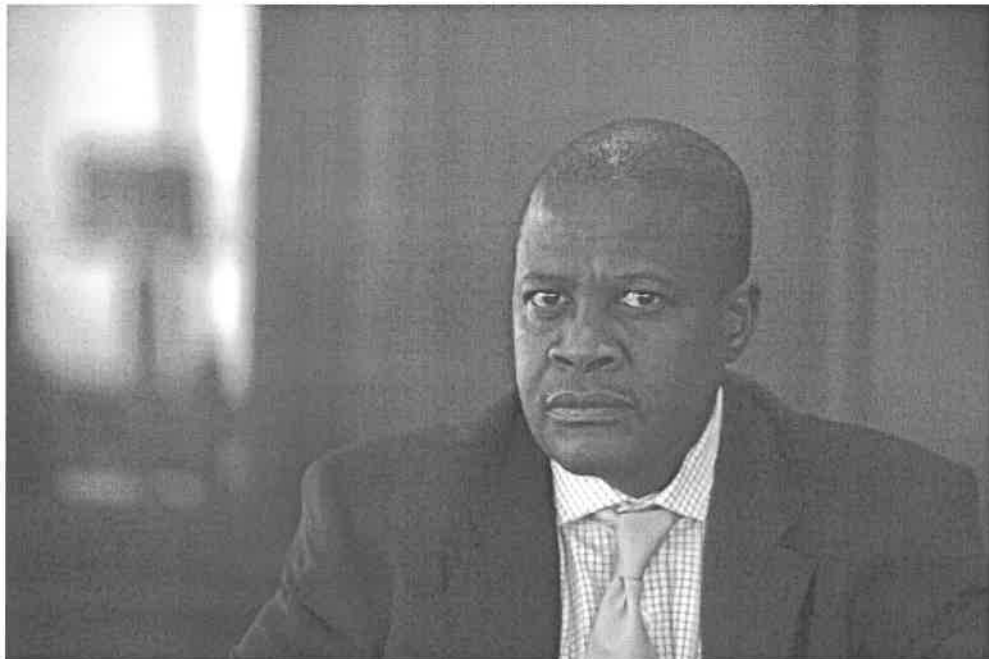
Brian Molefe scores 'R30m payout' from Eskom

ZR15-152

## NEWS

## Brian Molefe scores 'R30m payout' from Eskom

16 April 2017 - 02:03  
BY MZILIKAZI WA AFRIKA



Brian Molefe.

*Image: JAMES OATWAY*

Former Eskom CEO Brian Molefe walked away with a R30-million "golden handshake" even though he was at the power utility for only 18 months.

Molefe resigned from Eskom in November under a cloud after being named in former public protector Thuli Madonsela's State of Capture report.

The R30-million payment was made last month and has been described as "very irregular", but Public Enterprises Minister Lynne Brown said this week she knew nothing about it because this was an "operational issue".

Documents from Eskom seen by the Sunday Times show that Molefe was paid R30.1-million on March 23.

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Brian Molefe scores 'R30m payout' from Eskom

Molefe's package as Eskom CEO was R8-million a year. He was also allocated significant shares as part of Eskom's long-term incentives when he was seconded to the power utility in April 2015, after having served as Transnet CEO for four years.

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He now earns around R1.1-million a year as an ANC backbencher in parliament.

Molefe resigned from Eskom after it was revealed in the State of Capture report that he had exchanged 58 calls with Atul Gupta. The report also detailed how cellphone records had placed Molefe in Saxonwold several times around the time of the controversial Tegeta-Optimum coal mine deal.

When he resigned from Eskom, Molefe said that should not be misconstrued as an admission of guilt.

Brown said she was not aware of Molefe's payout bonanza.

"I am not aware that Eskom has paid Brian any severance package, but, then again, those are operational matters managed by the board – it is only brought to my attention if it is unusual," she said.

LabourNet industrial relations expert Juaane van Vuuren said the payment looked very irregular.

"I have to question where taxpayers' money is going and what the justifications are for such a payment. This looks like some mutual settlement agreement that they [Eskom and Molefe] reached before he resigned," she said.

Van Vuuren said Molefe was only eligible for half of his bonus since he had resigned. "He isn't entitled to the full bonus and benefits, but a pro rata bonus."

A source at Eskom who confirmed the payment to Molefe said pension fund contributions were 20% of an employee's pensionable income.

"One's pensionable income is 60% of the gross salary. If we work the figure of R30-million backwards, the pensionable earning would have to be R146-million a year. The gross salary would have to be R243-million a year," said the source.

Approached for comment, Molefe said he had been paid "what was due" to him but refused to give a figure.

"I won't comment about figures. You can ask Eskom for that. All I can say is that I didn't receive any severance package, but I was paid pension benefits that I was entitled to," he said.

Eskom spokesman Khulu Phasiwe referred questions to the board.

"I am not privy to how much the board decided to pay Mr Molefe. But I can tell you that the payment would be reflected in our annual report," he said.

Eskom board spokesman Khulani Qoma said Molefe was paid what was due to him.

"We declare all our directors' emoluments in our annual report, which is due in June. No amount was paid ... over and above the remuneration due to him as end of 2016," Qoma said.

[mzilikazi@sundaytimes.co.za](mailto:mzilikazi@sundaytimes.co.za)

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# ANNEXURE “ZR16”

## Minister of Public Enterprises and Eskom Board on reappointment of Brian Molefe as GCEO; with Deputy Minister present

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Public Enterprises

23 May 2017

Chairperson: Ms Z Rantho (ANC) (Acting)

### Meeting Summary

The Committee met for an urgent engagement with the Minister and Deputy Minister of the Department of Public Enterprises and the Board of Eskom on the apparent reappointment of Mr Brian Molefe as CEO of the power utility after it was said he had resigned and then became a Member of Parliament. The Minister began by outlining what was broadly contained in her affidavit on the matter. The Committee was unanimous in stating the principle of sub-judice would not be used as a means to prevent key matters from being discussed – while the merits of the case would not be discussed, as it was due to be heard in court soon, the Committee expected a full account and engagement to ensure its mandate of oversight and accountability was carried out.

The Committee, with its new Member, former Minister of Finance Pravin Gordhan, directly question how it was possible for someone to become a Member of Parliament while that person was still in the employment of the state – this amounted to a breach of the Constitution, could be considered perjury and could mean the ANC was implicit in the illegality. The Members questioned why the post of CEO was advertised, and people were interviewed therefore, if Mr Molefe had not resigned – there was also proof of an internal memo sent to Eskom employees detailing that Mr Molefe resigned. There were further questions about the Minister being summoned to Luthuli House, understanding the basis for the reappointment of Mr Molefe and exposed in the public interest, if the case was winnable in court and if the Minister, as shareholder, should not have put the reinstatement on hold until everything was sorted out. Members remarked that the situation had gone from the “sublime to the ridiculous” and the Committee, and the public, would not accept what it was being told as it was not truthful as it was clear someone was lying. There were numerous appeals for the Minister to be truthful, open, honest and frank with the Committee as her personal credibility was on the line – anything less than the truth could mean the Minister was held ethically liable by Parliament and criminally liable in court. The Committee was concerned by the lack of good governance in Eskom especially as this was at the heart of the matter, and the effect of this on the credibility and reputation of the Enterprise. There were also concerns about the salaries earned by CEOs of State Owned Enterprises (SOEs) and the fact that people were using the Enterprises as personal cash cows and ATMs at taxpayers’ expense. Members asked the Minister pointedly if she was under any pressure or was acting under instruction of the President, or anyone else. There were questions marks hanging over the head of Mr Molefe and the fact that he had not taken the *State of Capture* report on review, in an attempt to clear his name, revealed some level of guilt on the part of Mr Molefe. The Committee made it clear it would not be fooled into believing Mr Molefe did not resign when all the evidence said otherwise.

The Committee was unanimous in finding there should be an inquiry in the Eskom Board to assess if it was suitable to continue leading the Enterprise – this would be similar to the parliamentary inquiry into the South African Broadcasting Corporation. The Committee was empowered to conduct such an inquiry in terms of rule 167 of the National Assembly and could summon people to fulfil such function. Members said it was clear the Eskom Board was not upholding its fiduciary responsibility by appointing someone linked to the Guptas as closely as Mr Molefe was – this amounted to reckless behaviour. The Board also unwittingly, and wittingly, captured Eskom for the benefit of a few. The Board thus either needed to be dismissed in its entirety or should voluntarily step down as it let SA down more often than not – the Board was not serving the country well. The fact that the Minister supported a commission of inquiry into Eskom proved all was not well.

Members spoke about the clear steering of Eskom business towards Gupta-owned companies and the importance of context and “connecting the dots” in this regard. Members could not understand how Mr Molefe was in a parliamentary sitting on Thursday and then was back at work at Eskom on Monday like “papa action”. It was clear the best interests of state and taxpayer money was not taken into account and that answers provided lacked credibility. There was concern that a stage was being reached where those looting and abusing state resources did not care who produced which report – these people were now taking billions and no longer millions of Rand as it was not enough. Discussion emphasised the huge economic importance of Eskom, its role in job creation and pertinent role in the developmental state. The approach of the Committee, going forward, would be crucial in either giving Parliament credibility or acting as co-conspirators. The Committee also questioned why the Minister did not litigate.

There were questions about the relationship between Board members and Oakbay, in their personal capacity. Members demanded the Committee have access to the former and current employment contract of Mr Molefe, Board minutes, recordings and documentation relating to the decision to reappoint Mr Molefe. The Committee was concerned about the lack of care of the effect of Mr Molefe on the reputation of Eskom and that the only concern of the Board seemed to be balance sheets and financial performance – the Committee was not interested in this but about good governance and stewardship of public funds. The Minister was not exercising her oversight role in terms of Eskom, it was telling that the legal opinion used by Eskom differed from all other legal opinion, it was clear the Minister was being kept in the dark and it was shameful and disgraceful that each Board member professed that nothing was wrong with Eskom – this was further impetus for the Board to be suspended. A Member raised the fact that she was being sued by Eskom by the same firm investigating the former acting Eskom CEO – this was a direct conflict of interest. The spin by the Board was very embarrassing when it was clear now that Mr Molefe resigned (and that the Minister and Committee

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was lied to), no confidence was instilled by today's interaction, it was telling that there was no litigation against any of the media houses for the revelations reported and it was clear Eskom was captured – Mr Molefe was reappointed to continue looting after his appointment as Finance Minister did not go according to plan. The Committee welcomed the pending introduction of a Shareholder Management Bill (even though the current legislative agenda of Parliament was packed) but was disappointed by the answers received to pertinent questions today. The Committee was not encouraged by the apparent naivety and blasé attitude of the Board to shortcomings and felt a full investigation was the only way to get truthful answers. Members suggested the CEO of the Eskom pension fund be called before the Committee and said that governance of the SOEs was the concern of all three credit ratings agencies.

The Committee said all documentation requested was to be provided to it within 14 days for the inquiry to get underway in the next 21 days. This would mean the programme of the Committee would change. Members were to apply their minds to who would be subpoenaed because the full picture would only emerge if the correct people were called. The Committee would see legal advice on the scope of the inquiry. The Committee applauded the acting Chairperson for her leadership and effective way in which she chaired today's important engagement.

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## Meeting report

### Opening Comments of the Chairperson

The Acting Chairperson outlined that the rationale for the urgent meeting stemmed from Members wishing to discuss the recently reappointed CEO of Eskom, Mr Brian Molefe. Mr Molefe had been a Member of Parliament for the past few weeks but had recently returned to become the CEO of Eskom again. There was unanimous agreement in last week's Committee meeting that an urgent engagement was required with the Minister, Eskom Board and Department of Public Enterprises to explain to Members what was happening in Eskom regarding Mr Molefe's reappointment. Members were unclear on why Mr Molefe was reappointed when the post of CEO of Eskom was advertised, if Mr Molefe retired, was retrenched, if he resigned or stepped down.

Apologies were noted from Mr M Dlamini (EFF) and Mr E Marais (DA).

### Minister of Public Enterprises

Ms Lynne Brown, Minister of the Department of Public Enterprises, began by outlining she submitted her affidavit to court with regard to the Mr Molefe matter. She instructed her legal team to withdraw her opposition to Part A of the relief sought i.e. she set aside her appointment of Mr Molefe. She nonetheless deposed an affidavit as she believed the information she had will assist the court in determining its decision. Her initial advice was to oppose Part A on the basis that she neither appointed nor reinstated Mr Molefe, as well as on the basis of advice from Eskom's Board that it obtained an opinion from a Senior Counsel Advocate on its handling of the matter.

The Minister, having had the opportunity to properly appraise the issues, decided to abide by the court's decision on the legality of Mr Molefe's return to Eskom. When the Eskom's Board approached her to inform her of its decision to bring Mr Molefe back, she said she would support it on the proviso that it was legal. She also made this point repeatedly when addressing media on the matter, though, curiously, none of them thought it worthy of reporting.

With regard to Part B of the motion, which sought to stop Mr Molefe from conducting any work at Eskom, she reserved her rights. One of the issues that the court will have to decide was a technical one relating to Eskom's Memoranda of Incorporation (MOI). Eskom is governed by various pieces of legislation, including the Eskom Conversion Act, 13 of 2001. Section 6 (2) of the Act required the Minister, from time to time, to publish memoranda and articles of association. Two different MOIs were relevant to Mr Molefe's situation - one passed and adopted before his arrival at Eskom and the other during his tenure. Material differences between the two documents included that the 2014 version did not require the Minister to be noted as a party to the employment agreement of the Group Chief Executive (noting the Minister was required in the 2016 version) and the 2014 document did not provide the Minister with the power to remove the Chief Executive (as the 2016 version did).

The executive employment contract concluded by Mr Molefe and Dr Ben Ngubane (Chairperson of the Eskom Board) in March 2016 was concluded in terms of the 2014 agreement – this contract did not have to be shown to the Minister.

Minister Brown said that when Mr Molefe quit Eskom in November 2016, she was under the impression he resigned – she wished him well and was sorry to hear he resigned. She was not aware that he applied for early retirement – this she only learned in April 2017 after reading in the media, that Mr Molefe was receiving a R30 million pay-out from Eskom, and asking Eskom's Board to make a more prudent deal. Again, on Eskom's legal argument that Mr Molefe was appointed under the terms of the 2014 MOI, the early retirement agreement did not have to be shown to the Minister.

On 11 May 2017, after taking advice from a senior counsel, the Eskom Board reverted to the Minister with options on the proposed R30 million payout to Mr Molefe. As a courtesy, the Board indicated to her its preference was for consensual rescission of Mr Molefe's early retirement and that it was willing to accept Mr Molefe back as Group Chief Executive. She said she would support the Board's decision providing it was legal. As she told the media, she believed Eskom would obtain more value from having Mr Molefe at work than simply paying out R30 million.

The Minister did not expect that society would universally welcome news of Mr Molefe's return to Eskom following allegations levelled against him in the Public Protector's *State of Capture* report. But nor did she anticipate the level of vitriol. She expected that his achievements as a technocrat, the fact that he would be under enormous scrutiny, and the presumption of innocence until proven

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guilty, would bring some balance to the debate. But there was a presumption of guilt, despite the Public Protector's report being taken on review. As a society, as politicians, as media, we must beware of criminalisation by association, particularly in the absence of anyone having been convicted of a crime. 156

There was almost a climate of hostility presently surrounding state-owned companies that, incidentally, belied their actual performance. It was an environment complicated by strident voices ahead of the ruling party's policy and elective conferences later this year and by Members of the opposition who viewed the *State of Capture* report as their ticket to nirvana. The Minister was not trying to make anyone feel sympathetic towards Brian Molefe, Dr Ngubane or Eskom – she was telling the truth. Dr Ngubane would be able to answer any operational or technical questions of the Committee together with other members of the Board.

In the presence of Dr Ngubane, the Minister concerns raised about the Board's performance, to the extent that some have called for its dissolution. She did not think it would be fair to jump to any conclusions while there was an important matter before court. Ahead of Eskom's Annual General Meeting (AGM) in July 2017, the Minister already started a process to externally evaluate the Board, as happened annually. She had taken legal advice on the process to follow to rotate the Board, if appropriate, while a discussion was underway in government currently as well.

The country's giant state-owned companies, including Eskom, were critical levers of the developmental, transformative state. Where they erred, we must fix them. But we must be very careful we did not allow our discourse to break them. Later this week, when Deputy Minister Ben Martins and the Minister presented the Department's budget vote, she will provide a progress report on the State Owned Companies Reform Project and development of a shareholder policy. Suffice to say, now, the project will directly address some of the governance issues under discussion today, including appointment of chief executive officers and creation of remuneration and pension standards. She would try to answer the questions of the Committee as best she could and Dr Ngubane would do the same.

#### **Address by Eskom Board Chairperson**

Dr Ben Ngubane, Chairperson of the Eskom Board, said he was with counsel yesterday where he was informed the affidavit he signed was submitted and the matter could not be debated anywhere other than a court of law. In all fairness, he had no choice but to listen to the opinion of his counsel as counsel would be representing him on the matter in court – his hands were thus tied. The process as outlined by the Minister was exactly what happened.

On a point of order, Mr J Steenhuisen (DA) said legal advice was obtained in terms of Parliament's own procedures on the sub-judice rule – the rule would not be the convenient shield it was expected to be to Eskom and its board. The institution and its board remained accountable to Parliament – it was the duty of the institution and board to give a full account. The sub-judice rule was regarded as archaic and not applicable – Dr Ngubane was accountable to Parliament as Members were elected to do. The sub-judice rule did not apply and could not be used as an excuse to give a full and proper account to Parliament and the people of SA for shenanigans at Eskom.

The Chairperson said the legal opinion of Parliament was circulated to Members.

Mr Z Luyenge (ANC) made it categorically clear that the same legal advice received by the Committee went further to say as long as the exercise would not delve deeper into the details of the case, the Committee had the right and responsibility to hold the Executive and Board accountable, individually and collectively. Members did not want to get into the merits of the case concerned.

Mr N Singh (IFP) agreed noting it would also be appropriate for the Committee to have parliamentary legal advice present in case Members steered off course. Despite the comments of the Minister, he was no where nearer to understanding what happened. He requested the Minister provide the Committee with the documents she referred to and affidavit submitted to court as it was public information – this would assist the process.

Mr Ben Martins, Deputy Minister of the Department of Public Enterprises, thought the most proficient thing to do under the circumstances was to take cognisance of the fact that the Committee was within its right to ask questions in regard to what the Minister articulated. The Committee could be provided with the requisite information.

#### **Discussion**

Ms N Mazzone (DA) noted that when the Committee heard Mr Molefe had been reappointed, it also heard the Minister had been summoned to Luthuli House by the ANC for a discussion on the issue – who was the Minister summoned by and why? Was it because of the meeting that the Minister withdrew her application from the DA's court papers? The DA continuously asked for the former and current employment contract of Mr Molefe to be made public – she wanted the Minister to make a declaration that the Committee would see the document. She thought the whole situation had gone from the sublime to the ridiculous – for the Minister and Dr Ngubane to expect that the SA public would simply sit back and accept what was brought before the Committee today was simply unacceptable and was a slap in the face of good governance which was ironic as good governance was exactly the reason for Mr Molefe announcing his resignation. The Member had in her possession the resignation letter of Mr Molefe along with an internal memorandum sent to 48 000 Eskom employees from the head of HR informing them that Mr Molefe had in fact resigned. She also had Whatsapp correspondence where some of the power station managers aired discontent with the fact that Mr Molefe resigned but Mr Molefe answered them to say his decision was final. She found it difficult, along with SA, to accept and read that Mr Molefe resigned, then to hear he took early retirement and was retrenched the next minute – it was unacceptable that Members were treated as if they were to accept what it was being told today. The name Molefe was moving from a noun to a verb where people would soon be telling their children not to tell "Molefe's".

The Committee could not accept what it was being told as it just could not be truthful. She found it difficult to believe Minister Brown, as the stakeholder and chief overseer of Eskom, would not have known Mr Molefe applied for early retirement – there must be some kind of relationship between the Minister and Dr Ngubane and so she failed to understand or believe that the Minister did not know Mr

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Molefe took early retirement, if that was in fact what he did. The entire country understood that Mr Molefe resigned and then became a Member of Parliament – one could not be sworn in as a Member of Parliament if still a CEO of a state company and was simply on unpaid leave. These things did not make sense and SA had every right to be furious of the situation it found itself in. 157

Ms Mazzone said R30 million was a lot of money to be paid out to anyone – in fact it was an obscene amount of money. R7.7 million annual salary was an obscene salary to be paid. How much of the R30 million was paid to Mr Molefe? Would the Minister provide the document detailing the payment of the R30 million, how it was brought about and how it was calculated? Actuaries doing their own assessment on how much should be paid for 18 months employment, even given Mr Molefe's previous employment, said the amount should be around R2.8 million.

She appealed for the Minister to be open and frank with the SA public as someone to look up to with a fairly good track record – did she think it was right and fair to hold the entire country to ransom for a sum of R30 million? This was to say if the story of the Minister was correct and that it was better to employ Mr Molefe than pay out R30 million. She was surprised the Minister would have allowed herself to be bullied into this compromising situation. It was clear the left tongue did not know what the right tongue was lying about – someone was telling a fib. It was now up to the Minister today to clear her name in the Committee by telling the truth, the whole truth and nothing but the truth. The Minister was involved in a court process, was now appearing before Parliament and was obliged to tell Members the truth – anything less than the truth would mean the Minister could be held ethically liable to Parliament and criminally liable in court. She appealed for the Minister to come clean with the Committee and tell it who was lying – this was the opportunity for the Minister to tell the Committee about what the true situation was. The Member had before her the advert Eskom released for the position of CEO – if in fact Mr Molefe was on unpaid leave but remained CEO all that time, why was the position advertised? She knew people who were interviewed for the job and willing to file affidavits to say they were advertised for the job. If Mr Molefe was simply on leave, why was the position advertised and people interviewed for it?

Mr Luyenge thought the time had arrived that South Africans were waiting for since news broke that Mr Molefe would be returning to Eskom. As the lead shareholder of Eskom, and recognising the experience and expertise that existed in Mr Molefe, on receipt on the news that Mr Molefe was contemplating leaving the power utility, what did the Minister do to ensure the investment of Eskom in the expertise of Mr Molefe was maintained in the entity? When did the Minister receive the application for early retirement? On receipt of that, what did the Minister do in collaboration, perhaps, with Dr Ngubane? The Board had a responsibility to conduct oversight over Eskom as a governance structure – the Board could not have regarded the early retirement, stepping down or resignation of Mr Molefe as a normal issue. What did the Board do then, especially the chairperson, in collaboration with the Minister as the political head of the Department? In terms of sound governance in Eskom, did the Minister think such a senior individual as Mr Molefe could one day go to Parliament then the next day return to Eskom without her awareness of the application of the said individual? The salaries of senior executives in State Owned Entities (SOEs) was a thorn in the flesh of everyone – was it correct to have warm bodies earning triple that of the President? What was the view of the Minister on this aspect? The situation could also not be viewed as one thing going wrong – everything had gone wrong and Eskom was in tatters with its credibility at stake. The Board was now also affected – how would these issues be dealt with in a fair manner?

Mr M Gungubele (ANC) said the credibility of Eskom was essential and good governance contributed to that credibility – this affected the country economically especially in light of junk status. There was a question mark around Mr Molefe and it had not been cleared. The Eskom Board was working on the belief that that question mark might go but it existed. The Public Protector had a view of Mr Molefe – the President applied for review of that view but the view created a question mark around Mr Molefe which had not been cleared. Under what pressure was the Minister to hire someone in such a strategic institution on whose head there was a question mark which had not been cleared? The Minister had been a chair of boards, a leader in government and a track record – with good governance in her system, how could she hire somebody to lead an institution with this question mark which had not been cleared? What about the effect of the credibility of SA of the decision taken by the Minister? The basis of the reappointment of Mr Molefe must be exposed and understood – the basis on which the decision was taken was of public interest. He was curious of the statement made by the Minister that she had an impression that Mr Molefe resigned – how could the Minister be operating on impression with such a strategic person at such a high level? Was due diligence done to test legality of the R30 million payment? If so, the Committee needed to see the agreement for the R30 million. To what extent were the oversight powers of the Minister irrelevant when the Eskom Board acted, apparently, illegally? He was curious to hear the answers to pertinent questions posed by the Committee thus far.

Mr F Shivambu (EFF) highlighted the Powers, Privilege and Immunities of Parliament Act on the implications of those accounting to Parliament and its Committees, making false or misleading statements – such an offence carried with it a fine or period of imprisonment – those lying to or misleading Parliament would be reported to the police and/or court. The undermining of Parliament must come to an end. On 14 October 2016, the Public Protector released the *State of Capture* report and on 11 November, Mr Molefe resigned as CEO of Eskom citing the report as the reason therefore. The Minister then accepted the resignation of Mr Molefe – the Board nor the Minister never said the headlines were incorrect to say Mr Molefe resigned. On 30 November 2016, the Minister approved Mr Matshela Koko as acting CEO reaffirming this was due to the resignation of Mr Molefe. Again, the Board did not say Mr Molefe had not resigned. In March 2017, adverts were out for Eskom CEO – this advert was due to a vacancy created by the resignation of Mr Molefe, who was by that time sworn in as a Member of Parliament. Section 47 of the Constitution said (1) "every citizen...is eligible to be a member of the Assembly except – (a) anyone who is appointed by, or is in the service, of the state, and receives remuneration of that appointment or service". It was thus beyond any reasonable doubt that Mr Molefe resigned and the Committee could not be misled on this. The President and not Mr Molefe was appealing the *State of Capture* report – the President was not appealing the facts of the report such as the communication between Mr Molefe and the Guptas. The Committee could not be taken for a ride – Parliament must be respected. The Committee should out rightly reject the nonsensical explanation by the Minister. The Eskom Board should be subjected to an inquiry to assess if it was suitable to continue as a board of Eskom. He did not think the Board was executing its fiduciary duties in a responsible way particularly because it was appointing an individual who was not refuting he had a comprising relationship with the Guptas, the family which ultimately got contracts from Eskom. An inquiry into the Board would expose the issues related to Mr Molefe's reappointment and other issues raised in the *State of Capture* report.

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Mr Steenhuisen knew Minister Brown to be a good Minister, a Minister to always be upfront and honest in her dealings and duties and to exercise only the best fiduciary duties over the entities she had control. He found her behaviour today to be a complete <sup>100</sup> to the Minister Brown he witnessed and worked with over the past four years – this made him very suspicious. It was time to dispense of the nonsense – Mr Molefe was not on maternity leave, not on resignation, not on long leave, had not taken temporary unpaid leave but had resigned from Eskom. If Mr Molefe had not furnished the Minister, or anyone else, with a resignation letter or pronouncement that he had resigned, when Mr Molefe raised his right hand in the Speaker's parlour in Parliament, and swore to uphold the Constitution of RSA as a Member of Parliament, he tacitly resigned from Eskom. Section 47 of the Constitution was very clear that anyone who is appointed by, or is in the service, of the state, and receives remuneration of that appointment or service, is ineligible to become a MP. Mr Molefe therefore either tacitly resigned when he took that oath of office or committed perjury by swearing a solemn oath before a presiding officer of Parliament to uphold the Constitution that he would have known at the back of his mind he was betraying. The facts were that Mr Molefe resigned which was why Eskom went ahead to advertise the position and start procedures to fill it. The weekly bleeding and exposure of wrongdoing at Eskom under the nose of the Board, either with its knowledge or without, was being dragged out in the newspapers and Sunday television programmes where very serious questions were being asked of Mr Koko and other issues related to coal contracts which appeared to be steered towards Gupta- owned mines – the behaviour of people within Eskom, who fell under the duty of the Minister, were destroying Eskom and not public disclosure. It was very interesting to hear the Minister say the opposition saw the situation as a "nirvana". He did not see enough fiduciary responsibility and commitment from the side of the Minister and the Board to reverse the trends being set – what he was seeing was the outlying behaviour. Mr Molefe presented no evidence of clearing his name from the Public Protector's report and no explanation of the calls between him and Atul Gupta – there was no explanation for the clear steering of business towards Gupta-owned companies. Mr Molefe had not come forward to clean his name as he said he wanted to do. Given these circumstances, the Board itself behaved recklessly by appointing Mr Molefe as CEO again given he still faced huge allegations – why on Earth would an individual who lied to Parliament be reappointed to head a parastatal? Someone who committed perjury by taking an oath he knew was not truthful? Someone with huge allegations hanging over his head which certainly had not been cleared. The best interests of state money and SA taxpayers were not taken into account. The behaviour of the Minister was not what the Member knew – this made him question whether President Zuma had a conversation with the Minister and instruct her to reinstate Mr Molefe at Eskom. What was the instruction of the President to the Minister, if any, regarding Mr Molefe? The Member recommended a full parliamentary inquiry into the Board of Eskom because it need the same treatment the SABC had received. The SABC was now in a much better position and the shoots of recovery were emerging – the Eskom Board needed the same treatment from Parliament to begin its disinfection and getting it back on track.

Mr R Tseli (ANC) thought the fact that this meeting was one extraordinarily called for by the Committee as a matter of urgency suggested the issue at hand was a matter of public interest. At the meeting of the Eskom Board toward the end of last year where the leaving of Mr Molefe was raised, what was the situation as accepted by the Board at that meeting? Was it resignation or early retirement? Clarity on this was pertinent. What did the records of the Board show was accepted from Mr Molefe when he left Eskom? Clarity was also required on what was agreed to at the Board meeting when Mr Molefe returned to the entity. If this particular matter was pursued in the courts, was it a winnable case? Based on the explanation provided to the Committee, it would very difficult for Members to be convinced whoever pursued the matter should not be responsible for the cost. Could the Minister tell the Committee if the case was winnable if the matter was pursued? There was an indication Mr Molefe was on unpaid leave while he was a MP – this was something for the Board to clarify. The Committee had the responsibility of conducting oversight over the Board, and needed clarity on the matters at hand, hence this meeting being convened. SA needed answers on the issue which brought everyone together today.

Mr Singh was pleased to see the parliamentary legal advisors arrived. The whole issue went beyond the matter of a court case, beyond Mr Molefe and beyond Eskom – at the heart of the matter was good governance in the country. In so saying, he was in no way clearer on an explanation for the situation at hand. There were so many simple unanswered questions such as, did Mr Molefe resign? Was he on unpaid leave? Who accepted his resignation? Was HR present? Why was the position of CEO advertised if Mr Molefe did not resign? Did Mr Molefe commit perjury when sworn in as a MP? Was the ANC implicit in this? Was the party aware Mr Molefe did not resign from Eskom and was receiving benefit from a state organ? These were matters for the Committee to investigate. While there was a norm in SA, as correctly stated by the Minister, that one was innocent until proven guilty, there was no process to test whether Mr Molefe was engaged in any shenanigans while at Eskom. *The State of Capture* report indicated there was prima facie evidence of wrongdoing with Oakbay and Tegeta but this also went to the heart of the problem of people using SOEs as cash-cows and personal ATMs at the expense of taxpayers. The President had still not presented a case before the Public Protector on whether or not he was contesting, and in which way, the recommendations of the *State of Capture* report. In a pointed question to the President in Parliament, the President said he would not initiate a commission of inquiry into the on goings at Eskom. The credibility of the Minister was at stake – she needed to tell the Committee if there was any influence of anybody in the matter clouding her judgement? He knew the Minister for a long time having worked as MECs together and therefore knew her not to make the kind of "mistakes" she was making now. He pleaded for the Minister to come clean with SA especially as her credibility was at stake. The Minister was right to call for judicial commission of inquiry – while only the President could institute a judicial commission of inquiry, the Minister was empowered to initiate other kinds of inquiries into a SOE for which she was responsible. The Committee last week decided that if it could not initiate an ad hoc committee of inquiry, it would use Rule 167 which empowered the Committee to summon any person before it and have a full inquiry into what was happening at Eskom including what happened with Mr Molefe. Adequate financial and human resources were required for such an activity. He implored the Minister to tell SA what was going wrong and if she was being unduly influenced by anybody to make the statements she had. It would help everyone to get those answers. The Member was very glad to see Mr Pravin Gordhan, the former Minister of Finance, in the Committee as a Member. Mr Gordhan would be aware of the state of Eskom, and other SOEs, and where there was reluctance to provide answers. The matter went beyond Mr Molefe but concerned good governance – the Committee wanted answers.

The Chairperson welcomed Mr Gungubele and Mr Pravin Gordhan as new Members of the Committee. She humorously remarked the Committee was now dominated by males but this would be worked on.

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Ms G Nobanda (ANC) highlighted that in his letter of 11 November 2016, Mr Molefe repeatedly stated he was stepping down in the interests of good corporate governance and was going to take steps to clear his name – did the Minister think the return of Mr Molefe to Eskom was part of good governance? Who reported to whom? Did the Minister report to Eskom or did Eskom report to the Minister? Was Eskom not supposed to have informed the Minister of things happening? Why did the Minister only find things out through the media? With the unpaid leave, somewhere, somehow the Committee was not being given the correct version of events. If Mr Molefe was on unpaid leave he would have still been an employee of Eskom. If Mr Molefe resigned he would have left the entity. If he took early retirement he would have got some of his pension and enjoyed his package at home. No people were talking of maternity leave and retrenchment – somebody was playing with the minds of the Committee. The only way Eskom would come right was if the truth was told – this was all everybody wanted. Members needed to be clarified on stepping down vs. resignation – what did “stepping down” mean in Eskom? Her understanding of stepping down was of an individual resigning. She asked the Minister if it would not have been proper not to accept the reinstatement of Mr Molefe seeing as there were all manner of misunderstandings. It was correct to stop the R30 million payout to Mr Molefe. Mr Molefe left a sitting of Parliament on a Thursday afternoon only to return to Eskom on the Monday like “Papa Action” back at work. As a shareholder, would it not have been proper for the Minister to halt the reinstatement until everything was cleared up? 159

Mr P Gordhan (ANC) said the questions were plenty but answers were all over the show and lacked credibility both in the public domain and the Committee. Context was important in this matter – he was not sure if the Board was oblivious but the public was connecting the dots particularly about what the Board of Eskom was doing and not doing. The public was aware that state property and resources were being abused in their own names and not in the name of the SA public. There was awareness that the Board was wittingly and unwittingly capturing Eskom for the benefit of a few – this was the reality. Worse, the SA public was worried that managing governance in SA was reaching a stage where a significant number of people, from bureaucracy, the Board and elsewhere, did not care if public resources were being abused or which reports were produced because they were protected. The question was by whom and at what cost. Eskom is a critical institution in the SA economy – when Eskom did not work it had massive impact on economic growth, job creation in SA and enterprises. He did not think SA had fully recovered from troubles in the entity in the past. Context matters – this was not one isolated incidence of hiring, firing, retiring, not retiring, maternity leave or otherwise. This was part of a pattern – last week the SA Council of Churches produced its preliminary report which helped in connecting the dots and understand what was actually happening in this context. Would the Board still do as was done by activists before the security police i.e. keep a straight face notwithstanding the number of days one was in solitary confinement or pressure faced to answer questions of affiliation to banned organisations or not? Straight faces were what he saw today because there was a belief that no one would challenge what was being said in the public domain in a significant one – sometimes this was done with extreme arrogance which was remarkable considering a public institution was meant to be served.

In much of the literature and policy documents of the ANC, institutions like SOEs are a crucial part of the developmental state. Now state resources, assets and procurement were being dealt out to a handful of beneficiaries – the public would not be bluffed. What the Committee now did could either give Parliament credibility or it too would be accused of being “co-conspirators” in the process. How the Committee approached the process would be absolutely critical. If an inquiry took place, it would have to go back to the role of Mr Molefe in Transnet and some of the transactions now coming under public purview and examination – while this was no subject for debate today, dots needed to be connected completely to answer who did what, where and in service of what cause. The Chairperson should guide the Committee on how to take the process further. For parliamentary legal advisors to do their job well in an inquiry into hiring of Mr Molefe, to when the Board met and decided to let him go to reinstating him again, documents involved needed to be made available. This would mean certified Board minutes as a truthful representation of what transpired at Board meetings, if need be in an affidavit form – transparency was critical in such an exercise of accountability.

To the Board he asked who instructed it to rehire Mr Molefe. Who made what phone call to whom? Which meeting took place where and with whom which resulted in Mr Molefe being rehired? He did not think a truthful answer would be forthcoming but said the questions needed to be asked nonetheless. In his experience it was a privileged interaction to have between the Committee, Board and Executive Authority. It would be nice to hear from Board members what interactions they had with Oakbay in their individual capacities – in terms of the Powers, Privileges and Immunities of Parliament Act, the truth needed to be heard about what was really going on. Legal advisers would need to inform the Committee of whether the Board was indeed acting recklessly and had been forsaking its fiduciary responsibilities let alone its developmental responsibilities to SA. To the Minister, he asked if a legal opinion was obtained which said what the Minister could do, could not do, should agree with or should not agree with either by herself, the Department or by the Board. Ultimately this was a labour relations issue. Why did the Minister not litigate? R30 million was now considered a drop in the ocean because billions and not millions were being stolen at a time – R100 million was no longer enough in the public domain. Nonetheless, R30 million was a substantial amount of money so why was it not litigated on? Why did the Minister just give in to somebody's demands? While a judicial commission of inquiry was the constitutional prerogative of the President, anybody could hire a retired judge to look into a particular matter – why could the Minister not hire a retired judge, or senior counsel, respected by all, to look into all the facts and do the necessary in order to establish what really happened and what the facts were? The Committee could also decide on a parliamentary inquiry but this should be supported by a thorough forensic audit of how decisions are made in Eskom. Eskom was far too important of an entity for it to become a personal toy of a few individuals – it was a massive entity. Respectfully, a stage was being reached where either the Board in its entirety should be dismissed or it should voluntarily resign as it let SA down, more often than not. While he knew Dr Ngubane for a long time, he respectfully did not think the Eskom Board served SA well.

The Chairperson asked if the Eskom Board was under obligation to provide documents to the Minister and could sign documents without the knowledge of the Minister. If so, proof of such arrangement needed to be made available to the Committee so it was clear on the issues. She assumed that as CEO, Mr Molefe was the “main man” in terms of running the operations of Eskom – if this main man left the job, how could the Minister only find out about it after the fact? If a CEO left a company, the oversight authority should be the first person to know that individual left. Reasons for resignation were also important to find out especially if it was the CEO. Mr Molefe then became a MP which was a permanent job. Were the processes taken by the Board through this entire saga legal? Were they documented? All documents surrounding the process needed to be provided to the Committee to assess if decisions taken were constitutionally sound. The fact that the Minister said she would support a commission of inquiry into Eskom showed she knew all

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was not well with the entity which therefore prompted the need for an inquiry – did the Minister still support this? The Committee supported a commission of inquiry. All documents requested by the Committee needed to be provided as soon as possible because the matter would continue to be pursued by the Committee – rule 167 empowered the Committee to summon anyone to it. With these rights, the Committee was expected to serve the people of SA. Members only wanted the truth so that they could face communities on the issue. She worked as a member of the SA Police Service for 48 years, as a Lieutenant, but the money she received was less than R2 million when she retired. How could an individual work for 18 months and receive R30 million? This needed to be explained legally. 180

The parliamentary legal adviser explained the sub-judice rule was historically to protect courts and juries from being influenced in the administration of justice especially in light of a jury system but in SA, with the introduction of a new constitutional dispensation, there was a great move towards transparency and openness for the people to know what was happening in the country. In light of this the courts ruled on the matter of sub-judice and the Western Cape High Court set very stringent rules with regard to the application of sub-judice. This was in relation to the publication and broadcasting of a criminal case – the Court ruled the right to know and the free flow of information outweighed keeping information under wraps. The Judge said there must be a real prejudice to the administration of justice and the curtailing of information must outweigh the free flow of information. There was now publication and broadcasting of even criminal trials.

In relating the sub-judice rule to Parliament and the National Assembly, the Constitution outlined the need for accountability, transparency and openness. The National Assembly was elected to represent the people and ensure there was oversight and scrutiny of executive actions. The Constitution gave the National Assembly certain powers to ensure this role is met – section 56 said the National Assembly, or any of its committees, may (b) require any person or institution to report to it. Processes in court did not curtail the National Assembly from carrying out its role and responsibility. The National Assembly had its own rule to curtail itself on matters before court – rule 89 was specific and limiting in saying no Member may reflect on the merits of any matter pending judicial decision in a court of law. This rule applied only to Members, when discussing matters, to respect the independence of the judiciary to ensure no negative comments were made on pending cases and to respect the rights of litigants before the court. This did not mean Members could not scrutinise or conduct its oversight. This rule did not apply to members of the public but only Members of the Assembly. The sub-judice rule did not have merit because the Committee was conducting its oversight and accountability mandate. The Committee also had powers when members of the public did not cooperate – summons could be issued and if not adhered to, could result in criminal charges.

The Chairperson was pleased the matter was now clear and called on the Executive Authority and Eskom Board to respond to the matters raised by the Committee.

The Minister asked the Chairperson which commission of inquiry she referred to.

The Chairperson clarified she was referring to the commission of inquiry the Minister said she supported in relation to the *State of Capture* report.

The Minister began responding to questions posed by Members. The ANC top six usually engaged with deployees and she considered the engagement normal in that respect. She and the Deputy Minister presented to the top six where there was long discussion. The two were then sent back and it was said the matter would have to be sorted out between the Minister, President and Deputy President. A committee was then comprised to look at legal opinions of Eskom and the Department, subject them to an objective legal opinion and then make a decision. The Minister did not make the appointment of Mr Molefe at all – Mr Molefe was appointed in terms of the 2014 MOI. In that MOI, the Minister was not required to be noted as a party to the employment agreement of Group CEO. She reminded the Committee she was appointed Minister in 2014. In the 2016 MOI, it was required the Minister be noted as a party to the contract of employment between Eskom and Group CEO. Her affidavit was done under oath so if she lied in the affidavit it would mean the end of her career as a public representative and personal credibility. She reiterated she believed Mr Molefe resigned – as said earlier in the meeting, she said she was sad to see Mr Molefe go but wished him well. The first time she saw about the R30 million in the newspaper was the first time she learnt about the resignation. This was because Eskom thought it was acting in terms of the 2014 MOI – the issue was that there was about three months difference between the 2014 MOI, Mr Molefe's resignation, his reappointment and the 2016 MOI. The court would have to address itself to this matter and she would agree with whatever the court decided.

In terms of the process of governance in the Department of Public Enterprises (DPE), she reminded Members the Department was initially established as the Department of Privatisation many years ago. The Department had within its ambit six SOEs. Much of what existed currently came from historical arrangements. The Department had a shareholder compact that was an agreement drawn between the Minister and any one of the SOEs. This compact was reviewed annually externally by the Auditor-General of SA or the audit company for that SOE. There were consequences if less than 60% of the targets were met. This was quite an intensive engagement through which the SOEs were governed. There was also the Companies Act where a MOI for each of the SOEs was drawn up. The MOI also dealt with issues like the appointment of CEOs, other operational matters within the company, significance and materiality and various levels of decision making for the Minister and Board. How SOEs were run was very carefully legislated. All SOEs, except for Denel, had their own legislation. This legislation could be improved but the current process was to deal with governance matters in relation to the State Owned Companies Reform process which was chaired by the Deputy President. There were governance problems within the SOEs along with other problems to be dealt with. The idea was to have an overarching Shareholder Management Bill – it had taken a long time for this Bill to come about but it had just been submitted to Cabinet and all Ministers were now responding to it. The idea was to stop the fragmentation in SOEs seen over the years. It would also standardise procedures. SOEs could do much better in terms of governance. SOEs have been the backbone and hard mettle of the SA economy especially Transnet and Eskom.

There are 42 000 workers in Eskom and the Board appointed Mr Koko and she supported that. Mr Koko had since been asked to take leave while the Cliffe Dekker Hofmeyr investigation, into all the Sunday Times newspapers, was complete – this report was due quite soon. There was currently a leadership gap in Eskom – after Mr Molefe left, that gap was very prominent. In the past seven to eight

months there were many occurrences at Eskom – whilst Eskom had incredible technical skills from engineers, nuclear physicists and others, there was no requisite leadership in Eskom and this was her current concern.

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CEOs of Eskom and Transnet earn between R7 million and R8 million while the others earned in line with the size of the entity – this was almost half of what the CEOs of Eskom and Transnet earned. The Minister said salaries would be better managed in the State Owned Companies Reform process. There was a strong view in Cabinet that, because SOEs were both commercial and developmental, there should be consciousness to not have salaries much higher than the rest of the public service. She did not know if this meant the salaries would be reduced because these were large SOEs – Eskom had 42 000 workers while Transnet had 67 000 so the correct median would have to be found for the payment of CEOs. She was of the opinion the current salaries were too much but she had to commit herself to a legal process, governed by the labour law.

Eskom is very important to SA because it generated 95% of the country's electricity. There was a question mark around Mr Molefe – he would never be cleared until there was an investigation into the *State of Capture* report. Mr Molefe could not however clear himself. The Minister did want an investigation into procurement at Eskom – the Department had already drawn up its terms of reference but this was separate to whatever Parliament decided. There was an agreement for the investigation to involve the Special Investigating Unit (SIU), which had already conducted a number of investigations into Eskom. The investigation would have to include a number of inconclusive investigations conducted over the years and the current matter of Mr Molefe and procurement at Eskom.

The Minister was very conscious of the Powers, Privileges and Immunities of Parliament Act – she was conscious of the fact that she was a Member of Parliament governed by the Powers, Privileges and Immunities of Parliament Act. The Minister was the one to inform the President that Eskom Board would be reinstating Mr Molefe, as was the norm. She also told the ANC top six. The Minister stated that she did not receive any instruction to reinstate Mr Molefe. Perhaps the Minister should have allowed Mr Molefe to litigate on the matter of the R30 million. When the Minister told Eskom to renegotiate, there were four options on the table, (1) alternative pension proposal (not possible because it would change the pension fund rule) (2) settlement payment (the Minister was not happy about this as it would be a golden handshake) (3) Mr Molefe to resign with settlement (if there was no agreement on that, the matter would go to court) (4) rescind based on the fact that the Minister did not want the R30 million paid out and Mr Molefe would then remain CEO of Eskom. The Board preferred the option of rescinding was based on the request of the Minister i.e. Mr Molefe remained CEO of Eskom. The Minister made it clear she would only support this option if it was legal.

The Board assured the Minister, based on the strength of the legal advice received by Eskom, and also communicated with the Minister, which she had no reason to doubt, that the status quo would have to be reverted to once the contract of early retirement was mutually rescinded on the basis of an error – this was contained in the affidavit of the Minister. The Minister, Mr Molefe and Eskom were subjected to court proceedings. The Minister hoped the court process would bring greater clarity on the matters – the court sits on 30 May 2017. In terms of governance processes between the Minister and Eskom Board and who determined, in terms of significance and materiality, at what level decisions were taken, this was a public document like the MOI was. If anyone knew of any untoward behaviour in the SOEs, actively involving any Board members or executives in corrupt activities, this should be reported – there was an obligation to report such matters to the necessary authorities. In terms of the inquiry, the Minister wanted to lift all issues out of Eskom and to know the conclusion of all investigation reports. This process would get all the issues Eskom could possibly have into the public space

Dr Ngubane stated the Board would welcome any type of investigation into Eskom even if it started tomorrow. The company secretary wrote to the Public Protector for information to begin to clear the name of the Board in the *State of Capture* report. Boxes of information were provided to the Public Protector and anyone could look at this information. Eskom made use of double assurance from the audit and risk committee and assurance and forensic. Additionally there were independent auditors which explained why Eskom had clean audits year after year with minor statements where matters were not fully explained – the record spoke for itself. Eskom was once on the brink of collapse – the CEO and chairperson of the Board at the time, phoned the Minister the day after Christmas to say salaries would not be paid. There was a search for money in all sorts of hidden places, hard work was put in, experts were brought in like McKinsey and many matters were fixed. Mr Molefe then came to Eskom at the height of load shedding. At the beginning of that winter, Glencore came to Eskom to say it wanted R150 per tonne after it was argued exports and the commodity market was down. Mr Molefe correctly told Glencore to fly a kite as the National Energy Regulator of SA (NERSA) would not allow it, as it determined the price of coal, and Eskom's auditors would consider it irregular and wasteful expenditure. This was when the search for alternative prices for coal began – Glencore clearly said it would stop supply and there would then be a blackout in the country. This was the important context in this regard. He heard phrases such as "Eskom is a mess", "Eskom is being torn apart" but this was not reflected in the financial state of the entity – there had been much financial improvement, savings, contract management, performance agreements etc. The Eskom Board worked very hard and SA should at least acknowledge that.

Once the Minister expressed reservations about the matters surrounding Mr Molefe, Eskom's legal team was asked to consult with lawyers and counsel to find the optimal way to resolve the issue. In terms of legal opinion, the ultimate resolve was to cancel the early retirement agreement. When someone retired from an organisation, whether in terms of reaching the age limit or seeking early retirement, that person moved out and on from the organisation and was free to do whatever he or she wanted to do. When one resigned, that person only took their contribution to the provident/pension fund. In the case of Mr Molefe, after an agreement was reached to purchase 10 years to make up for the break in service from the Public Investment Corporation (PIC), then to Transnet and then to Eskom, so that when he reached the age of 55 he could retire with pension benefits/savings. This was done in 2015. This decision was expressed to HR and approved by the Board of Eskom and Board of the pension fund. The calculated payment for pension each month came to a total of R30 million. The shareholder did not agree with this amount. Mr Molefe consulted his lawyers who indicated there was a signed agreement so his rights stood. With much persuasion there was then agreement to rescind the early retirement of Mr Molefe i.e. he returned to work for Eskom, unless he resigned. This sequence of events was contained in documents sent to court and affidavits – it was now for the court to decide on the legality. The Eskom Board acted on the best legal advice and it, and the Minister, was satisfied therewith. Mr Molefe was not being reemployed – the status quo was simply reverted to because the original agreement for early retirement was rescinded. This was not "shenanigans" but an account of what transpired. All minutes and recordings of Board meetings were available for examination and on there judgement of the Board could be made. Dr Ngubane said

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he would defend the Board because he knew how strenuous work had been. With the new build programme beset by serious problems, such as huge claims by contractors and poor management of contracts, the Board worked very hard to clean this up and targets in this regard would now be met. There were sleepless nights going through documentation and submissions from management – this was a huge amount of work. The Board was not a bunch of idiots who just wanted to be called Board members of Eskom – they were there to work and should be given the benefit of the doubt. 182

Dr Pathmanathan Naidoo, Eskom Board member, said he grew up in Eskom, did his 27 years at Eskom and had been on the Board for three years. The company was grown to have assets of R700 billion and liabilities, to date, of R450 billion and where the current liability was R78 billion. Owners equity was R180 billion of which share capital was R80 billion, which came from Treasury. Eskom was thus a massive operation and amongst the world's best utilities. Eskom revenue for the last year was a total of R180 billion – Eskom was Treasury; it made money and printed money. Net profit was R1 billion and R100 billion was spent on primary energy i.e. coal. Wealth distributed was about R80 billion of which R40 billion went to employee benefits and R40 billion to money borrowed on global and domestic markets to fund operations. It was therefore so important to grow the credit rating of Eskom – nothing should be done in the public and governance space to harm the credit rating because this meant it was more expensive to do business for the end customer.

Dr Naidoo pointed out he was elected president of the SA Institute of Electrical Engineers and as custodians of electrical engineers in SA, the organisation was very troubled by the performance of Eskom knowing it was part of growing and building Eskom. With the call for nomination for the various Boards of state enterprises, he put up his hand and this was how he came to feature on the Eskom Board. He was appointed 10 December 2014 for a period of three years which ended December 2017. The new Board began the task of establishing committees of the Board...

Mr Gungubele interrupted to note the Committee was not averse to knowing how great Dr Naidoo was but the issue at hand today was Mr Molefe and Dr Naidoo had said nothing about it.

The Minister assisted by noting the questions posed to Board members included their relationship with Oakbay.

The Chairperson appealed to Dr Naidoo to get to the issue at hand.

Dr Naidoo felt he needed to provide context to how Mr Molefe came into the picture. In his first meeting with Minister Brown, Dr Naidoo appealed for the Minister to appoint some of the Board members as executive directors and not non-executive directors to assist in recovery at Eskom. The Minister clearly said she would not do so. He accepted this. The Board then began to clean up Eskom from leadership level because management was saying load shedding would continue for a long time to come and would not stop...

The Chairperson again urged Dr Naidoo to speak to the reappointment of Mr Molefe as the Committee was running out of time.

Mr Tseli said the Committee should just move on if Dr Naidoo did not have anything to clarify because clarity was what Members were seeking. What Dr Naidoo was currently talking to was not assisting the process and was irrelevant to the reappointment of Mr Molefe.

The Chairperson urged Dr Naidoo to respond to the questions posed by Members and speak to the reinstatement of Mr Molefe.

Mr Shivambu said the question to Board members was their relationship with Oakbay – Members did not need the autobiography of Dr Naidoo.

Dr Naidoo said he would go straight to Mr Molefe's term when he had resigned and then returned back to Eskom – following the *State of Capture* report, he heard in the media that Mr Molefe resigned from Eskom and it was understood he left the entity and was gone. Paperwork brought to the Board showed early retirement. When the paperwork was processed by the Eskom pension fund, it was publically stated the value was R30 million which the Minister duly declined. As non-executive director of the Eskom, he made clear the buck stopped with the Board – it was the Board who would make decisions for Eskom as the accountable accounting authority for Eskom. This explained why the Minister only heard of certain matters in the media. There was no communication whatsoever between the shareholder and Board members as all communication went to through the chairperson of the Board – Dr Naidoo only met with Minister Brown at induction as a Board member, at the Eskom AGMs in 2015 and 2016 and today. The chairperson did not sit on any of the committees of the Board of Eskom – all records of the Board were available.

Once it was understood Mr Molefe was gone, advertisements for Eskom CEO commenced. A recruitment agency was appointed and a shortlist of candidates was received. The process was halted when Minister Brown declined the R30 million pension fund payment to Mr Molefe. The Board then reviewed the payout, as the Minister requested it did, and the choice was then made to rescind the initial decision. This meant Mr Molefe either resigned or returned to work. It was debated and legal and audit advice was sought. Dr Naidoo made it clear he had no relationship with Oakbay. The Glencore discussion started at Eskom long before Mr Molefe arrived. Glencore owned the Optimum contract which supplied ground (essentially coal). The contract expired in 2018 and Glencore indicated it wanted more money for the ground after it invoked the clause in the contract to plead hardship. Eskom said it was also facing hardship and declined their offer. Eskom was all about coal – it converted coal into electrical energy. The price of coal determined the price of electricity to customers and so it was vital to ensure contracts were not on a runaway. Glencore was very smart to ask for a price increase before the contract expired in 2018 as it could then set a new base price for the next 30-year period going forward. Glencore then threw in the towel and declared business rescue – the consequence was loss of jobs and loss of production. Eskom however had contingency plans. There was no relationship with Glencore other than the straight supplier-customer communication.

Mr Zethembe Khoza, Eskom Board member, said the application received from Mr Molefe was for early retirement. Mr Khoza said he had no personal or direct relationship with Oakbay. The Board did support the reinstatement of Mr Molefe as CEO on the basis of his performance, the performance of Eskom, strategy put in place going forward and working off of the legal advice obtained. The Board did look into matters arising from the *State of Capture* report but the legal opinion obtained said the matters were simply allegations and required further investigation. This was why the Report was not taken on review. The legal opinion said only the findings could be reviewed.

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Mr Gungubele thought the response from Dr Naidoo affirmed why a parliamentary inquiry was necessary. It was clear both Dr Ngubane and Dr Naidoo did not care about the effects of Mr Molefe's reinstatement on the reputation of Eskom. The only concern was about numbers and money as if to say we have money so people should shut up because there was no problem – if the balance sheet was healthy, the public should shut up about the problems of Eskom, was effectively what was being said. Dr Ngubane said the same thing about the SABC but now the broadcaster was struggling to find money. The Committee was not concerned about money. Turning to the 2016 MOI, section 3.6.2 said "the company shall not appoint or remove the chairperson of the Board, the Group Chief Executive...other than as provided for in this MOI". It also said in section 3.8 "the shareholder may direct the company to take any action specified by the shareholder if the company was in financial difficulty or being mismanaged". How did this relate to the statement of Dr Naidoo that the buck stopped with the Board? The MOI further said "if the company fails to perform its function, the shareholder has a duty to direct". Section 14.3.1 said "the shareholder shall, on behalf of the company, have exclusive power in exercising its ownership of control pursuant to the provision of section...to appoint and remove the Chief Executive as an employee of the company". This meant the Minister was not as powerless as Dr Naidoo explained her to be.

It was said Mr Molefe could not clear himself but the Public Protector's report made reference to him and his conduct – who then should clear his name? The Member had a sense the Minister did not exercise her role of oversight in directing Eskom. He was concerned about the lack of concern of the general public opinion about the general state of Eskom – Dr Naidoo also stated Mr Molefe did resign. Based on responses received today, a parliamentary inquiry was required.

Ms Mazzone asked if the application to NERSA would no longer be necessary and South Africans would no longer have to panic about increased tariffs because the numbers of Eskom were as good as the Committee was informed today. It was ironic that Eskom always asked for more when today it was heard the financial performance of Eskom was great. It was as if the controversy surrounding Medupi and Kusile, and the Hitachi deal, did not exist. It was shameful for each Board member to profess to the Committee that nothing was wrong with Eskom – keeping the lights on in SA was the only job of Eskom. She could not believe the Board thought it should be congratulated for this one job. She was angry to hear about the acceptance of obviously flawed legal opinion and to hear Dr Ngubane say the Committee treated the Board as idiots – the Board was treating the Committee as if they were idiots. How could it be that every legal opinion in the country differed to the one accepted by the Board? It was clear Minister Brown was being kept in the dark about many happenings in Eskom. The Member pointed out that she was being sued for a total of R80 million – R30 million by Eskom, R20 million by Mr Koko and R50 million by Mr Molefe. Cliffe Dekker Hofmeyr was being used to investigate Mr Koko but was the very same law firm being used to sue the Member – this was a direct conflict of interest because the firm being used to sue her was the very same firm basically being used to investigate its own client. There was unacceptable behaviour from the Board but yet the Minister allowed it to continue. The Committee was being lied to as was the Minister – it was very obvious Mr Molefe resigned from Eskom and the spin by the Board was now very embarrassing. The Board was an embarrassment and disgrace to SA – she urged the Minister to suspend the Board with immediate effect.

Mr Tseli was highly disappointed by the responses received by the Committee on this matter today. There were also so pertinent questions which had not been responded to such as if the case was pursued, was the case winnable? Would personal responsibility be taken if the case failed? State resources could not continuously be used on matters not likely to be won.

Mr Steenhuisen questioned why the 2014 MOI was used instead of the 2016 one. The Shareholder Management Bill would certainly be welcomed but there was very little chance the Bill would see the light of day until early next year because Parliament's legislative agenda was packed. What immediate steps, outside of the Bill, were being taken to rectify some of the matters viewed as problems? Mr Molefe could clear his name by taking the *State of Capture* report on review – the fact that Mr Molefe had not done so revealed some degree of guilt on his part. Anyone who was innocent would seek to clear his/her name months ago. When on the SABC parliamentary inquiry, the chairperson of the SABC board, up until the last minute, professed the wonderful performance of the SABC to the Committee, how well managed the Broadcaster was and was a world leader in entertainment – it is now known this was not the truth and the SABC was rotten to the core. The same applied to Eskom – one only needed to open a newspaper on any given day or watch Carte Blanche on a Sunday night to see the devastating destructive nature of people in Eskom. The Member was not encouraged by the apparent naivety and blasé attitude of the Board to the shortcomings. There seemed to be complete focus on the balance sheet of Eskom and not on the governance structure of the organisation. There were people in Eskom who were corrupt and using their position in the SOE for their own benefit and that of others. The behaviour today before the Committee did not instil the Member with confidence that the Board could deal with this – the complete focus on the balance sheet meant the rest of the organisation was neglected. Parliament would hold Eskom accountable for its governance and stewardship of public funds. Once Mr Molefe raised his hand to become a Member of Parliament, he ceased to be an employee of Eskom – one could not be both fish and fowl. Even if Mr Molefe did not furnish Eskom with a formal letter of resignation, the day he was sworn in as a Member of Parliament, took the oath of office and signed it in the presence of a parliamentary official, he became a Member of Parliament and was no longer an employee of Eskom.

Mr Steenhuisen did not buy the argument that the best option was for Mr Molefe to remain at Eskom – it was impossible to remain if one had already left the organisation. Particular focus needed to be given to section 76 of the Companies Act which required members of a board to act in good faith and proper purpose, with diligence and care of service and in the best interests of the company. Hiring someone with significant public charges hanging over one's head, which had not been cleared, with more charges stemming from one's time at a previous parastatal (Transnet) and took the Constitution loosely, was not a fit and proper person to be a CEO of a company. The Minister would not get far with her ambitions with the current Board and she would end up being the fall person for wrongdoing and lack of due diligence and fiduciary responsibility.

Mr Singh thanked the Chairperson for the manner in which she chaired the meeting and the programming of the Committee to meet with the Executive Authority and the Board. He hoped the Minister and Board did not leave the meeting today with the attitude of "I came, I saw, I conquered" because the minds of Members were certainly not conquered into thinking all was well with Eskom. There were many more questions to ask. In a previous motion of no confidence debate in Parliament, IFP Leader Mangosuthu Buthelezi asked why the country was being destroyed for one person. Similarly, why was Eskom being destroyed for one person? Did this one

Dr. J.S. D.Z.R.

person have so much influence over the Board, Minister and other functionaries in Cabinet? He proposed the Committee call the Minister and Board for a follow-up meeting after the Committee applied its mind on the way forward – answers could only be achieved through a full investigation. 164

Mr Gordhan said financial performance could seem good until paper was shredded as was the history of big financial institutions. Numbers could tell many stories but there was always a flip side. Clean audit reports were seen in municipalities and departments but auditors only checked a sample of transactions and ultimately it was hoped that sample was representative of what was going on. It was fascinating to note there was no litigation against any media about the assertions made against Eskom – if there was good governance, the Board would surely be worried about the allegations made. If these were lies, why was it not being challenged by Dr Ngubane and Dr Naidoo? Part of the problem was that the Committee did not have the time, or skills, to go through all media reports in detail. If there was such a thing a conscious, as the SA National Council of Churches suggested, there would be an unburdening of what was done to undermine public confidence. The faith community was availing itself to any employee or manager to profess what had been done. The world and Africa was watching SA in how it was allowing the decline in governance, management and delivery of SOEs. Governance and management of SOEs was one of the major concerns of all three credit rating agencies – when a body like Eskom had guarantees of R350 billion and was in default in any kind of way, this would have serious consequences for the fiscus.

Mr Gordhan suggested the Committee call the CEO of the Eskom pension fund to hear what he/she had to say about some of the things said to Members. The Minister had significant powers assigned to herself in the 2016 MOI to hire and fire CEOs and members of the Board – in the interests of the public, perhaps some of these powers need to be exercised sooner rather than later.

Mr Shivambu wondered if the Minister could speak more to why she was withdrawing her opposition to part A of the relief sought by court papers of both the DA and EFF and other interested parties.

The Minister said this was because the matter was not sought against her.

Mr Shivambu thought the important issue to be spoken to more clearly was the context of a captured CEO of a SOE - Mr Molefe worked with a Mr Singh in Transnet where the two channelled hundreds of millions of Rands to a company which was owned by directors with links to Gupta companies. This company then received work from Eskom for hundreds of millions when Mr Molefe and Mr Singh moved from Transnet to Eskom. Tegeta, owned by the Guptas and Duduzane Zuma, then received huge coal deals of Eskom. Mr Molefe was found to be in the home of the Guptas 19 times in the space of 4 -5 months. When Ajay Gupta was interviewed by the previous Public Protector, Thuli Madonsela, he said Mr Molefe was a very good friend of his and spent lots of time in the Gupta house. The Companies Act, Public Finance Management Act (PFMA), MOIs and other key directives, which provided guidance on the ethical conduct of directors of companies, prohibited friends benefiting from that company. This was the issue at the heart of the matter today and was the context guiding what should be done. He agreed that the Committee should demand the minutes of the Board meetings. Information should also be provided on the deals Eskom provided to Tegeta and others. The reason why Mr Molefe was reinstated was because the Guptas wanted to continue to loot Eskom. As the SA Communist Party said, Mr Molefe was brought to Parliament in an attempt to appoint him Minister of Finance – this was a common fact which could not be disputed. When this attempt failed, Mr Molefe was reinstated at Eskom to continue with looting – the Committee would not fold its arms and pretend as if this was not known. Decisive leadership needed to be taken to stop this looting by the Guptas who also unfortunately controlled the President and instructed people to do wrong things. Perhaps an instruction should be given that the Minister should not oppose anything in court in relation to Mr Molefe. The Committee should also deal with some of the deals signed by Mr Molefe as CEO who was being used by the Gupta's for looting.

The Chairperson highlighted the findings of the Public Protector, as a Chapter Nine Institution, were to be respected as the findings of the Auditor-General of SA were.

The Minister said she was always available to meet with the Committee however Wednesdays were difficult because of it being Cabinet day. Reasonably and democratically, the Minister could not be instructed about what she should or should not do in terms of the court matter- she took the decision to not oppose part A of the court proceedings based on legal instruction. In terms of the MOI, these were dynamic documents which could be changed along with significance and materiality. In terms of her affidavit, the 2014 MOI did not require the Minister to be noted as a party to the employment agreement of the Group CEO (the Minister was appointed in May 2014). Paragraph 14.3.4 of the 2016 MOI required the Minister to be noted – the Minister had changed the 2014 MOI in 2016 to give her the power to be noted. On 7 March 2016, Mr Molefe and Dr Ngubane, in his capacity as chair of Eskom's Board, concluded an executive employment contract, some three months before the adoption of the 2016 MOI – this was a matter which the court would have to rule on.

The Chairperson asked which MOI was currently in use.

The Minister responded that it was the 2016 MOI – this MOI was passed in July 2016.

Mr Gungubele pointed out section 13.3.2 of the 2014 MOI said the shareholder could appoint a Chief Executive from a shortlist of candidates provided by the Board.

An official from the Department said the 2016 MOI required the Minister to be noted on both the contract and employment to be consistent in terms of appointment processes to become a party to the contract. The 2014 MOI did not require the Minister to note the contract.

Mr Gungubele found this confusing – if the 2014 MOI empowered the Minister to make the appointment, it could not be said the Minister had no interest in the contract. There was some serious inconsistency.

The official replied that the MOIs were consistent on employment processes but the inconsistency was in terms of the Minister being a party to the contract –the 2016 MOI had now clarified this. It was correct that the Minister could participate in the appointment process as allowed for in the 2014 MOI. The 2016 MOI took the process one step further by saying the Minister must now also be a party to the contract.

N.J.S

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The Minister found the way in which the MOIs were written to be complicated – the 2014 MOI was not as clear the 2016 MOI was. In terms of processes in place to fix the matters beyond the new Bill, there were a number of processes in play such as a six-month review to look at conflicts of interest. Appointments of chief executives in the public sector was slightly different than the private sector in that in the public sector, Cabinet approval was also required especially in terms of schedule two of the PFMA. After the court hearing, the 2016 MOI could also be strengthened. Another mechanism was the external evaluation of Board members which was done for the past two years – the idea was to give the Minister an opportunity to rotate members before the AGM, if needs be. The next Eskom AGM would be in June/July 2017 so this process was already under way. There was a systemic problem in managing SOEs and this was something to fix in the SOE Reform process – this would remove fragmentation and “looseness” in the relationship between the shareholder representative and the SOE. 165

The Minister hoped to have the investigation into procurement matters underway soon – not everyone held the same opinion but she wanted to see the SOEs performing more optimally than what they were doing now. She and the Deputy Minister had just come from a meeting with a credit rating agency – she cared that Eskom was financial stable and had good, strong governance as it was important. This was also important to the credit ratings agencies. Eskom did have the highest government guarantee in SA and Eskom had not defaulted on its credit rating. She would take all comments made by Members into cognisance. She subjected herself to parliamentary scrutiny. Everyone would be in court on 30 May and hopefully by then there would be more clarity on certain matters.

Deputy Minister Martins said the Committee raised a number of pertinent issues. In terms of procurement of coal at Eskom, Tegeta was named as being closely associated with the name of the Gupta family. The Department could carry out an investigation, as a matter of urgency, into procurement of coal so that there was clarity on the contracts in question. All companies involved could also be identified along with the period of the contract, scope etc. to ensure there was transparency.

The Chairperson summarised the session by noting the Committee was concerned by the state of Eskom and breakdown in communication between the shareholder and Eskom. The Committee was also concerned by the breakdown of corporate governance principles at Eskom – the Committee viewed the reappointment of Mr Molefe with serious concern. The Committee saw the reappointment as an illegal action until the Committee was convinced otherwise. The Committee supported the decision of a parliamentary inquiry, in line with the rules of the National Assembly, to look into the Eskom Board. The Committee must be provided with the documents required in relation to the correspondence and decision taken to reappoint Mr Molefe and other necessary documents required. The Committee was not convinced by what it heard today and so would appreciate any further information.

#### **The way forward**

The Committee decided all requested documentation be provided to it within 14 days.

Mr Singh pointed out the outcome of the court case would also be important. The Office of the Speaker would have to provide the Committee with more resources in order to carry out its inquiry.

The Chairperson said all requirements would be placed in the application. The programme of the Committee would have change.

Ms Mazzone emphasised the need to have the documentation in 14 days. The inquiry could then start in 21 days.

Mr Steenhuisen thanked the Chairperson for the way in which she managed the meeting today. The Committee would need to apply its mind on who was subpoenaed – the full picture would only emerge if the right people were called before the Committee. The Committee should consider calling people from the Gupta family, Tegeta and from Eskom itself to begin to unravel the picture.

Mr Gungubele said the Committee would rely on legal advice in this regard also in terms of the scope of the inquiry.

The meeting was adjourned.

W.J.S

D. R. R

# ANNEXURE “ZR17a”

ZR17a-166



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

National Assembly  
The House Chairperson: Committees,  
Oversight & ICT:  
Mr CT Frolick, MP  
PO Box 15 Cape Town 800 Republic of South Africa  
Tel. 27(21) 403 3897 Fax: 27(21) 461 9462  
speaker@parliament.gov.za

15 June 2017

Ms S Rantho MP  
Acting Chairperson  
Portfolio Committee on Public Enterprises  
Parliament PO Box 15  
Cape Town  
8000

Dear Ms Rantho

**ALLEGATIONS OF STATE CAPTURE IN ORGANS OF STATE**

I am sure that you are aware of numerous allegations of state capture that have appeared in the media in recent weeks. Some of these allegations involve members of the Executive and officials in a variety of state-owned enterprises such as Denel, Eskom, South African Airways (SAA) and Transnet.

I would like to request that your committee investigate the allegations within the parameters of the Rules and report any findings, where applicable, to the National Assembly as a matter of urgency.

Yours sincerely

**CT FROLICK MP**  
**HOUSE CHAIRPERSON: COMMITTEES**

cc The Speaker to the National Assembly  
Acting Secretary to Parliament

DZR  
N.J.S

# ANNEXURE “ZR17b”

ZR17b-167



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

National Assembly

**The House Chairperson, Committees,  
Oversight & ICT:****Mr CT Frolick, MP**

PO Box 15 Cape Town 800 Republic of South Africa

Tel: 27(21) 403 3897 Fax: 27(21) 461 9462

speaker@parliament.gov.za

15 June 2017

Mr L Mashile MP

Chairperson

Portfolio Committee on Home Affairs

Parliament PO Box 15

Cape Town

8000

Dear Mr Mashile

**ALLEGATIONS OF STATE CAPTURE IN ORGANS OF STATE**

I am sure that you are aware of numerous allegations of state capture that have appeared in the media in recent weeks. Some of these allegations involve the former Minister of Home Affairs in the granting of citizenship to non-South Africans.

I would like to request that your committee investigate the allegations within the parameters of the Rules and report any findings, where applicable, to the National Assembly as a matter of urgency.

Yours sincerely

**CT FROLICK MP****HOUSE CHAIRPERSON: COMMITTEES**

cc The Speaker to the National Assembly

Acting Secretary to Parliament

D.Z.R.  
H.J.S

# ANNEXURE “ZR17c”

ZR17c-168



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

National Assembly  
The House Chairperson, Committees,  
Oversight & ICT:  
Mr CT Frolick, MP  
PO Box 15 Cape Town 800 Republic of South Africa  
Tel: 27(21) 403 3897 Fax: 27(21) 461 9462  
speaker@parliament.gov.za

15 June 2017

Ms D Magadzi MP  
Chairperson  
Portfolio Committee on Transport  
Parliament PO Box 15  
Cape Town  
8000

Dear Ms Magadzi

**ALLEGATIONS OF STATE CAPTURE IN ORGANS OF STATE**

I am sure that you are aware of numerous allegations of state capture that have appeared in the media in recent weeks. Some of these allegations involve members of the Board of the Passenger Rail Agency of South Africa (PRASA).

I would like to request that your committee investigate the allegations within the parameters of the Rules and report any findings, where applicable, to the National Assembly as a matter of urgency.

Yours sincerely

**CT FROCLICK MP**

**HOUSE CHAIRPERSON: COMMITTEES**

cc The Speaker to the National Assembly  
Acting Secretary to Parliament

DZR  
N.J.S

ZR17c-169



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

National Assembly  
The House Chairperson: Committees,  
Oversight & ICT:  
Mr CT Frolick, MP  
PO Box 15 Cape Town 800 Republic of South Africa  
Tel: 27(21) 403 3897 Fax: 27(21) 461 9462  
speaker@parliament.gov.za

25 August 2017

The Honorable Ms. Magadzi, MP  
Chairperson: Portfolio Committee on Transport  
National Assembly  
Parliament of the Republic of South Africa  
Cape Town  
8000

Dear Hon Chairperson

**RE: LETTER DATED 15 JUNE 2017 ON ALLEGATIONS OF STATE CAPTURE**

I confirm that we've met and discussed the contents of the above-mentioned letter; we also agreed on an approach in dealing with the matter at hand.

Over the last two months serious allegations has been made in the public domain about state capture and the alleged role of certain Members of the Executive and/or the Departments/entities under their authority.

In terms of the Constitution, Parliament has a direct oversight role over the Executive. The sources of authority of the National Assembly is contained in Rule 2 of the National Assembly Rules and is thus primarily derived from the Constitution of the Republic. Parliament is amongst other legally bound and empowered to exercise oversight over the Executive and to keep it accountable for Executive action. Allegations against a Member of the Executive, the line function Department and/or entities under his/her jurisdiction

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ZR17c-170

warrants the attention of the relevant committee to clarify issues under contestation. The relevant Member of the Executive must be provided with a fair opportunity and platform to respond and where possible clarify allegations in the public domain. This should be the point of departure before the committee determine its next course of action. The Portfolio Committee is also reminded of the report of the Public Protector into the affairs of PRASA and must avoid re-opening investigations that have been concluded. Furthermore, the committee must perform its functions in terms of Rule 167 of the Rules of the National Assembly.

Finally, the committee must determine the resources required and communicate the needs to my office.

Yours sincerely



C T FROLICK MP

HOUSE CHAIRPERSON: COMMITTEES

cc The Speaker to the National Assembly

Secretary to the National assembly

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D. Z. R.

N. J. S.

# ANNEXURE "ZR18"

ZR18-171

**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

National Assembly  
The House Chairperson: Committees,  
Oversight & ICT:  
Mr CT Frolick, MP  
PO Box 15 Cape Town 800 Republic of South Africa  
Tel: 27(21) 403 3897 Fax: 27(21) 461 9462  
speaker@parliament.gov.za

23 August 2017

Mr S Luzipho MP

Chairperson: Portfolio Committee on Mineral Resources

Parliament PO Box 15

Cape Town

8000

Dear Hon Chairperson

Your letter dated 18 August 2017 is at hand and refers. I confirm that we've met and discussed the contents thereof in a meeting earlier this afternoon; we also agreed to an approach in dealing with the matter at hand.

Over the last two months serious allegations has been made in the public domain about state capture and the alleged role of certain Members of the Executive.

The sources of authority of the National Assembly is contained in Rule 2 and is primarily derived from the Constitution of the Republic. Parliament is amongst other legally bound and empowered to exercise oversight over the Executive and to keep it accountable for Executive action. Allegations against any Member of the Executive warrants the attention of the relevant committee to clarify issues under contestation. The relevant Member of the Executive must be provided with a fair opportunity and platform to respond and where possible clarify allegations in the public domain. This should be the point of departure before the committee determine its next course of action. Furthermore, the committee must perform its functions in terms of Rule 167 of the Rules of the National Assembly.

Finally, the committee must determine the resources required and communicate the needs to my office.

Yours sincerely

C T FROLICK MP

HOUSE CHAIRPERSON: COMMITTEES

cc The Speaker to the National Assembly

Acting Secretary to Parliament

D. J. S.

D. J. S.