

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No.:

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

AFRICAN NATIONAL CONGRESS

First Respondent

AFRICAN NATIONAL CONGRESS

DEPLOYMENT COMMITTEE

Second Respondent

THE DEPUTY PRESIDENT OF THE

AFRICAN NATIONAL CONGRESS

Third Respondent

THE PRESIDENT OF THE REPUBLIC

OF SOUTH AFRICA

Fourth Respondent

THE GOVERNMENT OF THE

REPUBLIC OF SOUTH AFRICA

Fifth Respondent

THE MINISTER FOR PUBLIC SERVICE

AND ADMINISTRATION

Sixth Respondent

FOUNDING AFFIDAVIT

M 631

TABLE OF CONTENTS

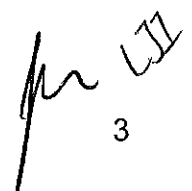
I. INTRODUCTION AND OVERVIEW.....	4
II. THE PARTIES	6
III. THE BACKGROUND TO THIS APPLICATION	8
IV. BACKGROUND TO THE ANC'S CADRE DEPLOYMENT POLICY.....	12
V... THE EVIDENCE BEFORE THE COMMISSION REGARDING THE POLICY OF CADRE DEPLOYMENT.....	18
THE EVIDENCE OF MS BARBARA HOGAN	18
THE EVIDENCE OF MINISTER GWEDE MANTASHE	21
THE EVIDENCE OF PRESIDENT CYRIL RAMAPHOSA.....	23
VI. THE EVIDENCE OF CADRE DEPLOYMENT AS A CONDUIT FOR STATE CAPTURE AND CORRUPTION.....	26
TRANSNET AND THE DEPLOYMENT OF MR SIYABONGA GAMA.....	26
THE STATE CAPTURE OF ESKOM AND CADRE DEPLOYMENT	28
THE STATE CAPTURE OF PRASA AND THE DEPLOYMENT OF MR LUCKY MONTANA	31
THE STATE CAPTURE OF SARS AND THE DEPLOYMENT OF MR TOM MOYANE.....	32
THE MINUTES OF THE ANC'S CADRE DEPLOYMENT COMMITTEE BETWEEN MAY 2018 AND MAY 2021.....	34
VII. THE LEGAL BASIS FOR THE RELIEF SOUGHT	41
THE ANC'S CADRE DEPLOYMENT POLICY, AND THE DEPLOYMENT COMMITTEE IS INCONSISTENT WITH THE CONSTITUTION AND INVALID.....	42
THE CADRE DEPLOYMENT POLICY IS INCONSISTENT WITH THE PUBLIC SERVICE ACT	48
ALTERNATIVELY, THE PSA IS UNCONSTITUTIONAL TO THE EXTENT THAT IT DOES NOT INSULATE PUBLIC SERVICE APPOINTMENTS FROM CADRE DEPLOYMENT	50
VIII. CONCLUSION AND REMEDY	51

I, the undersigned,

JOHN HENRY STEENHUISEN

state under oath that:


1. I am the leader of the Democratic Alliance ("DA") in the National Assembly. I depose to this affidavit on behalf of the DA. I attach as **FA1** a letter of the Chairperson of the Federal Executive Ms Helen Zille granting me authority to represent the DA in these proceedings pursuant to clause 1.5.6 of the DA's Constitution (available online at <https://www.da.org.za/why-the-da/constitution>).
2. The facts set out in this affidavit fall within my personal knowledge, or arise from documentation in the public domain. I believe these facts to be true and correct.
3. The evidence that the DA relies on in this application largely emanates from the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector ('the **State Capture Commission**' or 'the **Commission**'). This Court may take judicial notice of the evidence led and submitted to the Commission, as well as the reports of the Commission in consideration of this application. Where necessary, I attach certain documentation from the Commission to this application.


3

4. Submissions of a legal nature are made on the advice of the DA's legal representatives.


I. INTRODUCTION AND OVERVIEW

5. This application concerns the African National Congress' (ANC) Cadre Deployment and Development Policy ("**the Cadre Deployment Policy**" or "**the Policy**") annexed as **FA2**.
6. The purpose of the Policy is to permit the governing party, the ANC, to influence which individuals are appointed to, and employed by, important state institutions. In doing so, the Policy ensures that all levers of state power are controlled by those individuals who are loyal to the ANC.
7. The effect of the Policy is that the ANC, rather than the State, has control over the functioning of critical institutions of government. Loyalty to the ANC is prized above merit, competence and ability, and is a precondition for appointment to key institutions of the State.
8. The evidence at the State Capture Commission demonstrates that the ANC's Cadre Deployment Policy has incapacitated important state institutions, blurred the lines between the ANC and the State, and facilitated state capture and poor service delivery. This evidence is dealt with in detail below.
9. The Policy has had a profound effect on the rights of every South African. It has resulted in breaches of several fundamental human rights, and has inhibited

 WJ
4

the ability of the State to function effectively in order to promote the rights in the Bill of Rights.

10. Importantly, the Policy has eroded South Africa's democratic founding commitment encapsulated under Principle 30 of the Constitutional Principles that formed the basis for the adoption of the Final Constitution, to *'an efficient, non – partisan, career – orientated public service broadly representative of the South African Community, functioning on the basis of fairness and which shall serve all members of the public in an unbiased and impartial manner'*.
11. The Policy undermines that founding commitment. This application seeks to restore the commitment to Constitutional Principle 30 by declaring the ANC's Deployment Policy to be inconsistent with the Constitution and invalid. The DA seeks the following relief in this application:
 - 11.1. Declaring the ANC's Cadre Deployment Policy to be inconsistent with the Constitution and invalid;
 - 11.2. Declaring the Policy to be inconsistent with Chapter IV, sections 9, 10, 11 and 12 of the Public Service Act 23 of 1994 ("**PSA**") *alternatively*, declaring Chapter IV of the PSA unconstitutional to the extent that it does not sufficiently insulate the appointment of civil servants from political influence through the Cadre Deployment Policy; and,
 - 11.3. Declaring the ANC's Cadre Deployment Committee to be inconsistent with the Constitution and unlawful;

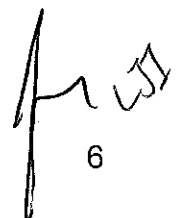
 WJ
5

12. This affidavit is structured as follows:

- 12.1. **PART II** sets out the parties to the application;
- 12.2. **PART III** deals with the background to the application;
- 12.3. **PART IV** explains how the ANC's Cadre Deployment Policy works;
- 12.4. **PART V** deals with the evidence of Ms Barbara Hogan, Mr Gwede Mantashe and President Cyril Ramaphosa on how the ANC's Cadre Deployment Policy Works;
- 12.5. **PART VI** illustrates with reference to the collapse of State Institutions, why the Policy undermines the rule of law and the Bill of Rights;
- 12.6. **PART VII** deals with the legal basis for the relief sought in this application; and,
- 12.7. **PART VIII** concludes with the relief sought.

II. THE PARTIES

- 13. The Democratic Alliance is a registered political party, and South Africa's official opposition party. The DA brings this application in its own interest, and in the public interest in terms of section 38(d) of the Constitution.
- 14. The first respondent is the African National Congress. The ANC is a registered political party, and has governed South Africa nationally since 1994. The


6

Deployment Policy impugned in this application, is a policy of the ANC. The ANC is served at Luthuli House, 54 Sauer Street, Johannesburg Gauteng.

15. The second respondent is the ANC Deployment Committee ("**Deployment Committee**" or "**the Committee**"). The Committee is a structure within the ANC responsible for considering whether individuals ought to be deployed to certain institutions of the State. The Committee comprises 15 members and is chaired by the Deputy President of the ANC. The Committee is served at Luthuli House, 54 Sauer Street, Johannesburg Gauteng.
16. The third respondent is the Deputy President of the ANC, who is the Chairperson of the ANC Deployment Committee. The Deputy President of the ANC is served at Luthuli House, 54 Sauer Street, Johannesburg Gauteng.
17. The fourth respondent is the President of the Republic of South Africa. The President is the Head of the National Executive as contemplated by section 83 of the Constitution. On 28 April 2021, the President appeared before the State Capture Commission to give evidence regarding the practice of Cadre Deployment in the ANC. The President is constitutionally mandated to protect the Constitution and promote the rule of law, both of which are undermined by the Cadre Deployment Policy. The President is cited in this application to the extent that he has an interest herein and is served at Union Buildings, Government Avenue, Pretoria.
18. The fifth respondent is the Government of the Republic of South Africa. The Government comprises all the Cabinet Ministers in the executive, headed by the President. The Government exercises the executive authority of the

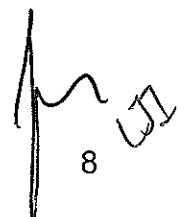
MS
WJ

Republic by fulfilling the functions set out in section 85 of the Constitution. The evidence before the State Capture Commission demonstrates that the Government has played a prominent role in effecting the ANC's policy of cadre deployment. It is cited in this application to the extent that it has an interest herein and is served care of the State Attorney, Pretoria, 316 Thabo Sehume Street, Pretoria Central, Pretoria.

19. The sixth respondent is the Minister for Public Service and Administration. The Minister is the responsible for the administration of the Public Service Act 23 of 1994. The relief sought by the DA concerns the proper and constitutionally mandated interpretation of various provisions in the PSA, and alternatively, in the event that this Court does not accept the DA's interpretation of the PSA, a declaration of invalidity in respect of the PSA, to the extent that it does not sufficiently insulate employment in the public service from the ANC's cadre deployment policy. The Minister is served care of the State Attorney, Pretoria, 316 Thabo Sehume Street, Pretoria Central, Pretoria.

III. THE BACKGROUND TO THIS APPLICATION

20. On 2 February 2021, the DA presented the State Capture Commission with a series of questions concerning the ANC's policy of cadre deployment. It did so in order for the public to gain clarity about how the policy works, and the extent to which the policy has influenced the erosion of important state institutions. A list of the questions presented by the DA to the Commission is annexed as **FA3**.



8 WJ

21. The questions were directed at the President in particular who was due to appear before the Commission in April 2021. The DA sought clarity on, *inter alia*, the President's role in effecting the policy and whether the policy is consistent with section 197(3) of the Constitution which provides that "*no employee of the public service may be favoured or prejudiced only because that person supports a particular political party or case*".
22. Quite clearly, the Constitution recognises that the public service is not an extension of the political party in government at any given time. And where a political party 'deploys' loyal members to key State institutions, those members are favoured over other candidates who do not enjoy the same political advantages.
23. On 28 April 2021, the President appeared before the State Capture Commission. Although the President did not address all of the DA's questions regarding the policy of cadre deployment, it was clear from the President's testimony that the policy was responsible for widespread corruption, state capture, and the erosion of State institutions. This evidence is set out below.
24. Yet, in his testimony, the President sought to defend the policy of cadre deployment remarking that "*cadre deployment cannot be faltered in principle*". The evidence before the State Capture Commission, as set out below, demonstrates the opposite.
25. The ANC's cadre deployment policy was raised with a number of other persons who appeared before the Commission including former Minister of Public Enterprises, Ms Barbara Hogan and the incumbent Minister of Mineral

9

Resources and Energy, Mr Gwede Mantashe. The testimony of the President as well as that of Ms Hogan and Mr Mantashe regarding the ANC's cadre deployment policy is dealt with below.

26. At the outset, however, it is important to highlight that the President and Minister Mantashe repeatedly emphasised at the Commission that the Cadre Deployment Committee merely "*recommends*" candidates, and that it does not dictate to Ministers and other officials, who to appoint. This was done in a bid to sanitise the policy and create the impression that it is not at odds with the Constitution.
27. It is now clear that this evidence was false and misleading. The minutes of the Cadre Deployment Committee between 11 May 2018 and 17 May 2021 demonstrate that the Cadre Deployment Committee does not merely recommend, it appoints.
28. On 22 February 2021, a member of the DA, Dr Leon Amos Schreiber, made a request to the ANC in terms of the Promotion of Access to Information Act 2 of 2000 for various records of the ANC concerning the cadre deployment policy. In particular, the minutes of the Deployment Committee between 1 January 2013 and 1 January 2021. The ANC failed to take a decision regarding the request, which prompted a High Court application before the Gauteng Local Division Court under case number 26339/21 ("**the PAIA litigation**").
29. Although the ANC per Ms Jesse Duarte deposed to an answering affidavit in the PAIA litigation proceedings before the Gauteng Local Division of this Court,


10

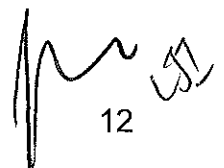
the ANC did not file heads of argument, with the result that the application could not be set down for hearing.

30. An interlocutory application was brought seeking to compel the ANC to file heads of argument, failing which its 'defence' in the PAIA litigation would be struck out. As matters stand, that application has not been finalised.
31. Subsequent to the PAIA litigation proceedings, certain of the records sought in that application have been made public through the State Capture Commission. In particular, the ANC has disclosed to the Commission the minutes of its Deployment Committee between 1 May 2018 and 1 May 2021. These minutes are dealt with below. They illustrate that the ANC's cadre deployment policy is at odds with the Constitution and the PSA.
32. What the ANC has not disclosed are the minutes of the Cadre Deployment Committee between 1 January 2013 and 30 April 2018. This period is particularly important because it covers the Presidency of President Jacob Zuma where corruption and state capture was particularly rife. That the ANC refuses to disclose the minutes of the Deployment Committee during this period is revealing because it has not taken the public into its confidence that the Deployment Committee was not complicit in state capture, widescale corruption and the erosion of public institutions.
33. The State Capture Commission has made its findings in a report consisting of four volumes. These findings demonstrate that the policy of cadre deployment has eroded the functioning of institutions such as SAA, Transnet, Eskom and others. The policy has allowed external influences, such as the Gupta family,

to control key State institutions for their own benefit, and for the benefit of certain ANC members. The State Capture Commission is due to publish the final instalment of its report containing its findings on the ANC's policy of Cadre Deployment on 15 June 2022. The DA reserves the right to supplement this affidavit to deal with the contents of the final report when it is published.

IV. BACKGROUND TO THE ANC'S CADRE DEPLOYMENT POLICY

34. The history of the ANC's Cadre Deployment Policy is set out in the evidence of Minister Mantashe before the State Capture Commission, as well as the affidavit of Ms Jesse Duarte on behalf of the ANC in the PAIA litigation proceedings.
35. According to the evidence of Minister Mantashe, the ANC Cadre Deployment Policy can be traced back to 1985 at a conference in Zambia, where the then ANC President, Oliver Tambo called for the establishment of a political school. The idea behind the political school was that the ANC would provide its members with training, so that when there was a change in power, there would be officials sufficiently capable of managing the public sector.
36. The evidence of Mr Mantashe as well as Ms Hogan and President Ramaphosa before the State Capture Commission explains that the idea behind the policy was to transform a mainly white male public sector that would not be sympatric to the need for transformation and diversity.
37. In the evidence of President Ramaphosa, he contends that the policy is a "*living document*", and has developed over the years.



12

38. The Policy itself (annexed as FA1) sets out its objectives in the following terms:

“strategic deployment of ANC cadres played an important role in the ANC taking control of the post liberation state. The ANC’s deployment committee on national and regional levels played a crucial role in state transformation, contribution to reasonable success in deracialising the public service. This also helped ensure that bureaucratic sabotage by reactionary forces intent on undermining the democratic order would be minimised.”

...

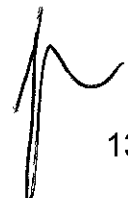

“Our immediate goal as set out in the Strategy and Tactics is to deepen the hold of the liberation movement over the levers of the state and begin to impact positively on other centres of authority and responsibility outside the immediate realm of the state institutions.”

....

“A core pool of comrades needs to be identified for deployment in each of the key strategic centres of authority and responsibility, particularly in relation to the legislatures, civil service, parastatals, independent bodies and ambassadorial appointments. “

39. The Policy also sets out the various levers of State power that it seeks to influence:

“The following are the key centres of authority and responsibility within the state that should be given priority: -

 13 

10.1. Cabinet;

10.2. The entire civil service, but most importantly from director level upwards;

10.3. Premiers and provincial administrations;

10.4. Legislatures;

10.5. Local Government;

10.6. Parastatals;

10.6. Education institutions;

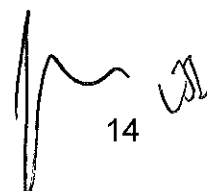
10.7. Independent statutory commissions, agencies, boards and institutes;

10.8. Ambassadorial appointments; and,

10.10. International organisations and institutions.

40. Although the President, Mr Mantashe and Ms Duarte have repeatedly stressed that the Deployment Committee merely “*recommends*” candidates, no such provision is recognised in the Policy itself.

41. In the evidence of Mr Mantashe before the Commission, he explains how the Deployment Committee works. The secretary of the Deployment Committee monitors media and government bulletins for advertisements of vacancies in the public sector. The Deployment Committee then identifies which candidate would be suitable for deployment to any given position from “*a pool of suitably qualified candidates for deployment*”. The Deployment Committee will then “*encourage comrades to apply for the position*”, whereafter it will “*express a*


14

view” to the relevant Minister responsible for appointments. However, Mr Mantashe contends that this does not have the effect of influencing the appointment process because that process is undertaken independently by the relevant Minister.

42. Mr Mantashe’s evidence is directly contradicted by the evidence of Ms Hogan as well as the minutes of the Cadre Deployment Committee. In Ms Hogan’s evidence before the Commission, she explained:

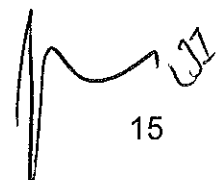
“I – my own view after an experience nowadays is that I sincerely wonder if a Deployment Committee plays a useful role now. You know, it is a handful of people, if you see the number of appointments that go to Cabinet every time, I mean it is huge numbers of people, you do not know how many institutions Government has got, and for a handful of people just simply to decide that this is their preferred candidate, on what basis, what transparency is there?”

...

I am not saying that the Deployment Committee did not always operate with honesty and integrity, but the weakness of the system is that if the Deployment Committee is captured by whatever forces it can have a fundamental impact on Government. And so we do have to protect Government from undue influence.

...

But it became apparent during my time, and we will see it later in a press statement issued by the ANC or statements to the press that even the NWC, the National Working Committee, which is the Executive



15

Committee of the ANC saw it as their right to instruct a Minister who should be appointed and not appointed. That is an abuse of power and that is usurping executive authority. Why have a Minister if you are going to instruct that Minister about what happens". (emphasis added).

43. The minutes of the Cadre Deployment Committee between May 2018 and May 2021 (which is dealt with in detail below) demonstrate that not only does the Committee instruct Ministers who ought to be appointed, it also requires Minister to prepare a list of names for it (the Deployment Committee) to approve before the Minister makes an appointment. As examples:

43.1. On 22 February 2019, the Deployment Committee resolved, regarding the appointment of commissioners to the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities that:

"The Committee will not yet endorse the shortlist. The DSG, with each member here, will headhunt a certain number and approach certain groupings etc, and will compile a preferred list, and submit a list by Friday next week. It will be confined to members of the Committee who are here. The Ministers will appoint four and the Committee to the interview panel.

The current chair will not remain. Cde Bridgette Mabandla will be the Chair and the current Deputy Chair will be retained.



16

- 43.2. On 11 May 2018, the minutes reflected that the Committee told Dr Edna Molewa, the Minister of Environmental Affairs, that she “*is allowed to choose from her identified short list*” for the appointment of the CEO of Isimangaliso.
- 43.3. The minutes of 26 November 2018 record Minister Susan Shabangu as “*requesting the Committee to grant permission for the final interviews of the short list of five (5) candidates*” for the Chief Executive Officer (CEO) of the South African Social Security Agency. The Committee “*commended*” Minister Shabangu for approaching the Committee correctly on every step of the process.
44. What is clear is that the Deployment Committee does not merely “*recommend*”, it controls the entire appointments process from who Ministers may interview, when Ministers may conduct interviews and who eventually gets appointed.
45. But even on the ANC's false version that it merely “*recommends*”, the policy is still unconstitutional. It allows the ANC to influence the appointment of persons because it has close contact with the Minister making the appointment. It places those candidates who wish to serve in the civil service but are not politically connected with the ANC, at a disadvantage, and it undermines the objective of a career-orientated public service as envisioned by section 195 of the Constitution.



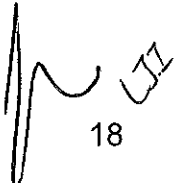
17

V. THE EVIDENCE BEFORE THE COMMISSION REGARDING THE POLICY OF CADRE DEPLOYMENT.

46. In this part of the affidavit, I deal with the evidence before the Commission regarding the ANC's policy of cadre deployment, and in particular, the evidence of Ms Hogan, Mr Mantashe and President Ramaphosa.
47. The evidence of Ms Hogan clearly demonstrates that the Policy undermines the Constitution and the rule of law and has promoted state capture. The testimony of both Mr Mantashe and the President similarly evidences the role of cadre deployment, and the Committee, in promoting state capture, yet both Mr Mantashe and the President sought to defend the policy at the State Capture Commission.
48. The full transcript of the evidence of Ms Hogan, Mr Mantashe and President Ramaphosa is available through the Commission's website and is not annexed to this affidavit in order to avoid overburdening the pleadings. Only certain portions of their testimony are annexed to this application. However, at the hearing of this application, the DA will provide this Court with copies of the full transcript of their evidence.

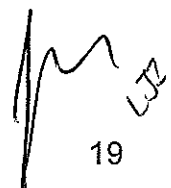
THE EVIDENCE OF MS BARBARA HOGAN

49. Ms Hogan appeared before the Commission on 21 November 2018. Her evidence highlighted the fact that there was no transparency and accountability in how the Cadre Deployment Committee functioned. She recognised that the


18

Committee possess extraordinary powers, yet the manner in which it functions is secretive.

50. Ms Hogan also emphasised in her testimony how the ANC "*saw it as their right to instruct a Minister who should be appointed and not appointed*". She testified that the practice of the ANC in which it deployed candidates was "*an abuse of power and.. [a] usurpation of executive authority*".
51. Ms Hogan highlighted, in particular, the influence that former President Jacob Zuma brought to bear over the appointment of a new CEO of the Transnet Group following the vacancy created by the departure of Ms Maria Ramos. The board of Transnet had undertaken a professional selection process and had identified Mr Sipho Maseko as the qualified candidate for the position.
52. But despite the fact that Mr Maseko had outstanding credentials, and was the most suitable person for the position of CEO, his appointment was not favoured by the President, and various ANC members including Mr Jeff Radebe, Minister Sipiwe Nyanda and the ANC Youth League, who had all expressed their support for the appointment of Mr Siyabonga Gama to Ms Hogan.
53. Ms Hogan had conveyed to the President that Mr Gama was not the board's choice; that Mr Maseko was the most qualified person for the job; and that Mr Gama was the subject of an inquiry into procurement irregularities where serious allegations against him had been made. Despite this, President Zuma was adamant that Mr Gama should be appointed.



19

54. Ms Hogan was asked to comment on her views of reports from insiders in the ANC's National Working Committee that Mr Gama was recommended by the ANC's deployment committee, and remarked that *"it may well have been, but that was never drawn to [her] attention"*.
55. Importantly, Ms Hogan highlights the effects of cadre deployment on incapacitating state institutions, and undermining the ability of those institutions to function in a manner that serves the country:

"it is unacceptable, and this is why I do feel that the Commission does need to look at the issues of how boards are appointed? What level autonomy, what level of professionalism is engaged and how we respect people. But is not only boards. There is a person like Siphso Maseko. He is running a major parastatal [subsequently appointed as the CEO of Telkom], the share price has shot up since he took over.

What are we saying to Siphso Maseko? A completely competent Manager who has come flying through the tests, that he is not good enough because for some reason the ANC does not see him as one of them...

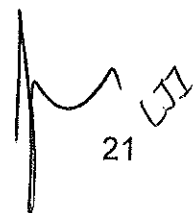
*This notion **that there is an in – house, and there is an out – house and the way to pursue your career is to beat, is to walk a beaten path to Luthuli House and ingratiate yourself with the party.** And I do think that we need to look at that **relationship between the state and the***

***party** and the way people are being mobilised to spread falsehood and disinformation". (emphasis added).*

56. Part 2 Vol 1 of the State Capture Report dealing with the State Capture of Transnet recognises Mr Siyabonga Gama as one of "*the primary architects and implementers of state capture at Transnet*". Mr Gama is understood to have accepted regular, large cash payments through Gupta associates and to have increased the control of Gupta associates over Transnet operations. Millions of rands were lost to irregular expenditure, with little benefit to show for the entity. Today, Transnet no longer serves the development of South Africa's economy.
57. Ms Hogan's evidence underscores the dangerous and damaging effect of cadre deployment. Important state enterprises such as Transnet are captured through the policy of deployment to serve the interests of certain individuals and families. Mr Gama was not a suitable candidate for the position of CEO at Transnet. Yet, the ANC saw it fit to undermine and "*usurp*" the power of the Minister of Public Enterprises to make appointments to relevant positions in State Enterprises.
58. Extracts of Ms Hogan's evidence before the Commission is annexed as **FA4**.

THE EVIDENCE OF MINISTER GWEDE MANTASHE

59. Mr Mantashe appeared before the State Capture Commission on 14 April 2021. His testimony largely concerned the origins of the cadre deployment policy, and the intricacies of the policy.


21

60. Mr Mantashe explained that *“comrades once deployed are expected to work on behalf of the movement”*. When questioned by an evidence leader about how deployment in the interests of the ANC can be squared with the constitutional requirement of a non – partisan public service, Mr Mantashe glibly remarked *“your question assumes that there is no political system”*. Mr Mantashe’s answer illustrates that there is little appreciation for the distinction between party and State.
61. Mr Mantashe confirmed the contents of the Policy in which it is indicated that *“decisions of the organisation... are final and the breach of this policy shall be considered a serious offence to be considered by the appropriate structure”*.
62. The purpose of the cadre deployment policy was explained by Mr Mantashe in the following terms: *“to deepen the hold of the liberation movement over the levers of the state”*. The following interaction evidences the extent of the cadre deployment policy on the *“levers of state power”*:

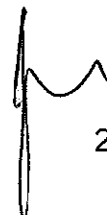
ADV FREUND SC: *And clearly when you refer here to the Liberation Movement you must be referring to the African National Congress and presumably its alliance as well?*

MR MANTASHE: *That is the Liberation Movement*

MR FREUND SC: *Yes. And when you talk about control over the levers of the state that presumably includes the Public Administration*

MR MANTASHE: *Yes, if you are government you must have that.*

MR FREUND SC: *And it includes control over the public service which is part of the public administration, you agree?*

 22 WJZ

MR MANTASHE: Yes.

MR FREUND: And it includes control over the state-owned enterprises, agree?

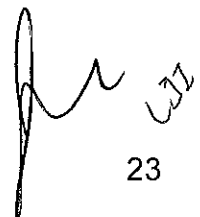
MR MANTASHE: Yes. Those are tools in the hands of a government budget to execute.

63. Throughout his testimony, Mr Mantashe maintained that the ANC does not deploy, but merely recommends the appointment of cadres. Relevant extracts of Mr Mantashe's testimony dealing with cadre deployment in the ANC is annexed as **FA5**.

THE EVIDENCE OF PRESIDENT CYRIL RAMAPHOSA.

64. President Cyril Ramaphosa appeared before the State Capture Commission on 28 April 2021 and again on 11 and 12 August 2021. At this first appearance, the President appeared in his capacity as former Deputy President of the ANC and as President of the ANC. At the second appearance, the President appeared in his capacity as former Deputy President of South Africa, and President of South Africa.
65. In his testimony before the Commission, the President recognised the potential harm of cadre deployment. This is evident from, *inter alia*, the following statements:

"With the passage of time more reports began to surface in the public domain about the alleged capture of public enterprises by private



23

interests under the influence of certain individuals notably members of the Gupta family in executive decisions and appointments.

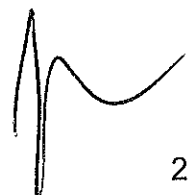
...

*The alignment of use within such an organisation is further influenced by access to the offices of state where the ability to appoint and to dismiss and even to dispense patronage **is concentrated amongst a few individuals**. For the ANC, this was compounded by its own subjective challenges.” (emphasis added).*

66. The President conceded in his testimony that there were weaknesses in the cadre deployment policy.
67. There were a number of important colloquies between the evidence leader, the Chairperson of the Commission and the President regarding the policy of state capture. These interactions are important because it demonstrates that even on the ANC’s false version that it merely “*recommends*”, the policy is still unconstitutional:

ADV PRETORIUS SC: ... *On the one hand there has been evidence that the policy goes far beyond mere recommendation and in fact is a policy implemented on the instruction and mandate of the deployment committee. That is one view and there is certain evidence in regard to that...*

PRESIDENT RAMAPHOSA: *The deployment committee, as I said in my statement – in – chief, should really be seen as a committee that recommends...*

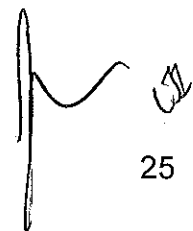


WT

...

CHAIRPERSON: *I am sorry, Mr President. What is the importance, Mr President, of this deployment committee having the power to recommend as opposed to simply identifying potential candidates and encouraging them to apply like everybody and be considered and if they are considered, the most deserving, they get appointed. So what is the importance of the committee having to recommend as oppose to simply saying there is this position available, we would like some of our members that we know are qualified and we think are suitable, or as you say, people in society that the organisation is aware of that it thinks should be encouraged, encourage them to say you apply and you compete with -- like with everybody. So if you did it that way, the people that the deployment committee thinks are appropriate will be among those who will be considered but they will not be coming with the recommendation from the deployment committee that the minister knows about, they will be coming like everybody but the deployment committee and the organisation should be covered because it has made sure that people that it thinks should take those positions are there with others and competing there.*

68. The President could not provide a cogent answer to the Chairperson of the Commission. The Chairperson correctly recognised that even a mere recommendation has the effect of giving certain candidates who are politically connected, an unfair advantage, undermining not only the principle of fairness and equality in the public service, but also non – partisanship.



25

69. When the President was asked whether the Deployment Committee ever goes public about the candidates that it “*recommends*”, he confirmed that it does not.
70. The President was asked to comment on the evidence that the Cadre Deployment Committee goes beyond merely recommending candidates with reference in particular to the evidence of Ms Lynne Brown that:

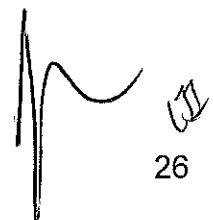
“It must be borne in mind that all appointments to the boards of state owned entities must also be approved by the African National Congress Deployment Committee where after it gets approved by Cabinet”.

71. Notwithstanding this evidence, as well as the evidence of Ms Hogan, the President maintained that the Committee merely “*recommends*”.
72. Relevant extracts of the President’s testimony before the State Capture Commission is annexed as **FA6**.

VI. THE EVIDENCE OF CADRE DEPLOYMENT AS A CONDUIT FOR STATE CAPTURE AND CORRUPTION

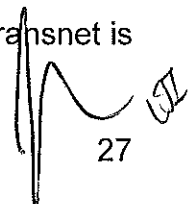
73. The State Capture Commission reports sets out how the ANC’s policy of cadre deployment has resulted in the capture of critical state institutions. Below, certain examples are highlighted from the Commission’s reports as it relates to cadre deployment and state capture.

TRANSNET AND THE DEPLOYMENT OF MR SIYABONGA GAMA.



26

74. As already highlighted, Part 2 of Vol 1 of the State Capture Report recognises Mr Gama as one of the “*architects*” behind the capture of Transnet. Mr Gama was instrumental in allowing the Gupta family to assert its influence over Transnet, ensuring that the entity serves the interests of the Gupta family, rather than the State. Mr Gama is alleged to have received kickbacks from the Gupta family, and made dubious donations as CEO of Transnet to the Jacob Zuma Foundation to the value of R 500 000. 00
75. There can be no doubt that the concerns raised by Ms Hogan regarding the suitability of Mr Gama for appointment as CEO were ignored. The serious allegations against Mr Gama made him unfit for the position of CEO. These concerns were raised with the President, but ignored. A meritorious candidate, endorsed by the board of Transnet, was overlooked because, as Ms Hogan explained, “*the ANC does not see him as one of them*”.
76. Mr Gama’s appointment was unquestionably an act of patronage. He was supported by influential ANC members and Ministers. When questioned about his support for Mr Gama, Mr Mantashe’s evidence was opaque on this question to say the least. Mr Gama received the open support of Mr Jeff Radebe and the ANC Youth League.
77. When President Ramaphosa was asked what his views were regarding the appointment of Mr Gama, he mentioned that he was “*not a member of the deployment committee not an official at that stage*”.
78. Today, Transnet is dysfunctional to say the least. It has awarded irregular contracts to the value of R 41.2 billion. The erosion and capture of Transnet is


27

due to the deployment of certain individuals who were loyal to the ANC and President Zuma such as Mr Siyabonga Gama and others.

THE STATE CAPTURE OF ESKOM AND CADRE DEPLOYMENT

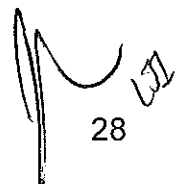
79. Part IV Vol 3 and 4 of the State Capture Report deals with the capture of Eskom. The Report notes that Eskom entered into irregular contracts to the value of R 14.7 billion, mainly with entities linked to the Gupta family.

80. The Report makes it clear that the capture of Eskom would not have been possible without the policy of cadre deployment. When Minister Lynne Brown was questioned about the appointment of Mr Brian Molefe and Mr Anoj Singh as CEO and CFO of Eskom, respectively, she explained that she was not acting alone, but with the approval of the ANC Deployment Committee and Cabinet:

"I do remember the board writing to say that they would like to appoint Mr Molefe and Mr Singh and I approved that. I took it to the ANC Deployment Committee and they approved it and I took it to the Cabinet Committee and they approved it. I mean, sorry. Not Cabinet Committee. I took it to Cabinet and they approved it.

81. I annex pages 89 and 90 of Ms Brown's testimony before the State Capture Commission hereto as **FA7**.

82. Vol 3 of the Report, Part 4 notes that Mr Molefe, Mr Singh and Ms Brown were captured by the Guptas:

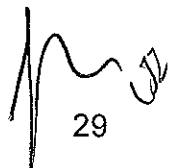


28

"We also know now that the Minister of Public Enterprises at the time, Ms Lynn Brown, was a Gupta associate. So, the Guptas had the Minister responsible for Eskom on their side. Furthermore, they had a number of the members of the Board of Eskom on their side. They had made sure that the Chairperson of the Board of Eskom who had begun not to co-operate – Mr Tsotsi – was removed from the Board and they had made sure that Dr Ngubane – who was also doing whatever the Guptas wanted him to do – was appointed as the Chairperson of the Board. So, the Minister was their Minister; the President was their man. The Chairperson of the Board was their man and the Acting Group CEO was their man. The Acting Chief Financial Officer was also their man. That is Mr Anoj Singh. The Guptas were in complete control of Eskom. All the positions of strategic importance were occupied by their people. In these circumstances there was no way that, if they said that Mr Brian Molefe should be appointed Group CEO without a competitive process, a competitive process would be initiated.

83. The Commission, in no uncertain terms recognises that the ANC's policy of cadre deployment was responsible for the breakdown in a number of SOEs including Eskom:

"South Africans thought that the ANC government was in control of Eskom but it was not. It had relinquished the control to the Guptas and those people the Guptas wanted. The ANC and the ANC Government should be ashamed that this happened under their



29

watch. The question that the people of South Africa are entitled to ask is: where was the ANC as the Guptas took control of important SOEs such as Transnet, Eskom and Denel? Where were they? What were they doing? Were they aware of everything but lacked the courage to stop President Zuma and his friends, the Guptas, in what they were doing? Were they looking the other way?

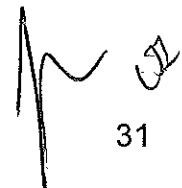
These questions are not being asked because it is accepted that the ANC should get involved in the appointment of members of the Boards of SOEs and in the appointment of Chief Executive Officers and Chief Financial Officers of SOEs but they are being asked because the ANC's position – which both President Ramaphosa and Mr Mantashe made clear in their oral evidence – is that it has a right to have a say on the people who are appointed as members of the Boards of State Owned Entities, and those who are appointed as Chief Executive Officers of such entities. It takes the view that it is entitled to deploy its own people or members in those positions. Whether this position taken by the ANC is correct or not is an issue that will be dealt with in a later Part of this Report... “ (emphasis added).

84. The evidence before the Commission underscores the role of the Gupta family in capturing the State. The Gupta family appointed Ministers, and dismissed Ministers. Minister Fikile Mbalula testified that he was informed of his appointment as Minister of Sports and Recreation by the Gupta Family. Mr Brian Molefe's appointment as Group CEO of Transnet was published in the

Gupta – owned New Age newspaper before the actually occurred appointment occurred, and Minister Lynne Brown dutifully complied with the demands of the Gupta family facilitating the state capture of Eskom.

THE STATE CAPTURE OF PRASA AND THE DEPLOYMENT OF MR LUCKY MONTANA

85. Mr Lucky Montana is widely believed to have been deployed as the CEO of the Passenger Rail Agency of South Africa (“PRASA”). In his evidence before the State Capture Commission, Mr Montana informed the Commission that “*I belong to the African National Congress. I joined it in my teenage years as a student activist ... and with all the things happening today, I still remain loyal to the ANC*”.
86. Mr Montana is considered as responsible for having allowed PRASA to fall prey to state capture by channelling lucrative contracts through corrupt contractors to the ANC and losing billions of rands in irregular expenditures. He has admitted that he paid R 80 million to a tendering company which said it was fundraising for the ANC after the company was awarded a R 3.5 billion contract by PRASA. The Courts have made damning findings relating to corrupt tenders during Mr Montana’s tenure at PRASA.
87. The most damning feature of Mr Montana’s legacy at PRASA, however is the state in which PRASA finds itself in today. Passenger rail services are dangerous, unreliable, and dilapidated, when they run at all. Facilities and infrastructure are plagued by vandalism and neglect. Ultimately, it is ordinary South Africans who suffer in consequence.



31

THE STATE CAPTURE OF SARS AND THE DEPLOYMENT OF MR TOM MOYANE

88. Volume 1 of the State Capture Report deals with how SARS was decapitated, and its institutional integrity eroded at the hands of Mr Tom Moyane, President Zuma and consultancy firm, Bain & Company. The Report notes that the “*massive failure of integrity and governance at SARS*” commenced when Mr Moyane was deployed as Commissioner.

89. On Mr Moyane's own version at the Commission, he did not have any experience in matters of taxation or running a revenue service:

ADV FRANKLIN SC: *Right, so, Mr Moyane, am I correct at this point in time when you applied in 2013, you had no experience running a revenue service or any experience in matters of taxation, is that correct?*

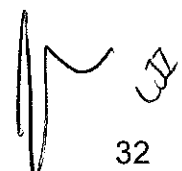
MR MOYANE: *You may did I have experience in running a revenue service?*

ADV FRANKLIN SC: *Yes.*

MR MOYANE: *No, I never had experience of running a revenue service.*

90. Mr Moyane also testified that he was aware that Mr Zuma had earmarked him as the Commissioner of SARS before his appointment. I annex pages 107, 108, 109, and 123 of the Transcript of the State Capture Commission on 16 May 2021 hereto as **FA8**.

91. Despite Mr Moyane's gross inexperience with matters of revenue collection and taxation, he was nevertheless appointed as Commissioner of SARS.

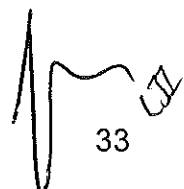


32

92. The Commission in its Report notes that there is a common feature in the capture of state institutions: that is, the policy of cadre deployment. The Commission notes that capture of SARS was no different from the capture of other entities such as Eskom, Denel, and SAA:

*“What Mr Symington said about how highly regarded SARS was internationally before it was subjected to capture by Bain under Mr Moyane’s leadership is **no different from what I was told about SAA at some stage, Eskom at some stage and Denel** at some stage each of which were subsequently run down considerably **with rampant corruption and state capture.** All of which happened under happened **under the watch of the Government of the ruling party, the African National Congress. Most, if not all, of these entities were led by the Chief Executive Officers and Boards of Directors who would have been approved by the ruling party through its national deployment committee.** These entities did not drop overnight from the internationally highly regarded entities that they once were to what they subsequently became. **The decline happened over a number of years but both the government and the ruling party failed dismally to make any effective interventions to halt the decline. Either they did not care or they slept on the job or they had no clue what to do.***

It is clear, therefore, that SARS was a highly effective service at both oversight and enforcement. Mr Williams said that no one, at that stage, could have legitimately described SARS as dysfunctional. Against this


33

background, there was simply no need for the services of a management consultancy.” (emphasis added).

93. There are many other examples of state capture flowing from the ANC’s cadre deployment policy. These include SAA under Ms Dudu Myeni, Denel, and the SABC under Mr Hlaudi Motsoeneng. The Commission noted that these entities disintegrated because the ANC’s deployment committee “*approved the Chief Executive Officers and Boards of Directors*” to the entities. There can be no doubt, therefore, that the ANC’s policy of cadre deployment has resulted in large scale corruption, and the erosion of important state institutions, with the result that many of these entities have become dysfunctional.
94. The ANC’s desire to ensure that it controls “*all levers of the State*”, has decapitated important levers of the State, directly affecting millions of South Africans. The decapitation of SARS meant that important revenue necessary to build the State and realise the socio – economic rights obligations in the Constitution, could not be realised because the necessary revenue could not be collected. The erosion of PRASA resulted in many South Africans not being able to commute reliably and safely. And the irregular contracts awarded by Transnet and Eskom means that billions of rands, necessary for the development of South Africa, is lost to irregular expenditure. All of this is the direct result of the ANC’s cadre deployment policy.

95. The minutes of the Cadre Deployment Committee between May 2018 and May 2021 illustrates that the Committee not only is directly involved in the appointment process, it also controls who gets appointed.
96. The minutes of the Cadre Deployment Committee between May 2018 and May 2021 is annexed hereto as **FA9**.
97. The minutes reveal that the Committee intervened in at least 88 different state institutions, and summoned 29 Ministers and Deputy Ministers as well as the President to account to it, in order to ensure the Committee's direction over crucial public appointments.
98. In the evidence of the President and Mr Mantashe before the Commission, it is contended that the Deployment Committee does not play a role in the vetting and appointment of public servants. However, the minutes reveal this to be incorrect:
- 98.1. The minutes of 8 March 2019 reflect that Committee members are appointed to Selection and Interview panels to ensure the Committee's influence over appointments. This is evidenced by the fact that Committee members would be appointed to the Selection Panel with certain appointments under the Minister of Water and Sanitation such as Rand Water CEO, and the Nkomati, Bloemfontein and TransCaledon TA Boards.
- 98.2. The Committee recorded that *"there is a danger of the Deployment Committee outsourcing its duties and therefore they must come to the*


Committee with the proposed shortlisting and then proceed with the interviews”.

98.3. The minutes dated 23 March 2020 record the Minister of Communications and Telecommunications, Ms Stella Ndabeni – Abrahams, presenting that a list of 11 candidates had not been shortlisted for the Postbank Board. The minutes record that the Committee *“decided that 12 should be presented and adjusted the shortlist”.*

99. That the Committee vetoes, instructs and approves who Ministers may appoint is clear from the minutes of the Committee:

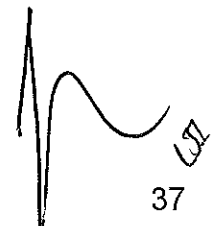
99.1. In the minutes of 30 November 2020, the Minister of Transport, Mr Fikile Mbalula’s presentation on appointments to the Cross – Border Road Transport Agency is recorded as having been *“not accepted”* by the Committee because there were *“issues raised with regard to processes being followed and the candidates and the make – up of the board”*. The Committee accordingly *“sent back”* the issue to the Minister *“to be refined”*.

99.2. The minutes of 11 May 2020 record that the *“office of the [Deputy – Secretary General] was tasked by the Committee with sending names”* to the Minister of Water and Sanitation, Ms Lindiwe Sisulu for appointment to various water boards.



36

- 99.3. On 11 May 2018, the minutes reflected that the Committee told Dr Edna Molewa, the Minister of Environmental Affairs, that she is "allowed to choose from her identified short list" for the appointment of the CEO of Isimangaliso.
- 99.4. On 11 May 2018, the minutes reflect that the Minister of Public Enterprise will appoint an interim board for Eskom: the Minister may choose six people and the Committee "*will forward six (6) nominations*".
- 99.5. The minutes of 20 January 2020 record the Committee as stating that the Minister responsible for Public Service and Administration "*can proceed to interview the candidates*" for the post of the principal for the National School of Governance".
- 99.6. On 11 May 2018, the minutes record that "*the Deployment Committee requested two (2) spaces on the board*" of the Small Enterprise Development Agency ("SEDA"). SEDA is an agency established through the National Small Business Amendment Act 29 of 2004, and in terms of section 11(2) of the Act, it is the Minister who "*must appoint the non – executive members of the Board*". Quite clearly, there was an attempt by the Committee to reserve places on the board of SEDA.



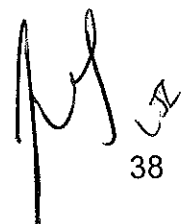
37

99.7. On 11 May 2018, the minutes reflect that the Committee would “forward four (4) names” to the Minister of Public Enterprises, Mr Pravin Gordhan for the Board of SAA.

100. The minutes of the Cadre Deployment Committee also demonstrate that the Committee is actively engaged in the appointments at independent institutions (including the judiciary) and gets involved in the appointment of ambassadors:

100.1. The minutes of 22 March 2021 show the involvement of the Committee in appointments to the Constitutional Court, the Supreme Court of Appeal, the Labour Court, and the Eastern Cape and Northern Cape divisions of the High Court including through naming particular judges that the Committee sought appointed. The minutes record the Committee’s worrying disdain for the legally – sanctioned process for judicial appointments as “incestuous” and allowing the judiciary too much power in determining its leadership.

100.2. The minutes of 26 November 2018 show that the Committee is involved in the appointment of ambassadors, a power reserved for the President. The minutes of 8 March 2019 show that the Committee is involved in deployments to foreign missions. The same minutes record the Committee stating that it needs “to look at where we deploy Cde McBride” with respect to vacancies in foreign missions and further noted that “Cde Supra is also available for international deployment”.

A handwritten signature in black ink, appearing to be 'M' followed by a flourish and a small mark.

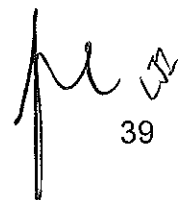
101. The minutes also reveal the importance of party loyalty in appointments:

101.1. The minutes of 11 May 2018 show that the Committee permitted Dr Edna Molewa, the Minister of Environmental Affairs, to appoint an interim board of SANParks *"that should add the names of ANC cadre as per discussion with the {Deputy President}"*.

101.2. The minutes of 3 August 2018 note that while no one may be appointed to the National Research Foundation Board who holds a political office, there nevertheless *"seems to be a good team with a number of people associated with the ANC movement"*. The same minutes record the Committee's views with respect to appointments and retentions on the National Advisory Council on Innovation that *"Cde Derek Swartz is a firm supporter of the ANC"*.

101.3. In the minutes of 3 December 2018, it is recorded that the Committee approved Minister Jeff Radebe's *"recommended names"* to the Nuclear Energy Board on the basis that *"The Chair is a longstanding member of the ANC and all the members are from the ANC"*.

101.4. Disturbingly, the minutes of 11 May 2020 indicate that there exists a *"database of comrades for deployment"*. *"Request for deployment"* is also a standing item in the 2018 – 2021 minutes. The May 2018 minutes reflect the Committee as agreeing *"to forward the names of people*



39

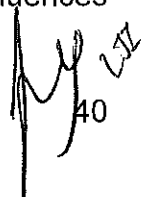
requesting for deployment to Comrade Pravin Gordhan for consideration in State Owned Enterprise Boards” together with a list of curricula vitae.

102. When Ministers seek to act independently, the minutes reveal that they are reprimanded:

102.1. The minutes of 3 August 2018 show the Committee’s dissatisfaction with the Department of Trade and Industry for its representation of appointments to the Export Credit and Insurance Corporation and Non – Proliferation Council as a *“fait accompli”* and resolved to take the matter up with the Minister. This dissatisfaction was again expressed in the minutes dated 20 January 2020. The Committee reminded the Minister *“that he must always follow the processes of Deployment before there are any adverts. The Committee made it known to the Minister that he must follow the correct procedure of informing the Committee before any appointments of such are made”*.

102.2. The minutes of 20 January 2020 record that *“the Committee allowed the Minister [of Defence] to go ahead with the process [for appointment of the CEO of Armscor] but was also reminded that in future she must work with the office of the DSG”*.

102.3. In the minutes of 26 June 2020, the Committee raised a complaint with the President that it was being used in certain instances to *“rubber stamp appointments”* and that members of the party were not complying with the Committee’s process and purpose is to ensure it influences

 40

appointments actively and is not merely “a rubber stamp” or recommendation committee. This clearly illustrates that the Committee itself sees a greater role for itself than merely “recommending” candidates.

103. Accordingly, the minutes show the far – reaching role played by the Committee in making appointments, from various civil service appoints, to the various appointments on the boards of institutions. The Committee also influences who gets appointed to independent institutions such as the Courts. The Courts have previously dealt with instances where the institutional integrity of the National Prosecuting Authority (“NPA”) was undermined because of political influence. And, the Courts have previously set aside appointments on the basis of cadre deployment, as was the case in *Mlokoti v Amathole District Municipality and Another* 2009 (6) SA 345 (ECD).


VII. THE LEGAL BASIS FOR THE RELIEF SOUGHT

104. The DA seeks declarations in the following terms:

104.1. First, the ANC’s policy of cadre deployment is inconsistent with the Constitution and invalid;

104.2. Second, that the Deployment Committee is unconstitutional and unlawful;

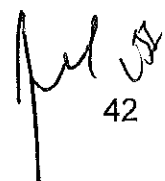
104.3. Third, that the cadre deployment Policy is inconsistent with the PSA; and

 41

104.4. Fourth, in the even that this Court does not find that the cadre deployment policy is inconsistent with the PSA, a declaration that Chapter IV of the PSA is inconsistent with the Constitution. .

THE ANC'S CADRE DEPLOYMENT POLICY, AND THE DEPLOYMENT COMMITTEE IS INCONSISTENT WITH THE CONSTITUTION AND INVALID

105. Section 8 of the Constitution binds both the State as well as natural and juristic persons to the provisions of the Constitution. Political parties such as the ANC are not permitted to adopt policies that is at odds with the Constitution.
106. The ANC's cadre deployment policy is at odds with section 7 of the Constitution. It undermines the Bill of Rights; it erodes the democratic values of human dignity, equality, and freedom; and it weakens the ability of the State to protect and promote the rights in the Bill of Rights.
107. Cadre deployment cultivates and fosters corruption in the State. It ensures that those who are politically connected obtain advantages over candidates who are not politically connected. And once deployed, officials are expected to be "loyal" to the ANC. As Mr Mantashe explained before the State Capture Commission, those deployees who are not loyal will be regarded as having committed a "serious offence" and will be dealt with by "the appropriate structure".
108. The evidence set out above starkly illustrates the damaging effects of cadre deployment. It ensures that otherwise meritorious candidates who are capable


42

of advancing the development goals of South Africa are overlooked, in favour of those candidates who serve the interests of the ANC. The corruption at Transnet at the hands of Mr Siyabonga Gama proves this beyond doubt. The State Capture Commission found that he was one of the “*architects*” of state capture at Transnet. Mr Gama was President Zuma’s decided choice for CEO of Transnet. He refused to consider the credentials of Mr Siphso Maseko who was favoured by the board of Transnet because he was the most qualified and suitable candidate.

109. The Constitutional Court has recognised that section 7 of the Constitution requires the State to adopt measures that combats corruption. In *Glenister v the President of the Republic of South Africa* 2011 (3) SA 347 [(CC), the Court held that

“[175]... its scheme taken as a whole imposes a pressing duty on the state to set up concrete and effective mechanisms to prevent and root out corruption and cognate corrupt practices. As we have seen, corruption has deleterious effects on the foundations of our constitutional democracy and the full enjoyment of fundamental rights and freedoms. It disenables the state from respecting, protecting, promoting and fulfilling them as required by section 7(2) of the Constitution”.

110. Cadre deployment is one of the those “*cognate corrupt practices*” referred to by the Court. The evidence above establishes that it “*disenables the state from respecting, protecting, promotion and fulfilling*” the rights and values of the Constitution.

111. But quite apart from section 7 of the Constitution, the policy of cadre deployment is unconstitutional for two further reasons.
112. First, the policy is inconsistent with Chapter 10 of the Constitution and sections 195 and 197 in particular.
113. Section 195 of the Constitution sets out the basic values and principles governing public administration. It reads as follows:

195. Basic values and principles governing public administration

1. Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

a. A high standard of professional ethics must be promoted and maintained.

b. Efficient, economic and effective use of resources must be promoted.

c. Public administration must be development-oriented.

d. Services must be provided impartially, fairly, equitably and without bias.

e. People's needs must be responded to, and the public must be encouraged to participate in policy-making.

f. Public administration must be accountable.

g. Transparency must be fostered by providing the public with timely, accessible and accurate information.

h. Good human-resource management and career-development practices, to maximise human potential, must be cultivated.

i. Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

2. The above principles apply to

a. administration in every sphere of government;

b. organs of state; and

c. public enterprises.

3. National legislation must ensure the promotion of the values and principles listed in subsection (1).

4. The appointment in public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.

5. Legislation regulating public administration may differentiate between different sectors, administrations or institutions.



6. The nature and functions of different sectors, administrations or institutions of public administration are relevant factors to be taken into account in legislation regulating public administration.

114. Cadre deployment undermines each of the objectives of public administration set out in section 195 of the Constitution. It is manifestly unfair and unequal: it affords advantages to politically connected deployees over other candidates regardless of their merit. And, as Ms Hogan explained before the State Capture Commission it mandates that “*there is an in – house, and there is an out –*



house and the way to pursue your career...is to walk a beaten path to Luthuli House and ingratiate yourself with the party”.

115. Cadre deployment is also untransparent. A Committee in the ANC decides where candidates are deployed. The President confirmed before the State Capture Commission that the decisions of the Committee are not made public. Ms Hogan testified that a *“handful of people just simply decide that this is their preferred candidate”* without any basis and without any transparency in the decision – making.
116. Political parties should not be able to influence who gets appointed to the public service, and ordinarily, political parties do not influence that process. There is a good reason for this: the State and political parties are different entities. There is a professional duty on the public administration to carry out the policies of the government of the day in a dutiful manner, but this does not mean that the public administration is an extension of the government of the day.
117. Cadre deployment ensures that there is a politically – orientated public service rather than a *“career – orientated”* public service, as envisioned by the Constitution. Loyalty is placed above the value of *“ability”* espoused in section 195(1)(i) of the Constitution.
118. At the heart of the policy of cadre deployment is the idea that the ANC must control all *“levers of State power”*. This manifestly erodes the distinction between party and State, resulting in the two concepts being seen as interchangeable. Section 197(3) of the Constitution makes it clear that there is a distinction between the political party in government and the State. It provides:

 46 

"No employee in the public service may be favoured or prejudiced only because that person supports a particular political party or cause.

119. Cadre deployment undermines Constitutional Principle 30 which recognises that the public administration is non – partisan. The policy cannot be reconciled with the values set out in Chapter 10 of the Constitution for South Africa's public administration. The evidence above proves that the policy is not compatible with Chapter 10 of the Constitution, and it must be declared invalid.
120. Second, cadre deployment undermines the manner in which the executive ought to function. It renders the executive accountable to the Deployment Committee who frequently call members of the Executive before it to account for their actions. The President himself testified before the State Capture Commission that he had "*come before the deployment committee [in order to] explain himself*", and "*apologise*" for taking decisions without the input of the Committee.
121. Ms Hogan had testified that the Committee usurps the powers of Ministers in the Executive by dictating "*who should be appointed and not appointed*". Ms Brown testified that the decision regarding the appointment of members to various boards required approval of the Deployment Committee and Cabinet.
122. The minutes of the deployment committee reveal that not only does it instruct Ministers on the appointments that they may make (in breach of various legislative instruments vesting Ministers with the exclusive power to make appointments), the Committee also intervenes on the appointment of

independent office – bearers, such as judges, and ambassadorial positions, which the Constitution vests in the President.

123. The President and the executive is accountable to Parliament for their decisions. Yet, it appears that many of the decisions of the Executive are actually made by the Deployment Committee who is not unaccountable to Parliament, and who does not act in an open and transparent manner.
124. Cadre deployment undermines the manner in which the Constitution determines power may be exercised. It usurps statutory and constitutional powers vested in Ministers and the President by allowing those decisions to be made by the Deployment Committee. And in doing so, it has fostered corruption and state capture, and undermined the values of the Constitution.

THE CADRE DEPLOYMENT POLICY IS INCONSISTENT WITH THE PUBLIC SERVICE ACT

125. Chapter IV of the PSA deals with appointments, promotions and transfers in the public service.
126. Section 9 of PSA deals with appointments to the public service. It provides that *“An executive authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed”*.
127. Section 10 of the PSA provides that no person shall be appointed to any post unless he or she is a South African citizen or permanent resident and is a fit and proper person.

128. Section 11 of the PSA sets out the manner in which appointments must be made:

"11(1) in the making of appointments and the filling of posts in the public service due regard shall be had to equality and the other democratic values and principles enshrined in the Constitution.

(2) In making any appointment in terms of section 9 of the public service

–

(a) all persons who applied and qualify for the appointment concerned shall be considered; and,

(b) the evaluation of persons shall be based on training, skills, competence, and the need to redress in accordance with the Equality Act, 1998 (Act No 55 of 1998), the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender and disability.

129. The PSA clearly envisions that appointments to the public service be conducted in an apolitical manner. It requires that persons appointed be suitably qualified and fit and proper. It recognises that candidates appointed for any position must have the requisite training, skill and competence for the position. It does not permit, in its criteria, any notion of deployment. On the contrary, it envisions that the merit of a candidate will determines their appointment rather than the political associations of that candidate.

130. The cadre deployment policy is at odds with the PSA for two reasons:

A handwritten signature in black ink, followed by the initials 'LJ' in a similar style.



130.1. First, it undermines section 9 of the Act which provides that the executive authority appoints. The cadre deployment policy usurps the ability of Ministers to exercise the executive function set out in section 9 of the Act by instructing Ministers on their appointment, and approving and vetoing the decisions of Ministers.

130.2. Second, the policy undermines the criteria for appointment set out in section 10 and 11 of the Act. The policy undermines the equality and fairness in the appointment process. It favours politically connected persons over those who are not politically connected. And, as the facts illustrate, the policy has proven to promote candidates who are not fit and proper, and who do not have requisite "*training, skills, competence*" over those candidates who are suitably qualified.

131. For all these reasons, the ANC's cadre deployment policy falls to be declared inconsistent with the PSA and unlawful.

ALTERNATIVELY, THE PSA IS UNCONSTITUTIONAL TO THE EXTENT THAT IT DOES NOT INSULATE PUBLIC SERVICE APPOINTMENTS FROM CADRE DEPLOYMENT



132. In the event that this Court does not find that the ANC's cadre deployment policy contravenes the PSA, then the DA seeks orders declaring Chapter IV of the Act unconstitutional insofar as it does not insulate public sector appointments from the ANC's cadre deployment policy.

 
50

133. Section 7 of the Constitution requires the State to adopt measures that promote the Constitution and the rights in the Bill of Rights. As the Constitutional Court has held in *Glenister*, this means that the State must adopt positive measures that “prevent and root out corruption and cognate corrupt practices”.
134. Section 7 therefore demands that the provisions of the PSA sufficiently root out corruption by removing any possibility for the influence of the ANC’s cadre deployment policy on appointments in the public administration.
135. The DA does not seek reading – in relief from this Court in the event that it finds the PSA unconstitutional. Instead, the DA seeks an order requiring the Court to remit the PSA to Parliament for a period no longer than 12 months, to remedy the unconstitutionality of Chapter IV, and to formulate detailed provisions that insulate public sector appointments from the ANC’s cadre deployment policy.

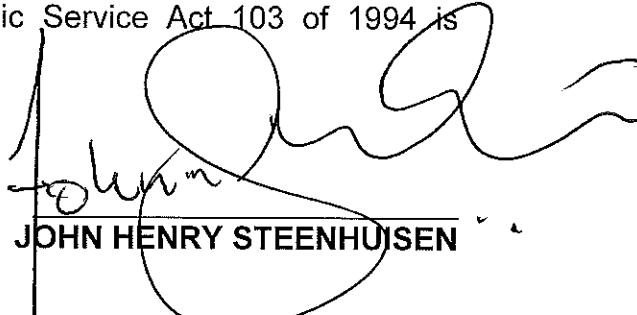
VIII. CONCLUSION AND REMEDY

136. For all the reasons above, the DA submits that the following orders fall to be granted:
1. It is declared that the first respondent’s *Cadre and Development Policy* is inconsistent with the Constitution of the Republic of South Africa, 1996 (“*the Constitution*”) and invalid;
 2. It is declared that the second respondent, a Committee of the first respondent, is inconsistent with the Constitution and unlawful;



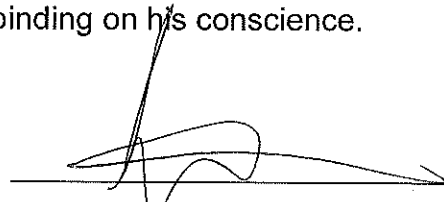
51

3. It is declared that the first respondent's Cadre and Development Policy is inconsistent with Chapter IV, sections 9, 10 and 11 of the Public Service Act 103 of 1994; and,
4. In the event that this Court does not grant the declaration in paragraph 3 above, an order declaring Chapter IV of the Public Service Act 103 of 1994 is inconsistent with the Constitution.



JOHN HENRY STEENHUISEN

Signed and sworn before me at CAPE TOWN on this 9TH day of June 2022 the deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the oath to be binding on his conscience.



COMMISSIONER OF OATHS

LISA JADE WYNGAARD
COMMISSIONER OF OATHS
PRACTISING ATTORNEY R.S.A.
ROSALIE SMIT INC.
EARLO BUILDING, 4TH FLOOR
2 PARK ROAD, GARDENS

FA1



HELEN ZILLE
Chairperson of Federal Council
Tel: +27 21 465 1431
Email: fedexchair@da.org.za
www.da.org.za
P.O. Box 1475, Cape Town, 8000

8 June 2022

MINDE SCHAPIRO & SMITH INC
TYGER VALLEY OFFICE PARK
BUILDING NO. 2
CNR WILLIE VAN SCHOOR & OLD OAK ROADS
BELLVILLE

Attention: Ms Elzanne Jonker

Dear Ms Jonker

DA / ANC AND OTHER – CADRE DEPLOYMENT CHALLENGE

I hereby, as Chairperson of the Federal Council, may act on behalf of and legally bind the Democratic Alliance in all matters in accordance with Clause 1.5. of the DA's Constitution.

I authorise John Steenhuisen, the Leader of the DA to act on the DA's behalf in the legal proceedings it will launch against the African National Congress and others regarding the ANC's deployment policy.

Yours faithfully,

HELEN ZILLE
CHAIRPERSON OF FEDERAL COUNCIL

FREEDOM. FAIRNESS. OPPORTUNITY. DIVERSITY.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.378.1000 Website: www.anc.org.za



ANC CADRE DEPLOYMENT AND DEVELOPMENT POLICY

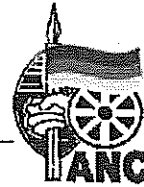
Genesis

1. Elements of cadre development policy can be traced back to the ANC's Kabwe Conference in 1985 when ANC President Oliver Tambo called for the establishment of a political school.
2. In 1994 the ANC recommended the deployment of suitably qualified personnel into structures of government at all levels with the proviso that a sunset clause was agreed to at the political negotiations process at the Convention for a Democratic South Africa (CODESA). The sunset clause in effect slowed down the implementation of deployment in the furtherance of transformation.
3. The ANC used the first term of government to perfect its deployment system, notably with:-
 - 3.1 A deployment framework;
 - 3.2 Guidelines on the relationship between ANC constitutional structures and government executives;
 - 3.3 Guidelines on the role and criteria for ANC Premiers;
 - 3.4 Guidelines on accountability and monitoring of ANC public representatives; and
 - 3.5 Guidelines on the deployment of executive mayors for Local Government Elections.
4. Strategic deployment of ANC cadres played an important role in the ANC taking control of the post-liberation state. The ANC's deployment committees on national and regional levels played a crucial role in state transformation, contributing to reasonable success in deracialising the public service. This also helped ensure that bureaucratic sabotage by

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61864 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



reactionary forces intent on undermining the democratic order would be minimised.

1997 National Conference

5. The deployment policy of the ANC started in earnest at the 50th National Conference in Mafikeng in 1997. The resolution called for the establishment of deployment committees throughout the ANC's organisational hierarchy. It recognised that the ANC needs to put in place its own policy and code of conduct to guide those of its cadres deployed to the public service. There were concurrent discussions about curtailing corruption and the need for guidelines on ethics.
6. The National Conference recognised that a Cadre Policy can only flourish within the context of a mobilised, strong and active organisation and consequently resolved to:-
 - 6.1 Put in place a deployment strategy which focuses on the short, medium and long term challenges, identifying the key centres of power, our strategy to transform these centres and the attributes and skills we require from our cadres to do so effectively;
 - 6.2 The establishment of deployment committees in the NEC, PEC, REC and BEC, which is implementing the above strategy should:-
 - 6.2.1 Discuss the deployment of comrades to areas of work on behalf of the movement, including the public service, parastatals, structures of the movement and the private sector;
 - 6.2.2 Such discussions of deployment of individual comrades be done with appropriate consultation with the cadre/s concerned;

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

- 6.2.3 Do probity checks in all deployments and in general on appointments of staff;
- 6.2.4 Provide support and disputes about the deployment or redeployment of cadres to the next highest structure for resolution.
- 6.2.5 Decisions of the organisation, after appropriate consultation with individual cadres are final and a breach of this policy shall constitute a serious offence to be considered by the appropriate structure.

7. Between January and July 1999 the ANC considered and eventually adopted a deployment policy and framework and guidelines for use by the organisation.

Deployment Framework

- 8. The key centres of authority and responsibility of power are diffused throughout society and located both within and outside the state. Our approach to deployment must therefore be sensitive to these realities.
- 9. Our immediate goal as set out in Strategy and Tactics is to deepen the hold of the liberation movement over the levers of the state and begin to impact positively on other centres of authority and responsibility outside the immediate realm of the state institutions.
- 10. The following are the key centres of authority and responsibility within the state that should be given priority:-
 - 10.1 Cabinet;
 - 10.2 The entire civil service, but most importantly from director level upwards;
 - 10.3 Premiers and provincial administrations;

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE

Chief Albert Lutulu House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



- 10.4 Legislatures;
 - 10.5 Local Government;
 - 10.6 Parastatals;
 - 10.7 Education institutions;
 - 10.8 Independent statutory commissions, agencies, boards and institutes;
 - 10.9 Ambassadorial appointments; and
 - 10.10 International organisations and institutions.
11. Non-state centres of authority and responsibility include:-
- 11.1 The media
 - 11.2 Business (financial, industrial, agricultural, small and medium enterprises, monopolies etc
 - 11.3 Other social and cultural institutions like religious bodies, sports bodies, cultural bodies etc

Guidelines for deployment to various centres

12. There should be a dynamic link between the National Deployment Committee to other deploying structures of the Movement, whether it be the President, list committees, premiers, cabinet ministers, MECs and provincial deployment committees. The Chairperson of the National Deployment Committee should act as the link, on a daily and on-going basis, between the Deployment Committee and these other deployment structures.
13. Whilst the ANC structures should be responsible for final decisions with respect to deployment matters where possible, a dynamic and continuous interaction must be maintained between the deployment committee and the Alliance secretariat. This should be replicated at

AFRICAN NATIONAL CONGRESS**SECRETARY GENERAL'S OFFICE**

Chief Albert Luthuli House 54 Sakar Street Johannesburg 2001 PO Box 61694 Marshalltown 2107 RSA
Tel: 27.11.378.1000 Website: www.anc.org.za



lower levels as well.

14. The decision of the National Deployment Committee should take precedence over those of the provincial deployment committees. We should ensure ongoing engagement between the national and provincial committees to build a common national approach to questions of deployment.
15. Our general approach should be that all strategic deployments should as far as possible be subjected to collective discussions by various structures of the movement. A collective approach will enable the organisation to effectively combat careerism, patronage and opportunism.
16. We should re-affirm the prerogative of the President to appoint cabinet, within the spirit of this collective approach. This will, in practice, mean that in considering cadres for appointment to these positions, the President can consult with the Officials and canvass broader views, as well as use the Deployment Committee as a resource.
17. At provincial level, in addition to the collective approach, we must emphasise the unitary nature of the ANC. The practice of Premiers consulting the Provincial Working Committee in considering the appointment of MECs should continue. In addition to consultation with the Provincial Working Committee, the Premiers should also consult the President in the appointment and dismissal of MECs, as the person overly responsible for matters of governance in the ANC.
18. Our strategy should not only concentrate on deployment at the most senior level, but at lateral entry levels as well. In doing so, we shall

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

prevent situations where we deployed capable comrades to positions only to find that they are completely surrounded by and locked into structures dominated by forces that not only do not share the same strategic objectives but also sometimes even actively work to undermine the goals of the National Democratic Revolution.

19. In the deployment of comrades a careful balance should be struck between organisational deployment needs and personal circumstances. Consultations and discussions should take place with individuals, within the framework of prioritizing the needs of the organisation and transformation. Once comrades are deployed, we should seek to create an environment which allows people to balance their deployment commitments with their family and other responsibilities.
20. A core or pool of comrades needs to be identified for deployment in each of the key strategic centres of authority and responsibility, particularly in relation to the legislatures, civil service, parastatals, independent bodies and ambassadorial appointments.
21. With respect to legislatures, the question of continuity and experience should guide the identification of a pool of comrades, without undermining the need for bringing in fresh blood. The Deployment Committee would argue that for the purpose of the list process, we should set a target of at least 30 percent of comrades who served before in the legislatures to form part of this pool. This has since been increased to 60 percent.
22. Focus should not only be on academic or professional expertise but should also take into account skills and expertise in doing constituency work and working with the masses on the ground.

AFRICAN NATIONAL CONGRESS**SECRETARY GENERAL'S OFFICE**

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1906 Website: www.anc.org.za

23. With respect to Cabinet and MECs, it is assumed that these comrades will be drawn from those who will be elected to the legislature, including the core which we have referred to above.
24. With respect to office-bearers deployed within the organisation through internal elections, discussions and consultations should be held about the alternative deployment options of these individuals well before the conference. Whether they are elected or not would have particular implications for them. This would go a long way to prevent bruising electoral battles within our structures as a result of the career and personal implications of being elected or not elected.

Deployment and Human Resource Development

25. A comprehensive human resource development strategy must be developed particularly targeting youth and women leadership, including the mapping of possible career paths and the advancement of transformation of gender relations.
26. Special attention should be paid to the Youth and Women's League to support their human resource development strategies and assist cadres coming through the ranks of the Leagues with career-pathing.
27. At all times, we must ensue an approach where we broaden the pool of cadres who have an understanding of the policies of the movement and the necessary experience and skills to be able to execute these policies effectively, wherever they are deployed.

Co-ordination

28. The overall strategic objectives of the Movement and the strategic role of each centre of authority and responsibility should guide the process of

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

accountability, supervision and co-ordination in the overall National Democratic Revolution.

29. The Movement and its constitutional structures therefore remain the main centres of power, which should drive the process of transformation in all centres of authority and responsibility.
30. The NEC subcommittees should ensure that comrades who are deployed in a particular centre of authority and responsibility are encouraged to network and to share information and experience. This should be done in a manner which does not undermine the formal structures in the area of deployment nor should it be too hierarchical.
31. It is also imperative that Directors General and Deputy Directors General should have regular forums to share information and discussion in key strategic issues. Similar forums should be established by leading comrades in the private sector, in the parastatals, independent agencies and other structures.
32. This arrangement should not necessarily interfere with the operational autonomy of these centres of power, but is aimed to ensure that what is happening there is in line with and informed by the Movement's policies and strategic direction.
33. Ministers should ensure a collective approach by involving their colleagues in Cabinet, especially with regard to policy matters. The Office of the President and the Cabinet secretariat in particular should be seen as another key area of co-ordination and the driving of integrated and streamlined policies. It should thus be seen as another key area for deployment.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Lutulu House 54 Sauer Street Johannesburg 2001 PO Box 81884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

34. The President in the next term post 1999 must ensure that she or he stamps authority on Cabinet Ministers, ensuring co-ordination and authority. The National Executive Committee of the ANC should review the overall work of Cabinet in relation to our transformation agenda.
35. The monthly ANC Cabinet caucuses and the preparations for national caucuses should be restructured to ensure strategic discussion and ongoing evaluation and monitoring of our transformation agenda.

Organisational culture of the movement

36. Our cadres deployed in whatever centre should take with them the qualities and attributes that we hold dear as a Movement. This includes putting service to the people, an ethic of work and selflessness, respect for the senior structures and cadres of the Movement, responsiveness to the needs of the people and a collective approach to matters.
37. In our deployment we should consciously strive to dispel the notion that we have become a Movement and a leadership which is distanced from the people whom we have served in our long struggle for liberation. We must be true to our tradition of putting the interests of our people and our country first.

Guidelines on the relationship between constitutional structures of the movement and government executives

38. The relationship between structures of the Movement and of government has been amongst some of the difficult issues that we have faced since our ascendancy to power in 1994.
39. While the relationship between these two structures is often best worked out in practice and convention, some guidelines are necessary to help

Handwritten signature and initials, including 'N', 'W', and 'KJ'.

AFRICAN NATIONAL CONGRESS**SECRETARY GENERAL'S OFFICE**

Chief Albert Lutulu House 54 Seuer Street Johannesburg 2001 PO Box 81884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



guide the organisation. We need to ensure an understanding, in theory and practice, that government implements the mandate of the organisation and is accountable to the political structures as well as to the public based on the electoral platform of the Movement.

40. Policy directions of government emanate from the organisation as resolved at the National Conference. Where there is a need to change or modify existing policy precipitated by prevailing conditions in the country at the time or as a result of practical experiences, such a change or modification must be discussed and approved by the relevant political structures. In such instances the President or Premier would make a recommendation to the political structures for discussion and final decision.
41. The President, Premier and members of the Executive must provide regular reports to the political structures and explain how the policies of the organisation are being implemented, monitored and evaluated by government. In other words, the political structures do not deal with the day-to-day affairs of government unless there is an extraordinary situation that requires political advice or decision by political structures.
42. With regard to government appointments, the collective approach reflected in the deployment guidelines adopted by the National Executive Committee between 22 and 24 January 1999 should be followed. This approach will help to deal with the tensions that usually arise between the two structures, particularly if there is a feeling by some in the organisation that some people have been excluded or that an individual who has no political support in the structures has been appointed to the National Executive.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 81884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



43. Some of the situations and practices to avoid would be:-
- 43.1 Allowing political structures to constantly interfere in the running of government and seeking to replace Executive structures of government;
 - 43.2 Allowing government to change or modify policies without consulting the political structures;
 - 43.3 Involving political structures in legalistic or technical debates, for example details of legislation;
 - 43.4 Allowing government structures to utilise political structures as a rubber stamp to mobilise authority for decisions which have not been debated in the movement especially highly contentious ones that are seen to signal a change in policy or direction of the organisation.
 - 43.5 Allowing demagoguery and populism to prevail where the political structures or individuals in them are at loggerheads with the Executive or its members.
 - 43.6 Allowing political debates of a sensitive or strategic nature to be conducted outside the political and government structures, for example in the press, through avoiding the debates in the political structures.
 - 43.7 Above all, political structures should ensure that political conduct, inside and outside government, is conducted in the tradition of the Movement, which is about allowing open debate coupled with decisive action, democracy, delegation of authority and power, and remaining true to the aims and objectives of the National Democratic Revolution.
44. At the 52nd National Conference in Polokwane in 2007, the ANC adopted a resolution mandating the leadership to ensure the implementation of the 1997 resolution on deployment and to strengthen the national deployment committee.

[Handwritten signatures and initials]

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 81884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



45. The Conference also called on the NEC to review the political management of the deployment process and take account of a number of issues, including the following:-

Strategic Centres of Deployment

46. The Strategy and Tactics document identifies the following centres as pivotal to national democratic transformation:

- 46.1 The State;
- 46.2 The Economy;
- 46.3 Organisational Work;
- 46.4 Ideological Struggle; and
- 46.5 International Work.

47. Deployment within each of the five pillars requires its own set of strategic discussions. For example, within the state sector, what principles should inform the deployment of cadres to institutions with judicial or investigative functions, and how should cadres deployed to perform such functions relate to the organisation. Within the 'economy' the potential for cadres to accumulate capital in their personal capacities is manifest. Should such capital accumulated by deployed cadres be regarded as under the command and control of the Movement and, if so, how?

Deployment and remuneration

48. How should our deployment strategy manage the reality that remuneration in a capitalist society is often determined by market forces? In other words, it may make perfect sense for a particular cadre to occupy a strategic position within the state, but such a cadre may already be engaged in activity elsewhere in society that generates greater pecuniary reward than that offered by the state. This poses significant

Handwritten signature and initials, possibly 'WJ' and 'KJ'.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE

Chief Albert Lutulu House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



and complex challenges for deployment strategy in a capital society.

The composition of deployment structures

49. What should be the composition of the deployment committee? In this regard the possibility of conflict of interest is of prime importance. Simply put, the potential for NEC members to have political or other interests in the deployment of particular cadres to particular positions cannot be ruled out. In this context, the NEC would need to consider whether the deployment structures should not be composed of veterans without a direct interest in the outcomes of the deployment committee's deliberations. This is especially important in the context of the Mafikeng resolution's conclusion that 'breach of policy shall constitute a serious offence'.

Linkage to broader cadre deployment programmes

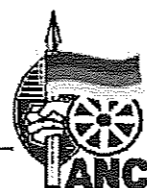
50. In more general terms, we would need to give attention to the question of how we link our deployment strategy to a broader set of principles and programmes that inform our cadre deployment strategy. It cannot be assumed that, after many years of a weak and inconsistent approach to deployment and cadre development, we do indeed possess an army of conscious and politically-trained cadres, able to carry out the strategies of the Movement in different centres.

Organisational Renewal

51. The resolution of the 52nd National Conference on Organisational Renewal instructed the incoming NEC to review the political management of the deployment process and ensure the implementation of the 1997 Resolution on Deployment, with a view to strengthening collective decision-making and consultation on deployment of cadres to senior positions of authority. This includes strengthening the National

AFRICAN NATIONAL CONGRESS**SECRETARY GENERAL'S OFFICE**

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1600 Website: www.anc.org.za



Deployment Committee.

52. The implementation of this resolution requires more than simply establishing an appropriate structure. It also requires, as a matter of urgency, that the NEC conducts a thorough political discussion which reviews the ANC's overall approach to cadre policy and deployment strategy.
53. A deployment strategy must provide broad guidelines for deployment of ANC cadres to all areas which the Movement crucial for the transformation project. The deployment strategy will ensure that the Movement deploys its cadres in accordance with their knowledge, skills, ability and experience.
54. The NEC was called to implement on the assumption that the ANC has at its disposal 'an army of conscious, committed and properly deployed cadres'. In this context, the resolution notes that 'our Cadre Policy and Deployment Strategy should directly relate to the National Democratic tasks as set out in our Strategy and Tactics document and should actively contribute to the building of strong structures and programmes'.
55. In preparation for local government elections, the ANC has an extensive guideline for the selection of candidates to be councillors, *inter alia*, the involvement of communities in the selection process.
56. Guidelines of ANC deployment policy were revised by the National Working Committee in June 2009. These included:-
- 56.1 Cadres of the ANC should be ready to be deployed where the Movement deemed it necessary to deploy them;
- 56.2 The ANC should look critically at the calibre of candidates that it will field for the 2011 local government elections, as that will determine the organisation's performance.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE

Chief Albert Lutulu House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



- 56.3 Deployees of the ANC should always be loyal to the organisation;
- 56.4 The ANC should set clear standards to guide its deployees who are deployed at all levels and structures of government which should apply to everyone without exception.
- 56.5 Comrades who are deployed in cabinet should not staff their offices along tribal or racial lines.
- 56.6 The deployment process is not an easy process and is open for improvement.
57. In its report to the NEC meeting between 17 and 19 July 2009, the NWC raised and discussed the issue of the principles that informed deployment and the rights of cadres in the exercise of deployment. This discussion emerged in the context of the NEC having identified the need to strengthen the operational capacity of the head office and provinces.
58. At the meeting it was decided that political considerations for deployment should be located within the overall objectives of the Movement and that strong leadership of NEC members were needed to be deployed in the following areas:-
- 58.1 Organisation building and campaigns;
 - 58.2 Policy development and coordination which will be housed in the Policy Institute;
 - 58.3 Communication
 - 58.4 International Relations
 - 58.5 Political education
 - 58.6 The Presidency.
59. At a NWC meeting in August 2009 the ANC tabled its draft policy on declaration of interest to ensure that there is objectivity in decision-making at all levels of the organisation in the best interest of the organisation.
60. The ANC's range of national and regional deployment committees ebbed and flowed over time as the movement battled intra-organisation positioning, optimisation of state governance, factionalism, careerism,

Handwritten signature and initials, including 'KS' and 'CJ'.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



opportunism, desperation for employment, and the organisational dilemmas of having to act against corrupt comrades.

61. The national deployment committee consists of 15 members, primarily from the National Executive Committee, and is chaired by the Deputy President of the ANC, comrade David Mabuza.

Cadre development

62. In April 2013 the ANC developed its conceptual position on an ANC Political School and Cadre Development.
63. The purpose of the political school is to conduct compulsory education for all elected leadership structures.
64. The overall vision is to provide a forum for collective learning through which members share experiences, learn from each other, assess the world around us and the challenges we face as a Movement and empower each other.
65. More specifically the objectives are:-
- 65.1 To provides resources, trainer-training and learning material for broader cadreship development and political education activities in the ANC and democratic Movement with the aim of re-building a culture of mass political education;
- 65.2 Develop middle-layer leaders who will be equipped with the necessary knowledge and skills to consolidate the ANC as a mass-based democratic Movement which must function as both liberation Movement and ruling party with the maximum and effective participation of members for the transformation of society.
- 65.3 Develop the capabilities of cadres to undertake the tasks to which

[Handwritten signature]
WJL

[Handwritten initials]
KG

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE

Chief Albert Lutulu House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



they are deployed and develop the cadres of cadres to support specific ANC campaigns and policy interventions.

65.4 Recognise the potential and aptitude amongst middle layer leadership and from which more senior positions and deployments should be filled.

65.5 Develop linkages with tertiary education institutions and funding agencies in South Africa and abroad with a view to placing ANC cadres with potential.

65.6 Provide training and resources for progressive parties outside Africa, especially on the African continent.

66. The course content and curriculum includes:-

66.1 Ideological development and political consciousness;

66.2 Policy analysis and public management;

66.3 Organisational, technical and party building skills;

66.4 Development and community outreach work in practice.

67. In 2018 President Cyril Ramaphosa launched the OR Tambo Policy Leadership Institute and Dr David Masondo was appointed as the Principal.



Docex 1 | Tygerberg
 PO Box 4040 | Tyger Valley | 7536 | South Africa
 Tyger Valley Office Park | Building Number 2 | Cnr Willie van Schoor & Old Oak Roads | Bellville
 T: 021 918 9000 | 021 918 9020 (Direct Line) | F: 021 918 9070 (General) | 086 613 1061 (Direct Fax)

E: elzanne@mendes.co.za | www.mendes.co.za

Our Ref: DEM16/0507/ELZANNE JONKER/ks | Your Ref: | Date: 1 February 2021

THE SECRETARIAT
 STATE CAPTURE COMMISSION
 Per email: inquiries@commissionsc.org.za

Dear Sir

STATE CAPTURE: COMMISSION OF ENQUIRY – EVIDENCE OF PRESIDENT RAMPHOSA

1. We confirm that we represent the Democratic Alliance, the official opposition in Parliament.
2. Our client has previously written to the commission concerning potential witnesses whose evidence would be vital to the workings of the commission and specifically relating to the mandate of the Commission - to investigate matters of public and national interest concerning allegations of state capture, corruption, and fraud. A Ruling was received by the Chairperson on 14 August 2018.
3. In terms of the Rules of the Commission, more specifically Section 3.1, "the Commission's Legal Team bears the overall responsibility to present the evidence of witnesses to the Commission. A member of the Commission's Legal Team may put questions to a witness whose evidence is presented to the Commission by the Commission's Legal Team including questions aimed at assisting the Commission in assessing the truthfulness of the evidence of a witness. Subject to the directions of the Chairperson, the Commission's Legal Team may ask leading questions."
4. Our client has taken note that President Ramaphosa has been called to testify at the commission. Our client is of the firm belief that President Ramaphosa's testimony will be crucial for the commission especially relating to the role that Cadre Deployment by the governing party has played in state capture. Questions relating to this subject matter will definitely **add value** to the enquiry of the Commission.
5. Our client wishes to take the liberty to suggest that the list of questions, attached hereto,

Minde Schapiro & Smith Incorporated | Attorneys Notaries & Conveyancers since 1926 | Registration number 2010/025182/21

Directors: Heinrich Crous BA LLB | Elzanne Jonker BA LLB | *Jonathan Rubin B Comm LLB LLM | Venesen Reddy LLB

Senior Associates: Gerhard Lourens FPSA® BA LLB | Andre van Breda B Comm LLB

Associates: Jhané Bezuidenhout LLB | Lauren Jacobs LLB

Consultants: Louis Meyer B Juris LLB | Marianne Olivier B Comm LLB LLM | Marais Hoon BA LLB

Vat registration number: 4580257428 | *At Greenacres, Port Elizabeth

member of
phatshoanehenneŷ
 GROUP OF ASSOCIATED LAW FIRMS

Mindes

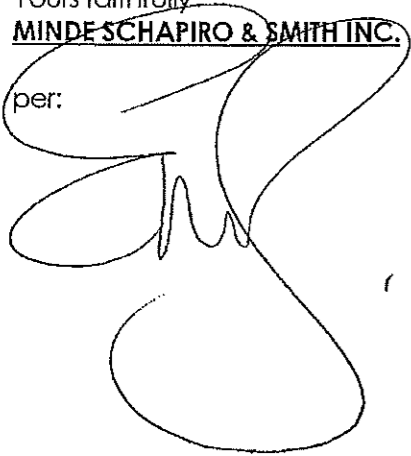
MINDE SCHAPIRO & SMITH

with reference to the memorandum thereto, be posed to the President, who at the height of state capture was the Chairperson of the ANC's cadre deployment committee. The answers would be significant in order to investigate the allegations of state capture, corruption, and fraud.

6. Insofar as the evidence leader appointed to lead the evidence of the President has been identified, we shall appreciate that this letter and its attachment be provided to such evidence leader for consideration and ultimate use.

Yours faithfully
MINDE SCHAPIRO & SMITH INC.

per:



Minde Schapiro & Smith Incorporated | Attorneys Notaries & Conveyancers since 1926 | Registration number 2010/025182/21

Directors: Heinrich Crous BA LLB | Elzanne Jonker BA LLB | *Jonathan Rubin B Comm LLB LLM | Venesen Reddy LLB

Senior Associates: Gerhard Lourens FPSA® BA LLB | Andre van Breda B Comm LLB

Associates: Jhané Bezuidenhout LLB | Lauren Jacobs LLB

Consultants: Louis Meyer B Juris LLB | Marianne Olivier B Comm LLB LLM | Marois Hoon BA LLB

Vat registration number: 4580257428 | *At Greenacres, Port Elizabeth

member of
phatshooneheney
GROUP OF ASSOCIATED LAW FIRMS



SUGGESTED QUESTIONS TO PRESIDENT RAMAPHOSA

1. When did you become the chairperson of the ANC's cadre deployment committee? When did you cease to be chairperson of the ANC's cadre deployment committee? Did you serve on the committee prior to becoming its chairperson? Given your years as chairperson, would you say that you are well-acquainted with the workings of the committee?
2. Why does the ANC have a cadre deployment committee? What is the intention behind the party's long-standing policy of cadre deployment?
3. Please explain the workings of the ANC's cadre deployment committee. How does it go about identifying people it wishes to have appointed to powerful positions in the public sector? How does it come to know of vacancies in the public sector? What are the criteria it uses to select people? Is "loyalty" to the ANC one of the criteria?
4. Once the deployment committee has identified its preferred candidate, how is that preference communicated to officials in the state?
5. Are you aware of any instance where the ANC's cadre deployment committee, or a member of the committee, informed a selection panel, executive authority or any other appointing authority in the state of their preferred choice for appointment to a position of influence in the public sector?
6. Do you believe that pressure being exerted by a political party on the state with the intention of influencing appointment decisions violates the principle of the separation between party and state?
7. Are you aware of any instance where a political party aside from the ANC has ever enjoyed the privilege of informing a selection process that they wanted one of their members appointed to a particular position in the public sector?
8. If not, would it then be reasonable to say that only the ANC enjoys the distinct privilege of advising the state on key appointments?
9. Would it also be accurate to say that as the former chairperson of the ANC's cadre deployment committee, you believe that senior positions in the public service, the public administration, state-owned entities, municipalities and other government agencies should be staffed



M¹
L32

primarily by people who have proven themselves to be "loyal" to the ANC?

10. Once a person is selected as the preferred candidate by the ANC's deployment committee, and that decision is communicated to officials in the state, does that person then enjoy an advantage over other applicants who were not selected by the committee, or who may not be member of the ANC?
11. Section 197 (3) of the Constitution stipulates that "No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause."

Given that cadre deployment is expressly designed to favour members of the ANC deemed "loyal" by the deployment committee while being prejudiced against applicants who are not members of the ANC when it comes to appointment decisions, do you agree that the ANC's policy of cadre deployment violates section 197 (3) of the Constitution?

12. Section 9 (2) of the Constitution further stipulates that "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

Given that cadre deployment in practice disadvantages applicants who do not express a favourable "conscience" or "belief" towards the ANC – as measured through the deployment committee's assessment of "loyalty" to the party – do you agree that the ANC's policy of cadre deployment amounts to unfair discrimination and violates 9 (3) of the Bill of Rights?

13. Could you confirm under oath whether you have ever seen the memorandum entitled "Deployment Committee Procedures," issued by the Secretary-General's Office last year? Can you confirm the authenticity of this memorandum? (Attached)
14. Can you confirm whether the following procedures, outlined in the memorandum, accurately reflect the process currently being followed by the ANC's cadre deployment committee: "The office of the Deputy Secretary General should be informed of all posts prior to them being

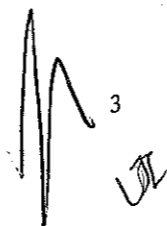
M²
LWJ

advertised and be sent the advert once they have been published. This process is to allow for Comrades who meet the criteria on the database to be allowed to apply...No appointment should be taken to cabinet without passing through the deployment committee first."

15. In particular, can you confirm that it is the policy of the ANC that "No appointment should be taken to cabinet without passing through the deployment committee first"?
16. Can you confirm whether the ANC continues to implement its policy of cadre deployment to this very day?
17. Between the time that you served as chairperson of the committee under President Zuma and the present day, would you say that there have been any substantive changes to how cadre deployment operates in the ANC? Or would you say that it broadly still operates in the same manner as when you were chairperson?
18. During her testimony delivered in November 2018, former minister Barbara Hogan described the ANC deployment committee as "a handful of people [that] just simply decide that this is their preferred candidate, on what basis, what transparency is there?" She went on to say that "the ANC saw it as their right to instruct a minister who should be appointed and not appointed. That is an abuse of power and that is usurping executive authority...It cannot be that closeness too or membership of the ANC should be the determining factors in the selection of candidates to senior positions."


Do you agree with Hogan's assessment of cadre deployment? If not, why not?

19. As the chairperson of the ANC's cadre deployment committee during President Zuma's tenure, do you agree that you were complicit in what Hogan calls "an abuse of power that is usurping executive authority?"
20. Do you accept responsibility for the appointments that were made while you were chairperson of the ANC's cadre deployment committee?
21. Do you agree that the ANC's policy of cadre deployment – which appears to value political "loyalty" to the ANC over demonstrated merit

3
LIT

– was a key element that enabled corruption and state capture through the appointment of unsuitable individuals into positions of power?

22. Do you believe that, in the absence of the ANC policy of cadre deployment and with a stronger separation between party and state, it would have been more difficult for nefarious actors to gain control over the levers of power in the state?
23. Do you believe that the country's current public administration legal framework provides inadequate safeguards against state capture? In what ways do you believe it may be inadequate?
24. Do you believe that the outlawing of cadre deployment and the bolstering of the separation between party and state would be an important element of preventing state capture and corruption in the future?

 4
LII

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

TO: All Deployed Comrades

Deployment Committee Procedures

Dear Comrades,

The Deployment Committee has taken the decision that the following procedures should be followed with regards to deployments of the following positions;

- Director Generals
- Chairpersons
- CEO's
- All boards of SOE's

The office of the Deputy Secretary General should be informed of all posts prior to them being advertised and be sent the advert once they have been published. This process is to allow for Comrades who meet the criteria on the database to be allowed to apply.

This does not alter the current process of what is suppose to be presented to the committee by the relevant minister. The following is required in the presentation of all deployments at least 3 days before presentation;

- Background and summary of challenges
- Post advertisement
- List of abridged CV's of all applicants
- Shortlist with complete CV's
- Recommended Candidates
- Summary of candidates which include columns for Qualifications, Experience, Gender, Age and Province of each candidate

No appointment should be taken to cabinet without passing through the deployment committee first.

Yours Comradely,

President: C Ramaphosa Deputy President: D.D. Mabuza National Chairperson: G Mantashe Secretary General: E.S. Magashule
Deputy Secretary General: J Duarte, Treasurer-General: P. Mashatile

12 NOVEMBER 2018 – DAY 21

FA4

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

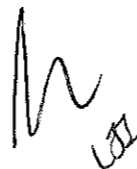
PARKTOWN, JOHANNESBURG

10

21 NOVEMBER 2018

DAY 21

20

Handwritten signature or initials, possibly 'M' and 'LJI'.

PROCEEDINGS HELD ON 12 NOVEMBER 2018

CHAIRPERSON: Good morning Mr Pretorius. Good morning everybody.

ADV PAUL PRETORIUS SC: Morning Chair.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Today Ms Barbara Hogan will be led by Advocate Mokoena.

10 CHAIRPERSON: Thank you. Before, Mr Mokoena before you do that, I just want to attend to one matter that I want to deal with and basically it relates to the media statement that the Commission issued on Thursday. I want to read this media statement again and make an appeal to the public and to the media to please respect the processes of the Commission and to abide by the law. The statement reads:

"Since the commencement of the public hearings of the Commission in August 2018, various sections of the media have disseminated and published contents of witnesses statements submitted to the Commission in connection with the inquiry the Commission before witnesses give evidence before the Commission and without the written permission of the Chairperson.

20 The latest incident relates to the statement submitted to the Commission by Minister Pravin Gordhan, Minister of Public Enterprises. The same thing also happened with the statement submitted to the Commission by former minister of Public Enterprises, Ms Barbara Hogan. Both minister Gordhan and Ms Hogan are yet to give evidence before the Commission.

An investigation is to be conducted to try and establish the



people responsible for the leaks of witnesses' statements, however, in the meantime I wish to draw the attention of all media houses and the public to the provisions of regulations 11(3) and 12(2)(c) of the regulations governing the Commission."

Regulation 11(3) reads as follows and I quote:

"No person shall without the written permission of the Chairperson

10

(a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document or peruse, that is b;

(b) peruse any document including any statement which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson."

Regulation 12(2)(c) reads and I quote:

"Any person who contravenes a provision of regulation 11..."

which includes the regulation I have just read.

20

"...is guilty of an offence and liable on convictions (ii) in the case of an offence referred to in paragraph (b) or (c), to a fine or to imprisonment for a period not exceeding twelve months."

Paragraph 3 of the media statement reads - and 4:

"These regulations make it clear that it is a criminal offence for anyone, and that includes the media, to disseminate or publish,



without the written permission of the Chairperson, any document which includes a witness's statements submitted to the Commission by any person in connection with the Commission's inquiry."

Paragraph 4:

"After a witness has given evidence in public before the Commission and his or her statement has been handed up at the public hearing, the media may publish his or her statement or portions thereof, unless the Chairperson orders otherwise."

10 Paragraph 5:

"I urge the media and everyone to observe Regulation 11(3) and desist from disseminating, or publishing witnesses' statements, or portions thereof, before the witnesses have given evidence at a hearing of the Commission, unless the Chairperson's written permission has been obtained. I therefore trust that in support of the work of the Commission, all media houses, journalists, commentators, analysts and the public at large will not act in breach of the regulations and will show respect for the processes of the Commission."

20 I just want to appeal to the media and the public again to say, in support of the work of this Commission, please just exercise patience. We are not saying that you are not going to be allowed to publish these statements. I am giving permission. I have given permission that once the witnesses have given evidence, you may publish the statements.

I just want to point out that, when witnesses have given their statements to the Commission, those statements are still the subject of investigation within the Commission before the witnesses give their evidence. The legal team looks at the statements, looks at issues that are covered in the statements and may themselves or through the investigators of the Commission seek to check certain things and discuss the statement with the witness in regard to anything that they might have picked up in terms of checking certain things covered by the statement.

10 So, in terms of public interest, I do not think that there is really any special public interest that dictates that they should be published before the witnesses give evidence. Whatever they say in the statements, it means it has been taken care of and will be published and made known to the public. It is just a matter of time. It is not that it is going to be swept under the carpet and therefore that is why it is necessary for the media to publish it ahead of the witness giving evidence.

So, I really appeal to all concerned to just exercise patience and give the processes of the Commission space so that we can do our job properly. Thank you very much. Yes Mr Pretorius.

ADV PAUL PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Mr Mokoena.

20 **ADV PHILLIP MOKOENA SC:** Thank you Mr Chair. Mr Chair, a question maybe posed as to where does one locate the evidence of Ms Hogan with reference to the Commissions terms of reference. Ms Hogan's evidence addresses the term of reference 1.1, to the extent that it deals with the undue influence made to members of national executive in the appointment of boards and/or the CEOs of the SOEs. She will also deal with how she was removed as a minister of Public Enterprises.

The testimony of Ms Hogan will also lay the basis, Mr Chair, for the evidence which the Commission intends leading in relation to the SOEs which - such as Eskom, Transnet, Denel, SABC and SAA. It might include also other SOEs which fell under her portfolio.

Apparent from her statement, she will also testify on these terms of reference, with specific reference to Transnet, Escom and SAFCOL. She will proceed, Mr Chair, to also testify on the issue relating to the termination of SAA route from SA to Mumbai. She will also refer and corroborate the evidence of Ms Mentor in relation to the rumours of her removal as the minister of Public Enterprise. You will see that her
10 evidence in a way dovetails with the period which Ms Mentor have testified upon pertaining to when she visited the Gupta compound and when an offer was made to her.

Initially, Mr Chair, you will recall that Ms Hogan, through the assistance of his legal team, did furnish the Commission with her written witness statement. It was after perusal of the statement, we arrived as the legal team at a conclusion that the statement only implicated one person and it was the ex-president, Mr Zuma.

A notice in terms of Rule 3.3 was then dispatched to the ex-president as early as 22 August 2018. The Commission did not receive any applications in terms of Rule 3.4 or any version from the ex-president, and subsequent to that Mr
20 Chair...[intervenes]

CHAIRPERSON: And in terms of actual receipt by him or his legal team of the notice, that is not an issue they did receive it.

ADV PHILLIP MOKOENA SC: They did receive both statements according to the records of the Commission. There is no issue around that Mr Chair.

CHAIRPERSON: Okay.



ADV PHILLIP MOKOENA SC: And subsequently Ms Hogan, having filed the initial statement, she then supplemented the same statement and attached comprehensive annexures to the statement in order to ventilate the issues which were paramount - or which were appearing in the first statement. So, there is no any change of the version – the version is the same, the second statement simply supplemented the initial statement and it was also delivered to the Commission, on 8 October 2018. In her supplementary statement, Mr Chair, Ms Hogan mentions a number of individuals and organisations and this raised a similar debate, like the one of Ms Lynne Brown, whether a mere mentioning of a person can be equated to that person being implicated within a proper interpretation of Rule 3.3? However, to err on the side of caution, as the legal team we did issue further notices in terms of Rule 3.3 to all individuals, institutions, organisations and parties that we mentioned. The *dies* has since lapsed and no person or party or organisation has applied to cross-examine Ms Hogan, save for two affidavits that we received from Mr Marocha and the other one from Mr Manje, where they simply clarified certain portions of Ms Hogan’s statement, which we will deal with them in due course, but none of them have actually made any formal application in order to cross-examine Ms Hogan.

Ms Hogan, Mr Chair, is represented by Harris, Nupen, Molebatse Attorneys and I am informed that Mr Harris and Mr Macheta[?] are in attendance on behalf of Ms Hogan.

Mr Chair, for ease of reference we have also prepared a bundle containing Ms Hogan’s witness statement and annexures. We propose that that bundle be marked as EXHIBIT L1. Ms Hogan...[intervenes]

CHAIRPERSON: Is that the one written File 2 of 2?

ADV PHILLIP MOKOENA SC: Yes, Mr Chair. There are two files, both of them - we may have to mark them L1, but we will refer to them as File 1 and File 2.

CHAIRPERSON: Yes. Okay. The two files relating to Ms Hogan's evidence will be EXHIBIT L. You said L, hey?

ADV PHILLIP MOKOENA SC: L1.

CHAIRPERSON: Ja. Exhibit L and the one which contains her statement will be referred to as Exhibit L File 1.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: And the one which contains only annexures will be referred to as
10 File 2 of **EXHIBIT L**.

FILES RELATING TO MS HOGAN'S EVIDENCE HANDED UP AS EXHIBIT L

ADV PHILLIP MOKOENA SC: Yes, thank you. Mr Chair, for completeness, there are other parties here to listen to the evidence of Ms Hogan and I am aware that Transnet, that is being represented by Mr Mattau, and I am also told that the SACP it is sending also its legal representative to also listen to the evidence of Ms Hogan in these proceedings. Their legal teams are present.

CHAIRPERSON: Okay. Thank you.

ADV PHILLIP MOKOENA SC: Mr Chair we are ready to proceed with the evidence of Ms Hogan.

20 **CHAIRPERSON:** Yes. Ms Hogan once again thank you very much for taking the decision to come forward and assist the Commission in regard to what you know and what happened during your time as Minister of Public Enterprises. We appreciate it very much. We are investigating allegations, as you know, including allegations of state capture and certain aspects which are set out in our terms of reference. You will be asked questions and if in the process you are asked questions you might interpret as



not so friendly, it will not be anything personal, it is simply because we approach the matter in terms of our reference on the basis that these are allegations. We have to get to the bottom of them. We have got to find the truth and so every witness who comes – if there are questions that need to be asked in order to understand his or her evidence properly and get to the bottom – those questions will be asked, but once again for thank you for coming forward. Thank you.

Yes Mr Mokoena - O, the Registrar will take an affirmation.

REGISTRAR: Please state your full names for the record?

MS BARBARA HOGAN: Barbara Anne Hogan,

10 **REGISTRAR:** Do you have any objection with making the prescribed affirmation?

MS BARBARA HOGAN: No objection.

REGISTRAR: Do you truly affirm that the evidence you will give, will be the truth, the whole truth and nothing but the truth. If so please state. I truly affirm.

MS BARBARA HOGAN: I truly affirm.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you very much. Yes Mr Mokoena you may proceed.

EXAMINATION BY ADV PHILLIP MOKOENA SC: Ms Hogan, you had furnished the Commission with witness statements. Is that correct?

MS BARBARA HOGAN: That is correct.

20 **ADV PHILLIP MOKOENA SC:** If you can keep your mic on.

MS BARBARA HOGAN: Ja.

ADV PHILLIP MOKOENA SC: The initial statement and the one which supplemented the initial statement. Is that correct?

MS BARBARA HOGAN: That is correct.

ADV PHILLIP MOKOENA SC: They appear on EXHIBIT L – just for reference sake, you do not have to go there. Page 1 – 24 and the initial statement appears from page 393 to page 399. Do you confirm those statements under oath?

MS BARBARA HOGAN: I confirm them. Yes.

ADV PHILLIP MOKOENA SC: Can you please, Ms Hogan, proceed to sketch for us a brief synopsis of your personal history.

MS BARBARA HOGAN: Okay. Chair, I had the distinction of being born in Benoni and I grew up there and I was lucky enough to go to university. I went to the University of Witwatersrand and I completed a BA Honours in Development Studies.

10 **CHAIRPERSON:** Just one second Ms Hogan. Is her voice audible enough for everybody? Okay, I think the technical – they must do something to make sure everybody can hear.

MS BARBARA HOGAN: Okay.

CHAIRPERSON: Just one second they will try and sort something out.

MS BARBARA HOGAN: Is that better?

CHAIRPERSON: It looks like that is much better. Can you now hear? Just say something again Ms Hogan.

20 **MS BARBARA HOGAN:** I was born in Benoni...[laughing]. Many more other famous people were born in Benoni, but I claim that right as well. I went to university at Wits and did my Honours degree there in Development Studies. It was at Wits that I first started to become politically conscientized. I arrived there in 1970, which was really the heyday of *apartheid*, the great heyday, and over time I developed a great misgiving about *apartheid* and what it was doing to the people of this country.

I became involved in the start up of what later emerged as the Congress of South African Trade Unions, COSATU. It was a legal advice office. I was involved in

Handwritten signature and initials, possibly 'LSE'.

that and I was involved in student politics and later on I was involved in support work for workers' struggles such as consumer boycotts etcetera.

In 1977 I joined the ANC underground, not the military underground, but the political underground. My reason was that I believed that the apartheid government, particularly after the death of Steve Biko and the banning of the black consciousness organisations, that they had so much power, that unless there was an organisation that was outside of the country which could continue the struggle. We would not be able to break the back of that power.

10 I also firmly believed in the non-racial stance of the ANC. In my university years I had to engage with the issues of the black consciousness movement, which was a predominant movement at that time and whilst I understood, and still do, sympathise with a lot of the positions they took, I felt that the ANC with its non-racial position provided a future for South Africa. So, I joined the ANC underground a political operative. I then – I registered for a Masters in Unemployment in South Africa and I was a full-time student then, and in 1981 I was arrested by the Security Police. Along with me there were – it was a wide scale raid on people. It was said that it was probably the first time in a long time that a broad range of people had been arrested who covered the entire spectrum of South African Society. Whites, Indians, Coloureds, Black. We were sort of seen as the immergence of a non-racial tradition that was now
20 coming forward.

I was initially charged with six - five other people and then charges were later withdrawn against three – one managed to slip the country and one was found not guilty. I then stood trial on charges of high treason. I was found guilty of high treason by the court, although the judge had said there was nothing absolutely illegal that I had done, but I was party to a conspiracy to overthrow the state because I was a member of



the ANC. So, I was then sentenced to 14 years, four to run parallel and I then went to jail – this whole process, I was in detention for six months and then awaiting-trial and finally sentenced seven months thereafter. So, in late 1982 I was sentenced to prison. I was the only white woman prisoner and I was not allowed to be with other prisoner, so I was on my own.

After that I was joined by one or two, three, four, people at a time and after eight and a half years of my time in prison, President de Klerk announced the unbanning of the ANC on 2 February. I was privileged enough to be released from prison two and a half years ahead of my release date, on parole, and I was released
10 two days before President Mandela was released. I wanted time out. It had been a long hard time. But the ANC had just been unbanned. It was still in exile. There were no structures in the country that were ANC. So, Walter Sisulu who headed the interim leadership core of the ANC, at that stage requested that I sit on an interim leadership committee of the ANC in Gauteng and our task was to build the branches and the structures of the ANC. If we were going to be in negotiations it had to be on a democratic basis and we needed a party.

I became the General Secretary of the ANC in Gauteng and I was there for a period of three years. It was a terrible period, as you would recall. When people were being massacred left, right and centre. It was one of the worst periods and it was a
20 very difficult time to persuade people to believe in a future when they themselves were being massacred. We participated as a province, very much in the policy considerations and negotiations around CODESA and in 1994 after the elections – in 1994 I was put forward as a candidate as a member of parliament and in 1994 I assumed my position as a member of parliament for the ANC, on the National list not the Provincial list.

A handwritten signature in black ink, appearing to be 'A', with the initials 'LSE' written below it to the right.

In parliament I served in various capacities. I was chair of the Parliamentary Budget Committee. I chaired the Finance Committee – the Parliamentary Committee on Finance. When I was in prison I was not allowed to continue with my Masters and I was only allowed to do a BCom degree which turned out to be very useful, because in a new country, a newly emerging democracy, economic and accounting skills were very important.

10 So I chaired the Finance Committee, we passed the Public Finance Management Act, the Municipal Finance Management Act, we set in process the procedures to reform the South African Revenue Services, which had completely collapsed during the apartheid years. I later served as the chair of the standing committee of the Auditor General. The Auditor General, I had a very close working relationship with the Auditor General and through our efforts, we were able to establish Public Accounts committees throughout all the provinces and later in the municipalities and they still survive as one of the greatest, the best committees for accountability.

20 In 2008, shortly before the 2009 elections, when shortly after President Mbeki was removed, or resigned from office, President Motlanthe asked me to be the Minister of Health. I am not a health expert, but I had strongly – I was strongly committed to making sure that people who had HIV and AIDS and Tuberculosis, received the proper medication in order to survive and I saw that as my challenge and fortunately, during that period of time we were able to start the process for unleashing a proper regime of care for people with HIV and AIDS. That was 2008.

In 2009 there were the elections and President Zuma appointed me as Minister of Public Enterprises and I served in that capacity until he removed me about 18 months later at the end of 2010.

A handwritten signature consisting of a vertical line with a loop at the top, followed by the initials 'LJZ' written in a cursive style.

ADV PHILLIP MOKOENA SC: Who was your Deputy? Who was the Deputy at the time?

MS BARBARA HOGAN: My Deputy was Enoch Godongwana, who was head of the ANC's Economic Transformation Committee.

ADV PHILLIP MOKOENA SC: So as a Minister of Public Enterprise, now I am talking from the period May 2009, flowing from your evidence, how many SOEs fell under your department and you may also mention them please?

MS BARBARA HOGAN: Yes. There were nine SOEs. The Department of Public Enterprise does not cover all SOEs but there were extremely important ones. There
10 was Eskom, Transnet, it is in paragraph 10 on page four. Eskom, Transnet, SAA, SA Express, Denel, Infracore, PBMR, Alexkor and SAFCOL. They were entrusted to my care.

ADV PHILLIP MOKOENA SC: Now during your time as a Minister of Public Enterprise, you also obtained two opinions; the one was from Wim Trengove and the one from Michael Katz. May I refer you to, just to identify them, Annexure D, page 53. The one runs from Annexure D, Mr Chair, page 53 to 82 and the other one runs from page 83 to 93 of Annexure D. Are you there Ms Hogan?

MS BARBARA HOGAN: Yes, I have them.

CHAIRPERSON: Did you say, page 53?

20 **ADV PHILLIP MOKOENA SC:** Page 53, Mr Chair.

CHAIRPERSON: And that is EXHIBIT LF, File 1.

ADV PHILLIP MOKOENA SC: EXHIBIT F1, File 1.

CHAIRPERSON: And what I have at 53 is on the letterheads of Public Enterprises and I did not expect Counsel's opinion to be on the letterheads of...[intervene]

Handwritten signature and initials, possibly 'LJZ', located at the bottom right of the page.

ADV PHILLIP MOKOENA SC: Mr Chair, let me just recheck that numbering, I might have given you - page 83 Mr Chair.

CHAIRPERSON: 83?

ADV PHILLIP MOKOENA SC: The one of Mr Wim Trengove is from page 83.

MS BARBARA HOGAN: Mr Katz is 68, I think.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Yes, I have got it at page 83. Have you got it Ms Hogan?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes. Are those the opinions that you received?

10 **MS BARBARA HOGAN:** Yes, I have got them.

ADV PHILLIP MOKOENA SC: Would I be correct that those opinions dealt with the appointments and removals of the SOEs and also address the powers and functions of the Minister of Public Enterprises with reference to the applicable legal instruments.

MS BARBARA HOGAN: Correct.

CHAIRPERSON: I am sorry Mr Mokoena, the other opinion is that of Mr Katz, you said.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Katz. I did not hear where you said that is to be found?

ADV PHILLIP MOKOENA SC: It is 68 and he signs at page 82.

20 **CHAIRPERSON:** Okay, thank you.

ADV PHILLIP MOKOENA SC: Yes, Ms Hogan, and do you agree with the conclusions arrived at in those opinions?

MS BARBARA HOGAN: Yes, I do.




ADV PHILLIP MOKOENA SC: Now, may you please in your own words and flowing from your understanding, you know, from your experience as the Minister of Public Enterprise, take us through the structure of ownership and control of the SOEs.

MS BARBARA HOGAN: Okay. There was a period in time before the ANC Government came into power, when SOEs like Eskom, Transnet and whatever, were not companies as such but Government agencies and over the period of time in the late 80's, early 90's and whatever, that status was changed so they then became public utilities and became a company and fell under the Companies Act and in terms of the Companies Act, both the one that prevailed at the time when I became Minister and the
10 Companies Act which then followed on shortly thereafter, the Minister in most cases of all of these nine SOE's is the single shareholder. Now, the Minister is the shareholder and performs her functions as a shareholder on behalf of Government. That is the executive authority assigned to the Minister of Public Enterprise which is to exercise her authority as the shareholder.

Now, as we all know, the shareholder does not run a company, nor does the shareholder interfere in the management of a company. The shareholder has certain prescribed rights conferred on it both by the Public Finance Management Act, by the Companies Act, codes of conduct by the King Report and the shareholders, one of its most important task of the shareholder is to appoint directors at an annual general
20 meeting of the Board and the shareholder can also remove a director under certain conditions.

As a Minister, you have to keep very close watch what is happening in each of these companies and particularly when I refer to companies like Eskom, Transnet, SAA, who have a vast asset base and Transnet and Eskom are essential for the running of the country, for the economy. If Transnet does not work, none of us work. So there is

Handwritten signature and initials, possibly 'LJI', in black ink.

even a greater need for the Minister to be very close to what is happening but not to interfere. There is a handbook that Government gives, that Government issued and which Cabinet adopted in 2008 which prescribes in very clear terms and I am sure the Commission would be very interested, prescribes how the Minister should go about appointing and it is a very - very careful process because you want to have the best people and the most knowledgeable people to run this company.

So then let us go to the directors. The directors have a fiduciary responsibility to the company, not to me as a Minister but to the company. They have to make sure that everything that is done there is for the good of the company. In order to do so they
10 appoint a manager, or a series of senior managers. Often the CFO, the Chief Financial Officer, and the CEO are the most important appointments.

In many of these SOEs, the memorandums of association as they were called then, prescribe that the Minister appoints the CEO, as in Transnet for instance, but under these circumstances no Minister would just go ahead and appoint a CEO because that CEO then has to enter into formal employment contract with the Board and is accountable to the Board for their performance. If there is no trust or no endorsement of that CEO by the Board, it is a very difficult relationship.

ADV PHILLIP MOKOENA SC: Ms Hogan, while you are still there testifying on the structure and the state as the shareholder, may I for completeness also, refer you to
20 page 84. Mr Chair, that is part of Mr Trengove's opinion, page 84, with particular reference to paragraph 4 and that theme runs up until page 87, paragraph 8.4. Would that also equate to what you have been testifying to the Chair, in as far as the State as the shareholder and the responsibilities of the Board as well as the CEO, the Minister.

MS BARBARA HOGAN: That's correct. Do you want me just to elaborate a bit on that?

Handwritten signature and initials, possibly 'WJ'.

ADV PHILLIP MOKOENA SC: Yes, you may please, definitely.

MS BARBARA HOGAN: So, the Minister's executive authority as a shareholder, one of its important roles is to appoint the Board and to allow the Board to do the initial work around the appointment of a CEO in agreement. So you would agree, this is what the shareholder, this is what competencies we want versus the kind of person we are looking for and keep very close to the process and the Board would consult backwards and forwards and say we have done the interviews and from my opinion, we would like to recommend so and so or whatever and then the Minister would make a decision and then take it to Cabinet.

10 Now, it is very important that the Minister, does not interfere with the work of the CEO or that the CEO does not believe that he or she can jump the directors, go past them and go straight to the political executive authority. Corporate governance is very important in this phase and if there is any dilution of that, it leads to the company starting to disintegrate because no-one knows where the real authority emerges and the notion of a shadow state comes up.

ADV PHILLIP MOKOENA SC: You have just referred to an important concept of corporate governance. Can we dissect that in order for us to place it in its proper context?

MS BARBARA HOGAN: Sorry, I did not.

20 **ADV PHILLIP MOKOENA SC:** Now, to place it in its proper context, who runs the day to day operations of the SOE?

MS BARBARA HOGAN: The management and the CEO is the central person in that.

ADV PHILLIP MOKOENA SC: And to whom are they accountable to?

MS BARBARA HOGAN: The Board.

Handwritten signature and initials, possibly 'f' and 'WJ'.

ADV PHILLIP MOKOENA SC: And what is the role of the Board in relation to the SOEs?

MS BARBARA HOGAN: The Board owes a company a fiduciary responsibility so the Board provides us to strategic direction and vision. Obviously in a relationship with its senior managers, you know, in consultation but the Board must provide that strategic direction and must hold the management to account.

ADV PHILLIP MOKOENA SC: Yes, and from your own experience and perspective, what is a focus of a major SOE such as Eskom and Transnet?

MS BARBARA HOGAN: Well, Eskom is responsible for providing energy to this entire
10 country and there are very few - when I came in as a Minister, I think Eskom was responsible for 97% of the energy generation and I think we have all experienced during the blackouts what the consequences are if Eskom is not performing.

ADV PHILLIP MOKOENA SC: Yes, now...[intervene]

MS BARBARA HOGAN: And Transnet, let me just, Transnet...

MECHANICAL INTERRUPTION [16:58]

CHAIRPERSON: [everyone laughing] So maybe you should...[intervene]

ADV PHILLIP MOKOENA SC: By the blackouts because we do experience them.

MS BARBARA HOGAN: I will undertake to do so.

ADV PHILLIP MOKOENA SC: You were just about to explain about Transnet?

MS BARBARA HOGAN: Transnet does not deal with passenger rail. Transnet only
20 deals with the movements of manufactured goods or goods or chemicals across the country. If you look at the moment at the trucks that carry coal, it is just two holders, containers. If you look at a Transnet train, it can go on for nearly a kilometre, the length, so obviously having an efficient rail infrastructure with an efficiently run infrastructure is incredibly important, because in our country we depend a lot on mining.

A lot of what is mined needs to be taken out of the ground, taken to where it is needed to be manufactured or taken for export. If Transnet is not operating at full capacity, we damage the economy and many people are of the view and I cannot corroborate that, that South Africa was not fully able to take advantage of the commodities boom that happened in the early 2000s because Transnet was not up and running with the efficiencies required. Maria Ramos then came in, she managed as a CEO, she got the balance sheets up and running and Transnet in my time was ready to start doing what it needed to do.

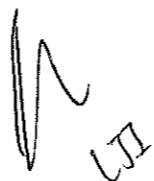
10 **ADV PHILLIP MOKOENA SC:** And these SOEs, where do they derive their capital from?

MS BARBARA HOGAN: They were?

ADV PHILLIP MOKOENA SC: Their capital, where do they derive their capital from, these SOEs.

20 **MS BARBARA HOGAN:** Yes, now one of the differences between a company and a State-Owned Enterprise is that the State is not in a position to provide equity on the scale that any shareholder would be able to provide that equity. So a State-Owned Enterprise has, you know, they are doing massive investments. Transnet and Eskom's biggest investments in the country in infrastructure, they have to raise their capital for infrastructure investment from the issuing of bonds, you know, by borrowing and hopefully they can cover their running costs through the tariffs that are imposed.

What has happened in my time in the case of the SAA for instance, is that technically SAA already at that time could have been declared bankrupt and the only way that the State could respond at that point was to offer a guarantee that, you know, if the SAA reneged on its payments, that the State would then come in so a lot of the State's strategy in those early years when I was there, was around giving guarantees



which National Treasury had to approve of. So you can imagine that the financial health of those two institutions is watched extremely closely by National Treasury, by us in Public Enterprises, by the ratings agencies because if these two fail, the consequences for the country are huge so the question of the funding model of State-Owned Enterprises was never properly resolved during my period. Cabinet asked Mr Gordhan, who was Minister of Finance at the time, and myself to set up an inter-ministerial committee to look at that funding model but that was then shut down when President Zuma appointed an independent commission to investigate State-Owned Enterprises.

10 **ADV PHILLIP MOKOENA SC:** Yes, you did also mentioned that one of the things that National Treasury would sometimes do was to issue loan guarantees and you mentioned SAA as a case in point. Now, may I link that evidence of yours with reference to Exhibit K1. Mr Chair, I have only provided the extract, that is the evidence of the ex-Minister of Finance, Mr Nene, with particular reference only to paragraph 102. I see that my colleagues are looking at their bundles, they will not find it. I have just provided the extracts. It is on a separate page, have you found it? You will see that the ex-Minister of Finance, Mr Nene, also touched on the things that you have now testified upon. At paragraph 102 he stated the following:

20 "SAA was brought under the arbitration of Treasury on the 11 December 2014, gazetted on the 19 December 2014, due to poor governance and financial instability. At the time of the transfer, SAA's financial position was extremely weak. In the 2012/2013 financial year, the airline suffered a loss of 1.2 billion. The loss increased on 2.6 billion in 2013/2014 and the airline was on track to realise an even larger loss for the



2014/2015 financial year which eventually amounted to 5,6 billion. The company was technically insolvent with its liabilities exceeding its assets by 3.5 billion as at March 2014 and was experiencing severely depleted challenges. I was only able to raise a funding with the support of government guarantees”,

and that is what you have also touched on during your time as this was your experience of Treasury having to provide those guarantees.

MS BARBARA HOGAN: Correct, yes.

10 **CHAIRPERSON:** Mr Mokoena?

ADV PHILLIP MOKOENA SC: Mr Chair?

CHAIRPERSON: The handwritten notes on those two pages, are they Mr Nene's corrections or are they...[intervene]

ADV PHILLIP MOKOENA SC: No, no, no, those are just for ease of reference so that you must know where are we finding those documents, where those documents are sourced.

CHAIRPERSON: Okay, all right.

ADV PHILLIP MOKOENA SC: They have nothing to do with Mr Nene.

CHAIRPERSON: Thank you.

20 **ADV PHILLIP MOKOENA SC:** Now, in relation to the SOEs Ms Hogan, what is the purpose of a shareholders compact?

MS BARBARA HOGAN: So, one has to ask the question, the Minister is a shareholder for these large enterprises, the Minister belongs to the Department of Public Enterprises which is not a policy department. So, for example, the Department of Energy formulates policy around energy and there is a document which is produced

on a regular basis which looks at the long term energy needs of the country and that provides the basis for Eskom to move forward and of course there is a lot of consultation with Eskom. So what a Minister does in Public Enterprises is, the Minister signs a shareholders compact with the Board in which that shareholders compact reflects the main direction and the performance objectives that government expects of that company and it goes through a lot of discussion and whatever and that is what you hold as a Minister, that company to account so you hold the Board to account on that. So that becomes then the mechanism whereby the shareholder has an influence on the direction of a company, its strategic possibilities and whatever, but does not dictate and

10 it provides a basis for evaluation. In the Department of Public Enterprises we had what we called a dashboard, so every three months we would look at the results of all the companies, we would spend a day analysing those results and then engaging with the various companies on the basis of our assessment.

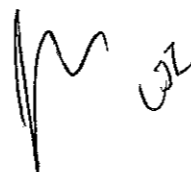
ADV PHILLIP MOKOENA SC: Yes, now, who appoints the Boards of the SOEs and what is the role of the Minister of Enterprises, if any, on such appointments? Who appoints the Boards of the SOEs and also please deal with the role of the Minister of Public Enterprise, if any, on such appointments?

MS BARBARA HOGAN: Okay, it is the Minister who appoints the Boards of the SOEs.

ADV PHILLIP MOKOENA SC: Yes. Now, can we take through, is there a process that

20 is in place? What process must be undertaken?

MS BARBARA HOGAN: Yes. In the Department of Public Enterprises there are various teams of speciality. You have got to have a team that specialises in energy, in logistics, rail infrastructure, in forestry, in nuclear. It is a wide range, that covers a lot of what the economy is composed of and that team keeps very close to the companies that fall within its speciality. It is a number of Deputy DGs and the DG, the Director



General of the department, runs all of that. They have to keep a watch on the Board because the Boards are usually appointed for three years and, you know, there is the usual provisions that might be in a memorandum of incorporation which says, you know, a third of the Board must move, two-thirds, it differs from company to company but nevertheless, there has to be a succession plan worked out around the Boards and the department has to keep ahead of that so if it is expected that certain directors will move on, then the search begins.

10 My experience in the Department of Public Enterprises, was that the DG would lead the process but in close consultation with myself. In virtually all cases, a professional search company would undertake professional searches under the guidance of Public Enterprises about the kind of skills that would be required on the Board. An assessment would be made of the kind of skills, what skills were lacking, what they needed more etcetera and that would be in discussion with the present Board, and then on that basis a brief would be given to a professional company.

20 But people would also headhunt, they would also look around and see and they would also – the Board often had a very good idea of who could come in. But that would all be subjected to interviews with the prospective Board members, not by myself, but by the professional agencies, there would be competency checks. For instance in Transnet and the big senior organisations, there would be professional psychological tests done, management competency tests done and these are not just – you know these are used in the corporate world extensively. You really got to have the best of the best on these Boards.

ADV PHILLIP MOKOENA SC: Yes and then who ...[intervenes]

ME BARBARA HOGAN: Ja?

ADV PHILLIP MOKOENA SC: And who appoints the CEOs in the process?

ME BARBARA HOGAN: The CEO appointment, once again depends on the memorandum of incorporation, all the founding legislation of a particular SOE. I took the view and that is also endorsed by the opinion of Michael Katz Senior Counsel that that appointment, even though a Minister may and it was not always, be said to do the appointment, the Minister would authorise the Board to do a search along commonly agreed parameters. So the Minister would never appoint a CEO out of the blue and would allow the Board to go ahead. The reason being is that the CEO is accountable, like I have said. You cannot have a CEO who the Board does not even know coming in.

10 **ADV PHILLIP MOKOENA SC:** Yes and what is the role of the President if any, in the appointment of the Boards of the SOEs, or the CEO what role does he play?

ME BARBARA HOGAN: The President has in terms of the Constitution exercises authority in two ways. One, as Head of State and he is permitted in terms of that Constitution to exercise that without consultation what the Cabinet can do and the President can then do appointments, you know, I am not *au fait* with this, but it might be the National Prosecuting Authority for instance. But the President is also a Head of the Executive Council of the Cabinet and exercises an authority there. But in that case, Constitution lays out what the President's responsibilities. Could I just read that, it is just a very short thing from the Constitution which spells out the President's responsibilities?

20

ADV PHILLIP MOKOENA SC: Yes you may.

ME BARBARA HOGAN: Section 85 (2) of the Constitution says that the President in his capacity as Head of the National Executive, exercises that Executive authority together with members of his cabinet and does so jointly by – and this is the quote:

"Implementing National Legislation, developing and



implementing National Policies, coordinating the functions of State Departments and Administration, so it is coordination, implementation, preparing and initiating legislation and performing any other executive function provided for in the Constitution or the National Legislation."

There is not a specific role in any legislation, which envisages that the President must make a decision about the appointment of people to a Board of a State Owned Enterprise.

10 Now when one becomes a Minister Chair, you are allocated as a Minister an executive authority. As Minister of Public Enterprise, I was given the executive authority to appoint members to the Board.

ADV PHILLIP MOKOENA SC: Yes.

ME BARBARA HOGAN: I had occasion to seek an opinion from Advocate Wim Trengove on this matter, because I clearly wanted to understand what my authority was. Firstly, must the cabinet agree with my proposed candidate and what role, if any, does anyone else play in this process?

If you do not mind Advocate Mokoena can I refer to the Trengove ...[intervenes]

ADV PHILLIP MOKOENA SC: Opinion?

20 ME BARBARA HOGAN: The prerogative of an executive authority?

ADV PHILLIP MOKOENA SC: Yes you may.

ME BARBARA HOGAN: I will not be long.

ADV PHILLIP MOKOENA SC: Yes you may.

ME BARBARA HOGAN: Okay. Now ...[intervenes]

ADV PHILLIP MOKOENA SC: I intended to take you there, but now that you are there it is fine you may continue.

ME BARBARA HOGAN: Is that okay?

ADV PHILLIP MOKOENA SC: Yes.

ME BARBARA HOGAN: Okay. The implications of a constitutional scheme, this is what Advocate Trengove writes.

ADV PHILLIP MOKOENA SC: And you are reading from?

ME BARBARA HOGAN: On page 86.

ADV PHILLIP MOKOENA SC: Page 86 yes.

10 **ME BARBARA HOGAN:** Paragraph 8. Okay?

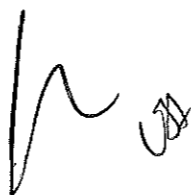
CHAIRPERSON: Yes.

ME BARBARA HOGAN: It is a prerogative – and this is the Minister exercises powers as the shareholder. Firstly Trengove says:

"It is the prerogative of cabinet, in terms of Section 85 (2) (b) of the Constitution to develop National Policy. Cabinet may in the exercise of this power, develop a policy on SOEs. It may determine, not only whether there should be such a policy, but also what it is and to what level of detail it goes to."

20 So that is, as I have said to you, I follow the Policy Departments. The only limitation on this cabinet prerogative is that the policy must be consistent and may not contradict National Legislation. So Trengove saying Parliament in the enactment of legislation still means that Parliament determines the full, you know, legislation trumps all. He goes onto say:

"It is in the first place for the Minister to determine how to exercise the State's power as a shareholder."



So the Minister has the policy, now how do you exercise it?

"If cabinet has, however, formulated a policy, then the Minister is bound to exercise it in terms of that policy. The Minister may consult the cabinet on the exercise of her powers, but she is not obliged to do so. Whether she does so, is in the first place a matter of cabinet, protocol and custom, but not law and in the second place a matter of personal discretion."

Now this is an important point:

"The Minister is bound in law to exercise her powers in accordance with these rules."

10

So I must exercise my powers in accordance.

"It does not follow, however, that if I fail to do so, that the exercise of a Minister's powers is invalid."

Trengove goes on to say:

"I am of the view that the Minister's exercise of her powers remains valid in law, even if she fails to adhere to National Policy determined by cabinet."

ADV PHILLIP MOKOENA SC: Yes.

ME BARBARA HOGAN: So the law trumps all.

20

"The external validity of the Minister's conduct does not depend on her compliance with the internal policy laid down by cabinet. The remedy for any failure by the Minister to adhere to cabinet policy, is for the President to dismiss her from cabinet, or to transfer her powers to another member of the cabinet."

ADV PHILLIP MOKOENA SC: Yes.

ME BARBARA HOGAN: So my understanding is just clear, once you become a Minister you are assigned executive powers and you must exercise those powers in terms of legislation and in terms of the policy given by cabinet and as long as you are exercising your powers in that way, you are doing your job.

ADV PHILLIP MOKOENA SC: Yes. Now flowing from that testimony and with reference to the opinion that you have read, can the President acting outside the cabinet instruct you as the Minister as to which Board a member he must appoint?

ME BARBARA HOGAN: No.

ADV PHILLIP MOKOENA SC: Can a President instruct you as the Minister, or instruct
10 the Board as to which CEO must be appointed?

ME BARBARA HOGAN: No.

ADV PHILLIP MOKOENA SC: Now in that ...[intervenes]

ME BARBARA HOGAN: That would be in terms of the opinions that I sought, if any cabinet Minister or the President tried to instruct me on who should be appointed, they would be usurping my executive authority. The opinion went so far as to say that if a President or a cabinet Minister requested three names from which cabinet would choose, that would itself be usurping the authority – usurping the executive authority of that Minister, because then it is cabinet that is choosing and not the Minister.

Now I do not want a false impression just given here that you just go and do
20 your own thing. Obviously you consult with your fellow Ministers, we are working as a team. But I think it is extremely important for us to understand executive authority and when it has been usurped, or when it is not being recognised.

CHAIRPERSON: I just want to ...[intervenes]

ADV PHILLIP MOKOENA SC: Mr Chair?

CHAIRPERSON: I just wanted to – Mr Mokoena, I just wanted to emphasise that you



are asking her about what the President may or may not do on the basis of her understanding of those opinions and not on the basis of anything else, is that right?

ADV PHILLIP MOKOENA SC: Yes Mr Chair.

CHAIRPERSON: Okay alright.

ADV PHILLIP MOKOENA SC: Mr Chair I am told that it is 11:15.

CHAIRPERSON: I did not understand her to be a lawyer, I do not know she may be.

Are you a lawyer Ms Hogan?

ME BARBARA HOGAN: Am I?

CHAIRPERSON: Are you a lawyer?

10 **ME BARBARA HOGAN:** No I am not.

CHAIRPERSON: Oh okay. No I just want to make sure that legal questions that are being put to you, that you are asking – you are answering them on the basis of your understanding.

ME BARBARA HOGAN: My understanding.

CHAIRPERSON: Of the opinions that you obtained.

ME BARBARA HOGAN: Yes.

CHAIRPERSON: Ja thank you.

ADV PHILLIP MOKOENA SC: Exactly that Mr Chair.

CHAIRPERSON: Thank you.

20 **ADV PHILLIP MOKOENA SC:** Mr Chair I am told that it is 11:15.

CHAIRPERSON: We shall take the short adjournment, a tea break and we will resume at 11:30. We adjourn.

COMMISSION ADJOURNS FOR TEA

COMMISSION RESUMES AFTER TEA

ADV PHILLIP MOKOENA SC: Thank you Chair. Ms Hogan can you please tell us

week a subcommittee, the next week cabinet okay. So the agenda of a cabinet is determined by the decisions that arise out of that cabinet subcommittee and that subcommittee then is the committee that makes the recommendation to cabinet itself, on the basis of the memorandum that a Minister would have prepared. So, in those circumstances, the agenda becomes – the agenda is managed by the cabinet secretariat who receive all of these memos, these decision memos from Ministers, it goes onto the particular subcommittee and then it becomes part, if they approve it, it becomes part.

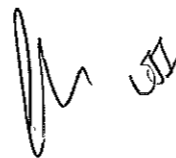
10 Now, when it goes to cabinet, cabinet is allowed to discuss the merits or demerits or that. But it is not usual that it would be dismissed like that.

CHAIRPERSON: Sending the memo that you are talking about to the subcommittee, would that, as you understood the position have been a requirement of law, or would that have been based on the booklet that you said was issued in 2008, would that be based on practices that had been evolved over time?

ME BARBARA HOGAN: Yes Chair. The handbook for the appointment of persons to Boards of State and State controlled institutions says fairly specifically, that you cannot send every appointment to cabinet. It says under – on page 22 of that handbook and I think it is page 475 of your documentation, paragraph 15 it says:

20 "It has become common practice for all appointments of persons to Boards – to refer all appointments of persons to Boards to the cabinet."

This places an unnecessary administrative burden on the cabinet, particularly in those cases where legislation specifically provides that the responsible executive authority may appoint Board members. Elsewhere – and I will not go into that. It does say, however, that if the Board is significant, then it ought to go to cabinet for approval



and then it also defines what is significant. One of the definitions is, if that particular institution has an asset base exceeding 1 billion.

So my understanding in that regard is that it would go to cabinet, you know Eskom, Denel all of those. However, the big issue which is not clarified in the handbook, and was never clarified in my day is, does it go to cabinet for approval, for noting, what is the point? The Department of Public Enterprises, when this became an issue, conducted an assessment of the extent of the cabinet's involvement in order to establish a trend. The review was from April 2002 to February 2009, relating to the appointment of CEOs, not Boards, to a variety of SOEs. The result show that cabinet's
10 involvement varied between approval that was ten times, concurrence six times and noting twice of the Minister's decision. Indicating that every CEO appointment is dealt with on a case by case basis, having considered the size, importance and circumstances facing the SOE at that time.

Now I did consult with one or two cabinet colleagues and people who worked with the cabinet secretariat on this matter around, would the President be in a position to stop a process and whatever. I was informed by a previous cabinet Minister that in his experience of President Mandela and Mbeki, if a cabinet memo was patently incompetent, if it was a badly drawn-up memo, the President would request that – or the cabinet would request that the Minister go back and discuss it, you know and bring
20 in. But it was not – now both who I consulted said it was never a precedent that the President must approve everything.

CHAIRPERSON: Thank you. Mr Mokoena.

ADV PHILLIP MOKOENA SC: Mr Chair following on your questions, just to clarify the issues. Ms Hogan may I refer you to page 89. You will see that initially in my question when I asked you about who appoints the CEO or the Board and that would be

Handwritten signature and initials, possibly 'M' and 'WJ'.

regulated from time-to-time by the specific founding documents of that company, do you agree?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now let us take, for instance Transnet in order to ventilate the issues which the Chair was canvassing with you. If you look at paragraph 12 it says that:

"In terms of Section 2 (1) and 3 read with Section 4 (1) Transnet it is a public company. The State is its only shareholder and the Minister exercises the rights of the State as a shareholder on its behalf."

10

Is this your understanding when you dealt with the issues pertaining to Transnet?

ME BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Yes. Now it also proceeds at paragraph 13 to say that:

"The State's right as a shareholder exercised on its behalf by the Minister include the following ..."

And those are tabulated in terms of key 1.


ME BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: And with reference to particular sections of the

20 Companies Act linked with the Transnet documents, am I correct?

ME BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Now would you get the same sense also in Eskom, one; you will have go to the founding documents and to see how do they regulate those specific powers *vis-à-vis* the shareholder, the President, the Board and the CEO, am I correct?



ME BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Yes. Now, let us take the following example, in instances where you as the Minister had went through a lawful process of appointing the Board and having interacted with the relevant structures. Can a President unilaterally rescind that decision of the Board?

ME BARBARA HOGAN: A rescind of a decision of a Board appointing a CEO?

ADV PHILLIP MOKOENA SC: Sorry, or the decision of you as the Minister to appoint the Board. Let us start by the Board first, we will then move on to the CEO. Where you have gone through the process of identifying individuals, their expertise, they are being interviewed, you have consulted with the relevant structures. Can thereafter the President unilaterally outside cabinet simply rescind that decision of the appointment of the Board?

ME BARBARA HOGAN: Based on the opinions that I have received, I would say that it would be extremely incorrect, or irregular for the President to intervene and stop a process outside of a cabinet process.

ADV PHILLIP MOKOENA SC: Let us take the CEO, whereby the Board which it is having the powers in terms of the relevant founding documents or Transnet or Eskom, having identified the candidate, having engaged the experts, having recommended, or found a suitable candidate, can that be ignored by the simply say-so of the President simply saying that that is not the candidate that I want?

ME BARBARA HOGAN: In my understanding not.

ADV PHILLIP MOKOENA SC: Yes. Mr Chair at an appropriate time we will make submissions with reference to the relevant documents, but also bringing the evidence of this witness to fall in within that regulatory framework. We understand that she cannot comment on the legalities, but we want her to give the factual spectrum on the issues

that confronted her at the time.

CHAIRPERSON: No, no that is in order.

ADV PHILLIP MOKOENA SC: Yes.

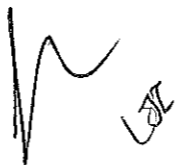
CHAIRPERSON: I do not know whether you are still going to deal with the issue of the different roles of different office bearers, or whether you are done speaking in general?

ADV PHILLIP MOKOENA SC: When we deal with the specific entities like Eskom and Transnet, she will ventilate on those issues Chair.

CHAIRPERSON: Okay no that is fine. Let me ask this question. The cabinet is a collective, it is appointed by the President, the Ministers are appointed by the President
10 and as any Minister is supposed to execute his or her functions in her or his portfolio in accordance with the Constitution, the law, the policies of Government and the particular department and whatever else it is that the Government of which she is part seeks to achieve for the country. Now, I can imagine that where, for example, in terms of policies, in terms of even legislation maybe as a Minister you are required, or you have a discretion to approach cabinet and hear what they may have to say about certain candidates that you are thinking of approving or appointing or supporting in terms of a Board. I can imagine that you might not necessarily always want to stick to – you might not want to be rigid to say, for example, this can only be discussed at cabinet. You might want to say, no before I go to cabinet, let me find out what the President's views
20 are on this matter, because you might want to have an idea whether by the time you go to Cabinet you have the support of the President on the particular candidate and if the President has got some issues you might want to apply your mind to those issues before the matter goes to Cabinet is that right?

MS BARBARA HOGAN: Correct.

CHAIRPERSON: Yes. So does that not mean that maybe problem areas arise

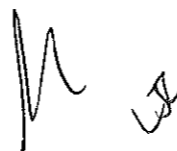


when maybe the different office-bearers, let us say well one such office-bearer is the President, the Minister is another office-bearer and there are others. You might have a situation where rightly or wrongly the President might think the Minister is not understanding her role properly, saying well I appointed her. The Minister might be saying well the President is now overstepping you know.

But where for example the President understands that you have, in law, the final say and whatever views they express they express with an appreciation of that, there should not be serious problems should there be, when they express their views, what is your view? In other words is the position not that it is not who you
10 consult it is how they perceive their role to be. If they, if for example a President perceives that you, if he or she says no even though the executive, the power in law vests with you then no matter what the circumstances are you should not pursue what you believe is right then there is a problem. But if the President says look I would not go along with, I would not support this candidate for this and that and that reason but it is your decision. Take into account everything you are supposed to take into account and then you have heard my views but then make up your mind then there should not be problems if that is the approach is it not?

MS BARBARA HOGAN: I think you are absolutely correct Chair. No Minister would make an appointment to as crucial an institution without talking through the matter
20 with people who do matter who will have to back up those institutions at a certain stage.

Consultation is different from interfering with what a minister does. My experience was that the President stopped things from going to Cabinet, instructed me to withdraw things and I will go more into the details but what was very worrying about that was that in some, in one of those instructions related to Transnet there



was a potential breach of law.

So you know you do consult you know, the President would phone you and say listen I hear this, can we talk a bit, but it is in a collegial basis. The same as you expect with your fellow Cabinet Ministers, they are not going to be driving their own agendas for their own purposes but remember that the Executive Ethics Act says that you may not make a decision in your, in exercising your powers as an executive authority if it is to benefit someone close to you or along those lines. So there is a constraint, a Minister or President cannot be doing if it is to benefit some unknown persons.

10 **CHAIRPERSON:** No thank you very much.

MS BARBARA HOGAN: Thank you.

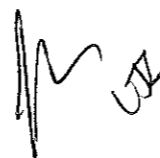
CHAIRPERSON: I thought at a general level it was important just us to understand what your views are in regard to that.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: Because it may be that the problem might not really be consultation, the problem might be how consultation is understood and how everyone understands their role. Thank you very much. Mr Mokoena?

20 **ADV PHILLIP MOKOENA SC:** Ms Hogan if I understood your interaction with the Chair you emphasised on a distinction between a consultation and an interference, and those interferences, we will deal with them in due course when you talk to specifics. For now just to complete the picture, can you explain to the Chair what happens once you had approved the composition of the Board and in relation to the Cabinet so that we get a full picture of your evidence?

MS BARBARA HOGAN: Once the Board is approved, you are saying what is the process or before?



ADV PHILLIP MOKOENA SC: Yes once you had approved as the Minister.

MS BARBARA HOGAN: Oh once I approved then it goes to a subcommittee of Cabinet and that goes through the Cabinet secretary. You know the Cabinet had a secretariat and they run all the processes so that, I have to sign off on it and then that would go to the Cabinet subcommittee. Sometimes the secretariat would say oh you have not added this in and you know there is a certain protocol about what must go into a memorandum.

10 Then your fellow Ministers will discuss it and then it will go to Cabinet based, your decision will go to Cabinet, the decision of that subcommittee goes to Cabinet as a recommendation to Cabinet. Cabinet can further engage, the President chairs that Committee and that is the process that takes place and then it is announced the next day.

ADV PHILLIP MOKOENA SC: Yes, and whatever that the President does will have to be within those structures that you have actually testified upon, that Cabinet Committee and those are the processes.

MS BARBARA HOGAN: Those are the processes that I understood and once you become a Minister you are given a handbook which explains the Cabinet decision-making process.

ADV PHILLIP MOKOENA SC: Yes.

20 **MS BARBARA HOGAN:** And it is very carefully run. In each department there is one person who is responsible only for Cabinet documentation. That person links into the Cabinet secretariat. There is a very sophisticated filing system. The minutes of those Cabinet meetings are taken very seriously. If you have to do something in terms of a decision of Cabinet the secretariat will remind you. So those documents, and as you know they are State secret, those documents and that

process is the ultimate decision-making process of a Government.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Of an executive authority.

CHAIRPERSON: Well let me just ask this question because I think it probably belongs at this stage when you are just talking in general; we have looked at the role of a Minister and the President and the Cabinet. Is there a legitimate role for the ruling party in the appointments of CEOs and Boards of SOEs? Obviously I ask this question because I have read your statement.

MS BARBARA HOGAN: Yes, ja. Well that is what ...[intervenes]

10 **CHAIRPERSON:** In other words I am saying.

MS BARBARA HOGAN: Ja.

CHAIRPERSON: You have told us your understanding about what role the President has, on your understanding he cannot instruct you to say you may or may not appoint so and so.

MS BARBARA HOGAN: Ja.

20 **CHAIRPERSON:** And you have said as a Minister you will not just go and just appoint whoever you want, you would want to hear what your fellow Cabinet members have to say you know, but you will appreciate that in the end I think if the power is given to you it is the power you must exercise. Now is there any legitimate role for the ruling party to make any input to a Minister who is a member of the ruling party, when she has to consider whether a particular CEO must be appointed, whether certain people must be put on the Boards or is there none?

MS BARBARA HOGAN: Chair, in law obviously it does not exist you know, the ruling party, there is nothing in law that requires a Minister to consult with the ruling party. The problems that I think many of us may have experienced with the ruling

Handwritten signature and initials, possibly 'M' and 'LH'.

party was that in 1994 when we came to Government the ANC set up a Deployment Committee. Now at that time the entire civil service was occupied by people from the apartheid era. There needed to be transformation, there needed to be transition. At the same time there were large numbers of people who had been in a struggle or had been sympathetic or who were wanting to use their professional skills for a new South Africa and how were they now going to be deployed. And in that sense the ANC set up a Deployment Committee which would say you Mr Gordhan, you will – no they did not say that to him but you know that it would be preferable if you ... [intervenes]

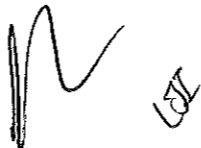
10 **CHAIRPERSON:** You want to say ... [intervenes]

MS BARBARA HOGAN: Let me not interfere with the Minister.

CHAIRPERSON: You are Mr X or Ms X.

MS BARBARA HOGAN: Mr X, Mrs X, you know we would want you to go. Like they said to my partner Mr Kathrada we would like you to be the parliamentary advisor to the President, to President Mandela. And so it was a question when you had to look at the resources available to you, the capable people, the people who understood what a new South Africa actually meant, to be deployed, and it had to be on a massive basis and those are the issues that come up with any change, fundamental change in Government.

20 I – my own view after an experience nowadays is that I sincerely wonder if a Deployment Committee plays a useful role now. You know it is a handful of people, if you see the number of appointments that go to Cabinet every time, I mean it is huge numbers of people, you do not know how many institutions Government has got, and for a handful of people just simply to decide that this is their preferred candidate, on what basis, what transparency is there?

Handwritten signature and initials, possibly 'LST'.

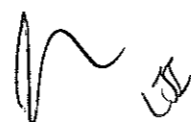
I am not saying that that Deployment Committee did not always operate with honesty and integrity but the weakness of the system is that if that Deployment Committee is captured by whatever forces it can have a fundamental impact on Government. And so we do have to protect Government from undue influence.

Now that again does not mean, I did it myself, I spoke to the Secretary General. We had differences of views on some matters and we agreed on other matters, on other appointments. He never wanted to know the full Board or the – you know it was on sensitive matters. Often those sensitive matters were related to issues of transformation but the President – but you know I would consult but I was
10 very clear that I was hearing, because I needed to hear what the issues were, and on the basis of hearing everything then I would apply my mind.

But it became apparent during my time, and we will see it later in a press statement issued by the ANC or statements to the press that even the NWC, the National Working Committee, which is the Executive Committee of the ANC saw it as their right to instruct a Minister who should be appointed and not appointed. That is an abuse of power and that is usurping executive authority. Why have a Minister if you are going to instruct that Minister about what happens.

I feel the same way very strongly about Parliament. When you become an NP your responsibility is to a constitution. You take into consideration of course,
20 ruling party views, but to be instructed by a ruling party about what you should do is usurping the legislative authority of you know finally MPs must make a decision. But yes, robust engagement. Yes discussion, yes persuasion. You do not want anyone appointed who is going to be knifed in the back by some political formations but it cannot be instructions.

CHAIRPERSON: And you may or may not be able to say, to answer this one and



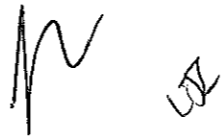
feel free to say so if you are unable to, do you know whether there is clarity within the ruling party as to where their role starts and where it stops in regard to for example the appointments of SOEs, Boards and CEOs, and I know you have raised the question of Parliament, it is a very important question as to what a party can say to members of Parliament who are there on his ticket as it is said, and that issue may become quite a big issue in regard to the work of this Commission because one of the things that we have to look into is what environment existed that may or may not have provided fertile ground for State capture.

MS BARBARA HOGAN: Ja.

10 **CHAIRPERSON:** Is there anything in our legislation, is there anything in our electoral system, is there anything in our laws that may have made it easy for certain things to happen which should not have happened? So – but we will deal with those and I hope that people, political parties, Government and everybody can start thinking about that very wide and important issue. But for now my question is simply whether you know whether there is clarity in the ruling party about whether their role starts and where it ends in regard to the appointment of Boards of SOEs, CEOs of SOEs and so on. In other words maybe they can be – their views can be sought but it is just views and nothing more, or whether they can insist on certain appointments.

MS BARBARA HOGAN: Chair, I can only speak to my experience at the time.
20 There was no clarity on this even when there were talks of a Deployment Committee I would ask now who is on this Deployment Committee and who is doing what, and I would be told well it is really not functional. So you know that leaves you very confused about what is happening.

But my first experience of this, my first negative experience of the relationship between the party and State emerged very early on in my career as a

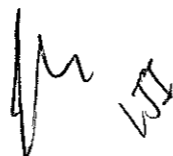
Handwritten signature and initials, possibly 'LW'.

Minister. As you will know the ruling party, on the question of State owned enterprises had vetoed any privatisation, and that was the position of the tripartite alliance, and had accepted though that there needed to be restructuring, and that was left very open-ended.

You will recall that I came into that position as – from the Minister of Health into Public Enterprises. In Health I had to deal with the Free State Government running out of antiretrovirals in August. Government did not have money, I had to go and speak to the American and British Governments to make grants. Now that is how desperate funding is for people on the ground.

10 So when I came to the portfolio and I had a look at it one of the first things I noticed was how financially stressed, apart from Transnet, many of these SOEs were under control, and SAA, within two days of my appointment I was already harassing the Minister of Finance to give them a guarantee to keep them a going concern. And so I was really concerned about it and I was interviewed by a reporter and I said you know there will have to be an equity partner somewhere in this game, and I was saying that not in defiance, I was saying it because the reality was Government would not – did not have the resources to fund the deficit.

20 We were also – it was shortly after the 2008 financial crisis so the revenue that we were going to expect was terrible. That was reported. The Secretary General and the Deputy Secretary General kicked up a huge fuss in the media and publically summonsed me to explain myself at Luthuli House, myself and the Deputy Minister. We both went and we explained you know, at that meeting I explained that SAA was in severe problems and it was not easy to see a funding model, and I said trust me you are going to have real problems there and they would not release a statement after that meeting.



But my concern at that stage was if I was seen to be going outside of Government policy it should have been the President who summonsed me not the party. And so I am not saying that I was saying the right or the incorrect thing but it is the President not the party. And what made things even more vulnerable at that time was that a certain faction, and I hate using these words but a certain faction who was supporting a President who came in, President Zuma, was very powerful in that NEC at that stage. If you look at the National Working Committee at that stage it consists almost entirely of his very vocal supporters.

10 So there is a weakness there. You know they were driving a whole agenda and they saw themselves as super powerful and they could now dictate. The tripartite alliance could dictate to the Government what it should be doing down to the level of who should be a CEO or not. And I think there are real problems there.

CHAIRPERSON: Thank you very much and again part of the context for this is that as we investigate these allegations of State capture and so on, at a certain stage I will have to make findings and reach conclusions, and one of the things we have to look at is where did things go wrong. And if things that go wrong include the role of a ruling party we would need to deal with that to say this may or may not have contributed to facilitating certain things happening and what needs to be done in the future. What should future ruling parties not do if we are to avoid a repeat of things
20 such as those that we are looking at, so that is the context.

MS BARBARA HOGAN: Yes, absolutely.

CHAIRPERSON: Ja thank you. Mr Mokoena?

ADV PHILLIP MOKOENA SC: Ms Hogan, the issues arising from the Chair's questions, would I be correct that they are dealt in your witness statement with reference to paragraphs 22 to 27? That is where you are talking about a parallel

A handwritten signature or set of initials, possibly 'M' with 'LH' or similar characters to the right, written in black ink.

behind the scene processes.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And you are also talking about the Deployment Committee of the ANC. Now if I have understood the debate between yourself and the Chair correctly, what you are saying it is not necessarily that you are not ... [intervenes]

CHAIRPERSON: More a conversation than a debate.

ADV PHILLIP MOKOENA SC: A conversation with the Chairperson.

CHAIRPERSON: We did not have any debate.

10 **ADV PHILLIP MOKOENA SC:** There is a thin line Mr Chair, the conversation with the Chairperson, you do not take issue with the question of having to consult the ruling party but I think what we describe as the weakness is the lack of transparency or where there could be inherent conflict.

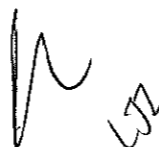
MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And that would result in people who are conflicted being appointed regardless of the proper lawful process that you had actually undertaken am I correct?

MS BARBARA HOGAN: Correct yes.

20 **ADV PHILLIP MOKOENA SC:** Ja, now you in fact summarise that conversation with the Chair, it is captured in paragraph 21, if you can go there, of your statement, and if you can read paragraph 21 and also for completeness read paragraph 25 and 26 so that at least we get a proper picture of what you wanted to convey to the Chairperson about the parallel behind the scene processes, on page 6 of your witness statement, paragraph 21.

MS BARBARA HOGAN: Okay I have read part of the paragraph 21 that said the pro



– you know the assessment of how many came, of how many you appointments were approved, concurred, noted. That and then page 20 ... [intervenes]

ADV PHILLIP MOKOENA SC: Page 7.

MS BARBARA HOGAN: Page 7 then it is ... [intervenes]

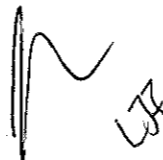
ADV PHILLIP MOKOENA SC: Paragraph 25 and 26.

MS BARBARA HOGAN: And 26.

ADV PHILLIP MOKOENA SC: If you can read that so that we can be able to understand better what you are conveying to the Chair.

MS BARBARA HOGAN: Yes, I was appointed a Minister shortly after the
10 Polokwane Conference and that Conference was noted for the emergence of very strong factional tendencies within the ANC. So I say from paragraph 25:

"Regrettably these factional battles in the ANC only serve to encourage an entrenched nepotism and patronage from within the ranks of the ANC in the tripartite alliance and this would have very damaging consequences for State owned enterprises and by extension for our economy, which I will illustrate below with regard to my experience in the appointment of Board members and CEOs of Transnet and Eskom during my time. It is important to note that there were
20 three damaging processes afoot in my time with regard to SOE related appointments. There were the very political and public manoeuvrings of certain elements within the ANC and the tripartite alliance to get their way. Then there were ways that President Zuma and some Cabinet colleagues thwarted my attempts to get Cabinet approval for Board appointments, and I



stress the word thwarted. And finally the inexcusable interference with my responsibilities as a Minister by President Zuma that eroded my executive authority, and I refer in particular to Eskom in that regard."

ADV PHILLIP MOKOENA SC: And that is what you were conveying to the Chair is it not?

MS BARBARA HOGAN: The last paragraph 27.

ADV PHILLIP MOKOENA SC: No, I am saying that paragraph 25 and 26.

MS BARBARA HOGAN: Yes, ja.

10 **ADV PHILLIP MOKOENA SC:** Those are the essence of what you were conveying to the Chairperson during your conversation.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Yes Chair.

ADV PHILLIP MOKOENA SC: Now I need to move to another topic. I need to deal with Transnet specifically Ms Hogan. Just to remind ourselves you were appointed as the Minister of Public Enterprise around May 2009. Who was your predecessor?

20 **MS BARBARA HOGAN:** Minister Brigitte Mabandla. She had been there for a short period of time after Minister Alec Erwin had resigned and Minister Mabandla took over for the eight or nine months ja.

ADV PHILLIP MOKOENA SC: And who succeeded you?

MS BARBARA HOGAN: Minister Malusi Gigaba.

ADV PHILLIP MOKOENA SC: Okay. Now did you have an opportunity to familiarise yourself with the issues and events which took place prior to your appointment?

MS BARBARA HOGAN: Yes.

A handwritten signature in black ink, appearing to be 'LJZ', is located at the bottom right of the page.

ADV PHILLIP MOKOENA SC: And you are introducing the topic of Transnet, in fact with reference to page 8?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Paragraph 28.

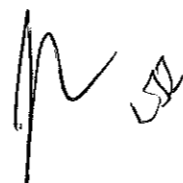
MS BARBARA HOGAN: Ja.

ADV PHILLIP MOKOENA SC: And therein you are saying that:

10 "A simple, but important job of appointing a CEO of Transnet, after the resignation of Maria Ramos at the end of February 2009 became the site of an ugly protracted battle between President Zuma and I, in which he thwarted all the legal and legitimate procedures that I took to obtain Cabinet approval for any appointments whatsoever to Transnet including the appointment of a CEO. As a consequence, Transnet had an Acting Chairperson, an Acting Group CEO and Acting CFO and later on an Acting CEO in one of the divisions Transnet Freight Rail for one and a half years".

Now can you please contextualise the issues which you are prefacing in that paragraph in relation to Transnet?

20 **MS BARBARA HOGAN:** Okay. As I have indicated before Transnet had gone through a restructuring process. Its balance sheet was now...[indistinct] and it now had to embark on a major investment in equipment, in trains and in infrastructure to really step up its performance. Maria Ramos had been CEO for five years and in November 2008 she announced that she would be moving on and the board then undertook a succession planning exercise. They consulted extensively with Minister Mabandla and



there is a document for timeline of Transnet. We can get – I did a document that shows the extent of that...[intervenes]

CHAIRPERSON: Well, between you and Mr Mokoena you must feel free if you want to refer to it.

MS BARBARA HOGAN: Yes.

CHAIRPERSON: To refer to it, so...[intervenes]

ADV PHILLIP MOKOENA SC: We will refer to it ...[intervenes]

MS BARBARA HOGAN: A bit later on, yes.

ADV PHILLIP MOKOENA SC: Just give us the context.

10 **MS BARBARA HOGAN:** I am not going to speak to it, but I am going to – I am summarising more here, but it was thoroughly - a very thorough process in which the Transnet board met with the Minister. They discussed the criteria for the appointment of a new CEO. What skills, what competency, what the time frames would be, how the interviews would be conducted, what tests would be conducted on short list? Who would be on the subcommittee of the board that would run that process? It was – you know a very, very professional run process.

And this is in line that the Minister is in power to appoint a CEO, but this is what you do. You allow the board, because they know what they need to run the process, but you make sure every step of the way that you have applied your mind. So
20 that process went ahead and a number of people were short-listed. Some were internal candidates, others were external and in a letter, early February 2009 the Head of the Board Mr Fred Phaswana, the Chair, sends a formal letter to Minister Mabandla and says they have decided that they are recommending one candidate only, because he stood head and shoulders above the rest, and that was Minister Ghordan – well Pravin Ghordan. Okay, ...[intervenes]



ADV PHILLIP MOKOENA SC: Ms Hogan, while you are still there we will come to that.

May I refer you to page 386?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: In order to help you with the time line that you are referring to.

CHAIRPERSON: You say 386?

ADV PHILLIP MOKOENA SC: 386. Mine is paginated 386.

MS BARBARA HOGAN: 386?

ADV PHILLIP MOKOENA SC: 386, yes, the first file, Mr Chair.

10 CHAIRPERSON: Okay, thank you.

MS BARBARA HOGAN: 386, of the timeline, 387. Yes, the timeline for Transnet is on page 387, is that what ...[intervenes]

ADV PHILLIP MOKOENA SC: It is the one that you were referring to, to the, Chair?

MS BARBARA HOGAN: Yes, but that is a detailed – yes...[intervenes]

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: It is a detailed summary. I am just speaking to...[intervenes]

ADV PHILLIP MOKOENA SC: Just to check and have reference to it, yes.

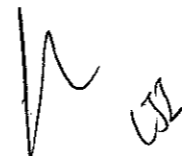
MS BARBARA HOGAN: Ja.

20 ADV PHILLIP MOKOENA SC: Now may I refer you to annexure A? As you were talking about Transnet on page 25, Mr Chair. You were just about to talk about the candidate that was recommended by the board?

MS BARBARA HOGAN: Yes, annexure A1, yes.

ADV PHILLIP MOKOENA SC: Yes, if you may identify that document firstly for us? If you can identify the document for us? What is that document?

MS BARBARA HOGAN: Yes, yes. This is the document that I was referring to.

Handwritten signature and initials, possibly 'M' and 'WJ'.

ADV PHILLIP MOKOENA SC: What is that document? What was the purpose for that document?

MS BARBARA HOGAN: 13 February 2009.

MS BARBARA HOGAN: And the purpose?

MS BARBARA HOGAN: The purpose was to make a recommendation to the Minister for the appointment of a group CEO of Transnet.

ADV PHILLIP MOKOENA SC: Yes, you can then proceed to take us through your evidence with reference to that document. You were saying that there was only one candidate. That is where I interrupted you.

10 **MS BARBARA HOGAN:** Yes, there was only one candidate.

ADV PHILLIP MOKOENA SC: I interrupted you, yes.

MS BARBARA HOGAN: Now, Chair, in this, in this proposal we have blacked out the assessments of other candidates, because it is confidential.

ADV PHILLIP MOKOENA SC: Can you refer to page 27?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Paragraph 4.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Would that entail ...[intervenes]

MS BARBARA HOGAN: That is a recommendation.

20 **ADV PHILLIP MOKOENA SC:** Yes.

MS BARBARA HOGAN: Yes. They say that – so at paragraph 4 on page 27 says:

"The Corporate Governance and Nominations Committee conducted interviews, although..."

And this is important, because this was distorted all the time, and this paragraph is very important.



"...although the preference was to a point a suitably qualified internal candidate. After consideration of the current global meltdown and the global recession its current and future potential impact on Transnet Ltd and as a consideration of these individuals the nominations committee fully supported by the board recommended the appointment of Mr Pravin Ghordan on the basis of the strengths he displayed against the competency profile and in comparison with the other candidates who were interviewed."

10 **ADV PHILLIP MOKOENA SC:** Yes, and you also referred to a letter that was subsequently written. May I refer you to page 31? Mr Chair, it is annexure A2.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Are you there Ms Hogan?

MS BARBARA HOGAN: Yes, now this is a letter that was sent again by Mr Phaswana to Mrs Mabandla, which says that although the board approved Mr Ghordan – hang on wait, and that is on page 34, that although the board had appointed – approved Mr Ghordan, he has withdrawn from the process and we know of course that he became Minister of Finance shortly thereafter.

ADV PHILLIP MOKOENA SC: Then what happened ...[intervenes]

20 **MS BARBARA HOGAN:** Then on page 33.

ADV PHILLIP MOKOENA SC: Yes?

MS BARBARA HOGAN: Now on page 33 there is a very important paragraph there.

"In the light of your letter...[intervenes]"

ADV PHILLIP MOKOENA SC: Are you now reading at the bottom of page 33?

MS BARBARA HOGAN: At the bottom of the page.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Bottom of page 33.

ADV PHILLIP MOKOENA SC: The last paragraph?

MS BARBARA HOGAN: The last paragraph:

10 "In the light of your letter it is also incumbent upon me to highlight that in respect of Mr Ghama the Transnet board has received documentation and reports including, but not limited to a recent forensic report from Transnet's internal auditors which detailed serious allegations of misconduct on the part of Mr Ghama, that require the company to conduct investigation to ascertain the truth thereof and decide on any appropriate action from Transnet's internal audit – any appropriate action against the individual involved."

Do you want me to continue?

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: "I annex hereto annexure C."


That is what I am annexing. Then:

20 "...correspondence from Transnet internal auditors relating to the matters in question which sets out some of the summarised information relating to the main allegations against Mr Ghama."

ADV PHILLIP MOKOENA SC: So at the time the board had already considered these issues in relation to the candidacy of Mr Ghama?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes, now what happened after Mr Ghordan has withdrawn his candidate?



CHAIRPERSON: I am sorry, I am sorry Mr Mokoena, you may have said this and I missed it, do you just want to confirm Ms Hogan that at page 32, which is part of the letter from which you were reading just now, there is a list of names of the candidates who had been short listed and to mention that Mr S Ghama is one of the candidates who are listed there.

MS BARBARA HOGAN: Yes, but you will note it is not written in numerical order.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: Ja.

CHAIRPERSON: Yes, thank you.

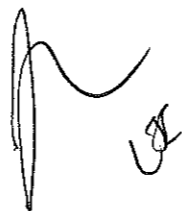
10 **ADV PHILLIP MOKOENA SC:** Yes, my question Ms Hogan, what happened after Mr Ghordan has withdrawn his candidature? What happened?

MS BARBARA HOGAN: The board then approached – once – you know the board then had to find another CEO and this is already getting towards the end of February when Ms Ramos was due to move on. So the board then requested Minister Mabandla if they could then start a further search, because in the interviews that were done with the other candidates both internal and external, although they did receive good reports they just felt that those candidates did not meet the requirements for being a group CEO.

20 Let me also say that Transnet had several divisions. All of them, I think a part one were all run by black Managers, very capable black Managers and the board was dominated by black Directors. I say that, because that became accusations later on.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Okay.



ADV PHILLIP MOKOENA SC: In fact you also capture the board's decision. The letter that you referred to of the Chairperson at the time Mr Fred Phaswana, if I may refer to page 34? 34.

MS BARBARA HOGAN: 84?

ADV PHILLIP MOKOENA SC: 34.

MS BARBARA HOGAN: 34, yes?

ADV PHILLIP MOKOENA SC: 34. The second paragraph you are saying there:

10 "The withdrawal of Mr Privan Ghordan has resulted in the board's view in the need to commence a new appointment process as none of the other short listed candidates are at the level required for such a key position for the organisation and indeed for the country given the central role that Transnet must play in the government's economic and infrastructural development plan."

That is what you are testifying about. Yes.

20 **MS BARBARA HOGAN:** Correct. So the board then requested the Minister to then – that they would like to embark on a further search, and they never got a definitive reply. The Minister asked to receive the CV's of the other internal candidates and their assessments, plus the professional assessments, which they sent on. At one stage he said send me a couple of names and I will put it before a panel for them to decide. It was not a cabinet panel, I am not sure what panel she was referring to, but you know it went backwards and forwards, and when I came in as Minister in May this matter had still not been resolved.

The board, however, in considering its ...[intervenes]

CHAIRPERSON: And Ms Ramos was about to leave at that time?

Handwritten signature and initials, possibly 'WZ'.

MS BARBARA HOGAN: Ms Ramos had already left.

CHAIRPERSON: O, had already left.

MS BARBARA HOGAN: And Minister Mabandla had approved Chris Wells as the Acting CFO, as the Acting CEO, he had been the Chief Financial Officer and had approved Anauze[?] Singh who had been in the Treasury as the Acting CFO, prior to my appointment. So Transnet already had an Acting General Group CEO and an Acting CFO, and one must always take into consideration that when there has to be a succession of a CEO is always a very vulnerable moment in any major enterprise.

10 So the board did not get a definitive thing, but in exercising their fiduciary responsibilities they went ahead and did a search, and out of that they came up with a candidate and when I, sorry – and in June when I became a Minister and they had done exactly the same procedures as they had done in the previous, they then submitted that document to me, recommending a candidate, a Mr Siphon Maseko who is now the CEO of Telkom.

ADV PHILLIP MOKOENA SC: May I refer you to page 35?

MS BARBARA HOGAN: 35, yes. Yes, that is the correspondence. Mr Phaswana met with me in person and gave me this document. What is missing from these memo's are the entire assessments of all the other candidates and reasons for accepting and not accepting. So it was not just a blank, we want this person. Details of all the others and
20 the strengths and weaknesses were identified.

ADV PHILLIP MOKOENA SC: And then may I refer you to page 38, paragraph 4?

MS BARBARA HOGAN: The recommendation is then for the appointment of Mr Siphon Maseko, and he gets a very glowing report. He had been Head of BP South Africa, he was familiar with logistics, various matters, developed very sophisticated interpersonal skills and whatever.



ADV PHILLIP MOKOENA SC: And may I refer you to page 45, paragraph 13?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: So that is a recommendation and you are saying that, that was the most qualified person with skills, and that was the recommendation of the board to appoint him premised on those credentials?

MS BARBARA HOGAN: Yes, yes.

ADV PHILLIP MOKOENA SC: Now, I want to take you to the events which happens after this recommendation. On page 9, paragraph 33 of your witness statement you referred to your meeting with the ex-President Mr Zuma approximately a month after
10 your appointment. Could you share with us what transpired in that meeting?

MS BARBARA HOGAN: I felt it necessary to inform the President that Transnet did not yet have a CEO. That is a serious thing. And I gave him a full background to the whole process for the appointment of a CEO. I also said to him that the Transnet AGM was coming up and that, you know, the shareholder would then appoint the group CEO at that meeting, and a Chairperson of Transnet, because Mr Fred Phaswana by that stage had resigned, and he was leaving the company at the end of July.

So both the Chair, the Chair had also now resigned.

ADV PHILLIP MOKOENA SC: Yes, what happened – what was Mr Zuma's reaction to all the issues that you are raising in relation to Transnet?

20 **MS BARBARA HOGAN:** Chair, I was extremely shocked. The President would not hear of any candidate except Siabonga Ghama. I informed him how professional the selection process was. I informed him that he was facing some serious misconduct charges. That the board in terms of the PFMA was obliged to investigate these charges, it was not just going ahead, and under these circumstances it would not be in the interest of Transnet to appoint a group CEO who was facing, you know, whose time



would be caught up with defending himself in a misconduct, but even over and above that I was recommending Mr Maseko on the basis of the recommendations made by the Transnet, the recommendations made by the professional evaluation agency. I will not go through them here, but they are here in this report that Mr Phaswana forward – gave to me.

It speaks very glowingly of Mr Maseko. I had also ...[intervenes]

CHAIRPERSON: Well I will ask you to go there and just ...[intervenes]

MS BARBARA HOGAN: Do you want me to go ...[intervenes]

CHAIRPERSON: Tell us what the Chairperson had to say about Mr Maseko.

10 **MS BARBARA HOGAN:** Okay.

CHAIRPERSON: Ja.

MS BARBARA HOGAN: Yes, do you want me to do that?

CHAIRPERSON: Yes, please, yes.

MS BARBARA HOGAN: Okay.

CHAIRPERSON: What is...[intervenes]

MS BARBARA HOGAN: So they...[indistinct] has an LLB in law from...[intervenes]

CHAIRPERSON: I am sorry what page is it?

ADV PHILLIP MOKOENA SC: Page 38.

MS BARBARA HOGAN: Sorry, it is page 38.

20 **CHAIRPERSON:** 38.

ADV PHILLIP MOKOENA SC: I have got it page 38 and let us talk about the profile of Mr Maseko, paragraph 4.1.

CHAIRPERSON: Thank you.

MS BARBARA HOGAN: Yes, and it is paragraph 4.1. He has a BA, a LLB, BA at Wits, LLB at KZN University in Durban Westville. Now it says here:



10

"During the interview process the panel was very impressed with his skills, experience, track record and knowledge that Mr Maseko had. The Transnet board are of the opinion that Mr Maseko who is currently the Chief Executive Officer of BP Africa has demonstrated the ability and track record to effectively lead and manage the strategic challenges and key responsibilities related to the post of group Chief Executive. Owing to his extensive experience, knowledge and utility in leading and transforming a large complex multi-national organisation across Africa. He has a stable track record in BP and has successfully improved operational efficiencies, reduced costs, increase service delivery and managed risk in a highly volatile foreign currency based revenue stream and dealt with the issues and challenges presented by regulatory authorities and constraints in infrastructure development. His leadership style contributes to a transformed and streamlined organisation."

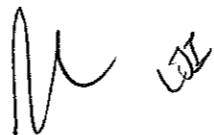
I will then go further and refer you to page 39.

ADV PHILLIP MOKOENA SC: Yes?

20

MS BARBARA HOGAN: To effectively the second paragraph there, he displays, it starts with.

"He displays very sophisticated interpersonal skills and has an ability to communicate influence and negotiate effectively at all levels with all stakeholders. Mr Maseko has successfully implemented world class standards in terms of operational

Handwritten signature and initials, possibly 'M' and 'LST'.

efficiencies, quality standards, cost structures, process service delivery and safety standards. His innovative flare has enabled him to effect meaningful black economic empowerment structures and partnerships for the organisation. He is well schooled in all aspects of governance and he has a high integrity reputation. In the past two years in BP Africa he has successfully refocused the business significantly reducing costs by 60%, moving the South African Head Office and remodelling the interface between the African satellite operations in South Africa."

10

I then just go onto the independent assessment, that is at the bottom of the page.

"His suitability in terms of his leadership style, his cognitive level of functioning to handle the complexity of an organisation as large as Transnet, his personality to lead with maturity, his drive and his integrity have all been independently..."

And I stress this.

"...have all been independently assessed by an independent counselling psychologist who confirms he has a requisite skills competencies and attributes for the job. In summary he is assessed as having a good all round profile."

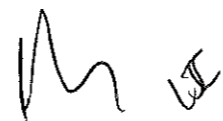
20

I do not think I need to go further than that. Okay.

ADV PHILLIP MOKOENA SC: I think you need to go further.

MS BARBARA HOGAN: Okay.

ADV PHILLIP MOKOENA SC: It is quite important.



MS BARBARA HOGAN:

10 "He has good thinking skills and the potential to be very effective in this executive leadership role. He is particularly good at dealing with detailed complexity and he spends a lot of time thinking through problems in order to consider all the ramifications. He has a high level of learning potential and can be expected to engage effectively in the new learning institutions. He has sophisticated social skills and an inspirational and supportive style of leadership. He is good at motivating and encouraging people, but will confront underperformance when he needs to do so. He forms good relationships with people and has a great respect for diversity and individual differences. He likes to listen to people and guide them rather than direct them, although he can be strong and assertive when a situation requires strong leadership. He is assertive in a quiet manner, and manages situations with sensitivity. He can be direct and straightforward."

Do you want me to continue?

ADV PHILLIP MOKOENA SC: Yes.

20 **MS BARBARA HOGAN:**

"He responds positively to change and embraces opportunities for advancement and challenge and ...[indistinct] bring in enthusiasm and energy. Mr Maseko's preferred style of problem solving is explorative and reflective when faced with an unfamiliar or new business environment or industry. This



indicates that in a new large organisation like Transnet he would benefit from an experienced mentor and coach who fully understands the complexity of the organisation. The industry is in the challenge and will fast track his learning and decision making."

And then he says all the relevant checks were done.

ADV PHILLIP MOKOENA SC: But this is important, because you know when you deal with other issues – I will be posing questions to you whether the subsequent boards when they were appointed did one have this checks, you know, that are referred to on page 40 and what were the credentials of the different individuals that were appointed, subsequent to you having left your position as the Minister of Public Enterprise.

Now can you take us all through this citizen credit criminal qualification checks on page 40?

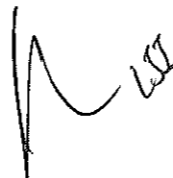
MS BARBARA HOGAN: Okay. All relevant suitability checks were done, criminal records, citizenship verification, credit financial asset record checks and qualification degree verifications.

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Advocate may I just say one thing in relation to this?

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: It sounds very lyrical. Let me say that was other candidates, a lot of very good stuff was also written and important assessments. What made me believe that this was not just trying to pull wool over my eyes was in the assessments of the other candidates there were frank pointers to certain issues which indicated that this would not be the perfect candidate or the most candidate.



I also met with Mr Maseko twice to get my own understanding. Sometimes you can hear good stuff. I met with him twice and I must say he was very, very impressive and straightforward no nonsense about him.

ADV PHILLIP MOKOENA SC: Yes, so he was – you first Chair.

CHAIRPERSON: So this was the candidate that the board was recommending after following certain processes and it was a black candidate?

MS BARBARA HOGAN: Yes.

CHAIRPERSON: With the academic qualifications that we have been referred to and quite a lot of experience according to the board's letter.

10 **MS BARBARA HOGAN:** Yes.

CHAIRPERSON: Yes, thank you.

MS BARBARA HOGAN: In recommending this candidate I also liased with my Deputy Minister Enoch Gordan Ngwana who is a Chair of the Economics Transformation Commission in the NEC of the ANC. He was fully behind this candidate and he had engaged very extensively, I asked him to concentrate. I also spoke to Deputy President Galima Motlanthle, because he was supposedly head of the employment committee at that time, and he said he knew him and he thought he was an excellent candidate. Okay.

CHAIRPERSON: Thank you.

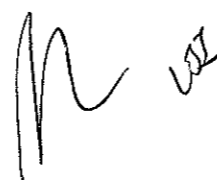
20 **ADV PHILLIP MOKOENA SC:** Despite all that process and the recommendation of the board Mr Zuma was saying that Mr Ghama should be the one that must be appointed?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now ...[intervenes]

MS BARBARA HOGAN: Ja, carry on.

ADV PHILLIP MOKOENA SC: You wanted to elaborate?



CHAIRPERSON: Go ahead Ms Hogan, you wanted to say something in response.

ADV PHILLIP MOKOENA SC: You may proceed.

MS BARBARA HOGAN: Yes, it actually shocked me. I, okay, you know he then said to me "you may not appoint anyone" to the board, because the board also had to have changes, until Mr Ghama's disciplinary was over, because I said to him we cannot appoint him until that disciplinary is over if that is the candidate that you are insisting on.

He said "until that disciplinary is over you will appoint no one".

CHAIRPERSON: Now when the former President said to you that he wanted
10 Mr Ghama to be appointed as the CEO did you furnish him with documentation such as this recommendation, for example from the ... [intervenes]

MS BARBARA HOGAN: Yes.

CHAIRPERSON: From the board so that he could familiarise himself with how the board had come to the decision to recommend this one as opposed to any other candidate?

MS BARBARA HOGAN: I did, and later on as the advocate will lead me, I gave him a more comprehensive document which included the chin grove and CATS opinions and an extensive document that outlined all of this, yes I did.

CHAIRPERSON: Do you know whether when he informed you for the first time that Mr
20 Ghama should be the one who should be appointed he had read or had had an opportunity to read the documentation you had given him?

MS BARBARA HOGAN: I could never give documentation ahead of a meeting. That was part of the problems with the way that office operated and in those early months it was pretty disorganised and remember this is a month into my job, ja, it was still disorganised, the President's office a lot of the staff had been redeployed into the

Handwritten signature and initials, possibly 'M' and 'LII', in black ink.

Deputy President's office to be staff members. So you know sending stuff in, it was confusing. So I took documents with me to the President, but I briefed him according to the documents.

CHAIRPERSON: Yes, okay, what I wanted to find out was whether at the time he expressed the view he had already had the benefit of reading them.

MS BARBARA HOGAN: No.

CHAIRPERSON: He had not?

MS BARBARA HOGAN: No, no.

CHAIRPERSON: But he had had the benefit of you briefing him in that meeting?

10 **MS BARBARA HOGAN:** Yes.

CHAIRPERSON: And did he express this view that Mr Ghama should be the one to be appointed at that same meeting where you briefed him or subsequently?

MS BARBARA HOGAN: No, at that same meeting. You know initially he wanted me to go ahead with the appointment of Mr Ghama. I said I cannot do that. The kind of compromise he then said, he said "alright, we will wait until the disciplinary process is over". I did not agree to that, but we then agreed that I would provide him with further information which I then did.

CHAIRPERSON: Yes, thank you.

20 **ADV PHILLIP MOKOENA SC:** Did the President, the ex-President provide you or the board with any reason why Mr Maseko was not supposed to be appointed, when he insisted Mr Ghama and Mr Ghama alone should be the one who should be appointed?

MS BARBARA HOGAN: He never raised objections about Mr Maseko. He never referred to Mr Maseko. It was just, this is my candidate and Mr Maseko was, you know, he never raised objections or reasons why he should not be appointed.



CHAIRPERSON: When he came up with Mr Ghama's name, as far as you know was that because in briefing him you had told him what the names of the other candidates who had been short listed were? Or do you know whether he might have had the name even before your meeting with him?

MS BARBARA HOGAN: I had the impression that he had the name before I met with him. He seemed to, you know, there were a lot of allegations going around and he seemed to be familiar with those allegations. They were wrongful allegations, but he was aware of them.

10 **CHAIRPERSON:** So, so whatever may have influenced him to make the choice that he made may have been what you said, maybe plus whatever else he might have known before the meeting?

MS BARBARA HOGAN: And also I am not sure, because I have no evidence thereof, but it came out in a month or two later that the ANC and a whole number of organisations were supporting Ghama completely as the candidate, and it might have been that these matters might have been discussed with him in his capacity as head of the ANC, and of course there were all sorts of allegations being made that Mr Ghama was being sidelined, because Mr Wells, a white man who was an Acting CEO had also applied for the job and it was a plot to marginalized a very competent black Manager.

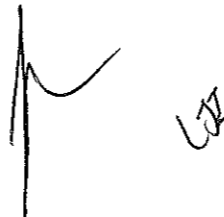
20 Mr Wells had applied for the job in December 2008, but he withdrew his application three days later. So there was a lot of false allegations going around.

CHAIRPERSON: But at the time that Mr Maseko was recommended, Mr Wells had withdrawn his application already. He was no longer a candidate or ...[intervenues]

MS BARBARA HOGAN: He was no longer a candidate.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: Not at all.

Handwritten signature and initials, possibly 'M' and 'LH', located at the bottom center of the page.

CHAIRPERSON: So for all intents and purposes to the extent that the former President or anyone of the organisations you referred to may have wanted Mr Ghama as far as the board was concerned and as far as you were concerned as Minister of Public Enterprises, they were wanting Mr Ghama over Mr Maseko?

MS BARBARA HOGAN: Correct.

CHAIRPERSON: And not over Mr Wells?

MS BARBARA HOGAN: No, over Mr Maseko.

CHAIRPERSON: And...[intervenes]

MS BARBARA HOGAN: But they were saying that Mr Wells, and this will come out
10 later, had conspired to marginalize Mr Ghama by instituting, and the board had instructed him to institute – by instituting an investigation into those misconduct charges.

CHAIRPERSON: But they never said anything as to why Mr Maseko was not good enough?

MS BARBARA HOGAN: No, it was just Ghama and that is it.

CHAIRPERSON: Yes, thank you. Mr Mokoena?

ADV PHILLIP MOKOENA SC: You – in your attempt or your attempts to persuade the
20 ex-President Mr Zuma about the suitable candidate that must be appointed in having regard to the process that was undertaken, the board's resolution, you also dispatched a comprehensive memorandum that you are talking about. If you can go to page 53?

MS BARBARA HOGAN: Yes, I have got it.

ADV PHILLIP MOKOENA SC: Are you there?

MS BARBARA HOGAN: Yes.

Handwritten signature and initials, possibly 'LJI', located at the bottom of the page.

ADV PHILLIP MOKOENA SC: Is that the memorandum that you said that you dispatched to the ex-President Mr Zuma, and you also annexed to that memorandum the relevant opinions which you have received?

MS BARBARA HOGAN: Correct.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: I am sorry, Mr Mokoena. The meeting that you had with the former President where you briefed him, how did it end? So what was the basis on which you parted on that occasion?

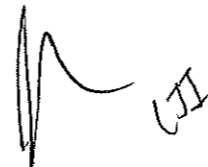
10 **ADV PHILLIP MOKOENA SC:** He was insisting – firstly he insisted that I go ahead and appoint Ghama. I said I could not. He was facing misconduct charges and he was not the preferred candidate. He then said that no appointment to translate must be made until the disciplinary case against Mr Ghama is concluded.

I was concerned about that and I said I would provide him with further evidence. I was already – remember I was only one month into that job, but I was already feeling that the President was exceeding his authority here, and I was truly shocked, you know. When you explained to the President that a person is facing misconduct charges you expect a certain response that says oh, well if that is the case let us look at the preferred candidate that the board is recommending.

20 Do you know what I mean? You are not going to encumber Transnet, that is so important, with a candidate that is going to be involved in controversy and the fact that the President was absolutely insistent, Ghama will be appointed.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Mr Chair, I see it is 13:00, is this an appropriate time to adjourn?



CHAIRPERSON: Yes, yes, thank you very much. We are going to take the lunch adjournment and we will resume at 14:00.

MS BARBARA HOGAN: Thank you.

CHAIRPERSON: We adjourn.

MEETING ADJOURNS FOR LUNCH

MEETING RESUMES AFTER LUNCH

CHAIRPERSON: We apologise about this delay. My protector and I was stuck in the lift for the past 25 minutes or so, so, but we are here now, there is a job to be done let us get on with it. Thank you.

10 **ADV PHILLIP MOKOENA SC:** Thank you, Mr Chair. Ms Hogan, just to recap and summarise on what we touched on before the lunch adjournment. When you testified about Mr Zuma saying that Mr Ghama is his choice, do you recall? When you nod the machine will not be able to take your answer.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Do you recall, yes?

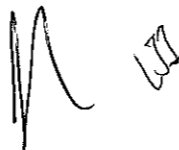
MS BARBARA HOGAN: Yes, yes, ja.

ADV PHILLIP MOKOENA SC: Now during that interaction you said that Mr Zuma was aware that Mr Ghama was the subject of an investigation pertaining to serious procurement irregularities?

20 **MS BARBARA HOGAN:** Yes.

ADV PHILLIP MOKOENA SC: And you conveyed to the ex-President that the board had underwent a very professional selection process and that Mr Ghama was the choice of the board, but despite that he still insisted that it must be Mr Ghama and no one else?

MS BARBARA HOGAN: Yes.



CHAIRPERSON: I think, did you not say Mr Ghama instead of Mr Maseko?

ADV PHILLIP MOKOENA SC: Maseko, yes.

MS BARBARA HOGAN: Maseko, ja.

ADV PHILLIP MOKOENA SC: I beg yours, Mr Chair. Now what I wanted to know from you is that, when the candidacy of Mr Ghama was considered did the board only consider the question of the pending disciplinary – the pending investigation or were there other issues which made the board to persist that Mr Maseko was in fact the suitable candidate?

10 **MS BARBARA HOGAN:** In fact when the board received the report of its nomination subcommittee it then discussed those matters and made its nomination and its recommendation of Mr Maseko. Ms Ramos then only introduced the update on the investigations of Mr Ghama after the board had made its decision. Now, Chair, the allegations of misconduct were initially centred on senior people, but not necessarily Mr Ghama at a certain point.

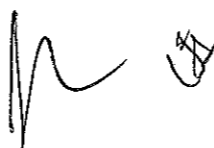
Mr Erwin had received a whistleblowers report and it referred it on...[intervenes]

CHAIRPERSON: And that was Mr Erwin being the former Minister?

MS BARBARA HOGAN: Minister, the former Minister.

CHAIRPERSON: Of Public ...[intervenes]

20 **MS BARBARA HOGAN:** And then forwarded it onto Eskom for investigation. That was related to the purchase of 50 locomotives. It was not immediately apparent that Mr Ghama who was the CEO of Transnet Freight Rail that was doing a purchase was implicated in anyway. And let me say now Mr Ghama was not ever found guilty of fraud, okay. However, there were other senior Managers who were found guilty of fraud and they were dismissed, okay.



So then another query had come up in the *interim* about a contract between General Ayanda Security Advisory Services and Transnet Freight Rail, a security contract that had been entered into that had certain anomalies and that was also further investigated and Mr Ghama's conduct in that matter also had to come under the spotlight.

But the board at that stage, as I understand it, was not completely oevvey of how Mr Ghama was sensually affected, you know, as sensual player in this, and Ms Ramos had the day before requested Transnet internet audit to provide an update, and that update is what we have from Transnet internal audit which I think is C, is that
10 right?

ADV PHILLIP MOKOENA SC: Yes.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: We will be getting to it shortly, but I ... [intervenes]

MS BARBARA HOGAN: Which then starts to definitely identify Mr Ghama as one of the people who had to be investigated. So, yes, there was no sense at the time of the discussions that the reason why they were turning Mr Ghama down as the – as a recommendation was more on capabilities, and let me stress here as well. Mr Ghama received very fine assessments and he is considered as is his fellow senior Managers. They are considered all of them in terms of the assessments. Got very good reports,
20 but there were certain, there were just certain aspects which from the individual evaluations and whatever made them not suitable to be the recommended appointment at this moment in time.

ADV PHILLIP MOKOENA SC: So if I understand your evidence correctly you are saying to the, Chair, that a number of factors were considered in relation to various issues, which were also considered by the board in relation to Mr Ghama?



MS BARBARA HOGAN: That is correct, yes.

ADV PHILLIP MOKOENA SC: Now may I refer you to page 40? Just to round up this issue. You will see that on page 40 you have four unnumbered paragraphs. I need to direct your attention to the paragraph just before the heading citizenship, credit and – can you see that heading, can you see that paragraph?

MS BARBARA HOGAN: On page 40?

ADV PHILLIP MOKOENA SC: Yes, 4-0. The fourth paragraph.

MS BARBARA HOGAN: The fourth paragraph, yes I can.

10 **ADV PHILLIP MOKOENA SC:** The one that starts with, it says "Mr Maseko's preferred ...[intervenens]

MS BARBARA HOGAN: Yes, yes.

ADV PHILLIP MOKOENA SC: Of problem solving is explorative and reflective when faced with unfamiliar or new business environment or industry. This indicates that in a new large organisation like Transnet he would benefit from an experienced mentor and coach who fully understand the complexity of the organisation. Now a question might be posed to say that, if indeed Mr Maseko was an excellent candidate, why would he still require a mentor when he is appointed at this large institution?

20 **MS BARBARA HOGAN:** Mr Maseko came not from within the ranks of Transnet, but from outside the ranks of Transnet. He had extensive experience in running a company that deals primarily with infrastructure and logistics and the movement of goods, and Transnet is a very complex organisation and anyone who came in as CEO from the outside would need a proper induction process. And my understanding of that is that he would undergo a comprehensive induction process, but that his managerial capabilities and his ability to assimilate and his managerial qualities overweighed any



instance that he was, you know, he was just someone who would not know what to do when he arrived.

ADV PHILLIP MOKOENA SC: Yes. Now in paragraph 35 of your witness statement you refer to persons and organisations that were vocal that Mr Ghama was the candidate of their choice. Could you please provide the context and detail to the contents of this paragraph?

MS BARBARA HOGAN: Yes. During the course of all of these matters the media began to carry stories that Mr Ghama was being sidelined in favour of a white candidate Mr Wells and the Transnet Chair...[machine stopped] with me and asked if I
10 could assist with media statements to set the record straight.

There were other media reports that was saying that he was the preferred candidate or the second preferred candidate. The next on the list after Pravin Ghordan and they were dealing with, it was often in Sunday newspapers. Later on when Mr Ghama was suspended by Transnet, about a day before and in the following probably ten, 11, 12 days several organisations issued very very firm statements that Ghama would become the CEO and that he was being sidelined.

Should I continue with those, mentioning who they were?

ADV PHILLIP MOKOENA SC: Those media statements are the ones contained from page 95 to 113, am I correct? I intend to deal with them in due course.

20 **MS BARBARA HOGAN:** Sure.

ADV PHILLIP MOKOENA SC: But I just want you to confirm whether are you referring to those media statements?

MS BARBARA HOGAN: Okay, alright.

ADV PHILLIP MOKOENA SC: Are those the ones from page 95 ...[intervenes]

MS BARBARA HOGAN: It was those, it was in that order ...[intervenes]



ADV PHILLIP MOKOENA SC: And they go up until page 113?

MS BARBARA HOGAN: Yes, and then there was also two cabinet Ministers. Minister Sipiwe Nyanda and Minister Jeff Kgadebe, also made very very strong statements that Mr Ghama was being sidelined, that he would – that he would become the CEO and that he was being persecuted like Mr Zuma had been persecuted.

ADV PHILLIP MOKOENA SC: And those cabinet colleagues that you are referring to them are they the ones that you are testifying about on your statement on paragraph 35, when you say that the problem was that President Zuma, two of my cabinet colleagues ...[intervenes]

10 **MS BARBARA HOGAN:** Correct.

ADV PHILLIP MOKOENA SC: So you were referring to Minister Jeff Kgadebe and ...[intervenes]

MS BARBARA HOGAN: Sipiwe Nyanda, yes.

ADV PHILLIP MOKOENA SC: May I refer you to annexure C on page 46? Now annexed to that letter it is a document on the next page that is styled summary report by Transnet internal audit into allegations relating to Transnet Freight Rail. Now could you please ...[intervenes]

20 **CHAIRPERSON:** Before you proceed Mr Mokoena, is it more convenient for you to deal with those media statements later rather than now, saying that she has just mentioned names?

ADV PHILLIP MOKOENA SC: Yes, Mr Chair, there is a context to them.

CHAIRPERSON: There is a context?

ADV PHILLIP MOKOENA SC: In terms of chronology yes.

CHAIRPERSON: Okay, alright.



ADV PHILLIP MOKOENA SC: The two documents that I have referred to you on page 46 and 47, could you please tell to us what do they relate to?

MS BARBARA HOGAN: Okay. After having received the whistleblower reports at different times Transnet internal audit was asked to investigate these. The first tender which raised problems was the 50 like new locomotives. That was a decision made by Transnet management, which government really agreed with, that certain locomotives could be refurbished in the *interim* until we purchased new and the Transnet board in agreeing that this particular company should get that contract said that the refurbishment must take place in Transnet itself. At that stage it was called Trans Werk or Transnet Rail Engineering. That is one of the divisions of Transnet, and Transnet wanted to up its ability to build, maintain, refurbish locomotives, instead of constantly trying to outsource.

Government's intention was also that government does not – and this was an initiative between Public Enterprises and Trade and Industry that we look very much at creating such a manufacturing capability in South Africa rather than importing rail stock from abroad. Also, South Africa also had that kind of rail manufacturing capability, Union Carriage Way, Downing Dunator was a private sector one and Transnet had it.

So the expenditure on refurbishing this was meant to advantage South Africa's manufacturing capability and to provide jobs. So Transnet board passed a resolution to say that this contract, the work must be done in-house. Only to find out later that Mr Ghama had signed off the contract with no reference to – that it should be in-house, and only to find out later that the company which had an international component, an American component as I remember, with a local component, had started such a facility near to Pretoria and was already investing and building it up. And Transnet now had to now role that back and they had to go to the United States, there were a lot of things,

M
lot

Transnet had to pay a penalty, all sorts of matters arose out of those kind of complications.

So that, what we have here is that this was a matter that Transnet internal audit was investigating and they say here that the contract that was signed did not take into account, and that is on page 48, and it is the third bullet from the bottom.

"The contract signed by Mr Ghama did not take into account the resolution passed by the board of Directors."

ADV PHILLIP MOKOENA SC: Now if I may refer you to page 49 under the heading conclusions?

10 **MS BARBARA HOGAN:** Yes. On page?

ADV PHILLIP MOKOENA SC: 4-9.

MS BARBARA HOGAN: Yes, so the conclusion at that stage, 49, in terms of Transnet internal audit was that the signatories of the contract did not comply fully with the board or Directors' resolution and consequently disciplinary action must be taken against the relevant signatories to the agreement. The Presiding Officer of the disciplinary hearing should take into consideration the implications to Transnet, of the non-compliance and the resultant additional costs to Transnet in determining the appropriate sanction.

ADV PHILLIP MOKOENA SC: Yes and you are saying that Mr Gama was the one that also signed the contracts?

20 **ME BARBARA HOGAN:** Yes. Now Mr Gama was not in control of the Tender Board, you know. Transnet had a whole series of Boards from different divisions and whatever. But as the General Manager of Transnet Freight Rail, it was his job to signoff on the contract and he gave evidence that he had not – you know, he was under pressure and he quickly signed it. He had not really read it through, because he was more or less aware of the contents. Yes that was that one.

ADV PHILLIP MOKOENA SC: Now you also make reference in your statement to one Mr Wells.

CHAIRPERSON: I am sorry Mr Mokoena, so this – the time of this letter and your report from the Transnet Internal Audit Section, was happening in March 2009?

ME BARBARA HOGAN: Yes.

CHAIRPERSON: Before your time?

ME BARBARA HOGAN: Yes.

CHAIRPERSON: Thank you.

ME BARBARA HOGAN: Yes.

10 **ADV PHILLIP MOKOENA SC:** You also make reference to Mr Walsh in your statement Ms Hogan?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: How did he feature in this saga of Mr Gama?

ME BARBARA HOGAN: Mr Walsh was the Acting CEO and he was instructed by the Board to initiate proceedings and whatever. I am not exactly sure the details are here, but as I understand it, he then handed it over to the Head of Human Resources to manage and that was a process that then went ahead. Mr Walsh faced a tirade of insults, it was a fusillade of insults, raciest comments, accusations that he was trying to thwart the progress of a very good black manager.

20 As I have said before, partly because he wanted the job, it was alleged that he wanted the job himself which was not true. Those accusations never ever stopped. Even into the Disciplinary Hearing, the person who conducted the Arbitration Hearings at that point, listed the number of accusations that were laid against Mr Walsh that proved not to be true and they are very – they are not nice accusations. You know, our country has gone into a mode of destroying people in the public domain and it was that



kind of thing. In that very disciplinary hearing, Mr Gama was found guilty of the way that he criticised, the manner in which he criticised the Transnet Executives and Mr Walsh in particular and he said he would apologise.

ADV PHILLIP MOKOENA SC: Yes. May I ...[intervenes]

CHAIRPERSON: I am sorry Mr Mokoena. As at March 2009, when the Transnet Internal Audit Section made this report, Mr Walsh had actually withdrawn his candidature a few months before in December, is that right?

ME BARBARA HOGAN: Correct in December 2008.

10 **CHAIRPERSON:** So when Mr Gama was charged with allegations arising out of this investigation by the Transnet Internal Audit Section, he was no longer an interested party in terms of the position, Mr Walsh?

ME BARBARA HOGAN: Yes he was no longer an interested party.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: May I refer you to page 53 Annexure D, could you please identify that document for us?

20 **ME BARBARA HOGAN:** This was the document which I gave and went through with to the President. At the end of July 2009, as you would recall Chair, I had undertaken to come back with more information to the President relating to the appointment of Mr Maseko. As you will see in the document, I took quite extensive legal advice on this matter and a lot of research was done and this I gave to President Zuma and I went through it.

ADV PHILLIP MOKOENA SC: Before that Ms Hogan, you also set out the purpose of this document on paragraph 1.1 to 1.5.

ME BARBARA HOGAN: Yes.

Handwritten signature and initials in black ink, consisting of a stylized 'M' followed by 'CH'.

ADV PHILLIP MOKOENA SC: And I think that those issues are quite important which you conveyed to the President. Could you please read them into the record?

ME BARBARA HOGAN: Yes, yes.

ADV PHILLIP MOKOENA SC: Could you please read them into the record?

ME BARBARA HOGAN: If there was?

ADV PHILLIP MOKOENA SC: Could you please read the paragraph 1.1 to 1.5?

ME BARBARA HOGAN: Okay I will read it. It was brief the President on the following matters:

- 10
- "1.1 The legal framework governing the appointment of a Group Chief Executive Officer for Transnet Limited.
 - 1.2 The CEO and the recruitment and selection process undertaken by Transnet Board of Directors to employ a CEO.
 - 1.3 Investigations into allegations of corruption at Transnet impacting one of the candidates for the position of a CEO.
 - 1.4 Assessment of the recruitment and selection process by the Board.
 - 1.5 The recommended process forward and the risks involved
- 20

That was the content of that.

ADV PHILLIP MOKOENA SC: So already in 2009 long before this Commission of Inquiry as per 1.3 there were already those issues pertaining to the allegations of corruption at Transnet as you have indicated in that paragraph?

ME BARBARA HOGAN: Yes.



ADV PHILLIP MOKOENA SC: Now what I want to know Ms Hogan, you then had a meeting with the ex-President and also provided him with this detailed memorandum?

ME BARBARA HOGAN: Yes I did.

ADV PHILLIP MOKOENA SC: Did you take the President through this document?

ME BARBARA HOGAN: Did I?

ADV PHILLIP MOKOENA SC: Did you take the President through this document?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: What was his reaction?

CHAIRPERSON: I am sorry before that. When was that meeting?

10 **ME BARBARA HOGAN:** It was towards the – this document is dated the 28 July. So it must have been within a week of that. You see I was approaching the President, because the process for appointing the CEO had been halted, we had to then postpone the AGM of Transnet and I was wanting the President – you know this documents comes with a recommendation that Sipho Maseko be appointed and so it must have been between the date of this document the 27 July and the 11 August when the Transnet AGM took place.

CHAIRPERSON: This meeting that you are talking about now between yourself and the President, where you took him through this document, this memorandum of 28 July 2009, that was then a second meeting that you had with the President on the
20 issue of the appointment of the CEO for Transnet?

ME BARBARA HOGAN: Correct.

CHAIRPERSON: The first one having been about a month or so after your appointment as Minister of Public Enterprises?

ME BARBARA HOGAN: Correct.

CHAIRPERSON: So a month or so would have been early June 2009, is that right, I

Handwritten signature or initials, possibly 'M' with 'LH' next to it.

think you were appointed about 10 May?

ME BARBARA HOGAN: Yes.

CHAIRPERSON: Or 11 May.

ME BARBARA HOGAN: June yes.

CHAIRPERSON: Ja. So your first meeting with him in regard to this issue, would have been around early June towards mid-June?

ME BARBARA HOGAN: I think I give the date – yes it was towards – I say approximately a month after my appointment.

CHAIRPERSON: Yes.

10 **ME BARBARA HOGAN:** So June sometime ja.

CHAIRPERSON: So that would be somewhere in the first half of June?

ME BARBARA HOGAN: Yes.

CHAIRPERSON: Ja okay thank you.

ADV PHILLIP MOKOENA SC: To clarify the Chair's questions, if you can go to page 9 just to point in the chronology, paragraph 33 that is where you talk about the first meeting?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And you will see that it is approximately a month after my appointment.

20 **ME BARBARA HOGAN:** Yes.

ADV PHILLIP MOKOENA SC: Ja. Now if we refer back to Annexure D page 53.

ME BARBARA HOGAN: Page?

ADV PHILLIP MOKOENA SC: Five three.

ME BARBARA HOGAN: Five three okay, yes.

ADV PHILLIP MOKOENA SC: You have outlined the topics which are dealt with in this

Handwritten signature or initials in black ink, appearing to be 'M' followed by a flourish.

memorandum on paragraph 1.1 to 1.5.

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And I take it that from – if one peruse this document, one will find these issues being ventilated at great length?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And this is what the President had in his possession when you were trying to convey to him the importance of appointing Mr Maseko?

ME BARBARA HOGAN: Correct.

10 **ADV PHILLIP MOKOENA SC:** Now just to clear one of the issues which – where there might be a lacuna in terms of your documents. Could you explain to the Chair whether at the time when you were preparing your statement, did you have all the necessary documents that you required?

ME BARBARA HOGAN: Yes I did.

ADV PHILLIP MOKOENA SC: You did?

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Did you receive all the emails that you required from your previous office?

20 **ME BARBARA HOGAN:** I did, but there was a problem. I wrote an official letter to Minister Gordhan requesting access to my documents in order to prepare this statement.

CHAIRPERSON: Sorry to Minister?

ME BARBARA HOGAN: Gordhan, because he is the Minister of Public Enterprises now. So I requested access to documents in order to prepare. They were able to assist me and he assigned an advocate in his department to assist me and I signed off and they signed off that these were copies. But, it was evident that my papers had

Handwritten signature and initials, possibly 'R' and 'WJ', located at the bottom right of the page.

been quite considerably tampered with and also we could find no record of my emails. It seemed that they had been deleted from my time and maybe a little later from the server of the Department of Public Enterprises. So I did have to reconstruct as best as I could some of these documents and my understanding, I spent a lot of time doing that, just to make sure that I – you know that it was solid.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Thank you, thank you.

ADV PHILLIP MOKOENA SC: Now we were still dealing with Annexure D on page 53.

ME BARBARA HOGAN: Yes.

10 **ADV PHILLIP MOKOENA SC:** You have also testified about your second meeting with the ex-President.

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now what I want to know is that after that meeting, or during that meeting, what was the reaction of the President?

CHAIRPERSON: Or maybe before that. Could you give me the main features of this document that you presented to the President?

ME BARBARA HOGAN: The main?

CHAIRPERSON: The main features.

ME BARBARA HOGAN: Features okay.

20 **CHAIRPERSON:** The main points.

ME BARBARA HOGAN: Okay.

CHAIRPERSON: In other words you do not need to say everything.

ME BARBARA HOGAN: Yes.

CHAIRPERSON: But what you consider were the main points that the memorandum contained, which obviously you probably mentioned to the former President.

h *17*

ME BARBARA HOGAN: Ja. The main point was firstly the legal framework, regarding the appointment of a Group CEO for Transnet that is founded in the Transnet founding documents.

CHAIRPERSON: And that briefly was, just go ...[intervenes]

ME BARBARA HOGAN: Okay I will go through it here. I am talking to page 55 it says here, Transnet's articles of association do provide specifically for the appointment of the Board and the CEO. Article 69 and 71 vest the power to appoint the CEO with the shareholder, the Minister in a general meeting. Article 69 specifically addresses the appointment of Executive Directors that is the CEO the CFO, and any other Executive
10 Director while Article 71 deals with the non-executive Directors. So I was giving who has executive authority to appoint. That was one of the matters. Because I thought the President did not understand that kind of component or was not agreeing with it.

Then I went through the CEO recruitment and selection process. As I have done with you, how thorough, what it was about, what the competencies we needed.

CHAIRPERSON: Effectively in the same way you have explained it.

ME BARBARA HOGAN: I done it with yourself yes.

CHAIRPERSON: Ja, ja that you explained to him as well.

ME BARBARA HOGAN: Ja.

CHAIRPERSON: Ja.

20 **ME BARBARA HOGAN:** I also dealt with investigation into the issues of corruption and I gave him the details of both instances, the 50 like new and the security contract which had been given to Minister Nyanda's company. Let me say Minister Nyanda was no longer – when he became a Cabinet Minister, he then moved out of that company, but at the time he had been a member. So I gave the President details of all of that.

I also informed him of the legal onus on the Board to take action when such

Handwritten signature and initials in black ink, located at the bottom right of the page.

instances of misconduct do occur and that it was not the Board's decision to make, to follow-up, it was actually a legal requirement. So that was followed up with him and then I repeated my recommendation that he notes the contents of this memorandum and approves the submission of a cabinet memorandum recommending the appointment.

Now I want to be very clear. I was not asking the President to approve Mr Maseko. I was asking him to approve a cabinet memorandum recommending the appointment. Now as I have said to you before, the cabinet memorandums go through a subcommittee of cabinet and then go to cabinet. When a Minister is under pressure and it is an important issue, the Minister can write a letter to the President explaining why the Minister would prefer to bypass the subcommittee process because of certain exigencies and the President is then empowered to grant the Minister to place that on the agenda. That is what I was referring to. Because it was already getting very late for the Board.

CHAIRPERSON: So the approval that you were seeking the appointment was an approval of bypassing the subcommittee of cabinet in regard to this memorandum and going straight to cabinet?

ME BARBARA HOGAN: My recommendation says that. Well not, it just says, approves the submission of a cabinet memorandum. I did not go into details of which process.

CHAIRPERSON: But what I mean is you – the approval you wanted related to the process to the procedure.

ME BARBARA HOGAN: Yes to procedures.

CHAIRPERSON: Ja okay.

ME BARBARA HOGAN: It was because Advocate Trengove had advised very strongly

Handwritten signature and initials, possibly 'LH' or similar, located at the bottom right of the page.

and others as well that you should not be asking for approval, you should be consulting with.

CHAIRPERSON: Okay I think Mr Mokoena's question before mine was therefore, what the former President's reaction was to your recommendation at that meeting.

ADV PHILLIP MOKOENA SC: Yes.

ME BARBARA HOGAN: He said he would come back to me.

ADV PHILLIP MOKOENA SC: Now may I refer you to Annexure E page 94.

10 **CHAIRPERSON:** And maybe before you go there. At your first meeting with the former President on this issue, had you left him with documentation relating to the issue that he could have looked at after your meeting, or not really?

ME BARBARA HOGAN: Yes I left him. The problem with meeting – in all – virtually every instance of meeting with the President, is that there was never an aid present. My experience with President Motlanthe, previously when I was Minister of Health is that, if there was something very important that you had to discuss, you know not just something quickly, but you could pass by him, you would request that meeting. On occasions the President's office would contact the DG or someone to say, what is this about and you know there would be various things. But in most instances, virtually all those instances when he was President there would be an aid taking a record of that decision. With President Zuma there was not that, you know, you met at his house. It was, you know the housekeeper sometimes would organise the meetings. There was not a professionalism there.

20 **ADV PHILLIP MOKOENA SC:** I was referring you to Annexure E on page 94.

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Now you had told the Chair that when you testified about Annexure D that you had a meeting with the ex-President Mr Zuma, you left him

Handwritten signature and initials in black ink, located at the bottom right of the page.

with that document, you took him through that document and he said he will revert to you, am I correct?

ME BARBARA HOGAN: Yes correct.

ADV PHILLIP MOKOENA SC: Now can you tell us, identify for us Annexure E and tell us what was the purpose of you despatching this letter to the President?

ME BARBARA HOGAN: Okay. So having not heard from the President and knowing that I had to get within the cabinet's cycle, I then formally addressed a letter to the President, requesting permission for the late and direct submission of the cabinet memorandum and therefore to – for the appointment of Mr Maseko.

10 **ADV PHILLIP MOKOENA SC:** Now in terms of the dates, I know – I will give you the opportunity to proceed with that evidence. We know that Annexure D is dated the 28th July 2009, Annexure D.

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And Annexure E it is now dated the 25 August 2009, almost a period of a month has lapsed without you hearing from the ex-President.

ME BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes. You can now proceed dealing with Annexure E.

20 **ME BARBARA HOGAN:** Ja. I then request the President's permission, because I had not heard – I had requested that I put it before cabinet, I had not heard from him. So I did the formal request which you are supposed to do as a Minister and I think I spoke telephonically, I cannot remember. All I have is that this memo was then withdrawn from the cabinet's agenda and the President then said he wanted several names, not only for the CEO position, but he wanted several names for the Chairperson of Transnet.

ADV PHILLIP MOKOENA SC: Now do you know who withdrew the memorandum from

Handwritten signature and initials in black ink, located at the bottom right of the page.

cabinet?

ME BARBARA HOGAN: This memo who wrote this?

ADV PHILLIP MOKOENA SC: No, no who withdrew the memorandum?

ME BARBARA HOGAN: The cabinet secretariat were instructed to withdraw the memorandum and they said the President had given that instruction.

ADV PHILLIP MOKOENA SC: Oh yes, and you said that the President wanted several names of what?

ME BARBARA HOGAN: For the Chairperson of the Board. I had not requested anything yet to put forward a memorandum on the Chairperson. But the President now
10 wanted three names for the Chairperson of the Board.

CHAIRPERSON: Would this have been around August now?

ME BARBARA HOGAN: 28th August. Oh yes, the formal request I put through was on the 28th August.

CHAIRPERSON: Had Mr Paswana left the Transnet Board at that stage?

ME BARBARA HOGAN: Yes he had left at the end of July.

CHAIRPERSON: Oh okay alright. But the point you make is that you had not yet approached the President about the feeling of that vacant position?

ME BARBARA HOGAN: Yes. I surmise that what I had said to him that it was important to have appointments is that there was now an Acting Chair, Acting CFO,
20 Acting Group CEO, Acting CEO of Freight Rail and that might have been the context. I cannot exactly remember, but he now wanted me to give him three names so he could decide.

ADV PHILLIP MOKOENA SC: Now you despatch Annexure E to the President, did he react to this letter?

ME BARBARA HOGAN: Well he did in a sense that the memo was withdrawn from

cabinet, it did not serve at cabinet, the recommendation.

ADV PHILLIP MOKOENA SC: Did you find any opportunity to address the cabinet on the issue of – the issues that you wanted to raise – that you have raised with the President?

ME BARBARA HOGAN: I could not raise that issue following on this until Mr Gama's disciplinary proceedings were completed and they were only finished in June when he was dismissed from Transnet in June 2010, it was almost a year later. So Transnet was left completely vulnerable with acting positions all the way through.

10 **CHAIRPERSON:** Now were you consulted in any way about the withdrawal of the memorandum from cabinet?

ME BARBARA HOGAN: No, no.

CHAIRPERSON: Yes.

ME BARBARA HOGAN: The President – what I surmise is that the President said, this is not going through, I want now you to add three more names for a Chairperson.

CHAIRPERSON: But as at the date when that happened, he had not come back to you on the documentation you had submitted to him in July?

ME BARBARA HOGAN: No he had not.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Now on paragraph 44 page 12.

20 **CHAIRPERSON:** I am sorry Mr Mokoena. The three names that the former President was asking for, were those exclusively for the position of Chairperson of the Board, Transnet Board, or did he also mean he wanted other names for the position of CEO as well.

ME BARBARA HOGAN: No he was then talking about the Chairperson of the Board.

CHAIRPERSON: As at that time, what was your understanding of the President's



position on the issue of CEO, Group CEO for Transnet? Was it that he wanted the search for a CEO to be put in abeyance until the disciplinary process relating to Mr Gama was finished, at which stage then all the relevant candidates could be considered and the choice be made, or was - were your understanding that whatever happened, Mr Gama was the one to be appointed at the end of that process if he was not dismissed as a result of the process. What was your understanding.

MS BARBARA HOGAN: That Mr Ghama must be appointed.

CHAIRPERSON: And that – your understanding that that was his position did it ever change at any stage while you were Minister of Public Enterprises?

10 **MS BARBARA HOGAN:** No.

CHAIRPERSON: It did not?

MS BARBARA HOGAN: No.

CHAIRPERSON: Was there – was there any time when you did ask whether the former President had any problem with the candidate recommended by the board? In other words did you get a chance to say, Mr President, do you have any particular problem with this candidate who has been recommended by the board? And maybe if you did, what was the answer?

MS BARBARA HOGAN: The answer was that Mr Ghama is being persecuted.

CHAIRPERSON: So you did get a chance to ask ...[intervenes]

20 **MS BARBARA HOGAN:** Oh, yes, when I briefed him the first time and the second time.

CHAIRPERSON: Yes, yes.

MS BARBARA HOGAN: But he was not prepared to discuss the merits of Mr Maseko.

CHAIRPERSON: Yes.

MS BARBARA HOGAN: He simply wanted Mr Ghama appointed.



CHAIRPERSON: So he did not articulate any criticism of Mr Maseko's capabilities or experience or knowledge?

MS BARBARA HOGAN: No.

CHAIRPERSON: Okay.

MS BARBARA HOGAN: Mr Maseko then withdrew as a candidate in September.

CHAIRPERSON: Yes, thank you.

ADV PHILLIP MOKOENA SC: Ms Hogan, just for completeness so that we do not leave the, Chair, behind. May I refer you to page 10, paragraph 34? And in that paragraph you address the questions that were now put by the, Chair, in order to clarify

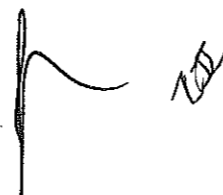
10 your evidence. You answer as follows: You are saying in your statement:

"I was shocked and disappointed when President Zuma informed me that he was adamant that Mr Ghama was his only choice for the group CEO. I informed him that that was not possible and that Mr Ghama was not the board's choice and I could not override the board as they had undergone a very professional selection process. I further informed President Zuma that Mr Ghama was the subject of an inquiry into procurement irregularities and it would be very messy to appoint a group CEO who could potentially be facing fairly serious charges."

20

And fundamentally you say:

"President Zuma said that if that was my view no appointment whatsoever was to be made at Transnet until Mr Ghama's disciplinary process was over. We agreed that I would provide him more detailed information for him to further apply his



mind."

So there was no doubt in the ex-President's mind as to whom he wanted as the group CEO?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Despite everything else that you have conveyed to him?

MS BARBARA HOGAN: Yes.

10 **CHAIRPERSON:** Was there an appreciation on your part that if you were the appointing authority in respect of the CEO and there were a number of candidates and the board had recommended a certain candidate that if you appointed another candidate you would as a matter of law be required to be able to justify why you chose a particular candidate and not another candidate? You had that appreciation?

MS BARBARA HOGAN: Exactly.

CHAIRPERSON: Yes, and that you would have – you would need to be able to defend your decision?

MS BARBARA HOGAN: Yes, I was aware of that, and for me it was really important that a board has confidence in a CEO, otherwise it is just not going to work. And, yes, you know, it was not for me now to go looking around for another candidate who they had said they would prefer not to appoint at that point in time.

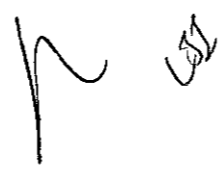
20 **CHAIRPERSON:** Um.

MS BARBARA HOGAN: Sorry, ja?

CHAIRPERSON: No, no, no, continue.

MS BARBARA HOGAN: No, no, that is ... [intervenes]

CHAIRPERSON: From what you say it seems that you were not given anything even if you may have been open to appointing somebody else other than Mr Maseko, you were



not given any grounds as to why Mr Ghama was or would have been a better candidate than Mr Maseko.

MS BARBARA HOGAN: I was given no grounds and what I learned from this experience and from what the President had said is that I would not be able to put before cabinet any proposal relating to Transnet. Going forward apart from submitting a very dubious memorandum nominating three names for cabinet or the President to decide, which I was advised was usurping an executive authority, and I quite frankly had started to become alarmed at – and I did not understand it, what the underlying motives must be for all of this.

10 What was the interest in just one particular candidate and what was the interest in a Chair then? That seemed to go beyond just the interest of Transnet as a company.

CHAIRPERSON: Did you have – did you get to know whether the former President also had an appreciation that whoever was chosen as the CEO, that decision would need to be a decision that could be justifiable in terms of why choose this one and not that one? Did you get to know whether he appreciated that? That that was required?

MS BARBARA HOGAN: You know, no. I could not get a sense that he appreciated – that you have to be able to apply your mind and justify what decisions you make as an executive authority. It was almost like he still saw himself in the ANC as issuing
20 instructions to, you know, one of your executive members or, you know, that you are in charge of the show and you tell people what they must do. He almost had that approach.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Ms Hogan, I was referring you to page 12 of your witness statement, with particular reference to paragraph 44. You say in paragraph 44:

Handwritten signature and initials in black ink, located at the bottom center of the page.

10 "Mr Ghama was formally charged by Transnet and later suspended on 1 September 2009. Immediately before and in the days following his suspension Minister Jeff Radebe, Ghama, 'Ghama will become CEO', Minister Sipiwe Nyanda 'Ghama is being persecuted like Jacob Zuma and also ANC, the SACP, the South African Transport Union and ANC Youth League under Julius Malema at the time all issued strong and harsh statements in support of Ghama' accusing Transnet of persecuting him. This was reflected in numerous statements and reports in the media which I attach hereto marked F1 to F13."

I need to explore with you some of those media reports in order for us to be able to appreciate the influence and the pressure which you say was exerted upon you at the time in relation to this issue. May I then refer you to page 95?

CHAIRPERSON: What page? 95?

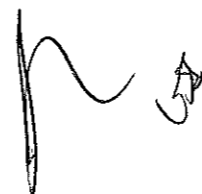
ADV PHILLIP MOKOENA SC: 9-5, Chair.

CHAIRPERSON: Thank you.

20 **ADV PHILLIP MOKOENA SC:** Now let us start with the one on page 95 headed ANC backs suspended Transnet boss, dated 30 August 2009 from the Sunday Times and if you can read that article and you can react or comment on it?

MS BARBARA HOGAN: I will just read extracts. This was an article which appeared in the Sunday Times a day or two before Mr Ghama was suspended and all of these statements occurred as Mr Ghama was suspended. Minister Jeff Radebe described his suspension as a miscarriage of justice, that is the first paragraph.

ADV PHILLIP MOKOENA SC: Yes, and if you can also comment on the last paragraph



that says Ghama is believed?

MS BARBARA HOGAN: Yes, then various falsehoods were put out. Ghama is believed to be among at least three candidates short listed to take over as a permanent CEO. He was short listed, but you know, he was not the person recommended. So it is an innuendo rather than a blatant distortion.

ADV PHILLIP MOKOENA SC: And that must be viewed in the light of your evidence before the, Chair, today when you told us about the individuals that were short listed and you also commented on the credentials of Mr Maseko?

MS BARBARA HOGAN: Yes.

10 **ADV PHILLIP MOKOENA SC:** And the other issues that were taken into account in relation to Mr Ghama?

MS BARBARA HOGAN: Yes, yes, indeed.

ADV PHILLIP MOKOENA SC: Proceed.

MS BARBARA HOGAN: And then it says the Sunday Times can also reveal that the National Working Committee instructed Minister of Public Enterprises, Barbara Hogan about two months ago to appoint Ghama as Transnet CEO after the departure of the ...[indistinct] former head Maria Ramos had left, who had joined ABSA.

20 Now I had never received an instruction from ANC's National Working Committee. It is, you know, it is insightful to look at who was on that committee at that stage. Many of them were people who had backed President Zuma in his campaign to be President of the ANC. They were his firm supporters and backers with very few exceptions on that National Working Committee.

ADV PHILLIP MOKOENA SC: Now can you turn over to page 96? You can ignore the first portion, unless you want to comment on it, but I am much more interested in the second portion that appears in quotes, that, that says in other words. If you can read

Handwritten signature and initials, possibly 'M' and 'LH'.

and react to it?

MS BARBARA HOGAN: Yes, now this was a quote from Brian Sekotu who was the media's ANC spokesman and he was saying, you know, he was saying that Ghama was an executive who has been around Transnet. In other words we say he has a track record. I am not aware of discussions about him at the NWC or the MEC level, but there is nothing stopping members of the ANC from discussing succession within parastatals. Now you can discuss, do you instruct? Why are you discussing? Those are the questions that one needs answered.

10 **ADV PHILLIP MOKOENA SC:** And then the following that says speaking at the University of KwaZulu-Natal on Thursday Radebe deny the Transnet board and described the decision to suspend Ghama as gross injustice. You have already testified about that.

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: Yes. Now if you go towards the bottom of the same page, starting with the words according to NWC insiders, Ghama was recommended by the parties deployment committee. Do you wish to comment on that?

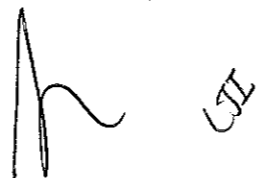
MS BARBARA HOGAN: It may well have been, but that was never drawn to my attention that Ghama was recommended by the deployment committee.

20 **ADV PHILLIP MOKOENA SC:** Yes, turn over to page 97. You can read from where it says both men and you can comment thereafter.

MS BARBARA HOGAN: Well this is misleading, because it says "both men were recommended". Only one person was recommended, not both men.

ADV PHILLIP MOKOENA SC: And this is in line with your testimony corroborated by the documents which I referred to today that there was only one recommendation?

MS BARBARA HOGAN: One recommended person all the way through.

Handwritten signature and initials, possibly 'M' and 'LJI', located at the bottom of the page.

ADV PHILLIP MOKOENA SC: May I refer you to page 98? Sorry, while you are still on page 97 the sixth line that starts with "an ANC deployment committee" if you can read there and comment? 97.

MS BARBARA HOGAN: 97? Sorry I thought it was 98.

ADV PHILLIP MOKOENA SC: 97, I think it is the sixth line.

MS BARBARA HOGAN: It was also, I do not know, I have no knowledge of who opposed Ghama, that person.

ADV PHILLIP MOKOENA SC: Yes. Now may I refer you to page 98? You can read the first and the last paragraphs and comment on them.

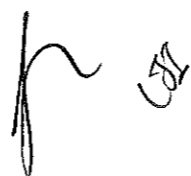
10 **MS BARBARA HOGAN:** This is now the ANC Youth League. So the first, well, one of the media statements is on the 30th, the ANC Youth League issues a statement on September the 11th saying:

"The African National Congress Youth League calls for the immediate appointment of Siyabonga Ghama as a group CEO of Transnet. There is evidently a concerted agenda by the predominantly white board of Directors and external role players to isolate Siyabonga Ghama from Transnet and deny him the position of group CEO of Transnet despite his credentials. Currently Africans are denied positions of responsibility in key and strategic sectors of the economy and we should never egg walk around this absolute reality."

20

And then it goes onto say:

"Siyabonga Ghama should be appointed as a group CEO and business go on as usual in Transnet. Any attempt to persecute and isolate him will be met with massive resistance from the

Handwritten signature and initials, possibly 'LH' or similar, located at the bottom right of the page.

youth of South Africa."

ADV PHILLIP MOKOENA SC: And this is some of the pressure that you say it was exerted upon you at the time?

MS BARBARA HOGAN: Yes.

ADV PHILLIP MOKOENA SC: And the board?

MS BARBARA HOGAN: And the board, yes.

ADV PHILLIP MOKOENA SC: Now may I refer you to page 101? You can identify that document, read it and you can also comment on it.

MS BARBARA HOGAN: Now this is the South African Communist party releasing a statement a couple of days before the ANC Youth League on 7 September saying, this is a statement:

"THE SACP has noted the recent developments within Transnet and the subsequent suspension of Siyabonga Ghama. We wish to express serious concerns about what appears to be an attempt by certain elements within and outside of Transnet to clearly frustrate the appointment of Mr Ghama as a CEO despite his illustrious career, commitment to public service and strong credentials."

ADV PHILLIP MOKOENA SC: Let us go to page 101.

20 **MS BARBARA HOGAN:** That is the same ...[intervenes]

ADV PHILLIP MOKOENA SC: That is the same thing, yes.

MS BARBARA HOGAN: A duplicate, ja, ja.

ADV PHILLIP MOKOENA SC: That is a duplicate. Page 108. It is headed Ghama being persecuted like Zuma, are you there?

MS BARBARA HOGAN: I am just allocating it. 107. This is on September the 13th in

the Sunday Times business page and the quote is:

"Ghama being persecuted like Zuma. Minister of Communications and ANC heavyweight, General Sipiwe Nyanda says suspended Transnet executive Siyabonga Ghama is being persecuted in the same manner as Jacob Zuma. He is a young man. Very few people are as capable or as suitable as he is. The challenge is that some people out there are really bent on insuring that he is destroyed. What happened to Jacob Zuma, to JZ is happening in this case.

10 People vilify and cast dispersions on you."

ADV PHILLIP MOKOENA SC: The last one on page 113.

MS BARBARA HOGAN: This is from South African Transport and Allied Workers Union. It is, it was issued by the General Secretary Randall Howard.

"SITAWU has become aware the suspension of Ghama effected on 1 September. SITAWU is convinced that the suspension is informed by a dirty tricks campaign ...[intervenes]"

ADV PHILLIP MOKOENA SC: You are reading the one on annexure G111, is it not?

MS BARBARA HOGAN: On 111.

20 **ADV PHILLIP MOKOENA SC:** Yes, okay, proceed.

MS BARBARA HOGAN: Yes, ja.

"...is a dirty campaign to discredit him publicly, rule him out as the most suitable candidate. We also question the timing of the charges."

And then it goes on:

"SITAWU is reliably informed that the Carlton Centre Kabal..."

And how often are we hearing that word Kabal?

"...that the Carlton Centre Kabal led by the acting GCEO Chris Wells with a direct link to former GCEO Maria Ramos is hell bent on insuring that Ghama does not get the job."

It goes on and on, SITAWU and then at the end here, the last paragraph:

"SITAWU will ensure that no puppet appointment takes place until the disciplinary process of Ghama is completed. Even though at the cost of keeping an untransformed Kabal in place a little longer."

10

And you know that is the tone of it. Might I just say that COSATU as a federation never once engaged publicly on this matter. I had briefed Zwelinzima Vavi and he concurred with me that there were, you know, this issue was problematic. So although the transport union who, you know, have members in Transnet issued a statement. COSATU was the one part of the ...[indistinct] alliance that did not follow suit as the others had done.

ADV PHILLIP MOKOENA SC: And we have also annexure H on 113. This also captures the history, and it has captured, it is headed meddling with Transnet matters.

MS BARBARA HOGAN: Yes, this is an editorial.

20 **ADV PHILLIP MOKOENA SC:** Yes.

MS BARBARA HOGAN: Of a City Press of September the 13th, 2009, headed as you say meddling with Transnet matters. It starts off with saying:

"The level of political interference at Transnet does not bode well for the effective management of parastatals. At last count the presidency the ANC headquarters Minister Jeff Radebe, the

ANC Youth League and the Trade Union Federation..."

And that was incorrect, it was just SITAWU.

"...had all insisted that the Transnet board appoints suspended executive Siyabonga Ghama as the Chief Executive. It is an unprecedented level of political pressure exercised on what is supposed to be a board appointed by government, but which operates with autonomy and respect for its professionalism and its expertise."

10 And then it starts to speculate what is at stake here. Obviously certain business associations with Minister Radebe, whatever, I will not go into those, but it ends off by saying and that is the third paragraph from the bottom:

20 "The question of who is right or wrong is really not for the ANC to determine, neither is it terribly good practice to level the race card at the board and the executive team at Transnet. The board is diverse and its non-executive Directors include Christine Ramon, Nunu Ntshingila and Peter Moyle. Their reputations are being sullied and it will be little surprise if they walk in the next week. Also in a tight spot is Public Enterprises Minister Barbara Hogan who has to make the nomination of the Transnet Chief Executive to cabinet. Caught between her party and the board she is damned if she does and damned if she does not."

ADV PHILLIP MOKOENA SC: Do you wish to comment on that?

MS BARBARA HOGAN: Very true. I have not included how in later times during this period, the kind of newspaper articles that were produced, allegedly quoting insiders,

Handwritten signature and initials, possibly 'M' and 'LST'.

people in the know, all of those. Besides myself, Mr Wells was also targeted, the Transnet board. As regards to myself there were often headline stories in particular Sunday newspaper, which said I did not have the confidence of the cabinet, that I must go, that I am going to be taken out, and it was, you know, nothing related to what I – what my experience was, but how I experienced that was an enormous amount of pressure being put on me publicly to exceed to what – whoever was doing this to exceed to their demands.

There was a point at which I was informed that a senior, that certain members of a senior black management of Transnet would walk out if Mr Ghama was appointed.
10 Now, Chair, you know this is a company. This is not a two bit little show. This is a company that is extremely important for the country. I counted no less 18 times in six months that the Transnet board tried to engage government, myself, my predecessors. They even went to President Motlanthe, Deputy President Motlanthe to make a decision about the board and the CEO.

Would any shareholder withhold and postpone and not appoint a board for over – you know, not appoint these critical positions for over a year? No. How are we treating senior professional people who we have appointed to a board and treat them as though they are part of a conspiracy to do whatever is evil and wrong and against transformation? That board, majority was black. Very fine people, and yet they were
20 castigated. Yet, and you can see here that some of them are already talking to the media and say this is ruining me, my reputation, I will have to move on, and in fact four did resign. And to the credit of others they stayed on, and to the credit of the people who were in the acting positions who often had to be in the firing line non-stop they stayed on.

It is unacceptable, and that is why I do feel that this Commission does need to



look at the issues of how boards are appointed? What level autonomy, what level of professionalism is engaged and how we respect people? But is not only boards. There is a person like Siphon Maseko. He is already running a major parastatal, the share price has shot up since he took over.

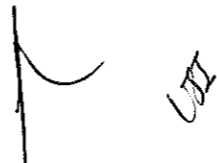
What are we saying to Siphon Maseko? A completely competent Manager who has come flying through the tests, that he is not good enough, because for some reason the ANC does not see him as one of them. Not that he is, you know, I am not saying as one of them as a member, but somehow refuses to respect him as a person. And this went on time and time again.

10 This notion that there is an in-house and there is an out-house and the way to pursue your career is to beat, is to walk a beaten path to Luthuli House and ingratiate yourself with the party. And I do think that we need to look at that relationship between the state and the party and the way that people are being mobilised to spread falsehoods and deformation.

CHAIRPERSON: To your knowledge, as at that time, had it ever happened that in regard to the appointment of a CEO of a parastatal SOE members of cabinet should go out publicly and make the kinds of statements that I understand were made by some of your cabinet colleagues in regard to another colleague's portfolio?

20 **MS BARBARA HOGAN:** You know it is unheard of that you would implicitly attack another cabinet colleague, insist on the decision that, that – you can criticise a cabinet colleague and say, well, you know, there is within bounds, but you know, I do not agree or whatever or I have reservations. But to say this cabinet colleague will appoint Ghama, appoint someone.

In fact the matter was taken to the Public Protector at the time. The Public Protector ruled in the case of Minister Nyanda that he had contravened the Executive

Handwritten signature and initials, possibly 'LH' or similar, located at the bottom right of the page.

Ethics Act in that he had leveraged his position as a Minister to benefit people who were close or whatever. And the President was told that he had to reprimand Minister Nyanda and when asked in Parliament whether he had reprimanded Minister Nyanda, he simply said yes, I have reprimanded him.

Yes, it is, you know I remember several cabinet Ministers coming to me and saying they were shocked at the way that fellow cabinet Ministers were going out into the public domain, neither of them ever, ever spoke to me, but went into the public domain and were, you know lobbying, and that is the only word that you can say, lobbying for a candidate.

10 **CHAIRPERSON:** Do you know whether those cabinet colleagues of yours as well as all the other organisations or people who are referred to in the newspaper articles that you have referred to, whether they were aware that there was a selection process that had to be followed? That had been followed by the board. A board as you say that was – and the majority of whom were black, and that there was a black candidate who had been recommended? Do you know if they were all aware of this or were there just some stories told that it was either Mr Ghama and a white candidate? Not necessarily white ...[intervenes]

MS BARBARA HOGAN: You know, I am not a party to the knowledge ...[intervenes]

20 **CHAIRPERSON:** Not necessarily meaning that if it was a white candidate it would be justified, but I am just looking at some of the things that I have read which some of the people seem to use to justify why they said it should be Mr Ghama.

MS BARBARA HOGAN: The Deputy Minister Ina Gordan Ngwana often had to be at the Luthuli House, because he was chairing the Economics Transformation Subcommittee and would engage there, you know in an informal basis. He was of the same view as I held. We both met with the Secretary General of the ANC. We wanted

Handwritten signature and initials in black ink, located at the bottom center of the page.

to know why he was insisting on Ghama. We explained all of this and he was absolutely adamant that Ghama was being persecuted and that they would not accept anyone else but Ghama.

Whereas ...[intervenes]

CHAIRPERSON: Even after you had told him about Maseko ...[intervenes]

MS BARBARA HOGAN: Even after I explained.

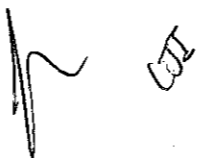
CHAIRPERSON: And his credentials and so on?

MS BARBARA HOGAN: Yes, O, yes, O, yes. As I say I had spoken to Deputy President Motlanthe and he agreed with me and I had also briefed Zwelinzima
10 Vavi as part of the ...[indistinct] Alliance and he also agreed with me, but from within the ANC it was absolutely Ghama or no one else. And I know, you know, I must take into consideration that perhaps they did genuinely believe that he was being persecuted, but then when presented with, not evidence, but the full story, you should then at least realise that there is a bigger story here. And I was disappointed that they did not realise that.

CHAIRPERSON: I can understand an attitude that says there is a certain candidate who is being unfairly excluded from the process. An attitude that says something must be done to make sure that there is a fair process, which allows everyone who is eligible to compete. That is obviously different from saying it does not matter what process is
20 followed, it should be so and so. That is different.

MS BARBARA HOGAN: Yes.

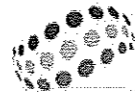
CHAIRPERSON: But I would – it would be surprising if people in senior positions, whether in government or in organisations in a process which by law is required to be fair were to basically say we do not care about the merits or demerits of other candidates, it should be so and so. Because from what you say it seems to me that,

Handwritten signature and initials, possibly 'W' and 'LH'.

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

14 APRIL 2021

DAY 374



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

Handwritten signature or initials.

WITNESS: My name is Samson Gwede Mantashe.

REGISTRAR: Do you have any objection in taking the prescribed oath?

WITNESS: I have no objections.

REGISTRAR: Do you consider the oath binding on your conscience?

WITNESS: [No audible reply]

REGISTRAR: Do you solemnly swear that the evidence you will give, will be the truth, the whole truth and nothing
10 but the truth? If so, please raise your right hand and say, so help me God.

WITNESS: So help me God.

SAMSON GWEDE MANTASHE: (d.s.s)

CHAIRPERSON: Thank you. I hope that you were audible Mr Mantashe to the – the technicians indicate that you could not be heard.

MR MANTASHE: Ja.

CHAIRPERSON: So I think I will ask you to speak up.
[laughs] And I think your mic needed to be raised a little
20 bit.

MR MANTASHE: [No audible reply]

CHAIRPERSON: Ja, okay.

MR MANTASHE: Okay. Is that better?

CHAIRPERSON: Is that – can you hear, Technicians?

TECHNICIANS: [No audible reply]

Handwritten signature and initials in black ink, located at the bottom center of the page.

CHAIRPERSON: Okay they can hear. Okay let us start afresh.

REGISTRAR: Please state your full names for the record.

WITNESS: My name is Samson Gwede Mantashe.

REGISTRAR: Do you have any objection in taking the prescribed oath?

WITNESS: I have no objections.

REGISTRAR: Do you consider the oath binding on your conscience?

10 **WITNESS:** I do.

REGISTRAR: Do you solemnly swear that the evidence you will give, will be the truth, the whole truth and nothing but the truth? If so, please raise your right hand and say, so help me God.

WITNESS: So help me God.

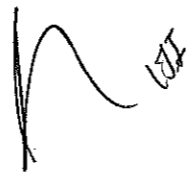
SAMSON GWEDE MANTASHE: (d.s.s)

CHAIRPERSON: Thank you, Mr Mantashe. I now give you an opportunity to make your opening statement or read your opening statement.

20 **MR MANTASHE:** Thank you very much, Chairperson. I am the National Chairperson of the ANC. In part, my election as National Chairperson, I served at the ANC between December 2007 and December 2017. That is ten years. I have deposed to an affidavit in which I deal with the following issues.



- New(?) party(?) system for proper(?) representation.
- The goal of goal of transformative constitutionalism, how ANC policies are formulated.
- The combination of the party candidate list.
- How the ANC chooses the president and cabinet members.
- ANC development and deployment policy.
- 10 - How the ANC Deployment Committee functions.
- The complexities of more than government, the lessons(?) from the UK
- Constitutional exploitation of the function of parliamentary oversight and accountability.
- The need for political wave(?) in parliamentary accountability.
- The relationship between Luthuli House and the ANC representatives in Parliament.
- 20 - Parliament 2009 Oversight and Accountability Model.
- Recommendations made by the ANC to enhance the model, response to evidence of Comrade Makhosi Khoza.
- The role of the ANC caucus and Study Group



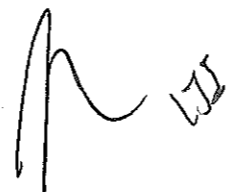
and Parliament

- A lateral reform.
- And monitoring(?) ANC performance in Portfolio Committee.

In this opening statement, I highlight some of the key-issues dealt with in my affidavit. However, before doing so I wish to refer to a speech(?) delivered in June 1991 at Stafford University of the United States by the then General Secretariat of the National Mine Workers, Matamela Cyril Ramaphosa in which he outlined the element of the new constitutional framework which was previously articulated by erstwhile President Oliver Reginald Tambo in 1987.

This includes:

- Reunification of the country including so-called homelands that the government has broken off from South Africa.
- One common citizenship for all people of the provinces.
- The democracy based on proportional representation at the national and local level.
- The Bill of Rights that protects human rights, specified in various related nations documents for reasons to guarantee that

A handwritten signature in black ink, consisting of a stylized 'M' followed by a flourish and the initials 'WJ'.

their rights will be enforced and cannot be overruled by any newly elected body and interpreted(?) judiciary.

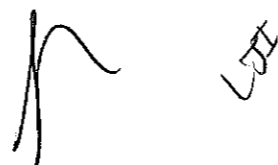
- The mechanisms for aiding regardless social and economic transformation in a democracy including provisions for affirmative action and not discrimination.

Not long after the Constitution Act was promulgated and Section 1 of the Constitution Act states
10 that the Republic of South Africa is a democratic state found on the following values.

- Human Dignity
- Non-racial and non-sexism
- Supremacy of the Constitution and the rule of law and universal adult suffrage.

I make a point to demonstrate that the value of the ANC Constitution and the Constitution of the country are aligned and the multi-party talks at the Convention for Democratic South Africa, CODESA, will resolve that the
20 electoral system shall be a closed party in this system of proportional representation, meaning that voters vote for a political party and the number of seats allocated to that party in Parliament is in proportion to the number of votes it is assigned(?) in a general election.

This averment was subsequently incorporated

Handwritten signature and initials.

into the legislation. On the issue of performative constitutionalism, I cite legal scholars in my affidavit to demonstrate that – to demonstrate what the ANC believes to be ...[indistinct] of our constitutional democracy and to locate the role of Parliament in the context because the ANC subscribes to the views that primarily – primary purpose for the adoption of the conclusion was not only to establish a society based on democratic values but fundamental human rights but also one based on social
10 justice. For that policy formation in the ANC starts with the development of concept paper which is sent to branches for discussion and inputs. The paper is discussed further at regional and provisional conferences.

Once every five years the policies of the organisation are consolidated at Policy Conference. At this conference, the view of the ANC and his partners, that is the Congress of South African Trade Unions, the South African Communist Party, the South African National Civil organisation are taking into consideration after which the
20 policies are adopted and a resolution taken and that is to be implemented.

The policies adopted become the manifesto of the ANC when it contest election because we do contest elections and therefore... Wait, wait, wait. Yes. And all comrades who are appraised on the National Provincial

Party can at least – are required to commit to the election manifesto of the ANC.

Now in complying its list of candidates, the ANC takes into consideration demographics, gender equality(?) so that at least 50% of the candidates are women and that is in the Constitution of the ANC through service.

Representation from the youth sector, particular skills of candidates that could enhance the work of Parliament and returns(?) of experienced parliamentarians.

10 In line with the Constitution of the country, every elected member in Parliament shall be eligible to be a candidate for the Presidency of South Africa. Although the Constitution affords the President the prerogative to choose the Cabinet, the practise in the ANC is that the President chooses the Cabinet after consultation with the ANC and its alliance.

I want to emphasise consultation because it is not the ANC and the alliance that tells the President who should be in the Cabinet. It is the President who consults
20 the ANC and the alliance so that the unit is maintained.

In November 2018, I made a submission to the Commission to clarify the confusion that had arisen when the banking institution presented the evidence about their meetings with the ANC and to explain why there is ...[indistinct] banks and what internal processes were

Handwritten signature and initials. The signature is a stylized 'M' with a vertical line through it. To its right are the initials 'LJI'.

followed thereafter. [Speaker is not clear.]

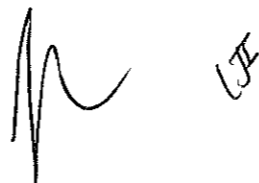
At the time, I raised the following issues with the Commission. All South Africans, both black and white, should embrace the Commission with open arms. We made the statement then, we repeat it today.

The ANC exhorts that all South Africans to persevere well to endure the pain and the emotional trauma for building a nation with a single identity out of the ashes of the racially divided and inhuman past and we
10 have to build a strong capable state for an exclusionary and illegitimate past.

Just as a matter of mentioning. In 1994, every director general of any state department was a white male and every judge was a white male. So that is what we are referring to. And the Truth and Reconciliation Commission fulfilled an important role in the post-apartheid nation building process as a young democracy.

We have achieved a relatively – in relatively short period a degree of consensus on the past cultural
20 traditions, customs, symbols, rituals and historic experiences of black and white people.

This proved to be a strong indicator of the willingness of the different racial groups in our country to come together for the common good to largely guard our victories and not allow anyone to drag us back to the

Handwritten signature and initials, possibly 'LJH', located at the bottom right of the page.

racially divided society where the rule of law was selectively used and with the majority of people, African, Coloureds and Indians existed as soulless dehumanised individuals. We should not go back there.

I have informed the Commission – I also informed the Commission that I would be submitting a statement about the ANC deployment. The details(?) of the ANC deployment policy was subsequently filed(?) with the Commission on 9th, 20th and 26th November 2018. So they
10 were submitted to the Commission as appear from the annexures in the bundle of documents as submitted.

I want to emphasise the fact that in the ANC we do not have a policy called Cadres Develop Deployment with a deployment policy. That is a huge difference because it is not a Cadres Deployment. It is a deployment policy of the ANC. I addressed the issue of Cadres Deployment in my affidavit for two further reasons.

To give – you know, we are able because of Cadres Deployment. These are the reasons. To give the
20 Commission an appreciation of the genesis of the ANC policy, development and deployment so that it can evaluate and pronounce on the validity of the request made by the leader of the opposition, Mr John Steenhuisen that on 10 February 2021 that the State Capture Commission should tackle and end the ANC policy of Cadres



Deployment. That is what the DA refers to our policy, Cadres Deployment for their own reason.

And to give the Commission an appreciation of the calibre of comrades and procedure followed for that deployment, between 1997 and 2017, the Cadres Deployment policy has been discussed, refined at National Committee meetings, Council(?) Executive(?) Committee meetings at National Conference.

10 An element of degree of the development policy can be traced back to ANC Conference in Zambia in 1985 where the ANC President Oliver Tambo called for the establishment of a political school.

Ironically, this was precisely at the same time when apartheid government placed our country under a state of emergency. There were formal and informal training taking place since the late 1990's to take over from the predominant white male civil services. Many as black males and females were deployed to undergo training. They will send them to various institutions. They were sent
20 to Egypt where they received diplomatic training, the Northern countries, United Kingdom has specific value in civil service and the Kennedy School of Governance, Wharton Business School, [indistinct] 00.11 School of Governance and at which university where they took courses in public sector policy and development



management.

We are making this point so that it must not be seen as just taking people from the street, put them into public service, there was a conscious process of training people to prepare them for a role in the state.

The purpose of the ANC political school in South Africa which was received in April 2013 was to connect from political education and training, political education and training for all elected leadership structures to develop
10 the capabilities of cadres to undertake the task to which they were deployed and to develop the calibre of cadres to monitor and [indistinct] 01.06 policy efficiency of ANC campaigns and policy development.

Now in 2018 President Matemela Cyril Ramaphosa launched the OR Policy Leadership Institute and Dr David Masondo was appointed its president. That is [indistinct] 01.26.

The ANC used the first demo(?) government in 1994/'99 to perfect deployment system notable with
20 deployment framework, guidelines of the relationship between ANC structure and the government structure and this talks to party and state relationship.

Guidelines on the role and criteria for its premiers, guidelines on accountability and monitoring of a supportive(?) representative, guidelines on the deployment



of [indistinct] 02.07 mayors for local government election.

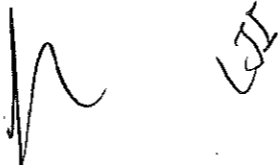
In practice the secretariat of the deployment committee monitors the media and government bulletins for advertisement for vacancies.

The committee takes a mere interest only in those vacancies which it considers strategic and which could advance the development agenda with the state, such for the post of Director General, board of directors and state owned enterprise.

10 The deployment committee does not deploy directors, deputy directors and all, the deployment does not enter there, it is limited to in the state to directors general and deputy directors general. That is it. Below that, it is normal.

Now the deployment committee maintains a pool of suitably qualified candidates for deployment. Sometimes the ANC would encourage comrades to apply for a position provided that they have already undergone psychometric testing and a comprehensive government-based selection
20 process. This is not an ANC process. The deployment committee does not appoint, it recommends. Government undertakes processes to select candidates for positions.

In the case of board position for state owned enterprises where public interviews are conducted, the ANC would encourage suitable comrades to apply. In cases

Handwritten signature and initials in black ink, located at the bottom right of the page.

where the Minister has the final say in appointments, the role of the deployment committee is to comment on short list, usually three candidates presented by that minister.

The focus is not only on academic and professional expertise but the deployment committee also takes into account skills and expertise in connection with constituency work, working with the masses on the ground and our comrades deployed in whatever centre should take with them qualities and attributes that we hold dear as a
10 movement.

This includes putting service to the people first, an ethic of work and service levels, respect of the senior structures and cadres of the movement, responsiveness to the needs of the people and collective approach to the matters. And it is important, Chair, to emphasise the fact that this is what we aspire for.

A few days ago the Minister of Public Services and Administration said at the top level, up to now, 65% meet the requirements, there is a 35% that is questionable,
20 meaning that it is quantifying progress that has been made thus far.

In our deployment we consciously strive to dispel the notion that we will become a movement and leadership which has discharged from the people whom we have served in long struggle for liberation. We endeavour to be



true to our tradition of putting the interests of our people and our country first.

The national deployment committee consists of 15 members, primarily from the National Executive Committee. It is chaired by the deputy president of the ANC, currently Comrade Mabuza.

Moving to parliamentary accountability, the National Assembly is required in terms of Section 52(2) of the Constitution to do two things, hold the organs of state
10 accountable and exercise general oversight over national executive authority and organs of state.

Equally(?) important is the provision of Section 42(3) of the Constitution which requires members of parliament not only to oversee executive authority but to scrutinise the action of executives without fear, favour or prejudice and to take their oath of office very seriously, namely that they would be faithful to the Republic of South Africa and will obey, respect and uphold the constitution of the Republic and perform their function to the best of their
20 ability.

In essence, our [indistinct] 07.07 democracy adheres to norms and principles of separation of power, rule of law, democratic self-government, self-government, protection of human rights and existence of an independent judiciary and it is a non-negotiable condition that these



values are upheld in the oversight and accountability obligation of members of parliament. It follows the ANC will not tolerate any unlawful and unquestionable conduct by its members of parliament.

Echoing the sentiment of Secretary General Comrade Ace Magashule, I give an unconditional undertaking on behalf of the ANC that the organisation has the political will to make parliament work and to ensure effective oversight and accountability.

10 Secretary General, Deputy Secretary General of the ANC to visit parliament from time to time to liaise with ANC members of parliament in caucus meetings. The Secretary General and Deputy General Secretary do not go to parliamentary portfolio committees, they talk to ANC caucus, that is the end of their space in parliament.

The comrade in charge of ANC members in parliament is the Chief Whip of the party and decisions within parliament are made within the rules of the National Assembly and legislative framework specific to parliament.

20 The ANC recommends that to enhance oversight and accountability, parliament implements a number of the [indistinct] 09.03 referred to in the 209 oversight and accountability model but which are yet to be implemented.

These include the [indistinct] 09.14 mechanisms, amendment of rules of National Assembly, an oversight



[indistinct] 09.17 section, legislative reform to act as deterrent that deals corrupt activities, an early warning system to detect state capture and corruption, building our position on democracy and then seeing the oversight and accountability obligation of the Portfolio Committee, upgrading, training and increase research capacity.

Asset interest disclosure, asset interest disclosure laws and encouraging [indistinct] 09.55. More details of these recommendation are set out in the affidavit of the
10 Secretary General.

In the execution of their duties, members of parliament have to balance two opposing principles, their loyalty to the party, its manifesto and voters who voted for the party and remain faithful to their political moral principles and obligation to the constitution.

As the ANC, we have stressed to our MPs that in the execution of their parliamentary responsibility, they should apply their minds to the purpose of their task in parliament to announce our development and agenda and not adopt a
20 herd mentality by virtue of the ANC majority [indistinct – dropping voice]. In short, they should be thinking MPs. That is emphasised.

However, South Africa is a very young democracy and the ANC's view is that we should tread with caution when making majority decision, such as the removal of a

Handwritten signature and initials, possibly 'M' and 'LJ', located at the bottom center of the page.

sitting president without having a full appreciation of the consequences that such decision could have on the country, the party and threaten democracy.

Recent events in the United States have really demonstrated how fragile democracy can be. I would elaborate on this because I have an experience of a party removing two of its sitting presidents. I can relate the stories of the consequences and one of those was the formation of Cope, you know, breakaway from the ANC and
10 many people do not take that into account and the fact that when you remove a president, for all intents and purposes the cabinet is removed and I can tell you that when the president was removed we received a long list of ministers resigning, basically collapsing government.

And, therefore, when we deal with the removal of a president, it is not just a question of a vote of no confidence, whatever, we look into the consequences and take a party view on those issues.

Impulsive action, I believe, would [indistinct] 12.30
20 certain of process which would have a detrimental impact on the democratic [indistinct – dropping voice] basically never take the sanction(?) [indistinct] 12.38 option.

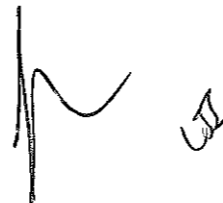
The [indistinct] 12.42 option, Chairperson, is when you get into a room, you pull the pillars, you collapse the system on top of all of us. We do not take that option, we



think it is a dangerous option, it is a fatal option. This was their [indistinct] 12.59 comrade Jessie Duarte adopted in June 2017 when a motion of no confidence was proposed in President Zuma.

So I am explaining the logic that we took and say it should not be done, we tread - we cannot a [indistinct] 13.22 collapse the party, collapse the government and therefore create a crisis in the country.

10 The removal of a president is a matter of party organisation discipline which should best be dealt within the confines of the party. All South African political parties operate caucus system in all spheres of government, national, provincial and local and as a governing party the ANC will endeavour to re-orientate the public [indistinct] 13.52 to appreciate the distinction and be able to differentiate between participation in a caucus for a static rule which may include participation of ministers and their constitutional obligation in terms of their oath of office to hold the same minister accountable in the portfolio
20 committee in which other political parties participate. Their participation both orally(?) have entirely different objectives, maintaining one, accountability to party and the public can be achieved by explaining to MPs that both roles are necessary to enhance the function of our democracy.

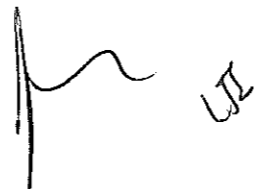


At the national general council meet and review later this year, the ANC will focus on two aspects of the [indistinct – dropping voice] where they will sit and produce elements of the constitution [indistinct] 14.53 electoral system at national and provincial level whether the national, provincial and local government election should be synchronised and take place at the centre and this follows a judgment.

There is a judgment that instructs us to have and
10 undertake that decision and I am committing here, will undertake that decision and in terms of reference of the Commission, place specific emphasis on the Gupta family.

As Chairperson of the ANC I believe it is necessary to explain how relationship between the Gupta family and the ANC evolved. Very important because hindsight is an exact science but if we take how it evolved it will help to a great extent.

A few years after the arrival of [indistinct] 15.48 one of the Gupta brothers, Ajay Gupta, became a member of
20 President Thabo Mbeki's economic advisory, [indistinct] 15.57 [dropping voice]. Around 2010 the family approached the ANC with a proposal to establish a newspaper and television channel. At the time the ANC had an interest in the diversification of the media in the country. On the basis the proposal was entertained, the

A handwritten signature in black ink, consisting of a vertical line followed by a wavy horizontal line. To the right of the signature are the initials 'LJZ' written in a similar style.

establishment of ANN7 and the New Age was, in our view, just such an opportunity. In fact, the name of the newspaper, New Age, was proposed by the ANC official after a well-known struggle newspaper of the 1950's.

Once established both newspapers and television channel gave much needed coverage to programmes of the ANC and I can tell you, if you looked into the newspaper and the media today, when I buy newspapers on a Sunday, if I buy them I know what to expect from Independent
10 Media, I know what to expect from the Sunday Times which is something I do not understand and that informed our view that we needed diversity in the media stream.

At this stage the ANC had no knowledge of other business interests of the Gupta family until much later. So what we know today, we did not know then.

Since 2013, after the Integrity Commission recommended that former President Zuma to step down, the ANC has been undergoing a period of instability.

A substantial part of that instability can be
20 attributed to the allegation of involvement of the Gupta family in the ANC politics, in particular, the perceived hold of that family had over the former President.

Now any indication of this perceived hold arose when a private plane carrying guests to Gupta family wedding landed in Waterkloof Airforce base in 2013 and a

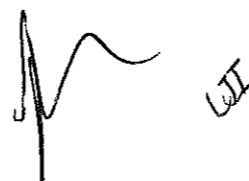


remark by Comrade Fikile Mbalula in a meeting of the NEC in June 2014 after the general election that he was told of his appointment to the executive by a member of the Gupta family. I have no doubt that during this period [indistinct] 18.32, many MPs felt leaderless(?) and this probably explains their [indistinct] 18.37 in the portfolio committee.

However, no ANC member of parliament was told to stop thinking or not to execute their responsibility in parliament.

10 In my affidavit I deal with the complexities of modern(?) government and the lessons we can draw from the United Kingdom. I am of the view that the manner in which parliamentary portfolio committee [indistinct] 19.03 and support structure around them, is an urgent need of reform so that when we assess their performance, we are comparing apples and apples.

Finally, I have been requested to comment on 55 press reports which relate to former President Zuma's relationship with the Gupta family, by the [indistinct] 19.31
20 Gupta family plane saga issue of irregularity and trust that parliament's [indistinct] 19.40 with Gupta family, claims by Mr Mcebisi Jonas that Gupta family wanted to bribe him, evidence of Comrade Vytjie Mentor and Barbara Hogan and [indistinct] 19.57 of the [indistinct] 19.57, I will endeavour to comment on matters arising from these press reports

A handwritten signature in black ink, consisting of a stylized 'M' followed by a wavy line. To the right of the signature are the initials 'GJI' written in a similar style.

sincerely and to the best of my ability.

Thank you very much, Chairperson, we thought that we should give this context to our [indistinct – dropping voice]. Thank you very much.

CHAIRPERSON: No, thank you very much, Mr Mantashe. There are a number of points that you have made in your opening statement which I have no doubt will be dealt with as you continue with your evidence. I am particularly encouraged about – by some of the points made which
10 commit the majority party in parliament to, as I understand it, doing what it can to ensure that there is proper and effective oversight and accountability in the context of the parliamentary function. So but I am sure that these points will be dealt with as we go along. Thank you. Mr Freund, you want to start?

ADV FREUND SC: Yes, thank you, Chair, I am in your hands as to time.

CHAIRPERSON: Yes.

ADV FREUND SC: There is a lot to get through today so
20 [inaudible – speaking simultaneously]

CHAIRPERSON: Yes. No, no, that is fine. I must just indicate so that everyone knows what my thinking is and if anyone has a different thinking they can indicate in due course. I have in mind that if by normal closing time, four o'clock, we are not done, we should continue with Mr



Mantashe's evidence and try and finish today but maybe we will finish before then.

ADV FREUND SC: Yes, certainly.

CHAIRPERSON: But I just mention because I think there are lot of issues that might require proper discussion and ventilation so I just mention that if everybody – if nobody has a problem with that, then we can proceed on that basis and if there is a problem we can know in advance so that we pace ourselves appropriately.

10 **ADV FREUND SC:** Yes, thank you, Chair. Chair, I will obviously endeavour to complete before four o'clock.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: But I do have concerns that we may not achieve that and we will have a better sense in that by mid afternoon.

CHAIRPERSON: Yes. No, no, that is fine, I mean, I think it is very important that the issues that need to be dealt with be dealt with properly because it is the majority party that is here and it commits itself to fully cooperating and
20 being party to solutions, to challenges that we have been looking at and therefore the opportunity must be seized and used optimally.

ADV FREUND SC: As you please.

CHAIRPERSON: Ja, okay, alright.

Handwritten signature and initials, possibly 'LJ'.

ADV FREUND SC: Mr Mantashe, if I could just start with the formalities. Can you please turn to page 100.2 where you will find an index?

MR MANTASHE: Page?

ADV FREUND SC: 100.2, which should be very early in your papers. So on the top left you will see numbers with PO 01 and then 100.2.

MR MANTASHE: So you want me to open...

ADV FREUND SC: It will be very near the very beginning
10 of your file but...

CHAIRPERSON: It is the index just before your affidavit.

MR MANTASHE: Okay.

ADV FREUND SC: Just turn the page. Maybe just give it a ...[intervenes]

CHAIRPERSON: 100.2.

ADV FREUND SC: If you go back one page, go back two pages from where you are. Go backwards two pages.

CHAIRPERSON: Oh no, I think he is going beyond.

ADV FREUND SC: Can you just over that page? Is there
20 not another page after that page please? No, no. No, no, just turn it over this way, ja. Is there not a page in between? Yes, you missed that page. That is the page I wanted to take you to. I am sorry...

CHAIRPERSON: Just before you proceed, Mr Freund, I do not know whether the lighting there where Mr Mantashe is

Handwritten signature and initials, possibly 'LII', located at the bottom right of the page.

is normal or whether it can be improved. I know that we always do not have the best lighting there. If the technicians can look into that? But you are able to read from there, Mr Mantashe? Mr Mantashe, are you able to read? The lighting is fine?

MR MANTASHE: Yes, [indistinct – dropping voice]

CHAIRPERSON: Okay, alright.

ADV FREUND SC: Mr Mantashe, the page that is now open in front of you at the top left, does it end with the
10 number 100.2?

MR MANTASHE: Yes.

ADV FREUND SC: Yes, thank you. Now that is an index which helps us to get our bearings on all the different papers that are related to your evidence and you will see that firstly it refers to an affidavit by yourself dated the 12 March 2021 and if you keep your finger there and go please to page 100.6, is that the beginning of your affidavit?

MR MANTASHE: Yes.

20 **ADV FREUND SC:** Yes. And then if you turn to page 100.44, is that the end of your affidavit with your signature?

MR MANTASHE: 144?

ADV FREUND SC: 100.44.

MR MANTASHE: Yes.

A handwritten signature, possibly 'LJI', is written in black ink at the bottom right of the page.

ADV FREUND SC: Right. So I take it that that is the affidavit you had deposed and presented to the Commission and you can confirm that that is your affidavit?

MR MANTASHE: I confirm.

ADV FREUND SC: Thank you. Now secondly, if you can go back to that index page, at page 100.2 you will see that item 2 is a set of media articles starting at page 100.45 and running all the way through down to on page 6 of that document, all the way through to page 100.418 and all I
10 want to ask you is that you can confirm that you have received those articles, you are aware of those articles.

MR MANTASHE: Yes, I did see them.

ADV FREUND SC: Alright. And then thirdly, if you go in the index to page 100.5.2 you will see there is an item 3. It is paginated at the bottom of the page, page 6.

CHAIRPERSON: I am sorry, what page, Mr Freund?

ADV FREUND SC: 100.5.2 and I have said to Mr Mantashe at the foot of that same page you will see the number 6 and you will see ...[intervenues]

20 **CHAIRPERSON:** I have got 100.5, that is still the index.

ADV FREUND SC: Yes, still in the index, then after .5 it goes 5.1 and then 5.2.

CHAIRPERSON: Well, after 100.5 I have got 100.6.

ADV FREUND SC: Ja, well then your file is not in order and I apologise.

Handwritten signature and initials, possibly 'WJ'.

MR MANTASHE: I have got 1.5.2.

CHAIRPERSON: Oh.

ADV FREUND SC: yes, so Mr Mantashe's file is the same as mine.

CHAIRPERSON: It means I was discriminated against.

ADV FREUND SC: You were discriminated against and we can only apologise for that. But with your leave, if I may do this, Mr Chair, we can sort this out in the tea break shortly.

10 **CHAIRPERSON:** Tea break, ja, that is fine.

ADV FREUND SC: Because it is just a formality that I am trying to deal with.

CHAIRPERSON: Ja, that is fine.

ADV FREUND SC: And the witness has the correct papers. I just want to confirm with you, Mr Mantashe, that what then is indexed and it is the documents that we find in the file from page 100.419 all the way through to the end are a set of documents that you, through Mr Naidoo, have furnished to the Commission and they have now been
20 incorporated into this bundle, is that correct?

MR MANTASHE: Yes.

ADV FREUND SC: Right. Now on that basis, Chair, may I move that the entirety of the affidavit, articles and further documents that I have just referred to, be admitted as evidence and they together form EXHIBIT ZZ1.10.

Handwritten signature and initials, possibly 'LM'.

CHAIRPERSON: Well, firstly, the bundle we are using at the moment is Parliamentary Oversight bundle 1A.

ADV FREUND SC: That is correct, as you have just said Chair it is going to be numbered one.

CHAIRPERSON: Yes, yes, and then you have – then the first document under the index, after the index is Mr Magashule’s affidavit and thereafter the affidavits ...[intervenes]

ADV FREUND SC: The first document ought to be not Mr
10 Magashule but Mr Mantashe’s affidavit.

CHAIRPERSON: Sorry? Well on mine the first affidavit is Mr Magashule’s one. Mr Mantashe’s one comes later on mine.

ADV FREUND SC: Yes indeed.


CHAIRPERSON: Is that correct?

ADV FREUND SC: That is correct, for the moment I haven’t moved the admission of Mr Magashule’s affidavit.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: For the moment I am leading the
20 admission of Mr Mantashe’s affidavit.

CHAIRPERSON: Yes, so what I am doing is try and establish which documents fall under what you refer to, you want me to admit as Exhibit ZZ1, so let’s start with Mr Mantashe’s affidavit and then the annexures plus ...[intervenes]



ADV FREUND SC: Based on Mr Mantashe's affidavit.

CHAIRPERSON: Yes.

ADV FREUND SC: To which I think there are no annexures.

CHAIRPERSON: Okay.

ADV FREUND SC: They then continue with a set of fresh reports, but to find the – if I take you Chair to page 100.6 as the beginning of the affidavit

CHAIRPERSON: Ja.

10 **ADV FREUND SC:** We established all the rest of it, and it runs all the way through to page 100.613.

CHAIRPERSON: Yes.

ADV FREUND SC: That is what I have covered with the witness and that is what I am for the moment moving the admission.

CHAIRPERSON: Yes, now let's start with the issue of whether there are any annexures to Mr Mantashe's affidavit? Now you have said that you think there are not, I know that he refers to some papers in his affidavit but
20 does he not attach them?

ADV FREUND SC: He does not attach them and that is precisely the reason why Chair in follow-up I have requested and was subsequently furnished with some of those papers.

CHAIRPERSON: Yes.

Handwritten signature and initials in black ink, consisting of a stylized 'M' followed by 'LII'.

ADV FREUND SC: And those fall into the third category.

CHAIRPERSON: Yes.

ADV FREUND SC: To documents recently furnished by Mr Mantashe.

CHAIRPERSON: Yes, now from page 100.45, which is the page immediately after Mr Mantashe's affidavit, are there documents that Mr Mantashe provided and then are there documents that you provided?

ADV FREUND SC: Yes, that is correct.

10 **CHAIRPERSON:** Shouldn't we separate the two and maybe have one exhibit for those that he provided and another one for those that you provided?

ADV FREUND SC: Well that is indeed what we are proposing.

CHAIRPERSON: Okay.

ADV FREUND SC: But all those has sub-sections so Mr Mantashe's affidavit ...[intervenes]

CHAIRPERSON: Let's start with Mr Mantashe's affidavit.

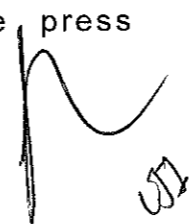
20 **ADV FREUND SC:** If we regard Mr Mantashe's evidence in totality as being Exhibit ZZ1.10 then we can divide that exhibit ZZ1.10 into three parts.

CHAIRPERSON: Yes.

ADV FREUND SC: The first part is his affidavit.

CHAIRPERSON: Ja.

ADV FREUND SC: The second part is the press



statements.

CHAIRPERSON: Yes.

ADV FREUND SC: And the third part is the additional documentation furnished.

CHAIRPERSON: Okay, no that is fine.

ADV FREUND SC: And that is already covered on the record with the witness.

CHAIRPERSON: That is fine, that is fine. Okay let's start with his affidavit, you asked me to admit it as an
10 Exhibit and to mark it as Exhibit what?

ADV FREUND SC: ZZ1.10.1 will be the affidavit.

CHAIRPERSON: The affidavit of Mr Sampson Gwede Mantashe starting at page 100.6 is admitted as an exhibit and will be marked as Exhibit ZZ1.10.10, okay.

**AFFIDAVIT BY MR SAMPSON GWEDE MANTASHE
HANDED UP AS EXHIBIT ZZ1.10.1**

ADV FREUND SC: Then from page 100.45 is the beginning of the press statements, and if that could be, that bundle of press statements could be admitted as
20 ZZ1.10.2.

CHAIRPERSON: That would be from page 100.45 up to what page?

ADV FREUND SC: I will give you the page. It will be up to 100.418.

CHAIRPERSON: 100.418, is that right?

Handwritten signature and initials, possibly 'MS' or 'LSI', located at the bottom right of the page.

ADV FREUND SC: That is correct.

CHAIRPERSON: Maybe for convenience there could be a divider between the two sets of documents, between the affidavit and this one.

ADV FREUND SC: Indeed.

CHAIRPERSON: So that Exhibit ZZ10.2 would basically be the document supplied by Mr Mantashe, is that right?

ADV FREUND SC: No, ZZ1.10.2.

CHAIRPERSON: Oh is there a one before ten?

10 **ADV FREUND SC:** There is one before it yes.

CHAIRPERSON: Okay I am sorry, that is starting from Mr Mantashe's affidavit?

ADV FREUND SC: Yes.

CHAIRPERSON: I think I just said 10.

ADV FREUND SC: It is 1.10 because it is all part of the ANC affidavit which is ZZ1.

CHAIRPERSON: Okay, I am going to do a correction in relation to Mr Mantashe's affidavit, it is not Exhibit ZZ10.1 but it is Exhibit ZZ1.10.1.

20 **ADV FREUND SC:** That is correct, thank you Chair.

CHAIRPERSON: And then we move to ...[intervenes]

ADV FREUND SC: The press statements would be – I am going to the page, it is at page ...[intervenes]

CHAIRPERSON: Then at page 100.45 that will not be Exhibit 10.2 but Exhibit ZZ1.10.2.

A handwritten signature or set of initials, possibly 'LJI', written in black ink.

ADV FREUND SC: And that runs through Chair to 100.418, I could tell you that that very page 100.418 is a special character but we will deal with that in the evidence in the course of the day.

CHAIRPERSON: Yes but just for my own understanding, are those documents then from page 100.45 to page 100.418, are those the documents supplied by Mr Mantashe?

ADV FREUND SC: No those are the documents supplied
10 by the Commission to Mr Mantashe.

CHAIRPERSON: Okay.

ADV FREUND SC: In order for him to be given an opportunity to comment on that.

CHAIRPERSON: Okay and the ones we haven't dealt with are those that he provided?

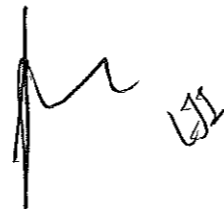
ADV FREUND SC: Yes which I will take you to very shortly.

CHAIRPERSON: No, no that is fine, so I think therefore we could take these, namely from page 100.45 to page
20 100.418 as a batch.

ADV FREUND SC: As a batch yes.

CHAIRPERSON: As a batch ja.

ADV FREUND SC: Yes, and that will be in your file if I may suggest, separately divided, so that you can clearly see ...[intervenes]

Handwritten signature or initials in black ink, consisting of a vertical line followed by a stylized 'M' and some scribbles.

CHAIRPERSON: Yes, ja, okay. So those documents therefore that start from page 100.45 to page 100.418 will be admitted and will be marked Exhibit ZZ1.10.2, but I am wondering whether you might end up with further page numbers for further documents or whether you would leave them like this and you have just referred to the overall pagination to identify which document.

ADV FREUND SC: Sorry, I don't understand Chair, but I think it is manageable as it is

10 **CHAIRPERSON:** It is manageable without further subdivisions, no that is fine.

ADV FREUND SC: Yes, manageable it is.

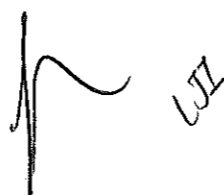
CHAIRPERSON: Then let's go to the next batch.

ADV FREUND SC: Then Chair from page 100.419 onwards, all the way through to 100.614 is what I propose should become Exhibit ZZ1.10.3, those are all documents recently furnished to the Commission by the Mr Mantashe, including you will see the very first one is the opening statement which you have just heard, but including many
20 other things that we will take you to in due course.

CHAIRPERSON: Okay, no that's fine. Then the batch of documents starting from page 100.419 up to page 100.614 will be admitted as Exhibit ZZ1.10.3.

ADV FREUND SC: Thank you Chair.

CHAIRPERSON: Okay alright. Yes?

Handwritten signature and initials, possibly 'LJI', located at the bottom center of the page.

ADV FREUND SC: And if I may then proceed, I want to start the examination.

CHAIRPERSON: Okay no that is fine, but I think let us take the tea break now so you can start when we come back. We are twenty past eleven, we will resume at twenty five to twelve.

Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** Okay we can proceed now.

ADV FREUND SC: Thank you Chair. Mr Mantashe I want to start on dealing with the issue of deployment that you have referred to in your introductory address and I think it might be convenient if we start at – at page 100.450 I think that has been opened for you in the interval. Page 100.450 Chair.

CHAIRPERSON: Okay. Thank you.

ADV FREUND SC: You got that?

20 **CHAIRPERSON:** I do not know whether the – the noise of the aircon is going to interfere with the sound but they will adjust it if we indicate that it is interfering. Okay alright. I have got 450 – 100.450.

ADV FREUND SC: It should be headed Supplementary Statement.

CHAIRPERSON: Ja.



ADV FREUND SC: May I then proceed?

CHAIRPERSON: You may proceed.

ADV FREUND SC: Mr Mantashe is it correct that after Barbara Hogan testified you furnished a brief initial statement and then after furnishing that brief initial statement this was in 2018 you then furnished this document that we have in front of us as a supplementary statement, is that correct?

MR MANTASHE: Yes.

10 **ADV FREUND SC:** And this was in or about November of 2018. The original statement was the 11th of November and I think this supplementary statement came around about the end of November 2018, does that sound right to you?

MR MANTASHE: Yes there was – there was supplementary 00:02:09 statement.

ADV FREUND SC: Right. Now in this document you turn to paragraph 32

MR MANTASHE: Chairperson where are you?

ADV FREUND SC: Sorry just bear with me. 3.2 – 3.2

20 **MR MANTASHE:** Oh 2.12 yes.

MR MANTASHE: Perhaps just to set the – the context. Ms Hogan had made certain allegations which we will come back to – we will come back to much later today but they were allegations which raised the proper place of the ANC's deployment committee and in answer to her allegations you

put up a brief answer and then in this document you elaborated further on the question of the deployment committee. That was the purpose of this document as I understand it, is that correct?

MR MANTASHE: Yes.

ADV FREUND SC: And in that supplementary statement that you furnished in 2018 at paragraph 3.2 you said the following:

“Our immediate goal – the our is presumed the African
10 National Congress is it?”

CHAIRPERSON: He is asking Mr Mantashe whether our immediate goal refers to the immediate goal of the ANC? Did you – can you hear me?

MR MANTASHE: Yes I do not understand the question.

CHAIRPERSON: Okay he is referring to paragraph 3.2.

MR MANTASHE: I see that.

CHAIRPERSON: Yes.

ADV FREUND SC: And in paragraph 3.2 you say:

“Our immediate goal.”

20 **MR MANTASHE:** Yes.

ADV FREUND SC:

“As set out in the Strategy and Tactics is to do certain things.”

I am just trying to understand whose immediate goal is it? I am putting to you that I think it must be a reference to the

A handwritten signature or set of initials, possibly 'LJI', written in black ink.

African National Congress.

MR MANTASHE: It is the ANC Policy document.

ADV FREUND SC: It is the ANC yes.

MR MANTASHE: Strategy and Tactics 00:04:23 support stream.

ADV FREUND SC: Yes. So the ANC immediate goal as set out in strategy and tactics. Now what is strategy and tactics?

10 **MR MANTASHE:** Sorry Chairperson a policy document of the ANC.

ADV FREUND SC: It is an earlier policy document – when was it drawn up approximately?

MR MANTASHE: It is not earlier. The first formal strategy and tactics was adopted in Morogoro in 1967 and it was a white and 00:04:53.

ADV FREUND SC: It is – sorry I could not hear you. It was...

MR MANTASHE: It is revisited and revised.

ADV FREUND SC: It is revisited at every conference.

20 **MR MANTASHE:** Every conference.

ADV FREUND SC: So at every conference the original strategy and tactics document gets revised in accordance.

MR MANTASHE: Yes.

ADV FREUND SC: With provisions of presumably the resolutions of the Congress – of the conferences. And you



then continue.

“Our immediate goal is to deepen the hold of
the Liberation Movement over the levers of
the state.”

Now when you refer there to the levers of the state to what
are you referring?

MR MANTASHE: Every world state is the 00:05:39 of
unconstructed – every 00:05:42 where that is departments of
state owned enterprises 00:05:48. All of them 00:05:54 of
10 unconstitutionally.

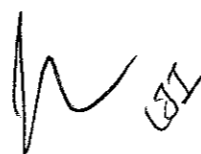
ADV FREUND SC: And the strategy of the African National
Congress as I understand you is to deepen its hold over the
levers of state. Correct?

MR MANTASHE: Yes.

ADV FREUND SC: Now what does that mean to deepen its
hold?

MR MANTASHE: The unashamedly they is the one to govern
– what I – I do not understand too and therefore you cannot
govern without the state. That is why there is a distancing
20 between state and government. We are a government party
but they stayed with this continuous that state must be made
ready to exit programmes of a government department.

CHAIRPERSON: Can I ask this question? Is my
understanding of deepen the hold of the Liberation
Movement over the levers of the state correct if I say it



means to deepen the control of the Liberation Movement on the various levels of state and features of the state?

MR MANTASHE: Yes it is entrenched.

CHAIRPERSON: It is correct.

MR MANTASHE: Yes it is correct.

CHAIRPERSON: Okay.

ADV FREUND SC: And clearly when you refer here to the Liberation Movement you must be referring to the African National Congress and presumably its alliance as well?

10 **MR MANTASHE:** That is the Liberation Movement.

ADV FREUND SC: Yes. And when you talk about control over the leaders of state that presumably includes control over the Public Administration.

MR MANTASHE: Yes if you are government you must have that.

ADV FREUND SC: And it includes control over the public service which is part of the public administration, you agree?

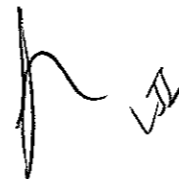
MR MANTASHE: Yes.

20 **ADV FREUND SC:** And it includes control over the state owned enterprises, agree?

MR MANTASHE: Yes. Those are tools in the hand of a government budget to execute.

ADV FREUND SC: Now do you accept the principle that the public service is required to be non-partisan?

MR MANTASHE: We accept that.



ADV FREUND SC: I beg your pardon.

MR MANTASHE: We accept that.

ADV FREUND SC: You accept that. And I furnished to you and Chair you may find on your desk just an extract from the – the constitutional principles which form schedule 4 to the interim constitution. They are numbered in roman numerals but if I can take you to the sixth...

CHAIRPERSON: Yes.

ADV FREUND SC: This sixth page of that.

10 **CHAIRPERSON:** Page 6?

ADV FREUND SC: Page 6 you will find Principle number 30 which is XXX.

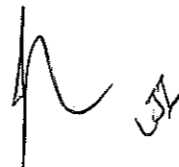
CHAIRPERSON: Yes.

ADV FREUND SC: And I – I would assume Mr Mantashe please correct me if I am wrong but I would assume that you would be familiar with these principles that were principles that form part of the interim constitution, am I correct?

MR MANTASHE: Yes.

20 **ADV FREUND SC:** And you understand and know very well that the – the interim constitution provided for the – for the establishment of what we now refer to as the final constitution but the final constitution had to comply with certain principles and that is the principles at which we are looking at the moment. Is that correct?

MR MANTASHE: And we accept them.



ADV FREUND SC: Right. And one of those principles that has to be incorporated and was incorporated in my view in any event into the – the so called final constitution the constitution of 1996 is that there shall be an efficient non-partisan career orientated public service broadly representative of the South African Community functioning on the basis of fairness and shall serve all members of the public in an unbiased and impartial manner and it continues.

And I am assuming that as Chairperson of the African
10 National Congress you have no difficulty with this principle. I think that is what you have already said to me, is that right?

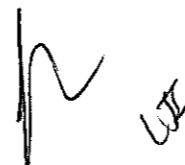
MR MANTASHE: No 00:10:44.

ADV FREUND SC: Right. So the – one of the issues that I am going to be exploring with you in the course of the morning is what some might think is there is a tension between the principle that the Public Service being non-partisan and what you have already told the Chair which is that it is the express policy of the African National Congress
20 to control the Public Service.

Now do you see any tension or conflict there at all?

MR MANTASHE: No there is no tension the emphasis is on working with the Public Service that is not rebellious against the governing party that is the emphasis.

ADV FREUND SC: And I presume what you are referring to

Handwritten signature and initials, possibly 'M' and 'LW'.

but correct me if I am wrong. The African National Congress when it was first elected here in 1994 inherited as it were a state established by an apartheid government.

MR MANTASHE: Yes.

ADV FREUND SC: With racists laws, with a predominantly white Public Service and you would accept that what I put to you, correct?

MR MANTASHE: Yes.

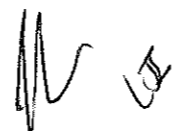
ADV FREUND SC: So one of the challenges confronting the
10 African National Congress after winning at least a first election is to try to re-orientate the state structures so that they are no longer racist and so that the demographic makeup of that Public Service is more in line with the – with the demographic makeup of the country as a whole, is that correct?

MR MANTASHE: Apparently so.

ADV FREUND SC: Yes. But let me make clear that I have no difficulty with that I cannot imagine the commission can have any difficulty with that. That is not in dispute in this
20 matter. We take that for granted. We also take for granted – or let me put it to you I am sure you will agree with this that the goal of the constitution is expressly to be transformative. You see?

MR MANTASHE: Yes.

ADV FREUND SC: And that embraces many things but



amongst the things it embraces is a desire – a policy in fact an instruction to the nation to shake off the racist past and – and to firstly as it were create a non-racial society with no racial discrimination and – and providing for more equitable representation in organs of state on a racial basis. I am sure you would accept all of that.

MR MANTASHE: Yes. Yes.

ADV FREUND SC: And again let me make clear that again there is no controversy between us I think the constitution is
10 very clear on that. And I think what you were referring to a moment ago was that the ANC confronted a problem which was on assuming office which was that it has inherited state structures which were reflective of the apartheid past and the ANC was resolved to change that in accordance with the principles that I have just been referring to. Am I correct there?

MR MANTASHE: Correct.

ADV FREUND SC: And again let me make clear that I can
20 see no basis for criticising the ANC on that. But the difficulty comes as it were further down the line you go and I think that was one of the points that Ms Hogan was trying to make that there comes a stage at which the obligation to promote a non-partisan Public Service and a non-partisan set of state owned enterprises is intentionally with ANC deployment policy if the ANC deployment policy is to staff



those structures with personnel who are cadres of the ANC committed to and accountable to the ANC. Do you take the view there is no tension there?

MR MANTASHE: Now that is why I clarified Mr Chairperson that the ANC does not have a cadres deployment policy. It has a deployment committee. That deployment committee if you go through those documents will explain to you that deployment is a recommend – is a recommending structure but everybody who goes to the state goes through the
10 interviews and the selection process and gets elected on merit. That is why I reflect with the 65% as quantifying progress made up to now. So 00:16:29 is not trying to deploy the people loyal to the ANC 00:16:31 is deploying competent people in the ANC but will have a broader understanding of the need to transform society.

ADV FREUND SC: Now if I can take you back now for the first time to your own principle affidavit, your main affidavit before the commission. Can I take you to page 100.16?

MR MANTASHE: 100?

20 **ADV FREUND SC:** .16 – 16. It is very early in the file. Well perhaps it would be better if I take you back to page 100.6 just to get your bearing.

MR MANTASHE: 100.16?

ADV FREUND SC: 100 and then .6.

MR MANTASHE: Okay. I have got that.

A handwritten signature, possibly 'LJ', is written in the bottom right corner of the page.

ADV FREUND SC: Alright so .6 I just want to indicate to you so that you understand what document you looking at is your affidavit to the commission submitted in the last month or two. You understand what I am saying?

MR MANTASHE: Yes.

ADV FREUND SC: And in that affidavit you go to 100.16 and we look at paragraph 43.

MR MANTASHE: Point?

ADV FREUND SC: Paragraph 43 do you have it?

10 **MR MANTASHE:** 4.3?

ADV FREUND SC: No 43.

MR MANTASHE: What is here? I do not have it.

ADV FREUND SC: Page – page 100.

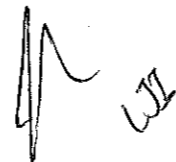
MR MANTASHE: I have 43 here.

ADV FREUND SC: You have got it. And you say this in your affidavit.

“Strategic deployment of ANC cadres played an important role in the ANC taking control of the post Liberations state.”

20 Now could you explain to us what you meant when you were referring in that sentence to the deployment of ANC cadres?

MR MANTASHE: Now you will have to move back in history and understand that here is the ANC walking into government. It inherit a state which is run by workmen, men of the masters. The ANC had a duty to deploy people who



understand the intention of the informative constitutionality and that is why I emphasise the point that people who were sent to school in various parts of the world to study and then brought back deployed to the state not out of the blue because they have gone to school, trained and therefore because of the 00:19:41 society was understood by both government and the state.

ADV FREUND SC: Now in your answer you said to me the ANC had to deploy persons to do certain things. What did
10 you mean the ANC had to deploy? What does that term deploy mean?

MR MANTASHE: Deploy means send people and give people responsibility. That is what deploy means (inaudible) like will be sending me to be Minister I am deployed to be Minister. It is not just being sent there I am given a responsibility to do the correct thing in that work.

ADV FREUND SC: Now I understand that answer so if you want...

CHAIRPERSON: Well before you proceed Mr Freund. Two
20 times Mr Mantashe you have emphasised that the ANC does not have a cadres deployment policy.

MR MANTASHE: Yes.

CHAIRPERSON: It has a deployment policy. Now I am trying to understand what the point – what the important point is that you wanted to drive home when you said that



and I do know that you referred to what the DA I think says. But now I am thinking if your own affidavit talks about deployment of the ANC cadres in the context of deployment policy whether there is not much point to make because your own statement is talking about the deployment of ANC cadres. Is there something I am missing.

MR MANTASHE: No the point that you will miss is that in that deployment it is not focussing on cadres it is focussing of deploying capabilities and competence. Okay. But
10 equally emphasise that people must understand the policy of a governing party. If you want to understand this you will go to a province that has not 00:22:03. That province will deploy people they have confidence in. But they do not call it cadre development – cadre deployment. But when they think to reconcile that and I must confess that because they do not look for cadres sometimes we will select a person that we think is competent and go to a responsibility and
00:22:37 policy. That is the point I am trying to emphasise. But 00:22:40 is that you work with a person who works
20 against the policies and those policies are 00:22:47 that you contested elections on.

CHAIRPERSON: But – but I think I – in substance there is nothing wrong with referring with saying the ANC deploys its cadres in terms of its deployment policy in substance there is nothing wrong but you are saying when one says that one

A handwritten signature in black ink, followed by the initials 'WT' written in a stylized, slanted font.

must not emphasise just the cadres one must look at the entire context.

MR MANTASHE: No. You will have to refer to the submission of the leader of the opposition party.

CHAIRPERSON: Yes.

MR MANTASHE: That submission 00:23:43 specifically cadre deployment.

CHAIRPERSON: Ja.

MR MANTASHE: Okay.

10 **CHAIRPERSON:** Okay.

MR MANTASHE: And because in its narrow interpretation the ANC does not look for competence.

CHAIRPERSON: Ja.

MR MANTASHE: It looks for cadres.

CHAIRPERSON: Yes, yes.

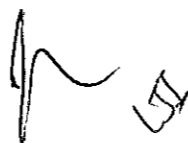
MR MANTASHE: That is the emphasis that I use.

20 **CHAIRPERSON:** Yes. No, no, no then I understand. I think what you – what you are saying is a term that on its own should not be objectionable it may be used in a certain connotation negative connotation by other people and that is the negative connotation that you reject.

MR MANTASHE: We do not have a problem with the term cadres.

CHAIRPERSON: Yes, yes.

MR MANTASHE: Okay because there is a clear definition.



CHAIRPERSON: Yes.

MR MANTASHE: Of whom a cadre is. It is not just a member of the ANC.

CHAIRPERSON: Yes, yes.

MR MANTASHE: Chairperson was going through a process, developed, understand policies and can be trusted. That is a cadre. I have no problem with the term cadre.

CHAIRPERSON: Yes.

10 **MR MANTASHE:** But deployment to positions we are not looking for cadres we would look for competence and people who are competent to execute the task at hand.

CHAIRPERSON: Ja. Okay.

ADV FREUND SC: So when you are talking about decisions and I am now not – I am now talking about decisions made by ANC structures. I am not talking about decisions made by Ministers or DG's or people appointing staff. I am focussing on decisions made by ANC structures and there are various ANC deployment committees, am I correct?

MR MANTASHE: Yes.

20 **ADV FREUND SC:** When those deployment committees are making their deployment decisions I want to put to you that it seems logical to assume that the people they are seeking to deploy are indeed their cadres not necessarily cadres who lack skill or competence or training but it is in the nature of the exercise that you talking about the deployment of your



cadres, are you not?

MR MANTASHE: You are cleaning me out of my affidavit because in the affidavit I emphasise the fact that a deployment committee does not employ it recommends. Sometimes a person who is recommended fails the selection process and that is where the big deal in the selection process a better candidate is found and that candidate is appointed.

ADV FREUND SC: Now you just said that the deployment
10 committees do not deploy, did I hear that correctly?

MR MANTASHE: They do not employ.

ADV FREUND SC: They do not employ?

MR MANTASHE: Yes.

ADV FREUND SC: But do they deploy?

MR MANTASHE: They deploy, they recommend.

ADV FREUND SC: And so that was going to be my next question. By deploy you say that should be understood to mean recommend.

MR MANTASHE: No. You are taking me to an English class.
20 I am going finish it.

CHAIRPERSON: But remember that it is important that the ANC's position be made clear.

MR MANTASHE: Yes, yes.

CHAIRPERSON: Ja.

MR MANTASHE: Yes. Deployment is a collective effort to



send people to tasks and give them tasks. Employment is the actual process that takes place in government not in the ANC. In the ANC we employ our people obviously they will employ cadre we will not employ prisoners and non-ANC members in the ANC but in government the government selection process is controlled by a department in government Public Service and Administration he has this policy therefore recommendation of the deployment committee are not automatic and I will give you example of
10 many who were recommended and failed dismally. The reason for that 00:27:51 is that I am trying – I am a cadre of the ANC, I am recommended. I assume that this is my position and...

CHAIRPERSON: And you do not prepare?

MR MANTASHE: I do not prepare I go there I become a disaster. I do not get appointed, simple.

ADV FREUND SC: Alright let us now focus more clearly on the most significant documents of relevance to this debate. Can I take you to page 100.486 – 100.486.

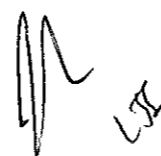
20 **MR MANTASHE:** 400?

ADV FREUND SC: 486. It should be the beginning of the 50th National Conference Resolution.

MR MANTASHE: 480.

ADV FREUND SC: 486.

CHAIRPERSON: Use the black numbers.

Handwritten signature and initials, possibly 'M' and 'LSE', located at the bottom right of the page.

MR MANTASHE: I have got it.

CHAIRPERSON: Looking at the black numbers not the red numbers.

MR MANTASHE: I am there 480.

CHAIRPERSON: 6.

MR MANTASHE: 6.

ADV FREUND SC: Right and that document runs through as you can see it is all marked up in yellow for some pages and can you confirm that this is the set of resolutions adopted by
10 the ANC's 50th National Conference?

MR MANTASHE: Yes.

ADV FREUND SC: And that 50th National Conference if I am correct took place in 1997 it was the Mafikeng conference. It was the conference really in the first administration of an ANC government, is that correct?

MR MANTASHE: Yes.

CHAIRPERSON: Just make sure Mr Mantashe that you speak closer to the microphone so that your answer will be recorded.

20 **MR MANTASHE:** Yes I – it was the conference which is towards the end of the first administration.

ADV FREUND SC: Of the first administration.

MR MANTASHE: It was not the ANC administration unit. It was government of national unit. [Speaker not clear]

ADV FREUND SC: Yes.

ADV FREUND SC: This was under the Mandela presidency.

MR MANTASHE: Yes.

ADV FREUND SC: Yes.

MR MANTASHE: That was the Cabinet(?) ...[intervenes]

ADV FREUND SC: And as you say, towards the end of that?

MR MANTASHE: Yes.

ADV FREUND SC: Yes. And if we can turn to page 491,
10 we find the policy which was adopted. And would it be correct to say that this policy that were are going to look at now, it is over the next – over this page and the next page. This, really, is the foundation of the ANC's deployment policy to this day?

MR MANTASHE: I would say yes and no because we should avoid mixing the ANC work and government work because if we are going to do that we are going cause confusion. The ANC as a party and as an organisation has a responsibility to prepare itself to have capacity to
20 govern. Okay? So this policy talks to the ANC internal processes of preparing his people to have capacity to govern.

ADV FREUND SC: Yes, but the question is whether this policy as adopted at this conference really stood as the dead-rock of the ANC's own deployment policies to this



day?

MR MANTASHE: I am worried about this. Of what? To locate a deployment to cadre. I am worried about that. The ANC prepares it cadres.

ADV FREUND SC: Yes.

MR MANTASHE: Government of school. I come back to ...[indistinct] and I go back, go back to school.

CHAIRPERSON: H'm.

MR MANTASHE: That is an internal ANC process.

10 **CHAIRPERSON:** H'm.

MR MANTASHE: So that if I am given a responsibility, I must have acquired the competence to execute.

CHAIRPERSON: Well, let me ask this – ask the question this way. I am not sure that you are – the two of you are on the same page. You remember you said earlier on the ANC has a deployment policy?

MR MANTASHE: Yes.

CHAIRPERSON: And as I understood you, you said that deployment policy was started by the ANC some years ago.

20 I cannot remember what year you have indicated. And you said every – at every conference that policy is revised. Is that correct?

MR MANTASHE: [No audible reply]

CHAIRPERSON: Or is revisited.

MR MANTASHE: The Deployment Committee gets divided



in the WC and NEC ...[intervenes]

CHAIRPERSON: Yes.

MR MANTASHE: ...on an ongoing basis.

CHAIRPERSON: Yes, okay. Now Mr Freund's question is whether this document that we are looking at which includes at page 100.491 a section that says Cadre Policy.

MR MANTASHE: Yes.

CHAIRPERSON: He is asking whether this document contains still the foundation of the ANC Cadre Policy that
10 has evolved over the years?

MR MANTASHE: No, Cadre Policy, it is about developing of individual cadres of the ANC.

CHAIRPERSON: Oh, okay. So you see Cadre Policy is not necessarily the Deployment Policy?

MR MANTASHE: It is not Deployment Policy.

CHAIRPERSON: Yes.

MR MANTASHE: It is the silencing of cadres ...[intervenes]

CHAIRPERSON: Yes.

20 **MR MANTASHE:** ...to be ready. If you do well and comply with the prescriptions of the Cadre Policy, you would be ready for deployment.

CHAIRPERSON: Okay.

MR MANTASHE: Because you would have had acquired the skills.

Handwritten signature or initials, possibly 'LJI', in the bottom right corner of the page.

CHAIRPERSON: Okay, okay. I hope that has clarified, Mr Freund?

ADV FREUND SC: I think it will become clearer as we go along, Chair.

CHAIRPERSON: Ja.

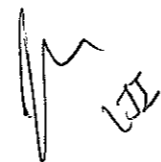
ADV FREUND SC: There is a lot more to canvas.

CHAIRPERSON: Ja, okay.

ADV FREUND SC: Now if we look at that Cadre Policy, that conferencing notes the importance of the process of
10 transformation and the mass character of the ANC of having – and these are the words I focus on – of having an army of conscious committed and properly deployed cadres. That is fundamental policy that was then the fundamental policy of the ANC and the question I want to ask you is. Does that remain the fundamental policy of the ANC?

MR MANTASHE: Yes, it remains fundamental(?). [Speaker is not clear.]

ADV FREUND SC: And if we look at the fourth bullet
20 point, this is under Conference Notes, the critical role of political leadership in the transition period and the need to deploy cadres to various organs of the state including the public service and to other centres of power in society, that remains the position of the African National Congress to this day. Am I right?



MR MANTASHE: Yes. Yes, it remains.

ADV FREUND SC: So it would not be correct to say that Cadre Policy is purely about framing and enhancing the political skills and the political education cadres because, although that is correct, there is a second part to it. And the second part to it is the policy of deploying those cadres. Correct?

MR MANTASHE: The Cadre Policy prepares people for ...[intervenes]

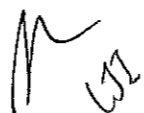
10 **CHAIRPERSON:** For deployment?

MR MANTASHE: ...for deployment.

CHAIRPERSON: H'm.

MR MANTASHE: Yes. It is like – even if you call it or you do not call it deployment policy, you have kids, you send them to school, you are preparing them for bigger responsibilities in society. The ANC give that responsibility on its cadres. That is why it is not an exception in the ANC to send an old person send back to school and he goes and study and come back because
20 there is an ongoing process of preparing people to take bigger responsibilities. And therefore deployment, yes.

ADV FREUND SC: Alright. Let us move on to the next page. After dealing with the topic of the development about cadres. That is the foot of 491. The resolution moves on to the question of its deployment and the



redeployment of cadres.

MR MANTASHE: Yes.

ADV FREUND SC: And I think the question I keep coming back to is, what does this mean? But in this context, in the context of this policy, when it says that conference resolves to put in place a deployment strategy. What is meant by or that term a deployment strategy?

MR MANTASHE: A strategy to deploy people to resume(?) responsibility [Speaker is not clear.]

10 **ADV FREUND SC:** And does the – ordinary meaning of the word deploy not denote, I think you used the word sending. Sending your cadres to occupy positions that are the subject – that are the target of the Deployment Policy?

MR MANTASHE: No. You deploy people to areas of responsibility and they are not targeted. We want to have people who understand in all centres of the state. So there is no specific jobs that are targeted. We want them to be ready to take up responsibility in the state.

20 **CHAIRPERSON:** So is deploy in that context – does deploy in that context means having prepared people for rendering service to the country in different sectors? You say now they are ready ...[intervenes]

MR MANTASHE: Yes.

CHAIRPERSON: ...whenever opportunities arise ...[intervenes]



MR MANTASHE: Yes.

CHAIRPERSON: ...they must either make themselves available to be considered or we as the party through whatever structure will recommend that those in government who have the power to appoint should consider them. Would that fact ...[intervenes]

MR MANTASHE: They are ...[intervenes]

CHAIRPERSON: ...you say?

MR MANTASHE: They are deployed(?) and encouraged to
10 apply.

CHAIRPERSON: They are encouraged to apply?

MR MANTASHE: They are encouraged to apply.

CHAIRPERSON: H'm?

MR MANTASHE: So that they go through the comprehensive selection process of this thing(?).

CHAIRPERSON: H'm, h'm. So are you saying that they are deployment, as it were, is subject to the overriding processes of government in the sense that in the end the processes of government relating to selection and
20 appointment or employment must prevail ...[intervenes]

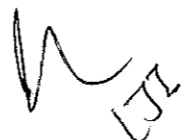
MR MANTASHE: Yes.

CHAIRPERSON: ...as to who get appointed?

MR MANTASHE: Agree.

CHAIRPERSON: That is what you say?

MR MANTASHE: I agree.



CHAIRPERSON: But as a party, you prepare them and make them ready and you satisfy yourself that they understand your policies and if given an opportunity they will make sure that the policies of the governing party are implemented.

MR MANTASHE: Probably(?). That is what I am saying. Okay alright. I do not know if that has clarified, Mr Freund but do what you need to do to make sure you understand what this meant.

10 **ADV FREUND SC:** Can we take it back Mr Mantashe to the previous page to 491? You will see there, we got a whole section, there is a whole resolution.

“Conference resolves on the development of our cadres to do various things...”

I think one could paraphrase it to say to train, to educate, inculcate the values. That is the development of cadres. That is part of the focus of this resolution.

MR MANTASHE: Yes.

20 **ADV FREUND SC:** I have no difficulty with that at all but what I am focussing on is the second part. The second part that says:

“Under deployment and redeployment of our cadres...”

And I am putting to you that just reading the document, there is a difference between that part of the



ANC's policy which is aimed at developing cadres and that part of the ANC's policy which is aimed at actually effecting deployment of cadres. If that was not the case, we would not have these two separate paragraphs.

CHAIRPERSON: Hang on Mr Freund. Before Mr Mantashe responds. What page are you on?

ADV FREUND SC: Can I take you back to 100.491?

CHAIRPERSON: Okay I am there. Yes?

ADV FREUND SC: And there you will see, Chair, on the
10 deployment of our cadres.

CHAIRPERSON: Under Cadre Policy?

ADV FREUND SC: Well, at the bottom of the page.

CHAIRPERSON: Oh, at the bottom of the page.

ADV FREUND SC: Conference resolves. So, Chair, you will see what happens here. Conference notes, further notes ...[intervenes]

CHAIRPERSON: Yes.

ADV FREUND SC: And then ...[intervenes]

CHAIRPERSON: Yes.

20 **ADV FREUND SC:** ...Conference Results.

CHAIRPERSON: Yes, I see that.

ADV FREUND SC: And the first thing that Conference Results relates to the deployment – on the development of our cadres.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: That is the point I am stressing.

CHAIRPERSON: Yes.

ADV FREUND SC: And I am not going to read into the record the next half page.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: But that next half page is all about developing cadres ...[intervenes]

CHAIRPERSON: Yes.

ADV FREUND SC: ...in the manner which I accepts
10 Mr Mantashe has described.

CHAIRPERSON: Ja, yes.

ADV FREUND SC: What I am putting to Mr Mantashe and I will put it again is that this very policy makes clear that the distinction has to be drawn between, on the one hand the development of the cadres, and on the other hand, the deployment of cadres.

MR MANTASHE: Yes.

ADV FREUND SC: Decisions on the deployment of cadres is a different thing to the process of training and preparing
20 of cadres. I think you accept that?

MR MANTASHE: No. You see, if you read that proposition on deployment and redeployment.

CHAIRPERSON: H'm?

MR MANTASHE: It says, such discretion of deployment of individual comrades they are dealt with a proper



consultation with the cadre consignment. In other words, you do not impose a deployment on a person.

CHAIRPERSON: Ja, but ...[intervenes]

MR MANTASHE: No, let me just finish.

CHAIRPERSON: Ja, ja.

MR MANTASHE: Let me just finish, it then goes further to say and so capacity building to prepare comrades for deployment and redeployment in various fields. That is the centre point of deployment that you deploy and you
10 develop capacity. Any consult you do, you do probative tax in all developments and in general on appointment of them. So read that thing in totality because if you just read phrases you are going to be start with the policy.

ADV FREUND SC: But Mantashe, my question is simply this. Is it not correct that we have to distinction between, on the one hand, the policy on the development of cadres and on the other hand, the policy under deployment and redeployment of cadres.

MR MANTASHE: Yes.

20 **ADV FREUND SC:** They are two different things. You agree?

MR MANTASHE: Yes, that would right.

ADV FREUND SC: Right. So now what we are trying to engage what is the meaning of the second thing.

MR MANTASHE: Yes.



ADV FREUND SC: Because the meaning of the second thing cannot be the saw me was the first thing. The first thing is the training process. The second issue is the deployment process. So I am now trying to understand this deployment process.

MR MANTASHE: No, the first thing is about preparation of people. The second one is to – deployment is about given them responsibility having gone through preparation. So if you see them as separate policies or as one, that is not the issue. The issue is. You do not just take a person because he is cadre who to deploy. You prepare that person, you sent that person to school and you must be ready for deployment. Then you give that person responsibility.

ADV FREUND SC: Alright. I understand. So the word you used is deployment is really giving them the responsibilities.

MR MANTASHE: Yes.

ADV FREUND SC: Now those responsibilities are the responsibilities associated with the post to which they are to be deployed.

MR MANTASHE: Yes.

ADV FREUND SC: So you, as the ANC, have a policy of giving cadres responsibilities in the various sector to which you wish to deploy them.



MR MANTASHE: Can I help you understand this?

ADV FREUND SC: [No audible reply]

MR MANTASHE: At one point, Minister Trevor Manuel, the Minister of Finance, one of the things that we credited him for. He sent all the MEC's in the provinces to the London School of Economics. That is why all the MEC's of that time has master's in economics today. That is the essence of preparation for responsibility. I am giving that just as an example of preparing the cadre for a responsibility so that
10 you do not take a person to a responsibility that does not fit.

CHAIRPERSON: Well, the example you give suggest to me that in that context you are talking about giving responsibilities to somebody who is already in a position or maybe preparing or training or enhancing their ability to perform their responsibilities better when they are already in positions when you take about MEC's that were sent at the time.

MR MANTASHE: The difficult with government and state,
20 okay, is that the selection in the state is done at the end of [indistinct].

CHAIRPERSON: H'm.

MR MANTASHE: In government you elect a party and the party put their cabinet. And even – you saw that this process of developing a person does not at the point of

appointment. If you appoint this person to be an MEC or a minister for this and you see gaps, the value of that of the skills and capabilities continue. That is the point I am making.

So I am trying to emphasise the fact that deployment of cadres should not be reduced to just dealing *with anything that you just put there(?)*. [Speaker is not clear.] That is not. There is a whole lot of ...[indistinct] on the development of the capacity and culpabilities of the
10 capacity and capabilities of the individual.

CHAIRPERSON: H'm.

ADV FREUND SC: As I understand this and I do not think that any reasonable person could have any objection to that. So the ANC is a party with a programme in a democracy wanting to explain and to educate and to enhance the skills of its members of its cadres or whatever term you want to use. It is not a controversy as far as I can see.

The controversy that we are starting to explore
20 is the next step and the next step is what you have described as being a process by which the Deployment Committee make recommendations to cadres as the positions for which they could apply and then it is left to somebody else to decide whether that application will be successful. Do I understand that that is what you are



telling us?

MR MANTASHE: Yes, to commence and the preparing the individual to apply.

ADV FREUND SC: Alright. Now let us look at what the policy actually says. Not the policy, the resolution. You say that – and this is the first bullet point under the heading, On the Deployment and Redeployment of our Cadres. So this under the heading, Resolves.

10 “Put in place a deployment strategy which focuses on the short, medium and long term challenges, identifying the key-centres of power, our strategy to transform these centres and the attributes and skills we require from our cadres to be so effectively...”

So we are going to come, shortly, to what happened three years after this in 1999, the development of a strategy but conferences resolving what you need to put in place a deployment strategy. Correct?

MR MANTASHE: [No audible reply]

20 **ADV FREUND SC:** Then it continues.

“Conference Resolves:

The establishment of Deployment Committee in the NEC, PEC, REC and BEC...”

That is the National, the Provincial, the Regional and the Branch Executive Committees. Is that correct?

MR MANTASHE: Yes, yes.

ADV FREUND SC: Yes.

“...in which implementing – which in the implementing the above strategy should:

- Discuss the deployment of comrades to areas of work on behalf of the movement including the public service, parastatals, structures of the movement and the private sector...:

10 Now the policy that was mandated by this conference, as I understand it from what I read here, is that comrades once deployed are expected to work on behalf of the movement inter alia in the public service and in the parastatals. Is that correct?

MR MANTASHE: That is right, Chair...

ADV FREUND SC: But what has happened to our non-partisan public service? Surely, a non-partisan public service is not there to work on behalf of the party. And let me call it by saying this. Clearly, every member of the
20 public service is under a duty to loyally execute the policies of the governing party. There is no difficulty about that but the question is about accountability. And is it accountability to the government or is it accountability to the party? This seems to suggest that the party is one of the accountability to the party.



MR MANTASHE: Your question assumes that there is no political system. That is your assumption that there is no political system and because there is no political system – parties that are involved in government must go home, sleep and assume that things will happen... That is your assumption. It is a wrong assumption.

Any party that is involved in government prepares to be involved in government meaningfully and that is what the ANC is doing. Now your assumption that
10 non-partisanship means no ANC. It is a wrong assumption...

Again, the ANC member and a cadre but once they are deployed to a responsibility I – well, first I understand the fact that I fail(?) to be a party person. I become a public representative. That is where non-partisanship kicks in. Now this assumption that non-partisanship means absence of the ANC. It is a wrong assumption.

ADV FREUND SC: In fact, it is the contrary, is it not?
20 The expectation of the resolution of the African National Congress that we are examining is that those persons deployed, for example, to the public service, for example to public to parastatals must understand that they sit there on behalf of the movement of which I understand the ANC. Is that correct?



MR MANTASHE: Yes, yes. But that understanding is. I am deployed by the ANC by the minister. I am not a minister deployed on the basis(?) of non-partisanship. I am a minister deployed by the ANC but what once I assume the responsibility I am must be non-partisan in my approach. I must to society because I am a public representative.

I must elevate myself above the party. But I want to submit that there is nothing in me appraising my party when they have a breakaway or they have a conference of developments and instead when I come there and say we should improve these representatives when we read this report, we need to put a lot of emphasis on all of this. [Speaker is not clear.] There is nothing wrong with that. That does not make me partisan.

ADV FREUND SC: Now what this point of – we have already referred to this bullet – says is that the NEC, PEC, REC and BEC Deployment Committees should disclose the deployment of comrades with the affected individuals. But then it continues in the final bullet point as follows:

“Decisions of the organisation, after appropriate consultation with the individual cadres, are final and the breach of this policy shall constitute a serious offence to be considered by the appropriate structure...”

What does that mean?

MR MANTASHE: I have never been a member of another party. [laughs]

CHAIRPERSON: [laughs]

MR MANTASHE: I have never been a member of another party.

CHAIRPERSON: Ja.

MR MANTASHE: I am a member of the ANC.

CHAIRPERSON: H'm.

10 **MR MANTASHE:** *Neither should they regard to you they have another party, the continuance(?)*. [Speaker is not clear.]

CHAIRPERSON: H'm?

MR MANTASHE: Let me tell you my assumption. It is that everybody that is involved in governments will try to prepare its members to participate effectively in government and you expect them to come(?) to them what they are doing. Now I am not sure it is a correct assumption to make to say it is an ANC issue.

20 In the Conference Resolution of the African National Congress a close conference of the ANC will bring it here, to the Commission now. And as a result on how to make itself effective in government. Now that ability of the institution, you do not have to - apply its mind *when do we to find as partisan*.

Now it is – what is done by everybody. Everybody. One party will resolve that ...[indistinct]. We will discuss that in this conference and execute consistently to stop *every at every city* if that is the province(?) but in the institutions of state, they should a formula(?) of dealing with that.

So the point I am making here is that we prepare our cadres, we train our members, we guide them, we sent them to school. As I have said to specific schools. In our
10 submission, we talk of William(?) Phulani(?) from the UK. Okay. We will say.

But the lot(?) of the matter is that from time to time we will go and look into the China system, why is that in China corruption and socialism(?) are an exception? Okay.

We go and learn and come back and we will discuss that in the ANC conference. We will not take it to the state. When you come across those discussions, they are going to ask us: Are you trained in China? Then you
20 should be partisan. If our internal arrangements will be prepare our cadres to meet the standards required of the task concerned.

ADV FREUND SC: Now Mr Mantashe, I can see no basis upon which anybody could object to be ANC making its own decisions on the training and selection of what I might call

political office bearers. People who are to be selected to go to Parliament and who will be selected to be in the Cabinet and other comparable situations. But the focus of my examination is really very much on the public service and the SOE's. And as regard the public service and the SOE's.

I want to put to you that it is not correct, as you have said, that any party tries to place people on those structures, loyal to and accountable to them under a duty, as it were, to report to them, the party, rather than to the
10 organisation in which they are employed. You disagree with that, do you?

MR MANTASHE: No, that assumption is very abstract. It assumes that people who were in the apartheid system are not in the state and people went to exile and they are in the camps of the – are not in the state. That assumption you are making. And I am saying it is a very, very abstract assumption that does not work in real life. And the reality of the matter is that Government, you also know that so
20 and so and so and so and so was trained in other countries, in DDR, in the Soviet Union and UK, in the [indistinct – dropping voice]

They are trained to play a role in the public service and we deployed them to the public service.

If we did not give that that would not happened



automatically. They had to be managed to happen, that is why if you look at any research you find out that there is more progress in transformation giving space for black people to participate in such a position than it is in the private sector because government has control there and it is actively managing, it is slow in the private sector because the assumption is, you stick with what you know and trust and not move on and change does not happen that way and if we did not do that, I can tell you the state will be looking different today.

ADV FREUND SC: Alright. Let us move on. What we have been discussing so far is a resolution of a national conference and the resolution was on the need to develop a policy. Can I now take you to 100.501?

MR MANTASHE: 501?

CHAIRPERSON: 100.501.

MR MANTASHE: The letter.

ADV FREUND SC: It should be ...[intervenes]

MR MANTASHE: Okay, I have it now.

20 **ADV FREUND SC:** Is that the document headed:
“ANC cadre deployment and development policy”

MR MANTASHE: Yes.

ADV FREUND SC: Incidentally, just in passing, I know it is cadre deployment, it is not just deployment, correct?

MR MANTASHE: Yes.

ADV FREUND SC: And is it correct that this is really the outcome, the product that emerged from the resolution we were discussing a moment ago?

MR MANTASHE: Yes.

ADV FREUND SC: There would have been some sort of process – this is at a time, I am not sure if you were already Secretary General, I do not think you were yet, or were you, the time of the development of this policy?

MR MANTASHE: What year was that?

10 **ADV FREUND SC:** This is in 1999.

MR MANTASHE: No.

ADV FREUND SC: No.

MR MANTASHE: 1999, Secretary General was [indistinct – dropping voice]

ADV FREUND SC: Yes and where were you in 1999, were you...?

MR MANTASHE: 1999 I was the General Secretary of [indistinct – dropping voice]

CHAIRPERSON: You were?

20 **MR MANTASHE:** I was the General Secretary of the National Union of Mineworkers.

CHAIRPERSON: Ja.

ADV FREUND SC: Right.

CHAIRPERSON: Another centre of development.

CHAIRPERSON: Ja, ja.

Handwritten signature and initials in the bottom right corner of the page.

ADV FREUND SC: But in due course – and just please remind me when you became Secretary General?

MR MANTASHE: Come again?

ADV FREUND SC: Of the African National Congress?

CHAIRPERSON: December 2007.

ADV FREUND SC: December 2007. So when you assumed responsibilities of the office of Secretary General in 2007, was this document that we look at at page 501 through to 511 still the governing policy?

10 **MR MANTASHE:** Leadership is continuous, you do not respect(?) new policies every time you elect a new leader. If this policy was in place, I took ownership of it as my policy.

ADV FREUND SC: Yes, yes. I am just checking, as I believe to be the case.

MR MANTASHE: Yes.

ADV FREUND SC: That when you took office you assumed this as policy.

MR MANTASHE: Yes.

20 **ADV FREUND SC:** That is all I am trying to establish as a matter of fact because, as a matter of fact, there is other evidence to show that this was adopted in 2009 when, as you correctly say, you were not there but ...[intervenes]

MR MANTASHE: 2009?

CHAIRPERSON: 1999.



WJ

ADV FREUND SC: 1999, I am sorry, my mistake, 1999 when you were not there but nonetheless this was a policy that you assumed.

MR MANTASHE: I was there, I was not Secretary General.

ADV FREUND SC: Yes.

CHAIRPERSON: Yes. Well, I was thinking exactly about that. You may have been there but not as Secretary General.

10 **MR MANTASHE:** Okay, because you will go to [indistinct] 04.34, I was a delegate.

CHAIRPERSON: Ja.

ADV FREUND SC: Yes.

MR MANTASHE: Stellenbosch, I am a delegate.

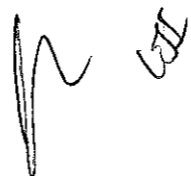
ADV FREUND SC: Yes.

MR MANTASHE: You go to [indistinct] 04.39 1991, I am a delegate, I am not Secretary General.

ADV FREUND SC: Yes, I understand.

MR MANTASHE: So I am there.

20 **ADV FREUND SC:** Now we will talk about some further documents later in the course of this evidence but I am not aware of another document that looks like this. This looks to me like the only document that has been furnished to me as the ANC's cadre deployment and development policy. Now my question to you is, whether you accept to the best



of your knowledge that this remains the applicable policy or whether you believe there were subsequent policies adopted in writing on some later occasion?

MR MANTASHE: I would have to break and go through the document that [indistinct – dropping voice]

CHAIRPERSON: Oh, okay, you have not had a chance to see whether it is ...[intervenes]

MR MANTASHE: There are quite a number of documents submitted on the cadre deployment.

10 **ADV FREUND SC:** Alright, well ...[intervenes]

CHAIRPERSON: Oh, okay.

MR MANTASHE: On the deployment policy.

CHAIRPERSON: Yes.

MR MANTASHE: So I do not know whether this is the last of it.

ADV FREUND SC: Alright. Well, I understand that

MR MANTASHE: I will need a break for that.

20 **ADV FREUND SC:** Well, may I make the suggestion, that there will be a lunch adjournment not long from now and over that luncheon adjournment you can look into that question, you can tell us immediately after the adjournment. Would that be in order? Thanks, but ...[intervenes]

MR MANTASHE: But I can assure that even if they are related documents, they will not [indistinct] 06.05 this

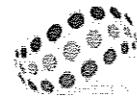


FA6

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

28 APRIL 2021

DAY 384



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

Handwritten initials or signature.

but I indicated to Mr Pretorius that we will have to advise your office that those dates will need to be moved towards later in May because there are still a number of witnesses that the commission would like to hear and – so that was something that was still to be done but I do not know Mr Pretorius may have spoken to your team about it but that was – that is something that is in the pipeline. So you might also have been wondering why he was talking about towards the end of May but – so those dates will change
10 and we will move you towards the end of May. Yes Thank you. You are done Mr Pretorius?

ADV PRETORIUS SC: For the moment Chair.

CHAIRPERSON: For the moment obviously. Okay Mr President if you wish to make an opening statement this is the opportunity for you to do so.

PRESIDENT RAMAPHOSA: Thank you Chairperson and thank you Mr Pretorius.

I appear before this commission as you have stated Chairperson at the request of the commission but I also
20 appear to assist the commission in its work and I would like make this opening statement on behalf of the African National Congress.

When I was confirming that I would be appearing I happened to be talking to one of my colleagues who is also Head of State; we had to attend to some matter and I said I



would be appearing before the commission and his reaction was Ah how can you do that as Head of State? I said this is how our democracy works. It works in such a way that when there are important matters that affect the state and the government and indeed the governing party we will not shy away from appearing before commissions so that we may shed light on the matters that the commission is dealing with and also be able to assist the commission in its mandate.

10 So I appear here in my capacity as President of the African National Congress having been elected to this position in December of 2017 at the ANC's 54th Conference.

 Yesterday our country celebrated 27th anniversary of the advent of democracy. On that day we ushered in a new era and as a nation we made a decisive break to the horrible past of colonialism and apartheid.

 The ANC working together with many anti-apartheid formations led and facilitated a process of crafting a new
20 constitutional dispensation that is today the bedrock of our democracy.

 This month marks 25 years since the first hearing of the Truth and Reconciliation Commission into apartheid era human rights abuse.

 It was a remarkable moment in our history to hold

Handwritten signature or initials, possibly 'M' followed by 'LH'.

that commission the Truth and Reconciliation Commission demonstrating our determination as a nation to unearth and confront the crimes of our past so that we may make a decisive break with those violations of human rights and so that we may forge a better future for all our people.

This commission on inquiry into allegations of state capture, corruption, fraud in the public sector carries a similar responsibility. This commission is the instrument through which we seek as a nation to understand the
10 nature and extent of state capture to confront it. To hold those responsible to account and to take the necessary measures and steps to ensure that such events do not occur ever again in our country.

State capture and corruption have taken a great toll on our society and indeed on our economy as well. They have eroded the values of our constitution and undermined the rule of law.

If followed or rather if allowed to continue they would threaten the achievement, the growth, development
20 and transformation of our country. It is for these reasons that the ANC's 54th National Conference in December 2017 resolved to support the establishment of this commission.

The ANC has consistently expressed its support for the objectives and the work of this commission. The National Executive Committee of the ANC has expressed

Handwritten signature and initials, possibly 'M' and 'LII', located at the bottom right of the page.

itself in that regard and we continue to do so.

The ANC has taken this position knowing that the organisation would itself be placed under great scrutiny and that the process of examining these matters would very likely be difficult and painful for the ANC.

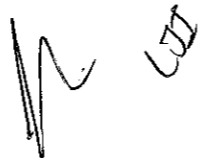
Nevertheless the ANC maintains that this commission is a necessary part of the broader social effort to end all forms of state capture and corruption.

The ANC's position has been that it is the
10 responsibility of ANC members and indeed all South Africans to assist the commission in its work.

Therefore I appear before the commission not to make excuses or to defend the indefensible. The ANC has agreed to not only support the work of the commission but to assist the commission in every way possible to fulfil its mandate.

My submission other submissions made on the ANC'S behalf are a number of my comrades and colleagues are therefore intended to provide whatever information
20 context and explanation the commission may require.

Corruption is not a new phenomenon in South Africa. The apartheid system was morally and systematically corrupt. Not only did its legal provisions appropriate to a small minority their assets and the resources that rightfully belonged to all South Africa's

Handwritten signature and initials in the bottom right corner of the page.

people but there was also a prevailing culture of corruption within the apartheid state also within its state owned enterprises but it also went broader than that into private business establishments and the numerous Bantustan administrations that had been set up to organise our country.

The advent of democracy in South Africa was an opportunity to make a decisive break with that past through the adoption of a new constitution we established a new
10 era of transparency, accountability, ethical conduct and respect for the rule of law.

The experience of the past 27 years shows that endeavour to have been for the most part successful and its success can also be measured by the establishment of this commission which is in a very transparent and open manner opening up a can of worms of corruption and state capture.

Our country has a National Parliament and Provincial Legislatures elected by universal suffrage and
20 regular and free fair elections. We are proud to have a strong and independent judiciary.

Our democracy is supported by robust institutions and we have a free and vibrant media.

An important aspect of the ANC's approach to corruption over the years is a recognition of the extent to

Handwritten signature and initials in black ink, located at the bottom right of the page.

which some ANC leaders and members were advertently and inadvertently complicit in corrupt actions and this recognition was well articulated in our conferences where we did say that we need to openly and publicly acknowledge that these are the problems that we have to deal with.

And as a consequence the extent to which corruption contributed to practices, patronage, factionalism and the manipulation of organisational processes in the
10 ANC is a matter of effort.

The recognition of these facts does not mean that the ANC is itself corrupt or uniquely affected by corruption. There are other institutions in society, various political and social formations as well as the private sector companies that have to confront corruption within their own ranks. Nor is South Africa alone in the world in having to deal with pandemic corruption.

Many other countries have to deal with corruption in the political, economic and social spheres and it is clearly
20 not sufficient for us to recognise the problems.

The task of any organisation like the African National Congress especially with its history of principled struggle, its values and its mission is to address the problem.

It should be noted that why there is broad



consensus within South African society but a process of state capture took place over the course of several years. It took some time for the term state capture to gain currency and for the phenomenon it described to clearly be recognised as such.

Therefore even though some of the incidents that I refer to in my submission may be regarded as instances of state capture they were not necessarily recognised or described as such at the time.

10 And even as the term gained currency there were individuals in the ANC and in society more broadly who contested both the use of the term and the existence of the phenomenon.

In my submission I outline how allegations of state capture arose within the structures of the ANC and how the organisation responded at different moments.

Without going into detail in this opening statement it is worth mentioning that one of the earliest claims made within ANC structures of the possibility that members of
20 the Gupta family may have had an improper role in the functioning of the Executive was a statement by Minister Fikile Mbalula at an ANC meeting in 2011.

To my knowledge the matter was not taken further by the NEC or in any structure of the organisation after he had mentioned it.



At the time the statement did not prompt any specific concerns about the capture of the state. With the passage of time more reports began to surface in the public domain about the alleged capture of public enterprises by a private interest and the undue influence of certain individuals notably members of the Gupta family in executive decisions and appointments.

As the volume of evidence began to mount in the public domain the issue of state capture even if it was not
10 described in those terms at the time began increasingly a subject under discussion in the National Executive Committee of the ANC and ANC structures.

It was also a matter taken up more directly by ANC's alliance partners, South African Communist Party and the Congress of South African Trade Unions. It was also ANC veterans and other outside structures of the organisation including service society formations including religious organisations. Corruption is by its nature a covert activity. Those who perpetrate corruption and
20 related to crimes, generally, seek to keep their actions hidden or masked and disguise their intentions without direct evidence, without any investigative capability and mandate and in the face of the vehement denials.

It is difficult for any structure to confront such activities. In addition, the ability of any organisation but



especially a political formation to act on allegations of maleficia relies not only on its formal rules and procedures but also on the balance of power within a structure.

The alignment of use within such an organisation is further influenced by access to the offices of state where the ability to appoint and to dismiss and even to dispense patronage is concentrated amongst a few individuals. For the ANC this was compounded by its own subjective challenges.

10 The ANC took time at its 54th National Conference to reflect on these subjective challenges and recognised the erosion of its organisational integrity as processes had been manipulated to advance the material interest of certain members and associated by that companies and individuals.

This manifested itself in weak and pliable branches of the ANC. It also manifested itself with both buying and gate keeping, factionalism and open conflict. This provided fertile ground for state capture and
20 corruption. As I outlined in my submission, Chairperson, the ANC has over the course of several years recognised the existence of corruption within the state, within its own ranks and within other parts of society.

It has taken a number of resolutions on measures to prevent corruption including on issues relating

Handwritten signature and initials, possibly 'M' and 'LW', located at the bottom right of the page.

to state capture. These are evident in the statements of ANC National Executive Committee particularly from 2016 onwards which included a call for an independent investigation by competent authorities into these allegations.

The question that arises is whether these resolutions and pronouncement were followed by a meaningful action to fight corruption and state capture. In answering this question, we must acknowledge that the
10 issue of state capture was a matter of great political contestation within the ANC.

Differences over whether indeed state capture existed, its extent and form and what should be done about it, contributed to divisions within the National Executive Committee and other ANC structures. These divisions were evident also in government, in Parliament and other sections of society and indeed the issue of state capture and corruption was prominent in the contestation that took place ahead of the ANC's 54th National Conference in
20 December 2017.

However, we would argue that over the course of time, through political debate and democratic contestation, the organisation took active measures to confront state capture. This is evident, for example, in the events that unfolded in Parliament from late 2016 and into 2017, where

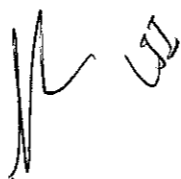


the ANC and other parties initiated a number of inquiries into allegations of malfeasance and some state-owned enterprises and parts of government.

It is clear from the affidavit submitted to the Commission by the former ANC Chief Whip, the late Mr Jackson Mthembu but the determination by the ANC in Parliament to probe these allegations was both a response to the evidence of wrongdoing that was accumulating in the public domain and the implementations of the decisions
10 taken by the ANC's constitutional structure especially with NEC.

The ANC's 54th National Conference was in many ways a watershed moment in the ANC's effort to confront state capture and corruption within its ranks. Much of the discussion at the conference on the issues of state capture was framed by a diagnostic organisational report presented by the then Secretary General, Gwede Mantashe, on behalf of the National Executive Committee.

This report directly addressed the allegations of
20 corruption and the involvement of ANC members and leaders in the broader context of state capture. The conference consequently resolved to demand that every ANC member accused of or reported to be involved in corrupt practices should account to the Integrity Commission immediately or face disciplinary processes.



It also resolved to summarily suspend people who failed to give an acceptable explanation or to voluntarily step down while they face disciplinary investigative prosecutorial procedures. Also, resolve to publicly exhaust this associate organisation from anyone whether business, donor, reporter or member accused of corruption or reported to be involved in corruption.

It further resolved to ensure that ANC members and structures cooperate with law enforcement agencies, to criminally prosecute anyone of corruption and further it said it requires the ANC deploees to Cabinet. That is National Cabinet. Especially the Minister of Finance, the Minister of Police of Justice, the Correctional Services to strengthen state capacity to successfully investigate and prosecute corruption and account for any failure to do so.

Now these resolutions, in more ways than one, signalled a clear determination by the membership of the African National Congress to acknowledge the organisations failing, to make also a clean break with corrupt practises and to initiate an ethical, political, and organisational renewal of the ANC.

Now following the 54th National Conference and in line with its resolution, the ANC embarked upon a process of organisational rebuilding and renewal. This included corrective measures both within the ANC and

Handwritten signature and initials, possibly 'M' and 'LST', located at the bottom right of the page.

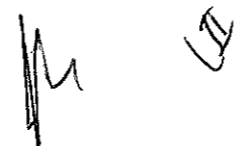
indeed the state by the latter I dealt with more extensively in my statement to the Commission in the capacity as the Head of State which was presented.

It is important to note that these measures were informed and inspired by the mandate of the ANC's National Conference which, as you might be aware, is attended by thousands of members of ANC branches across South Africa.

10 In one of the areas in which the ANC has taken clear action is to require that members of the ANC who are formally charged with corruption, other serious charges must immediately step aside from all leadership positions in the ANC, legislatures or government structures pending the finalisation of their matters.

Such members who do not step aside may be summarily suspended. Furthermore, members of the ANC who are reported to be involved in corrupt and other criminal practises must go to the ANC's Integrity Commission and provide a credible explanation for these
20 allegations or reports.

Should members fail to give an acceptable explanation, they may be suspended subjected to disciplinary processes. In line with the ANC constitution, ANC members who are convicted of corruption or other serious crimes must resign from leadership positions and

Handwritten signature and initials in black ink, located at the bottom right of the page.

face disciplinary actions.

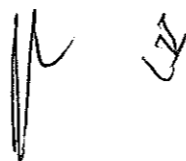
It is worth mentioning that some of these requirements, especially on the so-called step aside provision, have in the past been the subject of much contestation within the organisation. However, there is now broad support within the organisation or its implementation.

At its most recent meeting on the 26th to the 29th of March, the NEC directed that all members who have
10 been charged with corruption or other serious crimes must step aside within 30-days, failure which they should be suspended in terms of Rule 25.70 of the ANC's constitution.

The ANC has embarked on a process of renewal to build a movement characterised by integrity, accountability and the highest standards of ethical behaviour but the process renewal is by itself a process. It is not a one-day event and it is a process that is ongoing.

The rate or progress is determined not only by
20 the existence of political will and organisational capacity but also by the continued existence of invested interest and resistance from those who have much to lose from the corrective measures mandated by the ANC's 54th National Conference.

I will now turn to some specific issues that the

Handwritten signature and initials in black ink, located at the bottom right of the page.

Commission has asked me to address. The first of these are the ANC's approach to pave the development and deployment. This issue has been covered in some detail by the ANC National Chairperson, Mr Gwede Mantashe.

His testimony before the Commission, Mr Mantashe described the evolution and the development of the ANC's policies, the principles that informed this approach under structures and processes that the ANC has put in place to manage cadre development and deployment.

10 Since even before the advent of democracy, the ANC has said that in transforming the public service to reflect the values of our democracy and the demographics, or better still, the diversity of our country, we must emphasise professionalism and competency.

This is reflect in our earliest policy pronouncement which were part of the ready to govern document which was release in 1991 as the ANC was preparing to enter government knowing that the level of support that it had would give it a mandate to do so but it
20 was also confirmed at the 54th National Conference.

The ANC fully embraces the principle that all public servants should undertake their duties in a fair, balanced and non-partisan manner. It should be noted that the deployment of cadres to strategic positions is not unique to the ANC. It is practised in various forms and



through various mechanisms even if not always acknowledged as such by other political parties in our country and also in other countries.

In our view, cadre development has acquired such prominence in part because of the perspective that there should not be political interference in the selection of people who work in the public sector. However, international practise suggests a more nuanced approach to this matter.

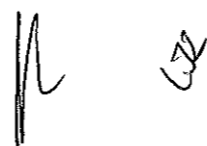
10 For example, an OECD working paper on public governance published in 2007 written by a number of scholars including one called Martinsen, said that with specific reference to appointments of senior public service staff:

“Political involvement in administration is essential for the proper functioning of a democracy.

However, public services need protection against being misused for partisan purposes.

20 They need technical capacity which survives changes of government and they need protection against being used to impair the capacity of future government to govern.”

In identifying suitable candidates for positions in public entities, the ANC does not seek to circumvent to

Handwritten signature and initials, possibly 'GZ'.


establish an often legally mandated processes for the appointment of individuals for these positions. Candidates are expected to submit their applications, meet the necessary requirements and be subjected to the normal processes of recruitment, selection, and appointment.

Even with these requirements, there are several instances where individuals appointed to positions may not have been fit for purpose or may not have had the necessary experience or qualifications and this much I am
10 prepared to accept.

The ANC's 54th National Conference recognised this problem and resolved that the married principal must apply in the deployment to senior appointment based on legislative prescripts and in line with minimum competency standards.

It is the ANC's view that the practise of cadre development should not be inconsistent with the principles of fairness, transparency and merit in the appointment of individuals to public entities. Cadre deployment cannot be
20 faltered in principle. It is a common feature of democratic practise around the world and I think it properly describe and is not diluted to various other intents and forms.

It is a useful process used by governing parties around the world to make sure that the mandate that they had been given by the populous is carried out but we could

Handwritten signature and initials in black ink, located at the bottom right of the page.

concede that there are weaknesses in this practical implementation that make the case for greater clarity both within the political parties and the state.

Ultimately, political involvement in administration of the public service should be and must be circumscribed by legislation, by convention as well as by practice and we should do so to protect both political and administrative positions and to create certainty as to the division within political and administrative responsibilities. There are a
10 number of governments around the world who utilise this very mechanism as outlined in the OECD.

The Commission also asked that I address the funding of political parties. Any successful multi-party democracy requires a diversity of functioning of political parties that are capable of articulating and representing the needs, the interest and the concerns of the electorate. For this, political parties require funding and in the absence of sufficient public funds for this purpose need to rely on donations from their own members, from supportive
20 individuals, and yes indeed, from businesses.

Until adoption of the Political Party Funding Act which took effect on the 1st of April 2021, there were few, if any, specific restrictions on donations to political parties and no requirements on the reporting of donations, either publicly or to any particular authority. Like other parties,

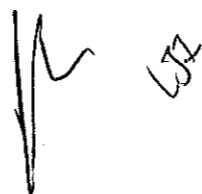
Handwritten signature and initials in black ink, located at the bottom right of the page.

the ANC relies on several sources of funding. Many Treasurer Generals who run their financial affairs of various political parties will testify that the running of political parties as the government increasingly costly, expensive, and requires a lot of funding.

These includes funds allocated to represented political parties which are administered by the IEC, membership subscriptions as well as levies that are levied on members who are deployed by the Parliament of various
10 places, fundraising initiatives, like, in the ANC's case, the Progressive Business Forum, funding dinners and other events, and donations from individuals and companies.

Despite the absence of any official policy on donations, there is an expectation based on the ANC's constitution, its principles and its values that the ANC would not knowingly accept monies that are a product of a criminal act, are offered in exchange for favours or are from a source known in illegal or unethical activities.

The ANC has long recognised the risk presented
20 by the lack of regulation with respect for political funding. The lack of transparency in donations to political parties increases the potential for corruption and the exercise of improper influence on political activity and government processes. It wants to address this problem that the ANC resolve at its 52nd National Conference that:

Handwritten signature and initials, possibly 'LW'.

“The ANC should champion the introduction of a comprehensive system of public funding of representative political parties in the different spheres of government and serious society organisations.

This should include putting in place an effective regulatory architecture for private funding of political parties and civil society groups to enhance accountability and transparency to the citizens.”

10

It was not until the next ANC conference in December 2012 that the Political Party Funding Bill was introduced into Parliament to achieve this purpose. We believe that the Political Funding Act will have a far-reaching implication for the integrity and transparency of our political system and will help to rebuild public trust in the political process.

20

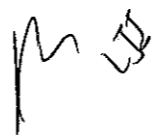
While the Political Party Funding Act deals with donations to political parties, the ANC has also identified weaknesses in its approach to the funding of internal party contests. That is leadership contests. Specifically, it has noted that its guidelines on the conduct of internal leadership elections are not suited for the conditions of the time that we live in and has initiated a process to review its policies on this matter.

The issue form part of the discussion documents published last year in preparation for the ANC's upcoming National General Council. I am raising this issue during the MEC meeting of 26 July 1990. I said as President:

“In the absence of clear, appropriate and realistic guidelines, our leadership contest will continue to play themselves out in the shadows in conditions of secrecy and mistrust, encouraging patronage and factionalism.”

10 In conclusion. The position of the ANC on leaders and members who have been complicit in acts of corruption or other crimes is clear. Their actions had a direct violation, not only on the laws of the republic, but also of the ANC's constitution, its values and principles and the resolutions and decisions for the ANC's constitutional structures. Such members must face the full legal consequences from their action. They cannot rely on the ANC for support or protection, nor may they appeal to the principle of collective responsibility.

20 In accounting for their actions, they must be accountable for their actions themselves because the ANC did not and could never direct its members or leaders to commit acts of corruption. While the ANC distances itself from those within its ranks who have been involved in corruption or who are complicit in state capture, the



organisation must and does acknowledge that it must provide explanations for the matters currently under investigation by the Commission.

We should do so because state capture took place under our watch as the governing party. It involves some members and leaders of our organisation and had fertile ground in the divisions and weaknesses and the tendencies that have developed in our organisation since 1994.

10 I should say, however, that the vast majority of ANC leaders, ANC cadres and ANC members are vehemently opposed to corruption in all its manifestations but we all acknowledge that the organisation could and should have done more to prevent the abuse of power and the misappropriation of resources that defined the era of state capture.

20 Particularly the period under review by this Commission, the ANC does admit that it made mistakes as we have admitted in our various conferences. We made mistakes as it sought to execute the mandate that it was given by the voters. It had shortcomings and living up to the expectations of the people of South Africa in relation to enforcing accountability and in generating a culture of effective of consequence management.

The leadership of the ANC newly elected at its 54th

N 5

National Conference, we acknowledge these shortcomings as an organisation and we did acknowledge that at our 54th National Conference and we do so now. For this, we acknowledge to the people of South Africa that we did not always live up to the values and the principles that have defined the glorious movement that we belong to for over more of a century of its existence.

We are, however, determined and we undertake to work alongside all South Africans to ensure that the era of state capture is relegated to history and that the excesses that took place may never, never, never ever occur in our country. I thank you, Chairperson.

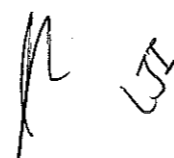
CHAIRPERSON: Thank you, Mr President. We are at nine minutes past eleven, we normally take an adjournment at quarter past eleven, I think we should take an adjournment now so that when we resume then we can continue. We are going to take the adjournment now, we will resume at twenty five past eleven. We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Let us continue.

ADV PRETORIUS SC: Thank you, Chair, Mr President. By way of introduction it appears from your statement and your opening statement in addition to public statements that there are indeed three issues that the Commission

Handwritten signature and initials, possibly 'M' and 'LSE', located at the bottom right of the page.

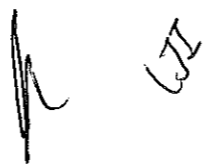
should properly investigate.

The first is to understand what happened in the period under review and we have three years of evidence before the Commission and we have certain statements in the opening and in your general statement in that regard.

But the second is perhaps more important for present purposes and that is to understand how things could have happened and it is that regard that many of the questions will be put before you, Mr President. In other
10 words, what were the circumstances and events that allowed these things to happen which appears by public consensus, as you say, to have conceded to – be to conceded to have happened.

And the third element that is also very important, it may have to stand over to a large extent to the second session of your evidence as how can these things be prevented from happening again. So we will cover all three issues but concentrate principally on issues two and three.

Of course we will also ask questions of what you
20 knew was happening in terms of the – or in relation to the terms of reference and in relation to the third question, we will also ask what you, as President, the ANC and the executive which you are leading are doing or intend doing or think should be done to prevent it happening again and many of those elements are already in progress, for

Handwritten signature and initials, possibly 'M' and 'LW', located at the bottom center of the page.

example matters in relation to law enforcement agencies, the Political Party Funding Act and others but there are other questions that will arise out of that and the object will be to ask on your part for evidence that will allow the Commission and the Chair in particular to understand what best are the remedies that it can recommend. But having said that by way of introduction, Mr President, there is a unique element to this evidence, this is your Commission, this Commission is reporting to you and in that sense it is
10 a unique situation but notwithstanding we hope that you will help us do our job for you properly.

CHAIRPERSON: Of course it is a Presidential Commission in his capacity as President of the country and not as President of the ANC.

ADV PRETORIUS SC: Yes, well that is also true, Chair, so maybe I should reserve that question for the next session.

Mr President, what we have done in response to your statement is look at certain paragraphs in the
20 statement and to deal with matters arising from those paragraphs and in particular your statements in those paragraphs but if we leave anything out in the sequence please alert us to it so that we can then go back and everything can be taken in its proper sequence. So the first issue that we do have to raise is on page 12 of



bundle 1, EXHIBIT BBB1, but if there is anything before that you no doubt will alert us to it. This is the introductory portion of your statement.

CHAIRPERSON: I am sorry, Mr Pretorius, you said page 12?

ADV PRETORIUS SC: Page 12.

CHAIRPERSON: You explained to the President the black numbers and red numbers?

ADV PRETORIUS SC: Yes. We will be dealing – there
10 are two sets of numbers on each page, we will be dealing with the numbers at the top left hand corner and we have taken the liberty of using the acronym CR there.

CHAIRPERSON: My page 12, Mr Pretorius, starts with:

“In the course of this Commission’s work...”

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Is that the right page?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: In paragraph 21 on that page, Mr
20 President, you say:

“In such circumstances political parties do not merely represent their members but often act as instruments to advance the needs and interests of entire sections of society. This is among the reasons that the ANC describes itself as a liberation



movement first and foremost that, among things, contests elections as a registered political party.”

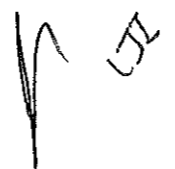
I understand from this paragraph as well as parts of your opening statement that the party is itself in terms of liberation, constitutional policies and principles the development of the South African society in accordance with this principles as a leader in society. There can be no doubt about that fact and, as I understand it, that would be the justification that the party holds for adopting the stance
10 that it is entitled to and does seek to control the leaders of power. Do you have any comment on that? Is that common cause?

PRESIDENT RAMAPHOSA: With reference that you make to paragraph 21, indeed the ANC characterises itself as a liberation movement which we really have been from formation and largely because we were set up to achieve certain objectives and those objectives remain current, to be executed and you could say, in part, some of them have been – now have a democratic dispensation but we still
20 want to pursue a truly non-racial South Africa. That has not yet been truly achieved.

We are also a liberation movement because we seek also to attain a non-sexist South Africa, sexism is still rife in our country and it is also compounded by a continued violence that is perpetrated against women. But



more importantly, also, to attain a prosperous South Africa, that is an overarching objective and that remains what the ANC has as its objective, that characterises it as a liberation movement. But in the midst of all this, it still has to be a political party that contests elections and in doing so, it then is supported by millions and millions of South Africans, so when it acts it needs to fulfil the mandate that it has set itself out to achieve which is informed by the ordinary people who elected because as we craft our
10 manifestos, we do not do it just merely for ourselves as a party, we go out and gather the views and aspirations of ordinary people and therefore, when we are then elected, we represent the people of South Africa and it is for this reason that we say we hold power not just for ourselves, we hold power and execute power – exercise, rather, power in the interests of the people of South Africa, the many millions who elect us and it is for this reason that we say – and it has been conceded that we are leader of society and what the ANC does and says quite often determines the
20 mood in the country, determines the direction that the country should go, so it is the role that is given to the African National Congress by the majority of the people of this country and they expect the ANC to act in a way where it will lead government and it will lead transformation and achieve the objectives as set out by itself as a liberation

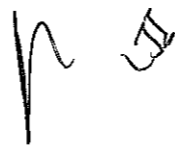


movement.

ADV PRETORIUS SC: Thank you, Mr President. It may seem what you have said should be taken for granted but perhaps it should not be taken for granted. There are two things that flow from that statement, particularly the latter part of your statement that there is an expectation on the part of South Africans that the party will lead in dealing with policy, problems, solutions and the like and we will come back to that point later.

10 But the second is that the electorate would then be entitled to know how and what – how the ANC intends to go about its business and business of the country, the people and what it is doing in that regard. Is that a fair statement? Obviously there are exceptions, but...

PRESIDENT RAMAPHOSA: I would concede that, yes, they are entitled and in other ways we also describe ourselves as the ANC as the parliament of the people. When the ANC was formed in 1912 we – the leaders of past then characterised even that moment as the creation of the
20 parliament of the people because the people, as the whole of the majority were excluded from the so-called parliament that existed there. So yes, people are entitled to know and that is why the ANC for the most part has been one of the very few parties in the country that has been willing and prepared to open, as it were, its chest, its heart to the



people of South Africa and admit its own mistakes and also set out the ways it seeks to correct much as sometimes, because it is a political movement, there will be contestation of some of the issues.

CHAIRPERSON: You may keep mic on, Mr President.

PRESIDENT RAMAPHOSA: Okay, I will do so.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Then, Mr President, after certain introductory structural remarks concerning the ANC's
10 structures and processes you deal with cadre development and deployment beginning at page 15 and in paragraph – well, perhaps I should presage that with a summary of the evidence – a very, very broad and perhaps superficial, but if it is superficial you will tell me, summary of the evidence in relation to cadre development and “cadre deployment”.

On the one hand there has been evidence that the policy goes far beyond mere recommendation and in fact is a policy implemented on the instruction and mandate of the deployment committee. That is one view and there is
20 certain evidence in regard to that. Whether that is exceptional or the rule, maybe we can deal with in due course when we come to detail.

The other view, which is reflected in your statement and other statements, Mr President, is that the deployment committee goes no further than make recommendations



and abides by the formal selection processes that take place for example in the public service.

Those are the two extreme views and whether either is correct or not, Chair will have to consider and decide. Or it may be that neither is correct as a general rule and that there is quite a large grey area between. What would your comment be?

PRESIDENT RAMAPHOSA: The deployment committee, as I said in my statement-in-chief, should really be seen as
10 committee that recommends, the recommendation committee and having been the Chair of the deployment committee as Deputy President, the process that really gets underway is as follows, and maybe I am simplifying it. The minister concerned, for instance when it comes to say state owned enterprises - or state entities, would come forward and say I need to appoint the CEO of one of the key state owned enterprises and in doing so, they will then have that post advertised, as they should in terms of the regulations and corporate governance and so forth and a
20 message will then be forwarded to yes, the ANC deployment committee, that there is a position that the minister will come to the deployment committee with to articulate what position they need to fill but then they will have triggered the process of – the formal process of filling that position. So the advert then goes out so that



whomsoever applies but then internally in the ANC people will then be encouraged to apply that there is a position, if you qualify, you could be one of those who are either shortlisted or whatever. So the minister will then say we have shortlisted a number of people and in the short listing these are people who have been shortlisted. Some of them may not even be ANC members, some of them may well be ANC members and what is then looked at by the deployment committee is to say we really need someone
10 with experience.

For instance, if it is a railway entity of railways and who has been well-trained and well-prepared and all that, and having done that, the deployment committee could well say well, in our view so and so fits the bill. It could be an ANC person, it could be an non-ANC person, completely unattached to the ANC, that we believe that this person can do the work. And then it then goes off, it goes off to the selection – final selection process, that the minister then gets involved in with her colleagues in cabinet
20 because an interviewing panel then is put up and if it is, for instance, a Director General, it happens in cabinet, if it is a state owned enterprise it happens in terms of company rules and what have you. So that then ensues.

And then at times, Chairperson, the desires of the deployment committee are not even fulfilled. They may



well have said we want so and so and it may not happen and we say that should be in terms of the prescripts of the law, corporate governance and the prescripts of the selection process in, for instance, in the public service.

So having chaired the deployment committee, I know that for a fact that in some cases the deployment committee wishes may not happen. So it is for that reason that I describe in the main a deployment committee as a recommendation committee. And it takes into account a
10 whole number of considerations. You could ask are some of them political? Yes. For key positions where we seek to advance the mandate of the governing party? Yes.

But where, for instance, the requirements and the experience of a candidate overrides that. We then say we rely on this person as an South African to execute the task.

ADV PRETORIUS SC: Whether it always happens that way or not we can explore in due course with some of the more detailed evidence that we have been given but I understand you to have said that the whole process does
20 require some form of statutory or other regulation and we can explore that issue as well in due course. But, for the moment, in paragraph 25 on page 15, your statement reads:

“The policy of the ANC is aimed at ensuring that the person most fit for purpose is appointed whatever



critical position has been identified.”

And the statement is quite a strong statement, in other words the object of the policy is to ensure, not merely to suggest, that the person most fit for purpose is appointed to a particular position. You have also now recently said that the deployment committee goes out to seek candidates. How does one ensure that a person most fit for purpose is appointed if it is only a recommendation and another body makes the decision?

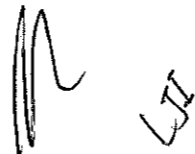
10 **PRESIDENT RAMAPHOSA:** The process of selection of -
let me put it deployment of people – has evolved, has been
evolving and has been a subject of discussion even in our
past conference and in recent time, the last conference,
the issue of professionalising the civil service,
professionalising state owned enterprises and getting
people who are fit for purpose has become accepted and
has become more current. And as it has evolved, it has
evolved from a past that did not necessarily subscribe to
that. So, as everything evolves, as everything improves
20 and gets better, this is now where we are. And to this
effect even the Minister of Public Service has now
embraced this process and it is now in the process of
being fully implemented in government so we now have a
new era, a new dispensation that is going to see to it that
we have people who have fit for purpose.

Handwritten signature and initials, possibly 'LTI', located at the bottom right of the page.

So what the deployment committee will now to be doing is to yes, seriously ask itself whether people are fit for purpose. Even as it will recommend certain people who could head any state owned enterprise or head any department as DG, it has to this as a filter and ask itself is that person fit for purpose as it recommends? So I see – I do not see the two things as mutually exclusive, I see this process as being seamless.

Chairperson, we do so because we are serious
10 about correcting what has gone wrong in the past and this is an important plank that we are working on to make sure that we build this up as an important pillar of improving state capability. So when I will speak as head of the state I will talk about how we are going about improving state capability and this is one of the areas that I will address myself.

CHAIRPERSON: I am sorry, Mr President. What is the importance, Mr President, of this deployment committee having the power to recommend as opposed to simply
20 identifying potential candidates and encouraging them to apply like everybody and be considered and if they are considered, the most deserving, they get appointed. So what is the importance of the committee having to recommend as opposed to simply saying we know there is this position available, we would like some of our members

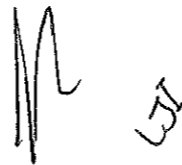
Handwritten signature and initials, possibly 'LH'.

that we know are qualified and we think are suitable or, as you say, people in society that the organisation is aware of that it thinks should be encouraged, encourage them to say you apply and you compete with – like with everybody. So if you did it that way, the people that the deployment committee thinks are appropriate will be the among those who will be considered but they will not be coming with the recommendation from the deployment committee that the minister knows about, they will be coming like everybody
10 but the deployment committee and the organisation should be covered because it has made sure that people that it thinks should take those positions are there with others and competing there.

PRESIDENT RAMAPHOSA: With respect, Chairperson, I hope you do not think that I am pedantic when I say maybe the two are not mutually exclusive.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And I say so advisedly because as previous chair of the deployment committee we
20 did have a situation, some situations were – the deployment committee will have identified two or three really suitable candidates and would say all of them, their names should go forward and in the end the final decision is then left to the final selection process in government. So what you are saying is that could the deployment

Handwritten signature and initials, possibly 'M' and 'WT', located at the bottom right of the page.

committee not just identify instead of recommending, I would say the two are not mutually exclusive, it is impossible where two or three names have been sent forward and in other situations it has been a recommendation of one or so, so – and I take that and it is not impossible for the deployment committee to function in that way because all that it really seeks to do and should seek to do is to get whoever is fit for purpose, particularly now in this new, if you like, reformed era of making sure
10 we do have people who are really good and fit for purpose who would be able to execute the task at hand without feeling that they need to pursue – advance certain side interest.

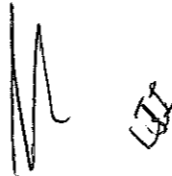
CHAIRPERSON: Well, that question arises in my mind because it would seem to me that where a minister is the appointing authority, for example...

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: And he or she knows that among the candidates there is this candidate who enjoys a
20 recommendation of the deployment committee and remember, the deployment committee is chaired by the Deputy President of the party and the Deputy President of the country because that is how it works at the moment.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: It seems to me that it might put some

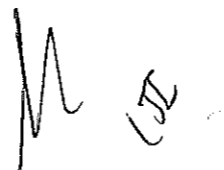
Handwritten signature and initials in black ink, located at the bottom right of the page.

pressure on the minister to take this candidate unless one of the other candidates really excels. So, in other words, this candidate seems to come with an advantage that nobody else knows about other than the deployment committee and the minister. So the other candidates think we are all competing on an equal footing but this one already enjoys a recommendation from the deployment committee, of course a recommendation that has been made by the deployment committee, not knowing the
10 strengths and credentials of other possible candidates and then the minister is aware, the committee chaired by the Deputy President thinks this is the person who should – or recommends that this person should be appointed. Would you want to say something about that?

PRESIDENT RAMAPHOSA: I do indeed.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: I do want to say something, Chairperson, and I will point to you the practical experience that unfolds at the deployment committee and it
20 is good that you actually cite the situation of a minister who will come to the deployment committee. Quite often ministers come to the deployment committee, having gone through a process, a pre selection process themselves and the various other officials or committees embedded in their own ministry, where they sift through a number of say



possible names.

When they come, they seek to convince the deployment committee about certain candidates who may be short listed. So in the end, quite often it is not even at the instance of the deployment committee. It is at the instance of the minister, who knows and should know the skills, the experience that are fit for purpose for the task that they manage or they run in the ministry.

10 So they would know for instance, the CEO of an entity what the requirements are and the deployment committee does not know in full. So they come to the deployment committee and seek to convince the deployment committee and even put up a pitted not fight, but argumentation of why the persons that they may want to see appointed should be recommended by the deployment committee.

20 So that is the practical experience that I have had. So the deployment committee, in the end it will tell people that apply, there are these positions and but it is the deployee in that ministry or in that who manages that state owned enterprise, who would know in greater detail, in finer detail precisely what is required.

So they seek to convince the deployment committee. So if you like, the deployment committee therefore plays a recommendation role, but it also plays

more of a reactive type of role. You could ask is there any desirability for the deployment committee and we would say yes, there is because it should serve as a filter.

We are a political organisation and what we do in government is very political, so you do need that political filter but it should also not be a political filter that will go ahead and appoint people who are not fit for purpose. It should be a filter that will make sure and if you like, it should be a quality type of assurance, that in the larger
10 scheme of things we are going to have people in senior positions who are going to execute the mandate as set out in the manifestoes of the governing party.

CHAIRPERSON: Now the two approaches, you said they are not mutually exclusive.

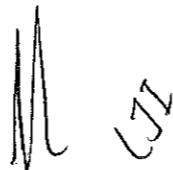
MR RAMAPHOSA: Ja.

CHAIRPERSON: And I agree. I have already indicated what possible criticism can be directed at the approach as you have described it.

MR RAMAPHOSA: Ja.

20 **CHAIRPERSON:** Namely that the candidate recommended by the deployment committee has this added advantage, and I assume that is not known to anybody, other than the deployment committee and the appointing authority, the minister.

I may be wrong on that. What criticism would you

Handwritten signature and initials, possibly 'M' and 'CJI'.

have with the other approach, which simply says your interest as an organisation in making sure that you, that certain strategic positions are occupied by people who understand your policies and so on and so on.

That would be taken care of if you encourage candidates, suitably qualified candidates to apply, but once you ... once they have applied, why do you not leave it to the process and the appointing authority and the appointing authority is your own cadre who is supposed to
10 understand the policies of the ANC and he or she will then look at all of this.

But in that way the candidate does not come with some extra added advantage. Would you have criticism for that approach and say it would not be suitable?

MR RAMAPHOSA: No, I would not except that what often happens, it is actually the minister who ...[intervenes]

CHAIRPERSON: Who comes to you.

MR RAMAPHOSA: Who comes and say I am recommending the following and the deployment committee
20 then examines that and it is often convinced ...[intervenes]

CHAIRPERSON: About the ministers.

MR RAMAPHOSA: Oh yes.

CHAIRPERSON: Yes.

MR RAMAPHOSA: And I have been in situations where the minister would come back maybe two to three times.

Handwritten signature and initials, possibly 'LJ' or similar, located at the bottom right of the page.

CHAIRPERSON: Ja.

MR RAMAPHOSA: And say ...[intervenes]

CHAIRPERSON: I want this one.

MR RAMAPHOSA: This is the best one.

CHAIRPERSON: Yes.

MR RAMAPHOSA: And I want to convince you and even bring further documentation to prove the case.

CHAIRPERSON: Yes.

10 **MR RAMAPHOSA:** And then I am not suggesting that the minister brow breeds the deployment committee into submission, but ...[intervenes]

CHAIRPERSON: Ja.

MR RAMAPHOSA: That is how it often happens.

CHAIRPERSON: Okay.

MR RAMAPHOSA: But having said that, your point is a good one and I would say yes, because I do not really see the two being so mutually exclusive, particularly because of the role that the minister does play.

CHAIRPERSON: Yes, yes.

20 **MR RAMAPHOSA:** As the minister should because they are the executive authority who has been deployed to do precisely that.

CHAIRPERSON: Mr Pretorius?

ADV KENNEDY SC: Thank you Chair. Perhaps it bears mention Mr President, that there are three issues that we

Handwritten signature and initials, possibly 'LST'.

will canvass in the time allowed. The first issue is, as you have elaborated in some detail, how is the system designed to work? How should it work.

The second issue is how, whether in part to the greater or lesser degree that may be debatable, how it did work in the past. What problems arose. You have mentioned some problems and we will come to it in a moment.

10 So that one can understand how best the third issue can be addressed, and that is the regulation that you yourself have proposed in your statement towards the end and we will get there. There is another distinction that is quite important to bear in mind, and that is there are various categories of quota and quote deployment.

The first is executive positions, for examples ministers, deputy ministers and the like. The second is members of public service. EG's and employees employed in the public service, at whatever level and we will come to that as well, and the third is state institutions.

20 The Captain Nine institutions, other institutions, whether at the hands of parliament or the president. Perhaps we should be aware of those distinctions when, well I certainly will try and be aware of them when I am putting questions to you about that.

The deployment policy of the ANC is I presume a

Handwritten signature and initials, possibly 'M' and 'LII', located at the bottom right of the page.

developing document. It is contained in your bundle, at page 122.

CHAIRPERSON: Did you say 182 Mr Pretorius?

ADV PRETORIUS SC: 122.

CHAIRPERSON: Paragraph 122?

ADV PRETORIUS SC: No, no on page 122.

CHAIRPERSON: Page 122, okay.

ADV PRETORIUS SC: Is this the deployment policy of the ANC?

10 **MR RAMAPHOSA:** Yes.

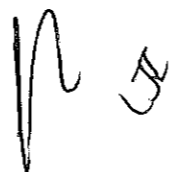
ADV PRETORIUS SC: And does it have a date or is it a developing document? Has it grown over time? I see if you look at page 138, there is a reference to 2018 in paragraph 67.

MR RAMAPHOSA: Yes. It is what I would call a living document. Living because as the ANC develops its own policies and polishes those policies up, so are these types of policies also being panel-beated into better shape. If I can put it in that way.

20 **ADV PRETORIUS SC:** Right. That point we can deal with perhaps at the end in more detail Mr President, but if one could ... if I could ask you please to go to page 105. This is a different document. This is the ANC constitution.

MR RAMAPHOSA: Yes.

CHAIRPERSON: What page Mr Pretorius?



ADV PRETORIUS SC: 105.

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: To paragraph or Clause 25 17.20.

This is the ANC constitution. That is how it is identified in your statement.

MR RAMAPHOSA: Yes.

ADV PRETORIUS SC: This, paragraph 25.17 appears on the face of it to be a list of active misconduct, which would apply to members of the ANC for which disciplinary proceedings or in respect of which disciplinary proceedings may be instituted.

25.17.20 says:

“In the case of a public representative breaching his or her contract of deployment concluded with the NEC.”

Does that creature still exist? Contract of employment with the NEC, or please tell us about it.

MR RAMAPHOSA: Ja, this presupposes a public representative. An elected public representative. Public representatives are substantively supposed to have a contract with the NEC. When I was secretary general and I think even during the tenure of the subsequent secretary general, we presumed the situation where a public representative would literally accept their deployment as a public representative and sign a contract with the NEC.



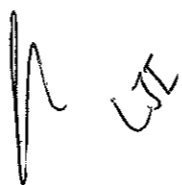
In the end, you know with the secretary general where they say I accept my deployment, so that where it comes to a point where they have to be either removed, it is a termination of contract, because in the past we face a situation where some would say I have been elected and I am not stepping down or whatever.

I am not agreeing to being removed. So it deals more with publically elected representatives and not so much with the appointees who would be governed by other provisions, which has to do with the appointment either in the civil service or in terms of company laws in the public enterprise.

ADV PRETORIUS SC: Understood. Would the contract of employment have any substantive provisions setting out the duties of the public representatives?

MR RAMAPHOSA: Yes, substantively it is supposed to have that, and I was also involved in the preparation and the drafting thereof in the past and I have not really kept abreast with the continuity of such, and I would say that if it has not continued, it is a very good instrument to have, because it helps to regulate the relationship in the end between the organisation and the person who is deployed.

This would also apply to a president, where the president has a contract with the organisation, because even as president or minister or whoever you are, in the

Handwritten signature and initials, possibly 'M' and 'LJ'.

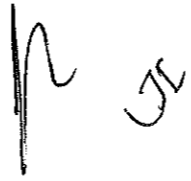
end deployed by the organisation because we have that type of political system.

ADV PRETORIUS SC: Would it be fair to say or would you accept that the electorate which elects the person to public office, would be entitled to know by what contractual provisions their representative is bound?

MR RAMAPHOSA: Absolutely, I would say yes. Just as right now we have even published as you might well know at government level and we can deal with that when I come
10 as president of the republic. Published the contracts I have entered into with the minister.

CHAIRPERSON: Well, in passing I must just say Mr President that the commission has struggled a lot to get previous performance contracts of ministers. We to the best of my recollection, we got documents which reflected how they were supposed to look like, and I am not sure that we ever got the ones that were actually signed, but maybe some units of the commission has, because we wanted them at a certain stage, starting from 2010 or
20 2009.

The information I was given at some stage was it looks like nobody knows where those contracts are, but maybe they have been found, I am not sure. But it would be good if the ones that have been signed are kept properly with the public or a commission like this wants

Handwritten signature or initials, possibly 'N' and 'SC', located at the bottom right of the page.

them and they can get them.

MR RAMAPHOSA: Chairperson, I undertake when I come before you again, I undertake to bring a box full of documents.

CHAIRPERSON: I also hope Mr President, in the box will be included performance assessments of ministers during that time.

MR RAMAPHOSA: We are in the course of doing performance assessments now.

10 **CHAIRPERSON:** Now, ja.

MR RAMAPHOSA: Yes. So you may find a very incomplete process.

CHAIRPERSON: Alright.

ADV PRETORIUS SC: Including presidents.

MR RAMAPHOSA: Including presidents, yes.

CHAIRPERSON: Ja.

MR RAMAPHOSA: Maybe I will ask the Chairperson to assist me.

CHAIRPERSON: Mr Pretorius?

20 **ADV PRETORIUS SC:** May I ask you to go back to the deployment policy at page 124?

MR RAMAPHOSA: Yes.

ADV PRETORIUS SC: Paragraph 9 of the deployment policy says:

“Our immediate goal as set out in strategy and



tactics, is to deepen the hold of the liberation movement over the leaders of state and begin to impact positively on other centres of authority and responsibility, outside the immediate realm of state institutions.”

Now can you assist, what are those other centres of authority and responsibility/

MR RAMAPHOSA: This put simply is a political speak about the ANC exercising its leadership role in society.

10 That the more we perform well, in the state that will have a cascading impact on a whole number of other institutions, be it whatever is your supporting bodies and all that, and we will all start working in a harmonious way.

With the ANC imposing this very positive developmental approach to how we should develop the country going forward. So that is what is envisaged here. It is more political.

ADV PRETORIUS SC: It does talk about positive impact.

MR RAMAPHOSA: Precisely.

20 **ADV PRETORIUS SC:** Rather than direct control.

MR RAMAPHOSA: Ja, positive impact which is the leadership of society.

ADV PRETORIUS SC: Right, and then in paragraph 10 the policy reads:

“The following are the key centres of authority



and responsibility within the state and should be given priority.”

10.1, cabinet.

10.2, the entire civil service but most importantly from director level upwards, and

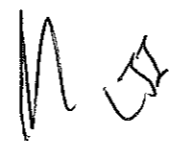
10.3, premiers and provincial administrations.”

Then over the page it goes on to legislatures, local government, parastatals, education institutions, independent statutory commissions, agencies, board and
10 institutes, ambassadorial appointment and international organisations and institutions.

That list from 10.1 to 10.10 does that entire list fall within the scope of activity for the deployment committee or is that list, should it be interpreted differently?

MR RAMAPHOSA: For the most part, yes it does. But I say for the most part advisably, because in some instances the deployment committee never really get involved or concerns itself with this. If you like the deployment committee has set itself its own limit that we will only limit
20 ourselves in terms of how we function or recommend people to these key positions.

For instance, the deployment committee does not get involved in the appointment of ministers to cabinet. That is left to the president, but the president does consult his immediate colleagues which are the officials of the



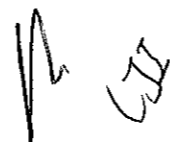
ANC, but in the end in terms of the government system we have, it is the decision of the president and the president alone.

So the deployment committee does not get involved in that. When it comes to the entire civil service, that has to be read to mean the top leadership of the civil service, because it could never, it is not possible for the deployment committee to involve itself in the appointment of you know secretaries or you know, directors and so
10 forth.

But it does however get involved in the appointment of directors general, and to some limited extent to also deputy directors general, but for the most part, the civil service appointments are done within the civil service itself and in the end, even the minister does not also get involved in the appointment of directors.

It is the director general who gets involved in that. Of course with premiers, yes. It is the deployment committee. Provincial administrations hardly ever. The
20 positions of DG of the provincial administration is done at the provincial level.

The legislatures, there is a process of if you like deploying people there are legislatures as well. The national parliament and provincial and local, which really does not even, the deployment committee does not really



get involved with that, because that is more of a very vigorous and robust democratic process that is involved there.

Local government and I explained somewhere in my affidavit, something quite innovative is now being done, as this has evolved in the ANC, where it is no longer only the branch committees, it is also the community that gets involved in the final selection of people who should go into local government.

10 Parastatals, yes. They key top positions. Education institutions, hardly ever. The deployment committee like with cabinet, hardly ever get involved. Independent institutions, only to the extent of your top key one, and for instance you will be interested to know that when it comes to the judiciary it is left to that process that we have in the law.

Ambassadorial appointment. Those will be recommended and they are always often recommended by the minister. The minister, and in the end because
20 ambassadorial appointment are at the instance of the president.

It is the president who appoints ambassadors, because in terms of our system, they represent the president in where ever they are deployed. So that too is a process that he is engaged in, and the president in those



cases takes the final decision, but he will also have discussed it with some of the colleagues.

So international organisations is even a much more complicated one, because we do not appoint people to international commission organisations. All we can do is to recommend, and after that, it is left to the board as it were.

ADV PRETORIUS SC: Yes, there has been some controversy on the latter point in relation to the Bricks Bank, but we did not go there at present. I note the
10 judiciary is not mentioned in paragraph 10 as one of the institutions falling within the scope of the policy.

But in relation to that scope, I understand you to be saying that that scope is, it does not although very broad and although would in terms of its policy statement, permit the deployment committee to intervene in those areas. As a matter of practice this is not done.

Is that correct?

MR RAMAPHOSA: It is.

ADV PRETORIUS SC: For example the entire civil service
20 is mentioned here.

MR RAMAPHOSA: It is not done. It is just the very top key positions as I have said, yes.

ADV PRETORIUS SC: Well perhaps a closer integration between policy and practice may be looked at.

MR RAMAPHOSA: Absolutely.

ADV PRETORIUS SC: If I could take you to another paragraph, on page 133. Para 47. This refers to strategic centres of deployment and paragraph 47 reads:

“Deployment within each of the five pillars requires its own sets of strategic discussions. For example within the state sector, what principles should inform the deployment of cadres to institutions with judicial or investigative functions and how should cadres be deployed to perform such functions, relate to the organisation.

10

There is a second point made later on, but we can come back to that. That seems to indicate that there is at least a discussion taking place in terms of the policy about judicial and investigative functions, persons deployed to those functions and how they should relate to the organisation.

Firstly, are persons deployed at least in the sense of being identified and encouraged to stand for appointment in the judiciary?

20

MR RAMAPHOSA: In the judiciary, no hardly ever. Hardly ever and I think much as it might have been thought of, it has never really resulted in that, because the appointment of people in judiciary in our country, is so well managed through the dispensation we have through the judicial



services commission which manages all these matter so well and in the end my full understanding is that whenever there is a vacancy there is a lot of activity amongst the legal organisations and fraternity who encourage one another, that why do you not apply, why do you not apply, why do you not seek to be chief justice or whatever.

So that is what I believe happens. So that one has if any, has actually been very much likes touch and not at all in as far as I am ...[intervenes]

10 **CHAIRPERSON:** Would those members of the judicial service commission who may be members of parliament, ANC members of parliament, not be expected to talk to the ANC, to say here are candidates for various positions that will be interviewed in due course.

Does the ANC have preference in terms of candidates? Do you know whether anything like that does happen?

MR RAMAPHOSA: Not as far as I am aware.

CHAIRPERSON: Okay.

20 **MR RAMAPHOSA:** We have always relied on what I have said now, yes.

CHAIRPERSON: Okay. Mr Pretorius?

ADV PRETORIUS SC: And again there appears to be at least on the face of it, and you may correct me if I am wrong, a disconnect between what the policy reads and the

practice. You concede that?

MR RAMAPHOSA: Yes.

ADV PRETORIUS SC: The JSC, the judicial services committee, positions on the JSC. Are they subject to the activities of the deployment?

MR RAMAPHOSA: No.

ADV PRETORIUS SC: No. Then a second point is made which does not necessarily relate to the first point. It says:

10 “Within the “economy” the potential for cadres to accumulate capital in their personal capacities as manifest, should such capital accumulated by deployed cadres be regarded as under the command and control of the movement and if so, how.”

Is that something that should not stand or what do you say about that?

PRESIDENT RAMAPHOSA: The – I think this is impractical, wholly impractical and to the extent that this
20 may have been inserted here it could have meant that those who may well have been put in certain positions in the economy are meant to manage those centres very well, because it is improbable that anybody once you have accumulated capital for yourself you know acting in the economy you would then account to the organisation. It

W *CS*

never happened.

ADV PRETORIUS SC: Well, it says two things, it suggests in the first sentence that there is an expectation that cadres and deployed cadres might accumulate personal wealth, whether that is in Government or outside Government it doesn't say but the second point is that there's a thought, at least expressed here, that the policy says that, well we should at least or consider whether that money should come to the movement, is that an
10 appropriate clause?

PRESIDENT RAMAPHOSA: No, it is wholly misplaced because as I say it is improbable and could never have happened because if people are in business, they do ...[indistinct] on personal accumulation processes and if they so want to donate money and give money to the movement then they should be able to do so and not that they should inherently be expected they should because they never would.

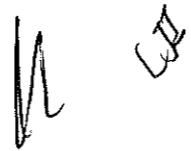
ADV PRETORIUS SC: Paragraph 56.1 on page 135, again
20 black number, I've just made the mistake of reading red numbers myself, 56.1 it says,

“Cadres should be ready to be deployed where the movement deemed it necessary to deploy them”,

That is quite a strong statement and veers towards the hard interpretation of the deployment policy, do you

have any comment?

PRESIDENT RAMAPHOSA: Well, this really should be seen in a historical context and this is where the ANC acting as a liberation movement when it was banned and in exile you were deployed wherever and you could not question where you were deployed and if you were – for instance Umkhonto we Sizwe you would be told you were going to be deployed on the Mozambican front or Lesotho front or wherever and you go, no question asked because
10 you are the NS soldier and similarly people who were not in the armed forces would be deployed anywhere you'd be deployed to London, to Moscow wherever and this is a remnant from the past but today you actually do engage the discussion with a comrade and say, we would like to deploy you wherever but when – as President I appoint Cabinet, I say this is where I want you to go and quite often no question asked in fact no question asked, people are deployed as they are informed by their upper leader. So, in other situations there are discussions because you
20 have to take into account the circumstances of the comrade. You've got to take into account their skills space, you've got to take into account a whole number of other things. So, my answer to this would be, yes and no and the no part would represent the considerations that you need to have and the yes part, in certain deployment

Handwritten signature and initials, possibly 'M' and 'LH'.

situations you've got to agree to go where you are deployed.

ADV PRETORIUS SC: Well, perhaps, as you've pointed out, Mr President, in a modern and democratic economy as opposed to the history or the historical situation in which the party found itself, perhaps it could be qualified or... [indistinct – dropped voice].

PRESIDENT RAMAPHOSA: Precisely.

ADV PRETORIUS SC: Paragraph 60 on page 136, this is
10 perhaps more of a commentary rather than a strict expression of policy, but it reads,

“The ANC’s range of national and regional deployment committees ebbed and flowed over time as the movement battled intra organisation positioning, optimisation of state governance, factionalism, careerealism and over the page opportunism, desperation for employment and the organisational dilemmas of having to act against corrupt comrades”,

20 Clearly – or perhaps I’m being presumptuous but if I am, you will tell me so, Mr President, clearly this is an expression of the problems faced in fact, in the history of the application of the deployment policy, am I correct in that?

PRESIDENT RAMAPHOSA: Yes, you are correct, I mean,

Handwritten signature and initials in the bottom right corner of the page.

as you correctly say, Chairperson, this is commentary and this is apt commentary because truth be told we have had to deal with issues like that, the deployment committee and as the ANC broadly, careerealism, opportunism and some of these deployments have caused internal ructions within the ANC because we are a living organisation composed of people with interests and people with aspirations and ambitions. So, in the end you've got to manage all of that, very, very delicately and carefully so it is apt commentary.

10 **ADV PRETORIUS SC:** Well, how would factionalism arise?

PRESIDENT RAMAPHOSA: Factionalism arises because members of the organisation, like it happens in any organisation would have different perspectives, different interests and some of the perspectives may be ideological some may be just organisational and some may even be economic where people have economic interest and they then cluster around those interests and become, say, a grouping within the organisation and become a faction that
20 then feed on things that happen in the organisation be they say, different deployments or appointments. So, that then involves into distinct groupings that could be pitted against each other but then there could also be groupings that have a minimum – minimum sort of agenda that pulls them together but at the other end both ends there are different

M *CS*

ones, ideological, economic, or organisational.

ADV PRETORIUS SC: So, is it fair to say that in the history of the party in implementing and developing the deployment policy it has had to face particular factions seeking to further, legitimately, economic interest?

PRESIDENT RAMAPHOSA: Well, that does happen and as any organisation would attest to, it is something that can be faced but it really beholds on the organisation whether it recognises that as a challenge and addresses it
10 and I can never say that it has not affected the ANC and it has and it is this that we're now involved in, in our renewal process that we need to rid the organisation of elements, factions that pursue certain divergent interest to our broad strategic objective of advancing the interests of the people of South Africa.

ADV PRETORIUS SC: And, to get to the third large topic, how can it be prevented from happening again, these experiences, I understand from your evidence inform the degree to which regulation is required?

20 **PRESIDENT RAMAPHOSA:** Regulation, Chairperson, is required, regulation at a state level but because the ANC is so broadly supported, it is the leader of society, it has to do things not so much for its own interest but for the interest of the people of South Africa. It, therefore, needs to embark on a renewal process so that it corrects all

Handwritten signature and initials, possibly 'LTI', located at the bottom right of the page.

these maladies within the organisation and if you like, clean up its own act so that it is much more presentable, even electorally to the people of South Africa and I comment on this in my document that over time we saw the electoral support of the ANC going down largely because of the corrosive corruption that our people found abhorrent and it is this, even at our 54th conference that we sought to address. That we've got to arrest this and reverse it and it is for that reason that we embarked on a renewal process
10 to renew the organisation and organisations do go through these ups and downs and that's what we've also gone through, renew our organisation but renewal should not just be in theory it should be in practice, which is precisely where we are now. We are putting into practice the entire renewal process and we – as it were, trying to herd everyone, everyone in the same direction and that is why I referred to the resolution that we passed at our 54th conference, were supported by thousands of members of the ANC who came from right across the length and the
20 breadth of the country. So, what remains now is the full implementation as we move.

ADV PRETORIUS SC: Moving between categories again, not to be confusing, Mr President, appointments to Law Enforcement Institutions for example the National Director of Public Prosecution the Commissioner of Police, the head

Handwritten marks:
A vertical line with a hook at the bottom.
A stylized signature or mark.

of HAWKS, the head of IPID, SIU and others, we know, and perhaps it put a – obtained a mention that in the appointment of the NDPP most recently, a completely new process involving public participation was directed by yourself but let's go back to trying to understand how appointments in the past – and I'm now going before your reign Mr President, in the past did the deployment committee involve itself in appointments to Law Enforcement Institutions, for example NDPP, Commissioner
10 of Police and the like?

PRESIDENT RAMAPHOSA: No, not under my Chairpersonship, no it did not. So, we didn't do so, I need, maybe on further reflection, need to maybe correct the impression I may have made when you asked me about those who would apply to the Judicial Services Commission.

CHAIRPERSON: Oh yes.

PRESIDENT RAMAPHOSA: Ja, because I do recall once where vacancies were mentioned and it was just in
20 passing, I should say that it was in passing and as it should that the deployment committee would look at where are vacancies, but it never resulted or descended into saying this one would be good that one would not be good and so forth and it was just in passing. So, I thought I should correct that.

Handwritten signature and initials, possibly 'M' and 'LJ'.

CHAIRPERSON: Okay.

PRESIDENT RAMAPHOSA: But having said that my – under my Chairpersonship there was no involvement with Law Enforcement Agencies, like Commissioner of Police, NDPP and so forth, that never was the case.

ADV PRETORIUS SC: Right, and of course, there has also been evidence about the direct power to appoint being used for purposes that are, to put it quite plainly, illegitimate and these appointment in Law Enforcement
10 Agencies and the like are the subject matter of other evidence and do not involve evidence concerning the deployment committee and will be dealt with separately but we should not forget about those in an overview in relation to appointments to offices of state but may I raise a further question because we've spoken about how the deployment committee should work, it's architecture and design, as it has developed over time. We've spoken about how it might not have worked or did not work in the past in instances and the extent of those instances may be debated and
20 we've spoken about the need in relation to policies and legislation as you've stated in your statement and have spoken about now needs to be looked at it and perhaps even rewritten but there is a view that has been expressed before the Commission and perhaps your comment on this view would be useful by more than one witness and a view

W *Let's*

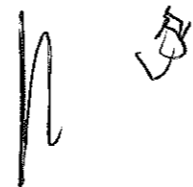
that has been expressed publicly that there is no need for a deployment committee anymore and if I may just put those views to you and then ask for your comment. In her testimony, Barbara Hogan stated,

10 “However, the usefulness of such a deployment committee these days is debatable, how can, just a handful of people possibly have the institutional knowledge and resources to pronounce on suitable candidates, for every senior position in Government and the private sector. It cannot be that closeness to or membership of the ANC or an of its alliance structures or to factions within these structures should be the determining factors in the selection of candidate for senior positions. In this day and age there are a host of capable black and white professionals, women, and men from which to choose who clearly understand and have an appetite for making the economy grow. Directorships on Boards should never be granted to
20 the favoured few as a reward for loyalty to a party or a faction of a party or as a retirement benefit for the well connected”,

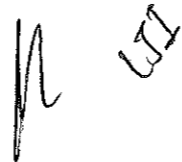
 There are several items or views in that passage, and you may want to consider it at more length, but do you have any comment?

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be a stylized 'h' followed by 'WJ'.

PRESIDENT RAMAPHOSA: Yes, I do, having listened to what you have referred to as put forward by former Minister Barbara Hogan I would say that, when dealing with these types of matters it's better to be circumspect and not to throw the baby out with the bathwater because if there is something that causes an irritation it does not mean that you just chuck everything out because the deployment committee has a number of considerations that it needs to keep in mind. One of those is, just having in mind the
10 developmental nature of the state that we are creating that we need to focus on this, what we refer to from the OECD paper of the political aspect which, in our book, would be the developmental side of the equation where we need to keep an eye on the mandate that we've been given in terms of our own manifesto in terms of support because you want – let me give you a good example. You want, for instance, the CEO or even Directors, say of an Eskom, you know right at the beginning we wanted an Eskom to electrify the country and make sure that even our people,
20 mostly the majority black people who never had electricity in their lives to have electricity. So, that person must have a developmental as well as a commercial orientation and if you just have someone who has commercial, my grandmother in Limpopo would never have had electricity because that person would just be infused or you know,



focusing on just the commercial that she will never be able to pay because she's a pensioner and dah, dah, dah but you want someone who you know is going to be developmental who is going to have a very clear developmental agenda as well as a commercial one to make sure that that happens. So, in the end it's not necessary that they should be ANC members, no and in fact one would discover that. The other consideration, which is very, very strong in our case, which the
10 deployment committee oversees is the gender balance in all these institutions. We've long gone past where we just have men appointed to various positions so the development, I mean the deployment committee focuses on that and says, do we have a clear gender balance, do we have sufficiently selected women who can get into key positions and it is due to the deployment committee that is today in Government, more – over and over now we have balanced Boards of Directors, we have balanced even in the state we're seeking to balance – it's a matter of
20 concern, for instance, to the deployment committee that the Director General cohort that we have is largely male. So, the deployment committee will intervene and say to those deployed in Government, you've got an over abundance of men in key positions we need to see a balance and – so the deployment committee drives that.

Handwritten signature and initials, possibly 'M' and 'LW'.

So, that is why I would say, yes, we shouldn't just tilt the pendulum one way, it should be balanced, and it should never be because someone is close to the ANC. We should appoint people who are close to South Africa who are South Africans who've got the loyalty and patriotism, but we are also professional who we assure have a developmental type of approach to doing things and who would be willing to promote the ideals that the ANC or the agenda and the mandate that the ANC was elected. So, 10 whilst I hear what Barbara Hogan is saying that, there's no further need I would say, right now there's even more need, however, deployment committee as decided by, even our recent conference must focus on ensuring that there are people who are fit for purpose, who are professional who know their craft who will go and execute their craft without fear or favour and who, themselves, will not be captured by any interest will just be there to serve the people of South Africa.

CHAIRPERSON: Well, I should have asked this question 20 earlier, Mr President, what does the deployment committee recommend, does it recommend that a particular person be appointed to a particular position, does it recommend that a particular person be considered for appointment to a particular position?

PRESIDENT RAMAPHOSA: Chairperson, it is the latter.

N *LET*

CHAIRPERSON: It is the latter?

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: It is the latter because in the end it has to depend on the sort of final selection processes of that given institution or given position, say in Government.

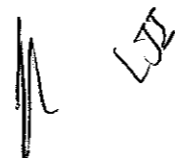
CHAIRPERSON: And the processes.

PRESIDENT RAMAPHOSA: And the processes.

10 **CHAIRPERSON:** Okay.

ADV PRETORIUS SC: One of the points that Barbara Hogan makes in that passage that was quoted that perhaps there are selection committees with expertise more concentrated and more thorough to deal with selection to, for example, particular state owned entity Boards, should it not just be left to them, that was the statement?

PRESIDENT RAMAPHOSA: Chairperson, as it often happens, it is in the end left to a selection panel that the Executive Authority that has been deployed in that terrain
20 will put together for instance I've often seen how, for instance, if a Director General has to be appointed the Minister will make sure that the selection panel is diverse but behind that there is another layer that really goes into thorough details and they often rely on external entities where external entities go through, in a very expert way,



the identification of those people who could be appointed and then the selection panel also has a number of, say Ministers and Deputy Ministers who are well versed in that sort of area but let me also say that, you know, the deployment committee is also composed of people who are quite knowledgeable. So, you know the deployment committee of the current period is composed of people from labour, people from labour are usually very sharp on human resource issues, you know, people from political
10 type of organisation, people from community based organisation, women, and the youth so it's a collection of people who are so diverse in their own experiences that in my view, gives rise to a wealth of wisdom in the recommendation of people which should be taken forward. So, whoever is then taken through a number of filters and processes before they are finally appointed.

ADV PRETORIUS SC: Would there be any warrant for the regulation about which you speak later on in your statement making special provision for positions which are
20 highly specialised requiring specialist skills and experience, is that catered for or would it specifically be catered for?

PRESIDENT RAMAPHOSA: It is something that we need, obviously, in accordance with what I've put forward that we need possibly to regulate that we should consider because

Handwritten signature and initials in black ink, located at the bottom right of the page.

when you look at what other countries also do they – some of them go through similar processes and when we talk about the professionalization of the state with a view to increasing or enhancing the capability of the state, this is precisely what we now need to do because we do really, seriously need to ensure that capture of the state does not happen again. So, we need to do things in a transparent, in a convincing way, whilst yes, because we're a political organisation we still keep our eye on the mandate we have
10 and ensuring that it is actually executed. So, it's a wonderful balance in as far as I'm concerned, we should really give rise to something that's quite new, innovative, and really beautiful for South Africa, as we go forward.

ADV PRETORIUS SC: Chair, I see it is one o'clock.

PRESIDENT RAMAPHOSA: Really?

CHAIRPERSON: Yes, okay.

PRESIDENT RAMAPHOSA: I thought it was five o'clock already.

ADV PRETORIUS SC: It is only one o'clock.

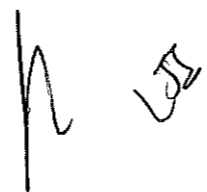
20 **CHAIRPERSON:** Let us take the adjournment and we will resume at two o'clock.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

Handwritten signature and initials in black ink, located at the bottom center of the page.

INQUIRY RESUMES

CHAIRPERSON: Before we proceed Mr Pretorius I think we must have in mind how far we would go this afternoon and I do not know whether the arrangement with the President and his team is that we would stop at four or five or whether if necessary he would be available for us to proceed beyond that time and I do not know your own situation and your team.

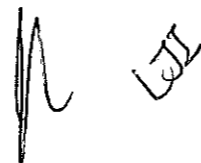
I am mentioning that because

10 1. I do not have an evening session this evening. So if the situation was such that we can beyond five o'clock I would be available but the President might have other plans because he might have worked on the basis that we would stop maybe at four or five. But tomorrow we do have an evening session.

So I am mentioning that in case if we do not use some time after five – after four today tomorrow might not be enough. I am just giving that information so that while we proceed everybody would be ready that when we come to four o'clock
20 whether the answer would be we can go up to five or we stop at four or whether what the position would be.

So you might have canvassed that with the President or his team.

ADV PRETORIUS SC: Yes Chair it has been rather tentatively raised with the President's team on this

Handwritten signature and initials, possibly 'LWJ', located at the bottom right of the page.

cannot remember whether they contemplated that there should be an advertisement as such but I seem to recall that, in the end, the board was, in terms of those guidelines, required to give to the Minister three names. Maybe it is that. At least three names I am not sure but three names.

And they were supposed to then give – to identify their preferred candidates. Does that accord with your recollection of what the guidelines you used,
10 provided?

MS BROWN: That does. That does.

CHAIRPERSON: Yes, yes.

MS BROWN: I do recall that now.

CHAIRPERSON: Now were those guidelines followed in the case of the permanent appointment of Mr Molefe as Group CEO of Eskom?

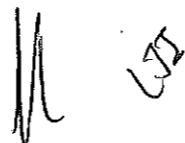
MS BROWN: I do not – I must be very honest. I have not looked specifically to that.

CHAIRPERSON: H'm.

20 **MS BROWN:** But if my memory serves me, that did not happen.

CHAIRPERSON: H'm.

MS BROWN: But... Yes, that did not happen because I cannot remember who – how that... I cannot remember Chair. Let me say that.

Handwritten signature and initials, possibly 'M' and 'LST'.

CHAIRPERSON: Ja, ja.

MS BROWN: Because I only... You see, I come in at the part where they write the three names in their first preference, their second preference and their preference. So the board will write the three names. Now I do not remember seeing it like that, to me.

I do remember the board writing to say that they would like to appoint Mr Molefe and Mr Singh and I approved that. I took it to the ANC Deployment Committee and they approved it and I took it to the Cabinet Committee and they approved it. I mean, sorry. Not Cabinet Committee. I took it to Cabinet and they approved it.

CHAIRPERSON: Yes.

MS BROWN: But I am saying to you, I do not remember having three names.

CHAIRPERSON: Yes.

MS BROWN: I have – I remember having only one name.

CHAIRPERSON: Yes.

MS BROWN: But, I mean, I could be wrong.

20 **CHAIRPERSON:** No, no. That is fine. And after today, if you get a chance to refresh your memory and wish to supplement your answer, arrangements can be made for you to do that.

But let me tell you that Mr or Dr Ngubane, I think was asked about this if I am not mistaken. And his answer

Handwritten signature and initials, possibly 'M' and 'LII'.

ADV FRANKLIN SC: And do you accept that that is correct?

MR MOYANE: What is correct, Sir?

ADV FRANKLIN SC: What he says there.

MR MOYANE: Well, that is what he says, that the ministry received 120 applications.

ADV FRANKLIN SC: Yes, that Mr Magashule resigned on a particular date, Mr Pillay took over, position was advertised in late 2013 and the ministry received
10 approximately 120 applicants. You accept that?

MR MOYANE: Yes, I think mine was amongst them.

ADV FRANKLIN SC: Alright. So the position is that ...[intervenes]

CHAIRPERSON: Well, you talk in your affidavit – might not matter, you talk in your affidavit about the advertisement having been probably in the second half of the year 2013. Mr Gordhan seems to talk about applications having been received already while he was Minister of Finance and he would have ceased to be
20 Minister of Finance in – or he would have ceased only in 2014, May.

MR MOYANE: Correct, yes.

CHAIRPERSON: Okay, alright.

MR MOYANE: Yes.

CHAIRPERSON: Okay. Okay, no, I see that he actually

says also the advertisement of the post was in the latter half of 2013. Ja, okay.

ADV FRANKLIN SC: Yes and if the Chair or the witness wishes to look at it, the advertisement is an annex 4, page 77 of that same bundle and it has a closing date of 13 September 2013.

CHAIRPERSON: Okay, okay.

ADV FRANKLIN SC: Does that sound right?

CHAIRPERSON: That is the last day that you are talking
10 about.

MR MOYANE: That is the day I submitted, yes.

CHAIRPERSON: Ja. Well, except that if that was the last day to submit applications, then it cannot be – okay, I may have I misunderstood you. So you say the President spoke to you after you had submitted your application?

MR MOYANE: That is correct.

CHAIRPERSON: Okay, alright.

MR MOYANE: Yes.

ADV FRANKLIN SC: Right, so, Mr Moyane, am I correct
20 at this point in time when you applied in 2013 you had no experience in running a revenue service or any experience in matters of taxation, is that correct?

MR MOYANE: You say did I have experience in running a revenue service?

ADV FRANKLIN SC: Yes.

MR MOYANE: No, I never had experience of running a revenue service.

ADV FRANKLIN SC: Alright. The President – let me just take you rather – yes, at the end of paragraph 66.8 on page 33 you said:

“Like some of previous appointees including Mr Gordhan and although I felt well-qualified for the position I did not have any experience in taxation but I was a generalist manager or senior executive in the public sector.”

10

Correct?

MR MOYANE: Which page is that, Sir, my apologies?

ADV FRANKLIN SC: Sorry, that is page 32 to 33 of your witness statement.

CHAIRPERSON: I guess to be more precise, Mr Franklin, is 32 and 33 of the bundle.

ADV FRANKLIN SC: Yes.

CHAIRPERSON: Because 32 and 33 of the statement will be other 30s.

20 **ADV FRANKLIN SC:** Yes, Chair is quite correct.

CHAIRPERSON: Ja.

ADV FRANKLIN SC: Do you have that?

MR MOYANE: Refer me to which – I have found it now.

ADV FRANKLIN SC: It is at the top of page 33 of the bundle.

M *LJI*

continuing with the chronology that you had set out in your account in paragraph 66 so having described how the President informed you that he intended to appoint you and that you kept this information only to yourself and your wife you then in paragraph 66.6 to 8 say the following:

“During a follow-up visit to the President to discuss the matter I happened to find him in a meeting with the Chairman and CEO of Telkom in the presence of the Managing Director of Bain who introduced himself as a Mr Massone.”

10

Just pausing there, I understand your version to be that this was just a chance meeting, it wasn't an arranged meeting between you and Mr Massone?

MR MOYANE: Yes.

ADV FRANKLIN SC: There ...[intervenes]

CHAIRPERSON: I am sorry, you refer to the Chairman, is he of Telkom, was that one and the same person or there were two people, one being Chairman and one being CEO.

MR MOYANE: Two people.

20 **CHAIRPERSON:** And who were they at the time?

MR MOYANE: Can I mention the names?

CHAIRPERSON: Ja.

MR MOYANE: Okay, Mr Jabu Mabusa and the current CEO of Telkom is ...

CHAIRPERSON: Mr Sipho Maseku?

M *LII*

DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
03 DECEMBER 2018 (08h30-12h00)**

1. Welcome
2. Apologies
 - Cde Sifiso Buthelezi
 - Cde Jessie Duarte, Deputy Secretary General
3. Minutes of Previous Meeting (26 November 2018)
4. Energy 9:00 – 9:30
Minister Jeff Radebe

The Deputy Minister also present, previously, the short list was requested. She explained that the advertisement was for all boards and therefore there is a list of 266 and the recommended names.

Nuclear Energy Board, requiring 8 members. The criteria used was that persons needed to understand board governance, audit skills, legal skills and technical skills for the nuclear sector, and human resource practitioners. There are persons in the later 30s, and there is a gender balance. The Chair is a long-standing member of the ANC, and all the members are from the ANC.

The recommended names are approved, but if there are changes the Ministry will inform the Committee.

W *W*

The other Boards are Central Energy Fund, it's subsidiaries PETROSAS, PRASA, Strategic Fuel Fund, i-Gas, African Exploration Mining Company, NECSA subs, the NTP (medical isotopes), NERSA. Should be presented in January.

Next meeting the proposal on all the Boards will be submitted, noting that a person should not serve for more than two Boards. Also noting that a member on the holding board, may serve on a subsidiary board. There are a no former board members on the incoming board. There have been a litany of infractions, which resulted in the almost shut-down of NTP, and a host of audit queries. The list must be compared to the database for the common names.

5. Defence 9:30 – 10:00
Minister Nosiviwe Mapisa-Nqakula

Apologise for not bringing this matter to the Deployment Committee. Unsure that an Advisory Council – Defence Force Service Commission – needed to be brought to the Deployment Committee. The DFSC advises on the service conditions of the defence force.

There are 6 vacancies, based on the long list we are appointing three. After consideration by retired generals and parliament. The current applications only had one woman application.

The Deputy President will assist in ensuring that the President is briefed on matters relating to defence. There must be constant engagement between the Deputy President and Minister.

6. DIRCO 10:00 – 10:30
Minister Lindiwe Sisulu

The Minister had to unfortunately cancel at the last moment. She has requested that her advisor attend on her behalf. However, the Committee, as previously decided to not have advisors to make representations. It is also noted that there are two deputy Ministers. Noting that this is the last meeting for the year.

N *LS*

When the administration changed the letters of appointment of ambassadors were not updated, and some have had to return and those who have not yet left are now unemployed because they have not been appointed as well. The SG must be alerted, and the DP must raise the matter sharply with the Minister.

7. STATSSA Advisory Council

Previously the names were not brought to the Deployment Committee or Cabinet, so that there is no suspicion of interference or the veracity of the statistical conclusions. Therefore the names will be discussed at officials' level.

We must be cautious that previously this is how the Deployment Committee was avoided, even though in this particular instance the Advisory Council did not come to Cabinet or the Deployment Committee.

8. IDC

Minister Patel

Procedures were not followed (especially since the process was outsourced), but you are dealing with a bank. Therefore let the matter be concluded by the officials.

We must be cautious that previously this is how the Deployment Committee was avoided. All Ministers must provide the Boards and the advertisements. It is important that we set out our scope.

9. Request for Deployment (Abridged CVs) 11:00 – 12:00

10. Closure 12:00

Let's work on who should be deployed to the many energy boards and the foreign deployments.

M *LJI*

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
22 FEBRUARY 2019 (10-13h00)**

1. Welcome 11h00 – 11h05

The Deputy President welcomed and opened the meeting.

2. Apologies 11h05 – 11h10

- Cde Solly Mpaila, from the SACP, apologised for not being able to attend. They also have raised that we should meet more regularly and consistently on set dates. Also so as to discuss broader deployment issues, and not just names.
- Agreed that on Fridays, twice a month, once in a fortnight.
- Cde Bheki Ntshalintshali from COSATU has also apologised for not being able to attend
- Cde Sdumo will have to leave before the meeting adjourns, due to other commitments, in particular the SACP CEC

3. Minutes of Previous Meeting & Matters Arising 11h10 – 11h15

7 – letter not latter

Minutes adopted unanimously.

4. COGTA – 11h15 – 11h30

President: C Ramaphosa, **Deputy President:** D Mabuza, **National Chairperson:** G Mantashe, **Secretary General:** SE Magashule, **Deputy Secretary General:** J Duarte, **Treasurer-General:** P Mashatile

W *WJ*

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

Deputy Minister Obed Bapela

CRL Commissioners

Initially, the nominees were mainly culturalists and the religious nominees were also from the evangelical churches, not the mainstream churches or the non-Christian religious. Therefore the Minister headhunted and added names.

There were 78 names and a shortlist of 37.

Comments & Decision: The Committee will not yet endorse the shortlist. The DSG, with each member here, will headhunt a certain number and approach certain groupings etc, and compile a preferred list, and submit a list by Friday next week. It will be confined to members of the Committee who are here. The Ministers will appoint four and the Committee to the Interview Panel.

The current Chair will not remain. Cde Bridgitte Mabandla will be the Chair and the current Deputy Chair will be retained.

Municipal Demarcation Board

The panel made up of judges have made recommendations, seven males and six females, geographic FS 3, Gauteng 1, and they cover the criteria. The Chair is full-time and the other board members are part-time. The current chair has requested to be recused as a Chair and Deputy Chair. The recommendation is that Mr. Thabo Manyoni is the new Chair.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

The Board selects and appoints the Deputy Chair. It will have to be a woman.

Comments: Our input is limited, because the selection panel is appointed after consultation with the President. Happy that the current Chair is remaining as a member of the Committee. She was excellent as a Chair. The recommended person to Chair is highly qualified, although the ANC should support the person, similar to how Cde Parks Tau is supported in SALGA.

It is positive that there is a town planner also in the Board, since previously the Board has been rigid in their approach and not as rational as it should be.

It is noted that the Minister did previously inform the Committee about the pending appointment, however, the matter was not sufficiently followed up by the Committee and the sector organisations.

5. Social Development –
Minister Susan Shabangu 11h30 – 11h45

Advert for DDG for Corporate Services, as reported in the previous meeting. A position which has been vacant for eight years. The vetting has been concluded and the *dpsa* has been contacted to prepare the submission to Cabinet.

Comment: The Committee supports the recommendation.

The NDA

Handwritten initials/signature

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

The NDA used to be under Treasury and over time has ended up with Social Development. It is an institution that needs to be reviewed, so that it can be a focused institution. Therefore there should be a temporary board (1 year) and not a five year board. The Act does not preclude the term being less than five years. There are 6 independent members and the rest from the department.

Comment: Only two are retained. Judy Hermanus and Hanekom retained. 2 and 4 recommended. Retain the four and review the institution. We expect the motivation on the review from the Minister.

SASSA

The matter is being finalised.

6. Commission for Gender Equality 11h45 – 12h00

Received 90 applications, two withdrew and therefore 88 applications. Will shortlist 24, and recommend 8. Due to timeframe, must be done by 19 March 2019. Human resources on verification of qualifications and State security on vetting have not responded as yet.

The DSG's Office has provided names of candidates.

Comment: The Committee endorsed the names.

7. Portfolio Committee on Communication (SABC) 12h00 – 12h15

Handwritten initials: M and LI

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

There will be two engagements. One now, and when the names are finalised. Mainly, because the study group has not met. The Deployment Committee is scheduled to meet in two weeks time.

There are good candidates, based on the CVs, that have applied. The Study Group will consider the names and shortlist so as to ensure gender, skills, geographic spread, covering SABC and MDDA.

Comment: The Committee members will scrutinise the list and submit preferred applicants to be shortlisted, by Monday. They will return upon the interviews have been concluded.

For Noting:

8. Science & Technology – Minister Kubayi-Ngubane
Appointment of DDGs

9. Minerals – Minister Gwede Mantashe
Appointment of CFO

10. Application for Deployment

Sectors must update their lists, via the DSG's office.

Handwritten initials/signature

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

The next meeting must update and finalise the overall list.

11. Closure

12h32 meeting closed.

h
LII

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27,11,376,1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
08 March 2019 (10-13h00)**

1. Welcome 10h00 – 10h05

The Deputy President welcomed and opened the meeting.

2. Apologies 10h05 – 11h10

- The Communications Portfolio Committee apologised they will not make it to report.
- Nkosazana Dlamini-Zuma
- Susan Shabangu
- Meokga Matuba
- Mildred Oliphant

The Committee is dependent on the co-operation and respect for process that includes the Deployment Committee by the Ministers serving in Cabinet.

In May, after elections, we host a Workshop with all newly-appointed Ministers, and Premiers of provinces. There is a general misunderstanding of the concept of democratic centralism, as well as lack of adherence to NEC authority. And we continue with the decision of every second Friday of the month we meet, whilst we are in the election campaign, we shall meet only when necessary.

President: C Ramaphosa, **Deputy President:** D Mabuza, **National Chairperson:** G Mantashe, **Secretary General:** SE Magashule, **Deputy Secretary General:** J Duarte, **Treasurer-General:** P Mashatile

M
LTI

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

3. Minutes of Previous Meeting & Matters Arising 10h10 – 11h15

Minutes adopted unanimously with the amendment on P3.

Matters arising on the Chair on the CRL, the nominee is in training to be an Ambassador, and therefore not able to be appointed. The DSG and Deputy President will discuss the alternatives for the CRL with the Minister.

Decision: Noted Cde Yvonne Chaka Chaka, who is also a UN Ambassador on Social Development, and a high profile person, could be the Chair. The Minister should consider a person from the Khoi and San community to also be included in the CRL.

Matters arising on the SABC Board. Initially, we had requested that Parliament appoint an interim board. But that was not possible, because there were still four members of the Board, and Parliament can only replenish the Board. The SABC Board interviews with the shortlisted candidates have been concluded. They will follow due processes and appoint the members of the Board before the elections. The Study Group has to present the names they are recommending. The new board must ensure that the debate and news mandate of the SABC is not outsourced. And it must have a person from organised labour. There should be a discussion on how the SABC Board is appointed.

M
LTI

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

4. DSG Report

11h15 – 11h30

Members of Parliament

The ANC will be approached by a number of persons, and ipso facto the Deployment Committee.

We must identify who can be deployed into the Foreign Missions, Boards, etc after consultation with the Officials. Look at the administration and advisors to Ministers. Noting that Attaches in missions have to come from their respective departments.

We need to get a sense of their skills.

Comments & Decision:

DGs Contracts

Comments: Consult with the Officials on the DGs who's terms are coming to an end. Consult with Cde Ayanda on this list. Those who are under 65, and performed well and must stay.

Vacant Missions:

Comments & Decisions: Who is acting in these 'vacant' positions.

McBride matter must also be dealt with. We need to look at where we deploy Cde McBride. The Deployment Committee should call him.

Cde Supra is also available for international deployment.

Handwritten initials: M and L

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

Need to reconcile the work of the Committee and the provincial deployment committees. Must meet with the Provincial Deployment Committees.

The DSG and DP will take the matter to the Officials.

There should be a strongly worded message from the Deployment Committee to the officials. All deployments in that area are henceforth stopped.

5. Communication Portfolio Committee (SABC) 11h30 – 11h45

Comment: Discussed in Matters Arising

6. Public Works 11h45 – 12h00
Minister Thulas Nxesi

Presentation on appointment of the CFO

The person has been acting in the position. He is young and an enthusiastic worker.

Presentation on appointment of Property Management Entity

The CEO is on the level of a DG. The post was advertised with a closing date of 14 December 2018. There were applications from about twenty-five individuals. Five persons were shortlisted. Interviews have not been conducted.

M
LH

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

Comment & Decision: All the shortlisted candidates are male, women must be included from the overall application list. Need to look at a strict 'Conflict of Interest' guide.

Presentation on Supply Chain

It is a post at DDG level. The post was advertised, and was shortlisted to four, two males and two females.

Comment:

7. Energy 12h00 – 12h15

Central Energy Fund

Comment: The Minister indicated that he wants to consult with the DP, before coming to the Committee.

8. Minister of Water and Sanitation Gugile Nkwinti

Rand Water CEO

Nkomati, Bloemfontein, TransCaledon TA Boards.

Note that there is no water in Jagersfontein in the Free State, where there is a new hospital.

The Deployment Committee condones the appointments.

Recommend that the Deployment Committee persons for the Selection Panel, because it does the shortlisting and interviews.

W
LST

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

The Minister will appoint one person, and the Premier appoints one, the Board, and the community.

There is a danger of the Deployment Committee outsourcing its duties and therefore they must come to the Committee with the proposed shortlisting, and then proceed with the interviews.

There are three boards Magalies, Sedibeng, Umgeni, and Overberg (WC). The DSG will talk to the Secretary and Chair of the Province. The Minister will talk to the Premier. The Umgeni one is quite a priority.

9. Closure

The meeting was closed.

Handwritten initials

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
22 March 2019**

1. Welcome 10h00 – 10h05

The Deputy President welcomed and opened the meeting. And indicated that DDG from Basic education will submit to the DC on behalf of the Minister.

2. Apologies 10h05 – 11h10

- Cde Sdumo Dlamini
- Cde Susan Shabangu
- Cde Bheki Ntshalintshali

3. Minutes of Previous Meeting & Matters Arising 10h10 – 10h15

Minutes adopted unanimously.

Matters arising

4. Deputy Director-General in Basic Education

Position for DDG- teacher's education, research vacant for the last few years. Struggle to finalise it. The person recommended is a Chief Director in the relevant branch. The Deployment Committee concurs.

M *CSZ*

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

No explanation on why the Deputy Minister was not here in the absence of the Minister.

Correct that no officials come to this Committee.

Worrying that senior appointments just 6 weeks before the election. Nevertheless, there shouldn't be appointments of DGs and Ministers should not be appointing DGs but retain the one's in the positions. DGs leaving cause departmental instability.

5. Defence Ministry – Minister Mapisa-Nqakula 10h15 – 10h30

ARMSCOR Board. The Chair has resigned for health reasons. Vice Admiral Refilwe Modmo. The person deputising Modimo has been Tuthukile Skweyiya, for the last two terms. The Deputy Chair becomes the Chair.

Malusi Motimele to take up the vacant position, and becomes the new Deputy Chair, allowing him to become the Chair in the next term.

Comments & Decision: The Deployment Committee confirms that Cde Skweyiya become the Chair, and Cde Motimele is appointed as the Deputy Chair.

6. Water & Sanitation – Minister Nkwinti 10h30 – 10h45

Comment & Decision

7. Transport – Minister Nzimande 10h45 – 11h00

Comment & Decision: Remove Nazir Alli, has proven to be dogmatic. Kweyama on a lot of boards. Matlatla was a part of the previous board and has not been up to the task.

h
LST

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

Irene Charnley & Notty Ngcobo & possibly one person from the Veterans, Khathu Ramakumba

8. Justice & Correctional Service - Minister Masutha 11h00 – 11h15

Sitting of the Judicial Services Commission to consider the filling of vacancies in the judiciary. Names are shortlisted by a structure within the JSC, and published for comment. At the end of January these processes were concluded.

ConCourt: Two vacancies, due to retirement of Justice Cameron and Nkabinde.

When vacancies are to be filled, there has to be three additional. So there needs to be consideration of at least 5, in this case this is 6.

Majiet and Tshiki (female) recommended.

Recommends: Justices Kollapen & Tshiqi

SCA: Deputy President of the SCA, recall that the Justice Maya is the President of the SCA and her position is now vacant.

Petse recommended.

Labour Court – the acting Deputy Judge President, who is Judge Molahlehi, and is made permanent.

Eastern Cape Division Judge – only one candidate.

DJP for Northern Cape – Phatswane is recommended

Recommends

Handwritten initials: N LII

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

5

Candidates to fill out of 9.

Recommends that we have a dynamic link with NADEL.

Recommends that the current process is incestuous. It contributes very little if anything towards judicial independence. The ANC prizes and values judicial independence. The current process provides for a system that has the judiciary having too much of oower in determining the leadership of the

9. Applications for Deployment 11h15 – 11h30

10. Closure 11h30

The meeting was closed. Communicate with the Ministers who did not turn up about our concerns.

Handwritten initials: M JI

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
19 August 2019**

1. Welcome 10h00 – 10h05

The Deputy President welcomed and opened the meeting.

2. Apologies 10h05 – 11h10

- Cde Bheki Ntshalintshali
- Cde Solly Mapaila
- Cde Susan Shabangu
- Cde Sdumo Dlamini

3. Minutes of Previous Meeting & Matters Arising 10h10 – 10h15

Will deal with it at the next meeting.

Minutes adopted unanimously.

Matters arising

4. Minister of Mineral Resources and Energy

Filling many vacancies, only PETROSA is a full board. Still will come with the NECSA group. Normally, the CEF board only is brought to the DepComm, but the Minister felt the subsidiary boards are also brought.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

In all the boards, we are dealing with proxies of interests. All of them are dysfunctional. They should be pumping money into government but they are a drain on resources.

Two unsolicited bids, which made one believe that our people are destroying value and could sell it as a song.

Unless we get governance right, we cannot get operational matters to improve.

PETROSA has not had a CEO since 2014.

CEF Group

4 out of 9 posts.

Will we still retain the 50-50 parity, and is there a possibility to appoint a woman to lead. There seems to be an emphasis on persons from the Eastern Cape, rather than other regions. And the question of youth.

Dr. Mnyande is not serving in any other board, and there should be a greater appreciation of the economic issues.

On geographic spread, we should not be seen to have one region over-represented, without discounting expertise.

Therefore the Minister will re-look at it, so there is gender and regional balance, without sacrificing the expertise required. And write back to the DepComm on the outcome.

M *LJS*

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Saver Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

PETROSA

It is a desperate situation. The DepComm to talk this issue beyond the Board. It has no fixed stock. The exploration and drilling has been killed. PetroSA has to be rebuilt.

Suggesting that Frans Baleni is deployed to Chair. He was in the team that raised the first

Cheeky HR specialist. A number of unions which are very disruptive.

Pheko, trading

Delpont geologist on upstream

Corne, engineer in the midstream

Ndamase lawyer

Gogo midstram

Heywood refinery specialist

Investment economist

Therefore the Minister will re-look at it, so there is gender and regional balance, without sacrificing the expertise required. And write back to the DepComm on the outcome.

Handwritten signature and initials

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DECISION: The DepComm will write to all Ministers indicating that they need to take into account gender parity, geographic spread without sacrificing expertise.

African Exploration Mining & Finance Corporation

We wanted to bring mining skills into the AEMFC. Shortlist of three.

Therefore the Minister will re-look at it, so there is gender and regional balance, without sacrificing the expertise required. And write back to the DepComm on the outcome. Of the three boards there must be one woman chair at least.

Strategic Fuel Fund

Chaired by a male, who is not being replaced.

I-Gas

Therefore the Minister will re-look at it, so there is gender (noting all are women) and regional balance, without sacrificing the expertise required. And write back to the DepComm on the outcome.

Petroleum Agency of South Africa

Nominating Madala Masuku to chair it. He is mature and well-qualified.

M *W*

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

Agreed. Therefore the Minister will re-look at it, so there is gender and regional balance, as well as youth presence, without sacrificing the expertise required. And write back to the DepComm on the outcome.

5. Applications for Deployment 11h15 – 11h30

We will try and get Cde Naledi to attend the meeting, as well as get the names proposed by the President. We also want to propose names. We should look at DIRCO, at the proportions of who are career diplomats and political appointments, so that we do not overwhelm with political appointments.

We need to look at the list, and see who has been deployed, etc.

6. Closure 11h30

The meeting was closed. Communicate with the Ministers who did not turn up about our concerns.

Handwritten initials: M LJ

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

**AFRICAN NATIONAL CONGRESS**

**Deployment Committee
10th Floor Boardroom
Luthuli House
14 October 2019**

1. Welcome

The Deputy President welcomed and opened the meeting

2. Apologies

- Cde Nkosazana Dlamini-Zuma
- Cde Solly Mapaila (Apologies received after meeting)
- Cde Susan Shabangu

Attendees:

- Cde David Mabuza
- Cde Yasmin Duarte
- Cde Sfiso Buthelezi
- Cde Mduduzi Manana (Arrived late)
- Cde Sibongile Besani
- Cde Meokgo Matuba
- Cde Louise Thipe

3. Minutes of Previous Meeting & Matters Arising (19 August 2019)

The minutes of the meeting was adopted

4. Minister of Communications and Telecommunications

The Minister presented a board for NEMISA which is responsible for teaching and the development of e-skills and works with relevant Post School Education and Training Institutions. There are 7 vacancies which need to be filled, 15 were shortlisted and 7 recommended. The 7 recommended included 4 women, 3 men and a balance of youth, race, experience and geographic spread. A female chairperson

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



AFRICAN NATIONAL CONGRESS

was recommended. Further boards which are appointed to Parliament will come to the Deployment Committee within the next two weeks. The Post Bank and SETA

have had posts already advertised and applications closed, they will be brought to the Committee soon.

The board of SAPO was also discussed. It has a 10 member board with a vacancy of 8 members, 2 of the vacancies will be appointed from the Unions, which are reappointments from the previous board. The remaining 6 will be appointed by the committee. Posts have been advertised and applications closed. Communications committee and youth league have made some recommendations. 4 of the 6 are African females, one male and one female, there is a broad geography spread, youth and race are all covered. A female chairperson has been chosen. Traditional leaders were consulted and have been represented in the board to assist with communication and mobilisation for the role out of programs.

ZEDNA is the domain name authority that deals with internet governance .za. It has been run by the industry with Afriforum having people in key positions. This SOE is strategic in the fourth industrial revolutions. There are 9 vacancies with 6 females. A geographic spread was hard to achieve because of the scarce skills which are largely based in Gauteng. A female chairperson was recommended.

5. Minister for Women, Youth and Persons with Disabilities

The minister's item was not on the agenda; however provision was made to allow the minister to brief the deployment committee on the lack of a director general in the department of women, youth and persons of with disability for the past 2 years. The minister was briefing the committee before putting out an advert for the position. The post will be advertised before the end of October, the ANC Deputy Secretary General in consultation with the Women's League and the minister must come up with a candidate, who may be outside the list provided.

6. Minister in the Presidency

President: C Ramaphosa Deputy President: D.D. Mabuza National Chairperson: G Mantashe Secretary General: E.S. Magashule
Deputy Secretary General: J Duarte, Treasurer-General: P. Mashatile

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

**AFRICAN NATIONAL CONGRESS**

The minister presented on the board for Brand SA. Brand SA has a 15 member board, 13 are required excluding one of CEO. A 23 name shortlist was provided and 13 recommended which has 7 women and 6 men, 4 of the members are below the age of 40, 2 of the members are reappointments. There was one change that was made to the recommended list, which was supported by the women's league. A female chairperson was chosen to lead the board.

7. Minister of Transport

The minister had several boards which need boards however there are only two boards which the committee had time to go through, which were PRASA and RAF.

The PRASA board process had started before the minister was appointed; the adverts have gone out and have been closed. The current interim board has been extended twice and needs to be finalised urgently. PRASA has an 11 member board of which 3 members are to be seconded from Treasury, SALGO and Transport. The 8 members recommended include 5 females, 4 reappointments for continuity who have proven to be competent. An advert was posted looking for a CEO however could not find a suitable candidate, are now head hunting, this will be done through the office of the DSG in consultation with the Minister. The minister would like to appoint a CEO whom will put a management in place to ensure that the CEO can work with the management effectively. In all appointment letters, there should be provision for review of performance after a year where the minister has the authority to replace any board member.

The Road Accident Fund is in urgent need of a board, A 12 member board was presented with 4 females. The current board has many doctors and lawyers, however the new list has a more broad skill base. The list was however sent back to be reconsidered because of lack of women and geographic spread, the age spread is good. At least two men need to be replaced with by women. List of applications must be provided to the DSG, two women will be chosen from there.

LII

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

**AFRICAN NATIONAL CONGRESS****8. General Resolutions**

The office of the DSG should send all ministers the guidelines and procedures of deployment which include informing the deployment committee before any posts are advertised. All presentations should include a brief background and a summary of the respective challenges. The committee should be mindful of rotating members between boards or having a member on too many boards.

The reminder of the boards which could not be presented will be presented at the next deployment committee.

9. Closure

M *CSJ*

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE
SPARTAN HALL, MIDDLE ROOM
ST GEORGE HOTEL
20 JANUARY 2020

1. Opening and Welcoming

The Deputy President welcomed everyone to the meeting

Apologies

- Cde Lindiwe Sisulu

No confirmation from Cde Mike Soko and Cde Sdumo Dlamini

Attendance

- Cde David Mabuza
- Cde Yasmin Duarte
- Cde Sfiso Buthelezi
- Cde Susan Shabangu
- Cde Mildred Oliphant
- Cde Meokgo Matuba
- Cde Mduduzi Manana
- Cde Sbongile Besani
- Cde Solly Mapaila
- Cde Natso Khumalo
- Cde Bheki Ntshalintshali
- Cde Nkosazana Dlamini-Zuma

2. Minutes from Previous Meeting (12 November 2019)

To be looked at in the next meeting

1
AL
LUI

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

3. Department of Environment Forestry and Fisheries

Minister of Environment Forestry and Fisheries came to present on the filling of vacancies in 3 boards namely: SANParks (South African National Parks), SANBI (South African National Biodiversity Institute) and Isimangaliso Board.

The Minister was commended in the process that she has engaged the ANC in KZN for Isimangaliso board and for the inclusion of white candidates in her proposals. The Committee resolved to accept the 3 proposals.

4. Department of Public Service and Administration

The Minister came to present the filling of the vacancy of the DG and the Principal for the National School of Governance. The Minister extended his apology for not complying with the process on the Deployment till now. The Minister indicated that for the DG position, they have shortlisted 4 candidates and all 4 meet the requirements.

The first candidate for DG position is a woman who has Master's degree as one of her qualification and she is currently Head of Department. The second candidate is also a female with relevant experience and she is currently a DDG. 3rd candidate has relevant experience and is currently a DDG. The fourth candidate has relevant experience and is currently a DDG.

The Committee resolved to accept the first woman candidate to be a DG as there is a shortage of woman DG's within the Public Sector.

National School of Governance:

The post of the principal has been vacant since November 2019, shortlisting have been done and the interviews have been scheduled for the 21 January 2020. Five candidates with good profiles have been shortlisted. There were two women and the other one fell off during further assessments.

2  LTI

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

The

committee resolved that the Minister can proceed to interview the candidates.

5. Department of Public Enterprises

The Committee raised serious concerns that the Minister always present fate accomplished matters, the matter of CEO that the Minister wanted to present on is already in the media.

The Minister was reminded that he must always follow the processes of Deployment before there are any adverts.

The Committee made it known to the Minister that he must follow the correct procedure of informing the Committee before any appointments of such are made.

6. Department of Mineral & Energy

The Minister presented that members of the NECSA board resigned one after the other and only 3 members remained. An advert was issued for the filling of vacancies with the intention that the 3 remaining board members will be maintained. The 3 remaining have subsequently resigned this week.

There is a proposal that the 3 boards be merged into one board of NECSA but the Minister is still looking at the legal processes. Currently the Chairpersons of the other boards have been included in the proposed list of the new board.

The Committee noted that one candidate has been proposed on the other boards and she is currently serving in many boards and thus her name should be removed.

The Committee resolved to accept the Ministers proposals and that the Minister must further engage with the DSG

7. Defence

The Minister presented on the filling of vacancy of CEO Armscor, she was reminded that she has not complied with the process of the Deployment and that she has been reminded for the second time. An advert was issued and 87 applicant responded and shortlisting was done and only 15 remained. The competency assessment process reviewed that only 2 candidates can be considered. The board proposed the name of the current Acting CEO to be considered which is what the Minister came to present.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

The Committee allowed the Minister to go ahead with the process but was also reminded that in future she must work with the office of the DSG.

8. Communication

The DSG presented On ICASA board that the Minister had informed that there will be advert for ICASA boards, 75 applicants applied, 75 names were discussed by ANC Communications Sub-Committee, and the Minister is supposed to be present and defend the shortlist. Interviews are to take place on 5th of February 2020.

The Committee accepted the process so far, and agreed to meet with the Minister before they start the interviews. The Committee agreed not to proceed without the views of the Minister. Chairperson proposed that this matter be put aside until the next meeting. The committee raised the issue that the list is not clear, on the qualifications or disability. The DSG to speak to the Chairperson of the Communication Sub -Committee to postpone the shortlisting.

9. Conclusion

The office of the DSG was requested to write a reminder to all the minister on the process of the Deployment.

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

**AFRICAN NATIONAL CONGRESS**

**Deployment Committee Minutes
10th Floor Boardroom
Luthuli House
23 March 2020**

1. Welcome

The Deputy President welcomed and opened the meeting

2. Apologies

- Cde 'Mduduzi Manana
- Cde Sfiso Buthelezi
- Cde Mildred Oliphant
- Cde Bheki Ntshalintshali
- Cde Solly Mapaila
- Cde Meokgo Matuba

Attendees:

- Cde David Mabuza
- Cde Yasmin Duarte
- Cde Lindiwe Sisulu
- Cde Nkosazana Dlamini-Zuma
- Cde Sidumo Dlamini
- Cde Natso Khumalo
- Cde Susan Shabangu

3. Minutes of Previous Meeting

The minutes of the previous meeting were adopted

4. Matters Arising

The matters arising are on the last page as requested by meeting.

M 5/4

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

**AFRICAN NATIONAL CONGRESS****5. Department of Minerals & Energy - Cde Gwede Mantashe**

There were 9 items on the agenda under Minerals and Energy. Time constraints due to Cde Gwede Mantashe being summoned by the President resulted in only one board being presented.

Central Energy Fund (CEF) required a CEO to be appointed. There are multiple subsidiaries under CEF which require boards to be appointed, this will however be done by the board of CEF.

A list of three candidates were presented in order of preference, the committee decided to maintain the order of as recommended by the process despite the recommendation of the national chair

6. Department of Communications and Telecommunications – Cde Stella Ndabeni-Abrahams

The Postbank Board was presented to the committee. The post as signaled in Cde Stella's previous presentation to the committee had already been advertised. The term of the board expires in April. A list of 11 candidates were presented for 7 to be selected by SARB, the balance would be on standby if there are any resignations. The committee decided that 12 should be presented and adjusted the shortlist to ensure gender balance with 7 women of the 12.

7. Minister of Transport

The minister was due to present three boards, however was unable to make it due to the Corona Virus issues. The item will be deferred to the next meeting.

8. Matters Arising

M
LJI

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

**AFRICAN NATIONAL CONGRESS**

Please find these on the next page.

9. Closure**Matters Arising****1. Follow-up from Minister of Minerals and Energy**

The minister was tasked with ensuring that the last board that was presented that no person must serve more than 3 boards. The Minister explained that the person was informed that they were appointed before he could make the changes. Due to an oversight on the last presentation the chairperson was meant to be an additional person whom the board included in the numbers, so minister appointed her.

2. The Director General of COCGTA

The long list has been concluded and interviews were to be conducted. A list of the applicants was to be emailed to all members of the committee.

M
CJR

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

**AFRICAN NATIONAL CONGRESS**

**Deployment Committee Meeting
Zoom Video Conference Call
13 April 2020 08:00**

1. Welcome

The Deputy President opened the meeting and welcomed the comrades.

2. Attendance

- Cde David Mabuza
- Cde Jessie Duarte
- Cde Nkosazana Dlamini Zuma
- Cde Lindiwe Sisulu
- Cde Sfiso Buthelezi
- Cde Susan Shabangu
- Cde Solly Mapaila
- Cde Mduduzi Manana
- Cde Mookgo Matuba
- Cde Sibongile Besani

3. Apologies

- Cde Natso Khumalo
- Cde Sidumo Dlamini

4. Department of Cooperative Governance and Traditional Affairs - Director General

There were 105 applications of which after screening and interviews they came to a short list of 4. The 4 consisted of 3 women and 1 man. The man was an internal application. Each candidate was made to make a presentation on how to transform the department. From the presentations and questions, one stood out, the women. She has good corporate and public experience, another factor was that most of the

M
WJI

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



AFRICAN NATIONAL CONGRESS

senior positions in the department are African males, this should bring diversity. The department has been without a DG for a while. The committee was happy with the candidate and process.

5. Closure

M
LII

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

**AFRICAN NATIONAL CONGRESS**

**Deployment Committee
10th Floor Boardroom
Zoom Video Conference
11 May 2020**

1. Welcome

The Deputy President welcomed and opened the meeting

2. Apologies

- Cde Natso Khumalo
- Cde Meokgo Matuba

Attendees:

- Cde David Mabuza
- Cde Yasmin Duarte
- Cde Lindiwe Sisulu
- Cde Nkosazana Dlamini-Zuma
- Cde Natso Khumalo
- Cde Susan Shabangu
- Cde Sfiso Buthelezi
- Cde Mildred Oliphant
- Cde Bheki Ntshalintshali
- Cde Solly Mapaila
- Cde Sibongile Besani

3. Department of Water & Sanitation - Cde Lindiwe Sisulu

Cde Lindiwe Sisulu indicated that several water boards had their terms extended due to Covid-19. Three water boards, namely Lepelle Northern Water Board, Magalies Water Board and Sedibeng Water Board which the documentation was not ready, required that an interim board be appointed. The Office of the DSG was tasked with sending names for consideration for these boards.

M
WJ

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

**AFRICAN NATIONAL CONGRESS****4. Department of Transport - Cde Fikile Mbalula****a) Railway Safety Regulator**

There were 182 applications received for the board positions. From the applications Cde Mbalula came with a recommendation of 9 Cdes, of which 4 were male and 5 female. Among the males, one was white and another coloured. The list presented to the Deployment Committee covered all stakeholders which the minister is required to cover.

b) Road Traffic Infringement Agency

The post had 50 Applicants which the minister appoints 5, then one must come from the NPA. The 5 presented included 3 male and 2 female, one male was Indian and all other candidates were African. The list was approved as is.

Cde Mbalula indicated that there would be a number of posts that will be sent out soon, he will inform the committee.

5. Minister of Communications – Cde Jackson Mthembu (Acting)**a) GCIS – Director General**

Cde Jackson Mthembu presented the 27 applicants for the position. From the 27 6 were shortlisted, 2 were female and 4 were men. All were African with the exception of 1 male who was Indian. The preferred candidate was a female, which the deployment committee agreed on.

b) ICASA

The process started with 75 applicants for the position. After going through the parliamentary process, 10 names were presented of which only 3 were females. 9 of the applicants were approved by the parliament process and one name came after, which Cde Jackson was unable to speak to. The board at the time still had three females sitting, two African and one coloured. The meeting concluded that the process will go back and be finalized with the communications subcommittee chairperson and the Communications portfolio chairperson.

6. Matters Arising

President: C Ramaphosa Deputy President: D.D. Mabuza National Chairperson: G Mantashe Secretary General: E.S. Magashule
Deputy Secretary General: J Duarte, Treasurer-General: P. Mashatile

Handwritten initials: N and CII

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



AFRICAN NATIONAL CONGRESS

Please find these on the next page.

7. Closure

Matters Arising

1. Meeting Resolutions

- i) **The Deployment Committee is not obligated to deploy any person after their term has come to an end.**
- ii) **Members of the deployment Committee should be given documents ahead of time to allow them to process.**
- iii) **The database of comrades for deployment should be circulated.**
- iv) **Cde Naledi Pandor should make a presentation in the next meeting.**
- v) **An alternative platform to host meetings should be found because of the security concerns raised with Zoom.**

M
LII

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE MINUTES

Zoom Conference Call

25 May 2020, 08H00

1. Opening & Welcome

2. Apologies

3. Department of Treasury – Minister Mboweni

- CEO of PIC
- South African Risk Insurance Association (SASRIA)

The presentation was noted, process had not been followed however the candidates recommended were diverse, skilled and experienced. The committee on those grounds allowed the two items to process.

4. Closure

11
17

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

**AFRICAN NATIONAL CONGRESS**

**Deployment Committee Meeting
Zoom Video Conference Call
26 June 2020 10:00**

1. Welcome

The Deputy President opened the meeting and welcomed the comrades.

2. Attendance

- Cde David Mabuza
- Cde Lindiwe Sisulu
- Cde Sfiso Buthelezi
- Cde Mduduzi Manana
- Cde Meokgo Matuba
- Cde Sibongile Besani
- Cde Mildred Oliphant
- Cde Natso Khumalo

3. Apologies

- Cde Jessie Duarte
- Cde Sidumo Dlamini
- Cde Nkosaza Dlamini-Zuma
- Cde Susan Shabangu
- Cde Solly Mapaila
- Cde Bheki Ntshalintshali

4. President on Special SOE Council

The President was called to make a presentation based on the previous resolution of the Deployment Committee. The President started by apologising for the appointment of the SOE Council without the involvement of the Deployment Committee, explained that it was an omission due to the pressure. A breakdown of

Handwritten initials: MJZ

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



AFRICAN NATIONAL CONGRESS

the members of the council was given and the process which was used to get to the members. The involvement of labour federations was requested by the President.

5. Discussion

The members of the council are male dominated, the absence of women was an issue raised. There is a vacancy on the council which should be filled in consultation with the Deputy President and Deputy Secretary General.

The committee members took advantage of the Presidents presence to raise the following challenges faced by the deployment committee;

- Deployment Committee used to rubber stamp appointments, lack of compliance by members
- Appointments brought to the Deployment Committee but another name presented to cabinet. This however will be looked into by the Deputy President
- Cde Naledi Pandor to work more closely with the Deployment Committee, she will present to the next Deployment Committee.

6. Department of Women, Children and Persons with Disabilities – Director General

The Minister made a presentation on the process that was followed to reach the recommended candidate. The Deployment Committee Procedures were followed and the Deployment Committee agreed with the recommended candidate.

7. Closure

Handwritten initials: LR

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE CALL

14 August 2020 10:00

1. Welcome

2. Apologies

3. Department of Home Affairs – Minister Motsoaledi

a) Appointment of Director General

The presentation on the item was welcomed and supported as processes had been followed and candidate met all the required criteria.

4. Department of Communication & Digital Technologies – Minister Ndabeni-

Abrahams

a) Adverts

Director General

b) CEO Positions

Appointment of NEMISA CEO

South African Post Office CEO

c) Boards

South African Post Office 4 Vacancies

1
LTI

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

The advert for the Director General of the department was presented and members were requested to encourage skilled comrades to apply.

The remaining items did not follow processes as the presenter was unaware of the process. The presentations were supported as the candidates had a balance of gender, skills, youth and geographic spread.

5. Closure

||
LJI

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE CALL

24 August 2020 08:00

1. Welcome

2. Apologies

3. Department of Environment Forestry & Fisheries – Minister Barbara Creecy

a) Director General

The committee welcomed and supported the presentation and preferred candidate as the candidate was skilled and had experience within the department at a provincial level.

4. Department Of Small Business Development – Minister Khumbudzo Ntshavheni

a) Executive Positions

Appointment of Small Enterprise Development Agency (SEDA) Chairperson

Appointment of Small Enterprise Finance Agency (SEFA) CEO

The presentations were welcomed and supported by the committee as the candidates were skilled and met the respective requirements.

5. Department of Treasury – Minister Tito Mboweni

a) Board

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

Appointment of Development Bank of South Africa board

The committee welcomed the presentation however was not happy with the failure to follow the processes. The committee recommended that further consultations be made before proceeding with the item.

6. Closure

h
CP

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE CALL

21 September 2020 08:00

- 1. Welcome**
- 2. Apologies**
- 3. Department of Water and Sanitation – Minister Lindiwe Sisulu**

- a) Amatole Water Board

The presentation of an interim board was supported by the deployment committee and the process to appoint a permanent board was to be initiated to provide stability.

- 4. Department Of Defence and Military Veterans – Minister Nosiviwe Mapisa-Nqakula**

- a) Director General of Military Veterans
- b) Armscor Board

The shortlisted candidates for the Director General position were supported by the committee in the order of preference presented as process was followed.

The presentation for the Armscor Board was welcomed; more skills in finance, an engineer and a labour representative were suggested. The presentation was supported with the recommendation that the suggested skills be included.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

5. Department of Agriculture, Land Reform & Rural Development – Minister Thoko

Didiza

- a) Appointment of Board for Onderspoort Biological Products (SOC) Limited

The presentation on the board was welcomed, the process was followed and the presentation was supported as it covered the gender, youth and skills.

6. Deployment Committee Outstanding Matters Report

The National Youth Development Agency was discussed and the committee was not happy with the process that was followed. A presentation on the matter was requested in the next meeting to resolve the challenges in the process.

7. Closure

h 32

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE CALL

9 October 2020 08:00

1. Welcome

2. Apologies

3. Department Transport – Minister Fikile Mbalula

- a) PRASA Board

The presentation was welcomed and supported as it included youth, experience, skills and gender balance. There was a request for labour representation on future transport boards.

4. Department Of Transport – Minister Ronald Lamola

- a) Director General of Justice and Constitutional Development

The presentation was welcomed by the Deployment Committee, the two candidates presented were recommended as the process was yet to be finalised and the committee.

5. Closure

Handwritten initials/signature

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE CALL

9 November 2020 08:00

- 1. Welcome**
- 2. Apologies**
- 3. Department of Trade, Industry and Competition – Minister Patel**

- a. National Lotteries Commission Chairperson
- b. National Lotteries Commission Non-Executive Position

There was a presentation made which was supported for both the board and chairperson.

- 4. Department of Communication & Digital Technologies – Minister Ndabeni-Abrahams**

- a. Director General
- b. South African Post Office CEO

The recommendations of the presentation were supported for both positions

- 5. Department of Mineral & Energy Resources – Minister Mantashe**

- a. Chairperson of Central Energy Fund
- b. CEO of National Energy Regulator SA

Handwritten signature and initials

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

The presentation was a second attempt after the first was interrupted due to the National Chairperson being called into a meeting by the President. The recommendation of the recruitment process was favoured over the preference of the Minister for the Central Energy Fund. The National Energy Regulation recommendation which was in line with recruitment process recommendation was supported.

6. Closure

Handwritten signature and initials

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE

ZOOM VIDEO CONFERENCE CALL

30 November 2020 08:00

- 1. Welcome**
- 2. Apologies**
- 3. Department of Public Enterprise – Minister Gordhan**
 - a. Eskom Board
 - b. South African Airways Board

A presentation was made for an interim structure that would provide stability to both institutions. Processes were not followed; however the deployment committee would be consulted on the appointment of both boards.

- 4. Department of Transport – Minister Mbalula**
 - a. Cross-Border Road Transport Agency

The presentation was not accepted by the deployment committee. There were issues raised with regard to processes being followed and the candidates and the make-up of the board. The item was sent back to be refined.

- 5. Closure**

Handwritten signature and initials

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE

26 January 2021 09H00

1. Welcome

2. Apologies

3. Department of Transport – Minister Mbalula

- Cross-Border Road Transport Agency Board

The presentation was welcomed and supported with the recommendation that a representative with labour expertise be considered as an addition.

4. Department of Environment, Forestry & Fisheries – Minister Creecy

- CEO South Africa Weather Services

The presentation was welcomed and the candidate was supported.

5. Department of Water & Sanitation – Minister Sisulu

- Amatola Water Board

The presentation was welcomed and supported as processes were followed and the board had the adequate skills and experience.

6. Closure

h *LTZ*

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE MINUTES

1 April 2021, 15H00

1. Welcome

2. Apologies

3. Department of Communications & Digital Technology – Ndabeni-Abrahams

- Council for Film & Production Board

The presentation was supported, it followed processes, had gender balance, youth and attempted geographic spread but was unsuccessful due to concentration of skills in Gauteng.

4. Department of Small Business Development – Minister Ntshavheni

- Director General

The recommended candidate was supported, processes were followed.

5. Department of Environment, Forestry & Fisheries – Minister Creecy

- CEO South Africa Biodiversity Institute

The candidate was supported as processes were followed and recruitment process was open. There preferred candidate met the required criteria as therefore allowed to proceed.

Handwritten signature and initials.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

6. Department of Agriculture, Land Reform & Rural Development – Minister Didiza

- National Agriculture Marketing Council

The presentation was welcomed and the recommended candidates were supported

7. Department of Water & Sanitation – Minister Sisulu

- Lepelle Northern Water Board

The recommendation was supported as process was followed and had the required skills.

8. Department of Employment & Labour – Minister Nxesi

- UIF Advisory Board

The deployment committee accepted the presentation as majority of the appointments were given by the respective NEDLAC partners as stipulated in the process. The partners should be consulted to include a greater gender balance.

9. Department of Home Affairs – Minister Motsoaledi

- CEO of Government Printing Works

The recommended candidate was supported, as the candidate was a female who had experience and adequate qualifications

10. Closure

Handwritten signature and initials.

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

DEPLOYMENT COMMITTEE

17 May 2021, 08H00

1. Welcome

2. Apologies

3. Department of Communications & Digital Technology – Ndabeni-Abrahams

- Broadband Infraco Board

The Deployment Committee supported the presentation, the only point made was that HR skills were missing from the recommendations. A higher demographic spread was encouraged moving forward.

4. Parliamentary Portfolio of Justice & Correctional Services – Bulelani

Magwanishe

- Human Rights Commission, Deputy Chair & Fulltime Commissioner

The Committee supported the recommendations presented. The recommendation of female candidates was welcomed as it brought youth into the commission and was addressing the gender imbalance.

5. Department of Water & Sanitation – Minister Sisulu

- Magalies Water Board
- Sedibeng Water Board

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA

Tel: 27.11.376.1000 Website: www.anc.org.za

- Umgeni Water Board

The deployment committee raised concerns over the number of recommended candidates who were over the age of 60, the lack of youth representation with the exception of the Umgeni Water Board and the geographic spread of the candidates.

The Deployment Committee also suggested a review of the criteria required for appointment, the process excludes youth participation.

6. Closure

M
LTS