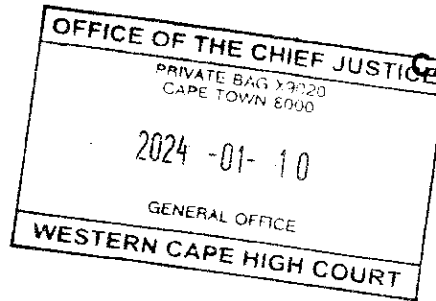


IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

COPY



CASE NO: 662/24

In the matter between:

ELIZABETH DIPUO PETERS

Applicant

and

THE SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

**THE CO-CHAIRPERSONS OF THE NATIONAL
COUNCIL OF PROVINCES**

Second Respondent

**ACTING REGISTRAR OF MEMBERS INTERESTS
ADV A GORDON N.O.**

Third Respondent

**THE CHAIRPERSON OF THE JOINT COMMITTEE
ON ETHICS AND MEMBERS INTERESTS**

Fourth Respondent

**THE PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA**

Fifth Respondent

#UNITEBEHIND NPC

Sixth Respondent

ABDURRAZACK "ZACKIE" ACHMAT

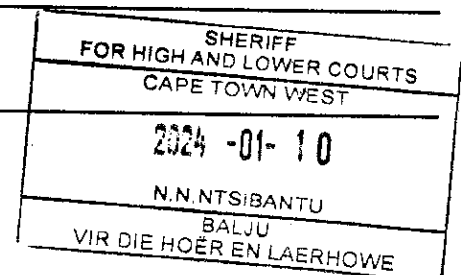
Seventh Respondent

ZUKISWA "VUKA" FOKAZI

Eighth Respondent

NOTICE OF MOTION

PART A



PLEASE TAKE NOTICE THAT the application will be made to the above Honourable Court on **26 JANUARY 2024** at 10:00am or so soon thereafter as the matter may be heard for an order along the terms set out hereunder:

1 The Applicant's non-compliance with the Rules of the above Honourable Court in relation to notice and service of Part A of the application be and is hereby condoned in accordance with Rule 6(12).

2 Pending the finalisation of **PART B** of this application, the first respondent is interdicted and restrained from implementing the sanction imposed on the applicant in terms of the resolution of the House adopted on 28 November 2023 in terms of which the applicant is suspended from her seat in all parliamentary debates and sittings and from committee meetings and committee related functions for one term of the parliamentary programme which commences on 30 January 2024.

3 The first respondent and any other respondent who might oppose this application is ordered, jointly and severally, to pay the applicant's costs.

4 The applicant is afforded further and/or alternative relief.

TAKE NOTICE FURTHER THAT the affidavit of **ELIZABETH DIPUO PETERS**, together annexures thereto will be used in support of this application.

TAKE NOTICE FURTHER THAT the applicant has appointed the address of her attorneys, which appears at the foot of this notice, as being the address at which she will accept service of all process in these proceedings.

TAKE NOTICE FURTHER that if any of the respondents intend to oppose the relief sought in Part A of the notice of motion they are required to:

(a) By no later than close of business on **10 JANUARY 2024** notify the

applicant's attorneys in writing of their intention to do so and appoint in such notification an address referred to in terms of Rule 6(5)(b) at which they accept notice and service of all documents in these proceedings; and

(b) By no later than close of business on **16 JANUARY 2024**, deliver an

answering affidavit, if any, setting out the grounds upon which such Respondent opposes the application and to answer the allegations contained in the applicant's founding affidavit attached to the notice of motion.

TAKE NOTICE FURTHER that to the extent necessary, the applicant shall deliver her replying affidavit by 5 pm on **18 JANUARY 2024**.

KINDLY set Part A of the matter down for hearing accordingly

PART B

TAKE NOTICE THAT the applicant will make application to the above Honourable Court on a date and at a time to be arranged with the Registrar, for an order in the following terms:

1 The decision of the National Assembly of 28 November 2023 to adopt the report of and accept the recommendations and sanction of the Joint Committee on Ethics and Members' Interests that the applicant be suspended from her seat in all parliamentary debates and sittings and from committee meeting and committee related functions and operations for one term of the Parliamentary

programme from the first term of the 2024 parliamentary session is reviewed and set aside ("the impugned decision")

2 To the extent necessary and required, the following decisions by the Joint Committee on Ethics and Members' Interests (the Committee) which culminated in the impugned decision are reviewed and set aside: The Decision

2.1 to consider the complaint submitted by #UnitedBehind.

2.2 to not conduct a further investigation into the complaint in terms of

clause 10.4.3 of the Code of Ethical Conduct and Disclosure of Members Interests for Assembly and Permanent Council Members (The Code).

2.3 of the Committee that the applicant had breached clauses 10.1.1.3 read with 4.1.3 and 4.1.4 of the Code.

2.4 of the Committee that the applicant had breached clause 10.1.1.3 read with 4.1.3, 4.1.4 and 4.1.5 of the Code

2.5 of the Committee that the applicant had breached clause 10.1.1.3 read with 4.1.4 of the Code.

2.6 The report, recommendations and sanction of the Committee that the applicant be suspended from her seat in all parliamentary debates and sittings and from committee meeting and committee related functions and operations for one term of the Parliamentary programme from the first term of the 2024 parliamentary session.

- 3 The first respondent is ordered to pay the applicant's costs or, if the other respondents oppose the application, the respondents so opposing are ordered jointly and severally, one paying the others to be absolved, to pay the applicant's costs.
- 4 Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the first respondent is called upon:

- (a) to show cause why the above-mentioned decision(s) should not be reviewed and set aside;

- (b) to dispatch within the time referred to in Rule 53(1)(b) or such shorter period as may be determined by the Court, to the Registrar of the above-mentioned Court: the record of all documents and all electronic records that relate to the making of the decision(s), together with such reasons as they are by law required or may require to give or make, and to notify the applicant's attorney that this has been done.

- (c) the first respondent is called upon to show cause why the decision(s) of the National Assembly under review should not be reviewed, set aside and declared invalid.

TAKE NOTICE FURTHER THAT:

(a) The Applicant may within ten (10) days after the Registrar of the above Court has made the record of the proceedings which resulted in the above-mentioned decisions available to the applicant, or such shorter period as may be determined by the Court, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of this notice of motion and supplement the supporting affidavit;

(b) Should any of respondents desire to oppose the grant of the relief sought herein such it shall:

(i) within **fifteen** days after receipt by them of the notice of motion or any amendment thereof, or within such shorter period as may be determined by the Court, deliver notice to the applicant that it intends to so oppose and shall in such notice appoint an address within eight kilometres of the office of the Registrar at which it will accept notice and service of processes in these proceedings;

(ii) within **thirty** days after the expiry of the period for delivery of a notice and accompany affidavits as contemplated in paragraph (a) hereof, or with within such shorter period as may be determined by the Court, deliver any affidavits he may desire in answer to the allegations made by the applicant.

TAKE NOTICE FURTHER THAT the affidavit of **ELIZABETH DIPUO PETERS,** together annexures thereto will be used in support of this application.

TAKE NOTICE FURTHER THAT the applicant has appointed the address of her attorneys, which appears at the foot of this notice, as being the address at which she will accept service of all process in these proceedings.

DATED at JOHANNESBURG on 9 JANUARY 2024

~~SELPE/ATTORNEYS~~

~~Applicant's Attorneys~~

~~61 Langemann Drive~~

~~Kensington South~~

~~2094~~

~~Tel: 087 700 4892~~

~~Cell: 083 308 7639~~

~~Cell: 082 835 6443~~

~~Email: dexter@selpelekeattorneys.co.za~~

~~info@selpelekeattorneys.co.za~~

~~C/O ABRAHAMS AND GROSS ATTORNEYS~~

~~4th Floor The Towers South~~

~~2 Heerengracht Street~~

~~Foreshore~~

~~Cape Town~~

~~8001~~

TO :

THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

AND TO:

THE SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

Office of the Speaker of the National Assembly

Parliament of the Republic of South Africa

Parliament Street

Cape Town, 8000

Email:

xgeorge@parliament.gov.za;

zadhikrie@parliament.gov.za;

louw@parliament.gov.za; mxaso@parliament.gov.za

AND TO:

THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES

Second Respondent

The Chairperson of the National Council of Provinces
Parliament of the Republic of South Africa
Parliament Street
Cape Town, 8000

Email: chairpersonsoffice@parliament.gov.za;

slucas@parliament.gov.za;
wmgwenya@parliament.gov.za;

smohai@parliament.gov.za

AND TO:

ACTING REGISTRAR OF MEMBERS INTERESTS

ADV A GORDON N.O.

Third Respondent

The Acting Registrar of Members Interests
Parliament of the Republic of South Africa
Parliament Street
Cape Town, 8000

Email: csocishe@parliament.gov.za; agordon@parliament.gov.za;

AND TO:

THE CO-CHAIRPERSONS OF THE JOINT COMMITTEE

ON ETHICS AND MEMBERS INTERESTS

Fourth Respondent

The Chairperson of the Joint Committee on Ethics and Members Interests
Parliament of the Republic of South Africa
Parliament Street
Cape Town, 8000

Email: csocishe@parliament.gov.za;

lmoshodi@parliament.gov.za;

Qhude.nkosi@gmail.com

AND TO:

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Fifth Respondent

Office of the State Attorney, Pretoria
316 Thabo Sehume Street
Pretoria

Email: malebo@presidency.gov.za;

presidentrsa@presidency.gov.za;

Vincentm@presidency.gov.za

AND TO:

#UNITEBEHIND NPC

Sixth Respondent

1st Floor,
Methodist House,
46 Church Street,

Cape Town,
8000
Email: info@unitebehind.org.za

AND TO:
ABDURRAZACK "ZACKIE" ACHMAT
Seventh Respondent
1st Floor,
Methodist House,
46 Church Street,
Cape Town,
8000
Email: info@unitebehind.org.za

AND TO:
ZUKISWA "VUKA" FOKAZI
Eighth Respondent
1st Floor,
Methodist House,
46 Church Street,
Cape Town,
8000
Email: info@unitebehind.org.za

on B

FOUNDING AFFIDAVIT

Applicant	ELIZABETH DIPUO PETERS
and	
First Respondent	THE SPEAKER OF THE NATIONAL ASSEMBLY
Second Respondent	THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES
Third Respondent	ACTING REGISTRAR OF MEMBERS INTERESTS ADV A GORDON N.O.
Fourth Respondent	THE CHAIRPERSON OF THE JOINT COMMITTEE ON ETHICS AND MEMBERS INTERESTS
Fifth Respondent	THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
Sixth Respondent	#UNITEBEHIND NPC
Seventh Respondent	ABDURRAZACK "ZACKIE" ACHMAT
Eighth Respondent	ZUKISWA "VUKA" FOKAZI

In the matter between:

CASE NO:

COPY

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

CM JB

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Handwritten initials and a signature.

A copy of the complaint marked "DP1".

("the Committee").

On 12 September 2022 #UniteBehind NPC ("#UniteBehind") lodged a complaint against me with the Joint Committee on Ethics and Members Interest

A. INTRODUCTION

representatives and which advice I accept to be correct.

4 Where I make submissions of a legal nature, I do so on the advice of my legal

others, I confirm that I believe same to be true and correct.

within my personal knowledge, and I refer to information conveyed to me by

context indicates otherwise, and are true and correct. Where facts do not fall

3 The facts stated herein are within my personal knowledge, except where the

business as such at the DTIC, 77 Meintjies Street, Sunnyside, Pretoria.

2 I am also the Deputy Minister of Small Business Development and conduct

2019.

its business at Parliament Street, Cape Town. I was sworn in as such on 22 May

1 I am a Member of Parliament ("MP") in the National Assembly which conducts

do state under oath that:

ELIZABETH DIPUO PETERS

I, the undersigned,

6 On 15 September 2022, the Committee furnished a copy of the complaint to me and requested that I respond to the allegations therein.

7 The complaint was made against me in my capacity as the Minister of Transport with oversight over the Passenger Rail Service Agency of South Africa ("PRASA"). It is said that:

7.1 I have breached a series of laws, the Constitution as well as Parliament's Code of Conduct;

7.2 I was guilty of mismanagement, maladministration and the collapse of PRASA;

7.3 I had failed to appoint the Group Chief Executive Officer ("GCEO") of PRASA;

7.4 I was responsible for wasteful management;

7.5 I dismissed the Board of PRASA under the leadership of Mr Popo Molefe and had failed to provide reasons for the dismissal;

7.6 I had attempted to stop investigations into corruption at PRASA;

7.7 I attempted, and did, use PRASA's transport for ANC events in 2014 and 2015 without ensuring that the African National Congress paid for such use; and

7.8 I had attempted to influence procurement proceedings by pressuring the PRASA CEO and the Board of Control.

8 I informed the Committee that the complaint was a regurgitation of the recommendations and findings of the State Capture Report ("the Report") and that I was taking legal advice on the possible remedies that were open to me as I intended taking the Report on judicial review to the extent that it related to me. Further that I was awaiting the President of the Republic of South Africa to put in place an implementation plan on how the state capture matters were to be dealt with by Parliament and that I would deal with the complaint in a holistic manner and not in a piecemeal fashion.

9 I requested the Committee to hold any further processes in abeyance until the President's implementation plan and that I elected not to engage further with the Report at that stage. This response is captured in the Joint Committee Report annexed as "DP4" below.

10 On 18 April 2023 the Committee informed me that at its meeting of 17 April 2023 it finalised its deliberations on the complaints. The complaints the Committee dealt with are summarised as follows:

10.1 That I failed to appoint a Group Chief Executive Officer for PRASA which resulted in R1,767,000,00 of fruitless and wasteful expenditure for PRASA;

10.2 I irrationally dismissed the PRASA Board under chairperson Molefe; and

10.3 I misused the assets of PRASA in the form of bus services to the ANC, which was not paid for by the ANC.

Committee on Transport. That this dismissal was ruled by the High PRASA Board on the same day when Mr Molefe wrote to the Portfolio have in Parliament as a representative institution when I dismissed the thereby engender the respect and confidence that society needs to Maintain public confidence and trust in the integrity of Parliament and

12.3

interest; and

and the public at large, by placing the public interest above my own Discharge my obligations in terms of the Constitution, to Parliament

12.2

Act on all occasions in accordance with the public trust placed in me;

12.1

because I failed to-

clause 10.1.1.3 of the Code read with clauses 4.1.3, 4.1.4 and 4.1.5 of the Code in respect of the second allegation, the Committee found that I had breached

12

recruitment process which resulted in a financial loss of R1,7 million.

Executive Officer after the PRASA Board had commissioned a my own interest and that when I failed to appoint a Group Chief Parliament and the public at large, by placing the public interest above I failed to discharge obligations, in terms of the Constitution, to

11.2

in me; and

I failed to act on all occasions in accordance with the public trust placed

11.1

alleged that-

10.1.1.3 of the Code read with clauses 4.1.3 and 4.1.4 of the Code in that it is The Committee found in respect of the first allegation, that I had breached clause

11

Court in *Molefe and others v Minister of Transport and others* (17748/17) [2017] ZAGPPHC to be irrational, unreasonable and unlawful.

13 In respect of the third allegation, the Committee found that I breached clause 10.1.1.3 of the Code read with clause 4.1.4 in that I failed to—

13.1 Discharge my obligations in terms of the Constitution, to Parliament and the public at large, by placing the public interest above my own interest when I requested buses from PRASA that was [sic] used for the ANC 2015 January 8th celebrations that was [sic] not paid for by the ANC.

14 The Committee invited me to make written representations on the penalty or sanction within seven days of the letter.

I attach as annexure "DP2", the findings of the Committee.
15 On 18 May 2023 I made submissions to the Committee.

I attach as annexure "DP3" a copy of my submissions on the question of sanction.
16 On 28 September 2023, I appeared before the Committee and made representations on the question of sanction. The representations I made are similar to the ones I made on affidavit and submitted on 18 May 2023. These representations are recorded in the Committee Report to Parliament.

The report is attached and marked "DP4".

17 On 24 October 2023, the Committee wrote to inform me that at its meeting of 20 October 2023 it finalised its deliberations on the complaint and made the following recommendations to the House (the National Assembly) in terms of clause 10.7.8.1 of the Code.

17.1 Breach 1 – that your client be suspended from her seat in all parliamentary debates and sittings, and from committee meetings and committee related functions and operations for one term of the parliamentary programme.

17.2 Breach 2 – that your client be suspended from her seat in all parliamentary debates and sittings, and from committee meetings and committee related functions and operations for one term of the parliamentary programme.

17.3 Breach 3 - that your client be suspended from her seat in all parliamentary debates and sittings, and from committee meetings and committee related functions and operations for one term of the parliamentary programme.

That the suspension in respect of all three breaches as set out above, run concurrently during a term of the parliamentary programme as determined by the House.

18 On or about 26 October 2023 I received a report of the Joint Committee on Ethics and Members' Interests on the complaint against myself in my former portfolio as Minister of Transport.

MB

implementation of the sanction for all the reasons I discuss in Part A and Part B

23 Thus, the matter is self-evidently urgent. I seek to interdict and restrain the

The parliamentary programme is attached hereto marked **DP5.1**

portions of the activities, it is not a lot.

adjudicated by 30 January 2024 or soon thereafter so that if I do miss some

2024 that I seek to interdict. It is therefore important that the application be

the sanction in relation to the above activities which commence on 30 January

committee meetings and committee related functions. It is the implementation of

22 I have been suspended from my seat in parliamentary debates, sittings and

January 2024.

January 2024. The National Assembly Committees and/or Oversight start on 30

period on 2-5 January 2024 and thereafter a Constituency Period from 2 – 26

21 I attach the Parliamentary Programme for 2024 which commences with the leave

The letter from the Acting Speaker is attached and marked "**DP5**".

Programme.

penalty of suspension is imposed for the first term of 2024 Parliamentary

20 On 6 December 2023 the Acting Speaker sent a letter to me to confirm that the

sanction.

the House and the House accepted the recommendations and confirmed the

19 On 28 November 2023, the recommendation of the Committee was tabled before

The report is attached and marked "**DP4**".

of this application. If this application proceeds in the ordinary course, it would mean that the application would probably be moot by the time it is heard. I would have served the sanction. There is no other way by which the implementation of the sanction can be stopped pending the resolution of the issues that arise in Part B of the application where I seek to review and set aside the decisions of the House and the Committee.

24 I am entitled to administrative action that is lawful, reasonable and procedurally fair under the Constitution read with the applicable provisions of the Promotion of Administrative Justice Act, 3 of 2000.

25 The process and outcome as well of the sanction (the decisions of the Committee endorsed by the House) are marred by irrationality, illegality, unconstitutionality, unreasonableness, procedural unfairness, errors, the consideration of irrelevant factors and the rejection of relevant considerations, and the decisions are arbitrary and capricious.

26 I expound more on this when I deal with the case. It would be unconscionable to serve a sanction in circumstances where the decisions are vitiated by all the flaws and/or defects referred above. It is of the utmost importance that the decisions be properly revisited by a court of law in Part B and/or to be remitted back to the Committee for investigation and consideration *de novo*.

27 In the interim, I should not have to serve the sanction irreversibly. I cannot reverse the sanction even if I am subsequently vindicated in Part B of the application.

28 Parliament on the other hand suffers no prejudice if I continue to participate in the Parliamentary Programme as an MP and continue to participate in the debates, sittings, committee meetings and committee related functions and operations of Parliament.

29 If it is ultimately found that I have not made out a case both in Part A and in Part B, I will serve the sanction. If it is found, on the other hand, that there was no justification for the decisions made by the Committee and endorsed by Parliament, I would have served that sanction which is irreversible, irreparable, immediately effective. There is no other way by which I can halt the implementation of the sanction except by interim relief.

30 I will not obtain a similar or substantially similar relief if the matter were to be heard in the ordinary course. This renders the matter urgent and should be disposed of on that basis.

31 I have satisfied the requirements for the grant of interim relief. I plead primarily my constitutional rights to lawful, reasonable and procedurally fair administrative action as well as the rights in PAJA. The suspension itself puts a stain on my name and if I were to serve the sanction, which is irreversible, this will have the effect of reinforcing the findings made by the Committee and endorsed by Parliament. It besmirches my good name. I should continue to serve as an MP, duly elected as such by the electorate.

32 The sanction puts a "brake" on my political representative capacity and political prospects going forward. This is irreparable and cannot be vindicated by any

36 The second respondent is **THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES**, appointed in terms of section 64 of the Constitution. The chairperson presides over the National Council of Provinces. The Committee is a joint Committee consisting of amongst others, delegates of the NCOP who fall under the chairpersonship of the second respondent.

35 The National Assembly adopted the findings and recommendations of the Committee together with imposing the sanction. This adoption constitutes administrative action as envisaged in PAJA and thus reviewable under PAJA. Nevertheless, if it is found that the recommendations and decisions are not administrative action, they are nevertheless decisions subject to review under the constitutional principle of legality.

34 The first respondent is **THE SPEAKER OF THE NATIONAL ASSEMBLY**, elected in terms of section 52(1) of the Constitution. The speaker will be served at 120 Plein Street, Parliament Precinct, Cape Town and by email. The Speaker presides over the National Assembly.

33 I am the applicant in this matter. As stated above, I am an MP as well as the Deputy Minister responsible for Small Business Development.

B. THE PARTIES

other means but to challenge the process and decisions of the Committee as endorsed by Parliament.

Code.

39.3 Serve as an advisory and consultative body both generally and to members, concerning the implementation and interpretation of the

members.

39.2 Develop standards of ethical conduct for Assembly and Council

members set out in the schedule.

39.1 Implement the Code of Conduct for Assembly and permanent Council

Committee are to –

the Council component of the Committee as co-chairperson. The functions of the the members in the National Assembly component and one of the members in Council Members. Rule 123 provides that the Committee must appoint one of joint committee established under Rule 121 and consists of 14 members and 9 **COMMITTEE ON ETHICS AND MEMBERS INTERESTS**. This Committee is a

39 The fourth respondents (jointly) are **THE CO-CHAIRPERSONS OF THE JOINT**

of the Committee.

38 The Registrar performs the functions of office in accordance with the directions

the Council – called the Registrar in terms of clause 11 of the Code.

jointly, after consulting the leaders of parties represented in the Assembly and Parliament, appointed by the Speaker and the Chairperson of the Council, acting **GORDON N.O.** The Committee is be served by a senior official, on the staff of

37 The third respondent is the **REGISTRAR OF MEMBERS INTERESTS ADV A**

and (2). The President appoints Ministers and assigns their powers and functions that authority together with other members of the Cabinet under section 85(1) The Executive authority of the Republic is vested in the President who exercises

42

of the National Executive.. including those necessary to perform the functions as Head of State and Head the Constitution. He has powers entrusted to him by the Constitution, legislation is the Head of State and Head of the National Executive under section 83(a) of Attorney, Cape Town at Long Street, Cape Town and by email. The President to oppose this application. The President will be served for the care of the State AFRICA. No relief is sought against him save costs of litigation should he elect

41 The fifth respondent is the **PRESIDENT OF THE REPUBLIC OF SOUTH**

The relevant Rules of Parliament are attached and marked "DP6".

Parliament.

necessary, I shall avail the entire document dealing with the Joint Rules of an extract of the Committee and Rules I have referred to above. If it should prove operation and effectiveness of the Code. For the sake of convenience I attach The Committee is required to report to both Houses at least annually on the

40

adopted in both Houses.

assigned to the Committee in the Code and in terms of resolutions Perform the other functions and exercise the other powers reasonably

39.5

amendment.

Regularly review the Code and make recommendations for its

39.4

and may dismiss them under section 91(2). The Ministers and the Deputy Ministers are responsible for the powers and functions of the Executive assigned to them by the President.

43 I was appointed to the position of Minister of Transport by the erstwhile President Jacob Zuma. I was part of the Executive as envisaged in the Constitution. I was also an MP.

44 At the time the complaint was lodged by #UnitedBehind on 22 September 2022, I was a MP but had ceased being a member of the Executive.

45 The sixth Respondent is **#UNITEBEHIND NPC**, a non profit company whose full and further particulars are unknown to me, whose principal place of business is 1st Floor, Methodist House, 46 Church Street, Cape Town, 8000. #UniteBehind lodged the complaint against me with the Joint Committee on Ethics and Members Interest on 12 September 2022. I am citing #UniteBehind NPC for any interest it might have in the outcome of Part A and Part B of the application. #UniteBehind describes itself in the complaint as a juristic person acting in the public interest and that it is a not for profit company dedicated to the building of a just and equal society.

46 The seventh respondent is ABDURRAZACK "ZACKIE" ACHMAT the second complainant in the matter. His full and further particulars appear in the complaint. I cite him for any interest he may have in the outcome of this application. The seventh respondent is cited are of the sixth respondent at 1st Floor, Methodist House, 46 Church Street, Cape Town, 8000.

51 I was the Minister of Transport between 2013 and 2017. Whilst Minister of Transport and representative shareholder of PRASA, I dissolved the Board of

also an MP.

50 I was appointed to the position of Minister of Transport by the erstwhile President Jacob Zuma. I was part of the Executive as envisaged in the Constitution. I was

my political leadership and background as an annexe "DP7".

For convenience and to avoid prolixity I attach a copy of my resume setting out

1999 and 2017 I was again a member of the National Assembly.

2009 I was in the Northern Cape Provincial Legislature and Chief Whip. Between

49 I was a Member of the National Assembly from 1994 to 1997. Between 1997 and

C. SALIENT FACTS

sought against them, jointly and severally, one paying the others to be absolved.

matter. However, should they oppose the application then a costs order will be

respondents. They are cited for any interest they may have in the outcome of the

48 No substantive orders are sought against the fifth, sixth, seventh and eighth

Cape Town, 8000.

care of the sixth respondent at 1st Floor, Methodist House, 46 Church Street,

outcome of the application. Her full details appear in the complaint. She is cited

complainant in the matter. She is cited for any interest she may have in the

47 The eighth respondent is ZUKISWA "VUKA" FOKAZI who was the third

Control of PRASA for reasons which appear in my submissions on sanction referred to above.

52 On 30 March 2017, President Zuma reshuffled his Cabinet and I was removed as the Minister of Transport.

53 At the time the complaint was lodged by #UnitedBehind on 22 September 2022, I was a MP but had ceased being a member of the Executive. I did not have any ministerial or deputy ministerial position at the time.

54 Since then, I have been a Member of the ANC caucus in Parliament.

55 In 2023 I was appointed Deputy Minister of Small Business Development by the President. The Executive authority of the Republic is vested in the President who exercises that authority together with other members of the Cabinet under section 85(1) and (2). The President appoints Ministers and assigns their powers and functions and may dismiss them under section 91(2). The Ministers and the Deputy President are responsible for the powers and functions of the Executive assigned to them by the President.

56 As Deputy Minister, my responsibilities include the following:

56.1 In the Executive:

56.1.1 Implementation of the Integrated Cooperatives Development Strategy;

56.1.2 Redtape (SME) Reduction programme;

56.1.3 Support Programme for entrepreneurs with disability;

56.1.4 Corporate Banks Development Agency (CBDA)

56.1.5 Legislation, regulations and policies

56.1.6 Program to address non-payment of SMMEs

56.2 In Parliament:

56.2.1 Participate in Study Groups;

56.2.2 Respond to oral Parliamentary Questions emanating from

both the National Assembly and National Council of Provinces

56.2.3 Participate in Budget Vote Debates;

56.2.4 Attend the Portfolio and Select Committee Meetings and other

Parliamentary structures on ad-hoc basis

56.2.5 Attend Party Caucus meetings

I attach hereto my allocation of responsibilities marked as "DP8". I ask that the remainder of the document be incorporated herein by reference.

The complaint

57 On or about 12 September 2022, #UniteBehind NPC laid a complaint against

me. The complaint states that it is brought to Parliament and specifically the Joint

Committee based on a number of reports (para 5). I point out that contrary to

clause 10.2.2.4 of the Code of Ethical Conduct and Disclosure of Members'

Interest for Assembly and Permanent Council Members ("the Code") the

complaint was given to me without these annexures/ reports. The complainants #UnitedBehind and Zackie did not actually attach the reports they rely on for the complaint – they merely refer to them and an attempt to summarise those reports is made in annexure "ZA1" of the complaint.

58 Neither the Committee nor the House has these documents when they considered the complaint, and, in the case of the House, when it deliberated on the recommendations made by the Committee, thus compounding the reviewable irregularities. Nor was I furnished with the attachments referred to in the complaint.

59 As a matter of fact, the Committee simply relied on what the complainant stated in the complaint.

60 The complaint was said to be based on the evidence compiled at the State Capture Commission (Judicial Commission of Inquiry into Allegations of State Capture) ("the Commission"). I am accused of PRASA's state capture , its mismanagement, maladministration and collapse.

61 In terms of clause 10.2.2.3 of the Code, the Committee may only consider complaints based on an alleged breach of the Code as contemplated in clause 10.1 of the Code. What constitutes a breach under the Code are the following:

"A Member breaches the Code if the Member-

10.1.1 contravenes or fails to comply with the requirements of the provisions for disclosing interest;

10.1.2 when disclosing registrable interest willfully or is grossly negligently, provides the Registrar incorrect or misleading details; or

10.1.1.3 contravenes clauses 4.1, 5.1, 5.2, 6.1, 6.2, 6.3, 7.1, 8.1 and 9.19.4 and 9.19.5 of this Code; and
10.1.4 a former Member breaches this code if the former Member contravenes clause 8.2 of the Code."

The Code is attached and marked annexure "DP9".

62 Under clause 10.2.2.4, the Registrar must within seven days of receiving a complainant inform the Member concerned of the complaint including all relevant information relating to the alleged breach available to the Registrar or Committee, and inform Members of the consequences of the failure to respond. The Members must be informed personally of the complaint and should sign for the receipt of the complaint.

63 The complaint was served on me by the Acting Registrar on 15 September 2022. The complaint was furnished to me without the annexures referred to in paragraph 5 of the complaint.

64 I informed the Committee that the complaint was a regurgitation of the recommendations and findings of the State Capture Report and that I was taking legal advice on the possible remedies that were open to me as I intended taking the Report on judicial review to the extent that it related to me and that I was awaiting the President of the Republic of South Africa to put in place an implementation plan on how the state capture matters were to be dealt with by Parliament and that I would deal with the complaint in a holistic manner and not in a piecemeal fashion.

65 I requested the Committee to hold the further processes in abeyance until the President's implementation plan and that I elected not to engage further with the Report at that stage. I informed the Committee that I remain available and willing to engage with the office of the Registrar of the Committee.

The Committee's report

66 The Committee deliberated on the matter on 17 April 2023. I only highlight the salient features of the deliberations.

66.1 The Committee seems to have confined itself to what is contained in the Report of the Commission.

66.2 The Committee referred to the evidence of Mr Molefe before the State Capture Commission. The Committee does not reference the conclusions of the Commission to the aspect of the delay in the appointment of the GEO.

66.3 In relation to the so-called dismissal of the Molefe Board, the Committee referred to what is contained in the State Capture Report.

66.3.1 The Committee states that the State Capture Report mentions that I attempted to stop the investigations but the Board refused to stop investigations that it had commissioned Werksmans Attorneys to conduct.

66.3.2 The State Capture Report indicates that after the letter was sent to Parliament, Mr Molefe made a similar request to the

Portfolio Committee on Transport. Instead of getting

protection, it was announced in the Portfolio Committee meeting on the same day that the Minister had dismissed the Board. The High Court set aside that decision.

66.3.3 When it became public knowledge that Mr Mashaba said that after his firm was awarded the Swifambo contract, he paid monies to persons who would pay it to the ANC, one would have expected the Minister to whom PRASA was accountable, to insist that the allegation be expeditiously pursued. The Minister did not do this and stood by.

66.4 Insofar as the misuse of PRASA assets is concerned, again relying on what is contained in the State Capture Report and re-hashing it, the Committee says that I failed to follow up with Mr Montana on the issue of payment considering that I said that I expected an invoice. That I had a duty to ensure that payment was made for the buses.

67 It appears again that the Committee deliberated on what is contained in the State Capture Report.

67.1 As to the failure to appoint a GCEO, the Committee stated that I was on record saying that the reason I did not appoint a GCEO was because I thought that PRASA was not ready for a new GCEO and later my testimony changed as to the reason for not appointing a GCEO and what the Commission found.

67.2 Further I, in essence, conceded that I was wrong in not appointing a GCEO.

67.3 As regards the dissolution of the Board of Control and my testimony before the Commission, this indicates that I was irrational in dissolving the Board.

67.4 Insofar as the procurement of buses was concerned, the Commission noted the findings of the Commission that I was under a duty to secure payment for the buses that were provided in 2015 by PRASA for the ANC celebrations.

The findings of the Commission

68 The Commission made the following findings:

68.1 In respect of the first allegation, the Commission found that I had breached clause 10.1.1.3 of the Code read with clauses 4.1.3 and 4.1.4 of the Code in that I failed to act on all occasions in accordance with the public trust placed in me and discharged my obligations in terms of the Constitution to Parliament and the public at large by placing the public interest above my own interest when I failed to appoint a CEO after the PRASA board had commissioned a recruitment process which resulted in a financial loss of R1,767,000.

68.2 In respect of the second allegation, the Commission found that I had breached clause 10.1.1.3 of the Code, read with clauses 4.1.3, 4.1.4 and 4.1.5 of the Code in that I had failed –

68.2.1 to act on all occasions in accordance with the public trust

placed in me;

68.2.2 to discharge my obligations in terms of the Constitution, to Parliament and the public at large by placing the public interest above my own interests;

68.2.3 to maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative

when I dismissed the PRASA board on the same day when Mr Molefe wrote to the Portfolio Committee of Transport. This dismissal was ruled on in *Molefe and others v Minister of Transport and others* (17748/17) [2017] ZAGPPHC to be irrational, unreasonable and unlawful.

68.3

In respect of the third allegation, the Committee found that I had breached clause 10.1.1.3 of the Code read with clause 4.1.4 of the Code in that I had failed to discharge my obligations in terms of the Constitution, to Parliament and the public at large, by placing the public interest above my own interest when I requested buses from PRASA that were used for the ANC 2015 January celebrations which were not paid for by the ANC and the committee intends dealing with the matter of penalty or sanction at its next meeting and also affording an opportunity to provide the committee with written representations on the penalty or sanction within seven working days of receipt of the letter and that the Code prescribes that the penalty must be determined in terms of clause 10.7.2 and the breach is in terms of 10.1.1.3 of the

Code.

69 I was invited to provide written representations on the sanction to be recommended to the House. I was also invited to address the Committee in person, which I did on 28 September 2023 as stated above.

The submissions on sanction

70 I highlight in this section the key features of my submissions on sanction.

71 I pointed out that there was no finding, let alone any suggestion that I stood to benefit personally from what has been found to be shortcomings on my part and in my official capacity before the Commission.

71.1 I have not been found guilty of corruption or otherwise aiding such acts.

71.2 I did not wish to be sacrificed at the altar of political expediency.

71.3 I made submissions as to my personal circumstances and my contribution to government service since 1994. I served in various legislative bodies since 1994.

71.4 I executed my tasks and duties to the best of my abilities and without breaking any laws.

71.5 I have served in various capacities as a member of the National Assembly, Chief Whip in the Northern Cape Legislature, the MEC for Health in the Northern Cape, Minister of Energy, Minister of Transport and now as Deputy Minister of Small Business Development.

71.6 In relation to the judgment in the dissolution of the PRASA Board that I was recalled from office as the Minister of Transport, just as I was

intending to appeal the adverse finding and I was of the view that had I proceeded with the appeal, I might have been vindicated.

71.7 Outside of that judgment, my track record has been unassailable and beyond reproach.

71.8 Even where I was found wanting, I was never the sole decision-maker in a vacuum, and I relied on the reports and *bona fides* of those with whom I was working.

71.9 I had a cordial and professional relationship with the Boards of the 12 entities for which I was responsible, including PRASA. I was never motivated by any ulterior motive in taking decisions that I took. I acted with *bona fides* and take full responsibility for those decisions.

72 I addressed PRASA.

72.1 I explained why I took the decision to dissolve the Board of PRASA, mainly because of the public spats between the chairperson and the CEO.

72.2 With respect to the failure to appoint a CEO, I exercised my discretion based on the material conditions that were prevalent at the time and took the view that PRASA needed to be stabilised first to enable conducive conditions prevail by the time a CEO is appointed.

72.3 I believed that I had exercised my powers correctly and without any malice or otherwise prompted by any ulterior motives.

72.4 I stood to gain nothing for my personal benefit.

72.5 To the extent that I was found wanting on delaying the appointment of a permanent CEO, this was animated by a lot of weighty issues which resulted in internal strife. I generally did not want a situation where someone is appointed and instead of focussing on the strategic objectives of PRASA, and bringing about much needed stability, they ended up being sucked into the factional and egotistical battles.

72.6 The delay was commensurate with what I sought to stave off.

72.7 If it was found that I was remiss in delaying, then such a delay was neither negligent nor malicious at all.

73 Insofar as the question of the buses was concerned:

73.1 I did not have any knowledge of machinations regarding the procurement of any mode of transport, especially the PRASA trains, used by the ANC at its rally.

73.2 I indicated to an ANC organiser that I would ask the CEO of PRASA to provide information that the organiser sought.

73.3 I did not discuss the use of any buses and/or otherwise assist with the procurement thereof or with anyone who was my subordinate.

73.4 I discharged my duties with adequate care, diligence and circumspection.

73.5 If I am found to have erred, I am comforted by the fact that there was no suggestion that I acted maliciously or was motivated by personal or any form of undue benefit.

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parliamentary debates and sittings, and from committee meetings and

75.1 Breach 1 – that your client be suspended from her seat in all

10.7.8.1 of the Code.

would make the following recommendations to the House in terms of clause

October 2023 it finalised its deliberations on the complaint and that the committee

75 On 24 October 2023, the committee informed me that at its meeting of 20

Sanction

74 I ask that the balance of the submissions be incorporated by reference.

73.12 I took accountability.

73.11 I did not want to leave a negative legacy.

73.10 I was neither negligent nor malicious in my dealings with others.

73.9 I did not run away from accountability and criticism.

applauded by the Chairperson of the Commission.

some of my ways, with hindsight, I did so without hesitation, something

73.8 Where I was constrained to concede and acknowledge the error of

being held accountable.

73.7 I did so when others avoided appearing before the Commission and

evidence leaders as well as the Chairperson of the Commission.

testified under oath and subjected myself to further questioning by the

73.6 That I had appeared on a few occasions before the Commission,

40 B

I impugn a series of decisions taken by the Committee in terms of the Code, kits recommendations to the House and the resolution of the House to adopt the Recommendations and the proposed sanction. But ultimately what I shall seek in the relief in Part B is to set aside the House's decision to adopt the recommendation and sanction of the Committee. For convenience I identify the flawed decisions of both the Committee and the House. Depending on the context, I refer to a "decision" or "decisions" all of which, singly, alternatively, collectively constitute " administrative action" as defined in the Promotion of

76

D. CAUSES OF ACTION

determined by the House.
run concurrently during a term of the parliamentary programme as

75.4

That the suspension in respect of all three breaches as set out above,

parliamentary programme.
committee related functions and operations for one term of the

75.3

Breach 3 - that your client be suspended from her seat in all

parliamentary programme.
committee related functions and operations for one term of the

75.2

Breach 2 - that your client be suspended from her seat in all

parliamentary programme.
committee related functions and operations for one term of the

Administrative Justice Act 3 of 2000. Alternatively, the decisions are reviewable under the Constitutional principle of legality.

76.1 The decision to consider the complaint submitted by #UnitedBehind.

76.2 The decision to not conduct a further investigation into the complaint in terms of clause 10.4.3 of the Code of Ethical Conduct and Disclosure of Members Interests for Assembly and Permanent Council Members (The Code).

76.3 The decisions of the Committee in finding that I had breached clauses 10.1.1.3 read with 4.1.3 and 4.1.4 of the Code (the first breach).

76.4 The finding that I had breached clause 10.1.1.3 read with 4.1.3, 4.1.4 and 4.1.5 (the second breach).

76.5 The finding that I had breached clause 10.1.1.3 read with 4.1.4 (the third breach).

76.6 The sanction recommended by the Committee and adopted by the House that I be suspended from my seat in all parliamentary debates

and sitting and from Committee meetings and Committee-related functions and operations for one term of the parliamentary programme.

76.7 The decision of the House to endorse and adopt the recommendations and imposition of the sanction recommended to it by the Committee.

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democracy, accountability, transparency and public involvement.

concerning its business with due regard to representative and participatory arrangements, proceedings and procedures and make rules and orders
81 Under section 57, the National Assembly may determine and control its internal

committees.

80 Section 45 of the Constitution provides for joint rules and orders and joint

action.

issues, by passing legislation and by scrutinising and overseeing executive
choosing the President, by providing a national forum for public consideration of
and to ensure government by the people under the Constitution. It does this by
79 Under section 42(3), the National Assembly is elected to represent the people

as set out in section 44 thereof.

legislative authority of the national sphere of government is vested in Parliament
Constitution. Section 43 of the Constitution provides that in the Republic the
National Assembly which is part of Parliament as provided for in Chapter 4 of the
78 If I am appointed as a Member of the Executive, I first become an MP in the

The framework

Committee ought to have declined to consider the complaint.

powers and functions of the Committee and why is it that I shall contend that the
77 It is important for me to set out the context in which the Code operates, the

On the failure to appoint a GCEO

82 I have already stated that at all material times under consideration I was the Minister of Transport and served in the National Executive under the President who is the Head of State and Head of the National Executive. When I discharged my functions as Minister of Transport I was doing so as a Member of the National Executive, not as an MP, even though I was an MP. As an MP I do not have the powers that I exercised as Minister of Transport. It is this distinction that the Committee failed to appreciate and which led to the decisions taken by it and endorsed by the House.

83 The Code of Ethical Conduct and Disclosure of Members' Interest for Assembly and Permanent Council Members is intended to provide a framework of reference from MPs when discharging their duties and responsibilities.

84 The Code outlines the minimum ethical standards of behaviour that South Africans expect of public representatives including upholding proprietary, integrity and ethical values in their conduct.

85 The purpose of the Code is to create public trust and confidence in public representatives and to protect the integrity of Parliament.

86 The principles underpinning the Code are as follows:

"Principles

2.4. A Member must adhere to the following:

2.4.1 Selflessness: take decisions solely in terms of public interest and without regard to personal financial or other material benefits for themselves, their immediate family, their business partners, or their friends;

2.4.2 Integrity: steadfastly avoid placing themselves under any financial or other obligation to any outside individual or organization where this creates a conflict or potential conflict of interest with his or her role as a Member;

2.4.3 Objectivity: in carrying out public business, including making public appointments, do so only on the basis of merit and in accordance with Constitutional imperatives;

2.4.4 Openness: Members should be as open as possible about all decisions and actions, bearing in mind the constitutional obligation for openness and transparency;

2.4.5 Honesty: Members must declare private interests relating to public duties and resolve any conflict arising in a way that protects public interest; and

2.4.6 Leadership: promote and support ethical conduct by leadership and example."

87 The Code applies primarily to all MPs, including those MPs who are members of the Executive, however members of the Executive are also subject to the Handbook for Members of the Executive and Presiding Officers.

88 The distinction in the jurisdiction of the Code and Handbook the Committee failed to appreciate is that Members of the Executive are only subject to the Handbook (and not the Code) when performing their executive functions (as I was relating to the conduct complained of) while MPs are subject to the Code only when they perform their parliamentary functions as MPs.

89 In short, when discharging their functions as Ministers, Ministers act as part of the Executive headed by the President. They are not discharging duties and responsibilities as MPs. The Code does not apply to executive functions.

90 The Code seeks to protect the integrity of Parliament as appears, amongst others, in the following clauses:

"4.1.4 Members must discharge their obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above their own interests."

"4.1.5 Maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution."

91 I submit that it is this fundamental distinction which completely eluded the Committee when it considered the complaint in respect of acts and/or conduct that are alleged to have been performed in my capacity as a Member of Cabinet. I did not discharge that conduct and/or acts as an MP.

92 The Committee noted in its report that I had given testimony before the Commission which is reflected in the State Capture Report. The Committee also noted the reasons why I did not appoint a CEO to PRASA, namely that I thought that PRASA was not ready for a new CEO, and later "that testimony changed". Furthermore that I conceded that my reason for not appointing a CEO was not sound and could have been wrong at the time:

"In essence the Member conceded that she was wrong in not appointing a Group CEO. Her failure to appoint a Group CEO amounted in a loss of R1,767,000.00 for PRASA".

The extract is attached and marked annexure "DP10".

93 It will be recalled that the Committee found that I had breached clauses 4.1.3 and 4.1.4 of the Code by failing to appoint a CEO after the PRASA had commissioned a recruitment process which resulted in a financial loss. The

Committee said that I had failed to act on all occasions in accordance with the public trust placed in me and had failed to discharge my obligations in terms of the Constitution, to Parliament and the public at large, by placing the public interest above my own interest.

94 The Committee should have found that the charge that I failed to appoint the CEO of PRASA was in my capacity as Minister of Transport and a member of the Executive and not as an MP.

95 The Commission dealt with the summary of my evidence before it and my role from page 798 paragraph 2081 of the State Capture Report.

The extract is attached and marked annexure "DP11".

96 Paradoxically, the Commission finds that the process that was previously followed, where the Board recommended to me to appoint a CEO was unlawful (para 2125) because no provision of the Legal Succession Act sets a limit on the Board's express powers as set out in section 24(1) to manage PRASA's affairs, and it would be unlawful for the Board and the Minister to decide, whether through a Board charter or any other instrument, that a power that a statute gives to the Board is to be exercised by the Minister, and, furthermore, there does not appear any legal basis for taking such a decision, especially given that in terms of section 49(2) of the PFMA, PRASA's board is its accounting authority.

97 Based on the finding that I, in my capacity as Minister of Transport, did not have the power to appoint the CEO, it was irrational for the Commission and, by extension, the Committee, to find that I am guilty of breaching clause 4.1.4 and

4.1.3 of the Code in failing to appoint a GCEO. I simply did not have the powers to appoint. I could thus not have delayed the appointment.

98 The Committee disregarded this critical factor that I had no powers to appoint the GCEO and accordingly could not have delayed and/or failed to appoint the GCEO.

99 The conclusions reached by the Committee and adopted by the House fail to be reviewed and set aside on the basis that they:

99.1 were materially influenced by an error of law inasmuch as the Committee considered a complaint based on acts and/or conduct that I discharged, not in my capacity as MP, but as Minister of Transport and in my executive capacity;

99.2 were taken because irrelevant considerations were taken into account and/or relevant considerations were not considered. The factual scenario set out above was not considered by the Committee, alternatively it was completely ignored if it was considered;

99.3 were irrational in light of the conclusion by the Commission that I did not have powers as a Minister to appoint a GCEO but nevertheless found that I had delayed the appointment;

99.4 were so unreasonable that no reasonable person could have so exercised the power or performed the function and it is otherwise unconstitutional or unlawful or suffers from illegality as contemplated in the Constitution.

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100 The decision falls to be set aside under the following provisions of PAJA - sections 6(2)(d), (e)(iii), (f)(ii), (h) and (i).

101 The findings nevertheless fall to be reviewed and set aside under the constitutional principle of legality.

On the dissolution of the Board

102 The Committee found that I breached clause 10.1.1.3, clauses 4.1.3, 4.1.4 and 4.1.5 of the Code because I dismissed the PRASA Board on the same day Mr Molefe wrote to the Portfolio Committee on Transport. Furthermore, that the High Court found this to be irrational, unreasonable and unlawful.

103 The relevant provisions of the Code are as follows:

"4.1.3 Members must act on all occasions in accordance with the public trust placed in them.

4.1.4 Discharge their obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above their own interests.

4.1.5 Maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution."

"10.1.1.3 What constitutes a breach, a member breaches the Code if the member breaches clause 4.1, 5.1, 5.2, 6.1, 6.2, 6.3, 7.1, 8.1 and 9.19.4 and 9.19.5."

104 I dissolved the PRASA Board under the leadership of Mr Molefe pursuant to the powers I reposed as Minister of Transport under section 24(1) of the Legal Succession Act which empowers me to appoint and dismiss members of the Board of Control of PRASA. When I dismissed the Board I was exercising my

powers as Minister of Transport and not as MP. I do not have those powers in my capacity as MP. As Member of the Executive I account to the President who is, as stated above, head of the National Executive under section 83(a) of the Constitution.

105 The Code applies as an instrument to discipline MPs in their capacity as Members of Parliament. This philosophy is stated in the sections that I have already covered above, including the fact that the Code is intended to provide a framework of reference for MPs when discharging their duties and responsibilities. It would be unconscionable and contrary to the Code and the doctrine of separation of powers for Parliament to discipline MPs who supposedly infract in their capacity as members of the Executive. It would collapse the distinction between the Executive and Parliament. This is to be distinguished from Parliament holding the executive to account.

106 The President as head of the Executive reposes the powers to "discipline" members of the Executive who serve at his pleasure.

107 I have already stated that President Zuma removed me as Minister of Transport soon after the judgment in which the dissolution of the PRASA Board was reversed. In any event, when President Zuma reshuffled his Cabinet and I was removed as the Minister of Transport, I could therefore not appeal the judgment of Mabuse J.

108 The Committee, thus, does not have the legal power to exercise disciplinary powers over an MP whose supposed infraction consists of acts and/or omissions performed in their capacity as a member of the Executive.

109 Even assuming (and I do not concede this) that the Committee has the power to, as it were, to discipline members of the Executive who are also MPs, by disciplining me and imposing a sanction, I was sanctioned twice for the same acts/omissions.

110 The President in his capacity as head of the Executive removed me as Minister of Transport and the Committee and the House now have imposed another sanction for the same offence.

111 This would offend basic principles including the right not to be punished twice for the same offence. My removal as Minister of Transport following the court case was good enough "sanction". To again impose a sanction of suspending my parliamentary duties constitutes double jeopardy.

112 Thus, my decision to dissolve the PRASA Board and Mr Molefe, even if it was set aside by the High Court, could not constitute a breach of clauses 4.1.3, 4.1.4 and 4.1.5 of the Code because the decision is not a decision taken in my capacity as an MP. Furthermore and contrary to what the complaint stated and what the Committee seems to have concluded, Mabuse J did not find that my decision to dissolve the board was unreasonable and unlawful, but only that it was irrational, an entirely and legally distinct test and conclusion.

113 This once more points to the fact that the Committee failed to apply its mind when considering the complaint. On this aspect it would have found that the complaint bears no relation to the findings of Mabuse J and ought to have concluded that it was unfounded, alternatively, instituted a further investigation.

113.1 It is not a decision that goes to the relationship between myself as MP

and Parliament and the public at large.

113.2 It is not a failure to discharge my obligations in terms of the Constitution

to Parliament and to the public at large.

113.3 I did not by taking the decision place my own interests above those of

the public.

113.4 My decision could not have undermined public confidence and trust in

the integrity of Parliament because I was not acting as an MP although

I am and was an MP at the time, I took the decision in my capacity as

the Minister of Transport under the executive in the Republic and not

as an MP in Parliament, an entirely separate state arm.

114 The findings of the Committee that I had breached clause 10.1.1.3 read with

clauses 4.1.3, 4.1.4 and 4.1.5 of the Code because I had dismissed the PRASA

Board and the court found this to be irrational, unreasonable and unlawful, falls

to be reviewed and set aside for the reasons that follows:

114.1 The Committee was not authorised by law to investigate the complaint

because I was charged with conduct and/or omissions in my capacity

as then Minister of Transport and not in the discharge of my roles,

responsibilities and functions as MP. It falls to be reviewed and set

aside under section 6(2)(a)(i).

114.2 The action was materially influenced by an error of law section 6(2)(d)

and 6(2)(e)(i) and section 6(2)(e)(iii) and (iv).

cm

JB

114.3 The Code does not empower the Committee to investigate decisions and/or conduct made by members of the Executive even though they are MPs.

114.4 The Committee failed to have regard to the fact that President Zuma removed me from my position as Minister of Transport consequent upon the finding of the High Court (the decision falls to be reviewed for ignoring relevant considerations and taking into account irrelevant considerations under section 6(2)(e)(iii)).

114.5 Even assuming that the Committee had disciplinary powers over me in my capacity as Minister of Transport, I had already been punished by my removal from the portfolio. It was double jeopardy to impose a sanction in respect of the same conduct and/or omission for which I had been removed from my position as Minister of Transport.

114.6 The decision was irrational also for the facts discussed above. It falls to be set aside under section 6(2)(f)(ii) and (iii).

114.7 Further, the Committee ignored the fact that the High Court had reversed the decision. No appeal was prosecuted as against it.

114.8 In any event the High Court found only that my decision was irrational and not unlawful and unreasonable as the Committee concluded. The Committee's conclusion which is at odds with the High Court, although seemingly based on the High Court's decision, is irrational and without legal and factual foundation. The Committee's conclusion was

regurgitation of the complaint. The committee did not apply itself to the judgment of Mabuse J.

115 The decision of the Committee in the circumstances was unreasonable and no reasonable person could have so exercised the power or performed the function and it was otherwise unconstitutional or unlawful under section 6(2)(h) and (i).

116 In any event, the State Capture Commission made no finding that my decision to dissolve the Board was irrational. It is a finding made by the court.

The buses: January ANC celebrations

117 The findings of the Committee were founded upon the conclusions made by the State Capture Commission.

118 The Committee noted that the Commission found that the Minister was under a duty to secure payment for the buses that were provided in 2015 by PRASA for the ANC celebrations.

119 Paragraph 2041 sets out my counter to the allegations made by Mr Montana against me before the State Capture Commission.

119.1 I said that there had been no suggestion that the buses were to be made available free of charge. I was not aware of Mr Montana's refusal or being told that he was "defying the moment".

119.2 As regards my request to Montana in January 2015, I said that I had asked Mr Montana to provide a quotation and assistance with the use of the trains. I stated that I had not made the request to him in his

Handwritten initials: "JM" and "JB"

capacity as PRASA's GCEO or to make the trains available for free or without following the usual process "where such services are enlisted";

119.3 In paragraph 2043 the following is stated:

"On any basis, the evidence given by Mr Montana is highly worrisome. It suggests that people whom the ANC deployed to leadership positions in SOEs were expected to secure benefits for the ANC from service providers to which the SOEs are the tenders.

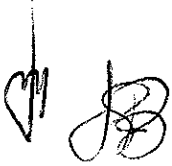
119.4 In paragraph 2044 the following is stated:

"The evidence of former Minister Peters is equally worrisome. Even on her own version, in early 2014, she had asked Mr Montana to assist the ANC by providing PRASA transport in 2015 and had succeeded in getting him to provide the ANC with PRASA transport in 2015. It is so that former Minister Peters said that she expected that the ANC would have to pay for this. Yet, what is missing from her response to Mr Montana's allegations is that she followed up on the issue of payment. Given that she was the Minister, there would have been a duty to do so. She does not seem to have asked for any quotation first one would expect anyone who was going to pay for such transport to request."

119.5 On the issue of the buses, the Commission makes no adverse findings in its conclusions and recommendations. Nor does the Commission mention that I am one of the persons who should be held in respect of this issue.

120 I made clear in my main affidavit before the Commission that there was no suggestion that the buses had to be made available for free. I was conveying to Mr Montana a request by a fellow MP and President of the ANC Women's League who had informed me that she was battling to get hold of Mr Montana

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with a view to discussing the processes to be followed as well as the quotation for the utilisation of buses which were owned and managed by Autopax.

121 I could not have been expected to follow up on the issue of payment. First, I was not the organiser of the event. I had merely been conveying to Mr Montana that the organiser had been struggling to get hold of him. Second, I do not have operational and executive responsibilities at PRASA.

122 The affairs of PRASA are managed by its Board of Control appointed by the Minister. There was no basis to expect that Minister would follow up on payments for buses procured by a third party.

123 The State Capture Report stated that there would have been a duty to follow up on payment. The Commission nevertheless does not identify the source of that duty.

124 The finding and conclusion by the Committee that I had breached clause 10.1.1.3 and clause 4.1.4 of the Code falls to be reviewed and set aside under section 6(2)(a)(i), 6(2)(d), 6(2)(d)(i), 6(2)(e)(i), (iii) (f)(i), (iii), (h) and (i):

124.1 The conduct with which I am accused occurred in the context of my duties and responsibilities as Minister of Transport.

124.2 As Minister of Transport I did not have the obligation or powers to follow up on payment for buses procured by a third party.

124.3 I did not take the decision that the PRASA buses would be utilised for ANC celebrations. I simply did not have those powers as Minister of Transport.

124.4 In any event, I had no duty in my capacity as Minister of Transport to follow up on payment.

125 As with the other decisions, the Committee simply does not have the legal power to exercise its jurisdiction over acts and/or omissions purportedly undertaken in my capacity as Minister of Transport and not as an MP.

126 The findings of the Committee are irrational and the decision of the House to adopt such recommendations is similarly flawed for the reasons discussed above.

127 The findings both by the Committee and the House are in any event nevertheless reviewable on the basis of the constitutional principle of legality based on all the flaws and errors discussed above.

Legality cause of action

128 The Code places a duty not only on the Committee to make recommendations, and likewise places a duty on the House, when considering (the merits and) a penalty, to:

128.1 accept or reject the recommendations; or

128.2 refer the matter back to the Committee for further consideration.

141

129 While the complaint against the Committee is procedural fairness and procedural rationality, I accept that before the House it can only be procedural rationality and unlawfulness, both of which are components of legality.

130 The components of procedural rationality in which the House or the Speaker's conduct is to be assessed is the following.

131 In order to come to the decision of whether to accept or reject the recommendations of the Committee, including a decision of whether to refer the matter back to the Committee for further consideration – the House was required to consider relevant and necessary facts (including the evidence) that served before the Committee. This, however, did not happen. Thus, in the absence of those relevant and necessary facts (and evidence), the purpose of the power exercised could not be achieved.

132 This is evident from the fact that the House was only seized with the report from the Committee and not the underlying documents or evidence. The House thus based its decision on a report that did not contain the evidence on which I was found to have breached the Code.

Sanction

133 The sanction recommended by the Committee and ultimately adopted by the House was excessive in the circumstances. I say so because the House completely ignored the fact that the High Court per Mabuse J, in the PRASA dissolution matter, reversed my decision to dissolve the Board of PRASA.

Additionally, soon after the judgment, President Zuma removed me from position as Minister of Transport.

133.1 The decision to remove me as Minister related to the dissolution of the PRASA Board and cost me politically. That is a material fact that ought to have weighed with the Committee.

133.2 Insofar as the question of the buses is concerned, as stated, I made the case before the State Capture Commission that I was not responsible for the procurement of buses. I only put a query from a colleague to Mr Montana. I had no responsibility whatsoever pertaining to the operations and procurement of buses with PRASA. Even if I was found to have been derelict on following up (which I don't accept), it is a very important fact again that I could exercise no executive and/or operational powers regarding the collection of fees due to PRASA.

133.3 On the question pertaining to the delay in the appointment of the CEO of PRASA, I have already pointed out that the Commission concluded that I did not have the powers to appoint a CEO and, *a fortiori*, and this is my submission, could not have affected the progress on the appointment or otherwise of the CEO. That competency lay with PRASA's Board of Control.

134 All of these are important in considering the question of sanction.

135 In none of the three complaints did I place my own interests above those of the public. None of the decisions concerned had anything to do with my own interest.

136 I do not wish to repeat what I addressed in the mitigatory submissions to the Committee. I ask that that be incorporated in this section. I only seek to highlight a few of the submissions I made before the Committee on sanction.

136.1 I voluntarily appeared before the Commission and gave full evidence.

136.2 I had an unassailable track record in the public service.

136.3 I took the decisions on the basis of reports placed before me in my capacity as the Minister of Transport.

136.4 My conduct insofar as the delay in the appointment of the GCEO is concerned was neither negligent nor malicious. I have already addressed the question of buses.

136.5 I was removed from my position as Minister of Transport and suffered the political ignominy that comes with a removal from that post.

136.6 The substance of the complaint related to issues that occurred when I was the Minister of Transport between 2013 and 2017.

136.7 Some considerable time has passed between when those acts and/or omissions occurred and when the complaint was made in September 2022.

137 It is also a significant aspect that the acts and/or omissions with which I was accused in the complaint were performed in my capacity as a Member of the Executive and not as an MP. I was not in the course of discharging my duties and obligations and roles as MP, but rather as a Member of the Executive.

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legality for all the reasons discussed.

141 The decision is nevertheless reviewable under the constitutional principle of

function as to the sanction imposed.

reasonable person could have exercised the power or performed the

140.3 Section 6(2)(h) in that the decision is so unreasonable that no

of the above discussion;

140.2 Section 6(2)(f)(ii) in that the decision on the sanction is irrational in light

were not considered;

were taken into account and relevant considerations as outlined above

140.1 Section 6(2)(e)(iii) because irrelevant considerations as outline above

the following provisions of PAJA :

140 The decision on the sanction falls to be reviewed and set aside on the basis of

above and referred the matter back to the Committee for further consideration.

sanction could have rejected the recommendation on the grounds referred to

139 The House on the other hand, when considering recommendation on the

term which is 90 days.

period of 90 days. There is no basis for recommending that I be suspended for a

and/or a Member's right to a seat in parliamentary debates or committees for a

term of Parliamentary Programme as opposed to suspending certain privileges

138 The Committee does not say why it decided to recommend a suspension of a

142 The procedure followed by the Committee in reaching its conclusions was flawed and falls to be reviewed for the following reasons.

142.1 Clause 10.2 provides for procedure of investigation of complaints. Clause 10.2.2.1 provides that the Committee may only consider complaints based on an alleged breach of the Code, as contemplated in clause 10.1 of the Code. Once a complaint comes in, it is referred to the Member concerned who is required to respond to the complaint within seven days of being informed of the complaint.

142.2 If the Member fails without good reason to respond within seven days, the complaint may proceed with the investigation.

142.3 The Registrar is required under clause 10.3 to assess the authenticity of the validity of the complaint based on the information at his or her disposal and collate such further information as may be necessary to enable him or her to make an informed recommendation to the Committee members (10.3.2), consult the chairperson and conduct a preliminary investigation as may be necessary to enable him or her to make a recommendation to the Committee. In this instance, the Member must be immediately informed that a preliminary investigation is under way, upon a completion of the collation of further evidence and the preliminary investigation referred to above and under clause 10.4 to make recommendations to the Committee either that the complaint is frivolous, vexatious, unfounded or that a specific finding be made on

the available evidence together with a recommended sanction to be imposed or that a further investigation be instituted with a suggested procedure to be followed with an elaboration of issues and facts to be investigated and indicate who will conduct the investigation and the duration of such a proposed investigation or that a hearing should be held without any further investigation or any other recommendation that may be supported by available facts and circumstances of each case which may not be provided for (clause 10.4).

143 Clause 10.4 obliges the Registrar to make a recommendation to the Committee. There is no evidence that the Registrar in fact considered the complaint in its totality because what transpired, despite the fact that I provided 'good' reasons (as contemplated in clause 10.2.2.7) and requested that the matter be held in abeyance to enable the President to produce an implementation plan regarding matters that were dealt with by the State Capture Commission. These reasons were also conveyed to the House in the Report by the Committee.

144 The Committee nevertheless considered the complaint and deliberated upon it as appears in the Committee's Report.

145 Based on the outcome of the Committee's deliberation, it is clear that the Committee did not interrogate –

145.1 The foundation of the complaint nor the reports it relied upon;

145.2 The points I had raised with the Commission in response to the three topics that were referred to the Committee in the complaint;

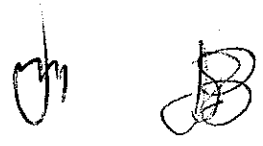
145.3 The Committee clearly did not consider the responses I had tendered to the Commission in relation to (a) the delay in the appointment of the GCEO, (b) the procurement of buses for the ANC celebration; (c) the dissolution of the PRASA Board under the leadership of Popo Molefe.

145.4 The Committee slavishly followed and appears from its report to have adopted, in a wholesale fashion, the findings made by the Commission without interrogating them.

145.5 The Registrar did not assess the authenticity of the complaint in light of the responses I had given to the Commission because if that had been done, the Committee would have noted that the Commission made no finding on the dissolution of the Board. It did not find that my decision to dissolve the Board was irrational.

145.6 If the Committee had considered the judgment of Mabuse J, they would have appreciated the decision why I had dissolved the Board, why I also did not have the opportunity to pursue an appeal against the decision because the President had, soon after that judgment, removed me from the position of Minister of Transport.

145.7 In relation to the delay in the appointment of the GCEO, the Committee would have realised that the Commission found that I had no power to appoint the GCEO. In light of that conclusion, the Committee would have realised that it would be irrational to find that I was guilty of any delay if I didn't have the power to appoint.



145.8 In relation to the procurement of the buses for the 2015 ANC celebration, the Committee would have immediately noted that I did not have in my capacity as Minister of Transport, the power, let alone the duty to deal with the procurement of buses by third parties. I could not have followed up on payment by the ANC to PRASA for the use of PRASA's buses. The Committee would have immediately perceived that the Commission had not outlined the source of the duty to follow up on payment and therefore, there was no legal and/or factual basis for me to have discharged a duty of ensuring that the ANC paid for the use of the PRASA buses.

146 All of my contentions before the Commission were contained and are contained in the affidavit and/or supplementary affidavit filed with the Commission.

147 In light of my answer before the Commission, there was no legal or factual basis for the Committee to have reached its conclusions that I had breached the Code. By extension, there was no basis for the House to have adopted the findings and recommendations of the Committee in light of the flaws identified above.

148 In terms of clause 10.7.8 where the Committee reports and recommends a certain penalty, the House has a duty to (a) either accept or reject the recommendation, or (b) refer the matter back for further consideration. The House doesn't simply elect to accept or reject or refer the matter back. It must properly consider the contents of the report vis-a-vis the penalty.

149 It is at this juncture that the House also committed the irregularities similar to that of the Committee in that had it properly considered the contents of the report and

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put together an implementation plan on the State Capture cases and reserved my rights. I further indicated that I would deal with the matter in a holistic manner.

152 The answer I provided to the Committee was that I was awaiting the President to

Commission.

are in dispute. I have already indicated that I disputed what was before the

151 Clause 10.7.1 of the Code provides that hearings must be held when the facts

investigated.

procedure to be followed with an elaboration of issues and facts to be

which provides that a further investigation may be instituted with a suggested

undertaken. This was not done despite the existence of clause 10.4.3 of the Code

for the Registrar to recommend to the Committee that further investigation be

150 In light of the answers I had given to the Commission, it would have been logical

of ensuring that the ANC paid for the use of the PRASA buses.

128.3. there was no legal and/or factual basis for me to have discharged a duty

power to appoint; and

would be irrational to find that I was guilty of any delay if I didn't have the

128.2. the Commission found that I had no power to appoint the CEO so it

the Board;

128.1. the Commission did not make a finding against me on the dissolution of

the House would have realised:

all the evidence before the Committee including my answers to the Commission,

This I indicated to the Committee to show I intended to clear my name in the event I was charged and did not accept the findings of the Commission.

153 Given this and in the event the Committee insisted on continuing with the investigation, and given that the Committee itself was dealing with a fresh complaint, the Committee ought to have called a hearing as peremptorily required by clause 10.7.1.

154 In that hearing the Committee would have been able to put questions to me which I would be obliged to answer to the extent that I do not self-incriminate in view of the upcoming investigations by the SIU as indicated by the Commission in its Report and the President in his subsequent reports. The Committee simply did not avail itself of this.

155 The Committee's failure to recommend further investigation into the matter under clause 10.6.4, 10.6.5 and 10.6.6 and 10.6.7, and to refer the complaint to a hearing under clause 10.7.1 in light of the disputed facts falls to be reviewed and set aside under section 6(2)(b) of PAJA because the Committee failed to comply with a mandatory and material procedure or condition prescribed by an empowering provision.

155.1 The failure to conduct further investigation and to refer the matter to hearing was procedurally unfair under section 6(2)(c).

155.2 The decision not to conduct further investigation and to refer the matter to a hearing was materially influenced by an error of law as contemplated in section 6(2)(d).

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- 155.3 The Committee ignored the fact that the matter warranted a further investigation in the light of the responses I had given before the Commission and the existence of disputes of fact. The decision to nonetheless deliberate absent further investigation and a hearing falls to be reviewed and set aside because relevant considerations were not considered or that irrelevant considerations were taken into account under section 6(2)(e)(iii).
- 155.4 The decision to proceed with the deliberations absent further investigation and a hearing was irrational in the light of the considerations I have outlined above. It is reviewable under section 6(2)(f). Further, the Committee's exercise of its power and the performance of its function in relation to the complaint was so unreasonable that no reasonable person could have so exercised the power or performed the function and in any event it was otherwise unconstitutional and unlawful under section 6(2)(h) and (i).
- 155.5 Additionally, the Committee was required under clause 10.2.2.4 to furnish to me both the complaint and all relevant information relating to the alleged breach available to the Registrar and the committee. The complainant made clear in paragraph 6 of the complaint that the Committee and the registrar must consider all the reports, aspects and evidence in its evaluation of the complaint.
- 155.6 In addition to its being procedurally unfair, the committee's failure to furnish me with the complaint falls to be reviewed and set aside under

section 6(2)(b) for failing to comply with a mandatory and material procedure prescribed by the Code.

156 The decision of the Committee to deliberate the complaint in light of all the considerations referred to above was procedurally unfair.

E. ON THE REQUIREMENTS FOR THE GRANT OF AN INTERIM INTERDICT

157 I submit for the reasons that follow that I have satisfied the requirements for the grant of an interim interdict.

Prima facie right

158 The *prima facie* right that I claim is in terms of section 33 of the Constitution read with the applicable provisions of PAJA. I am entitled to just administrative action. I am also entitled to procedurally fair administrative action in terms of section 3 of PAJA.

159 The impugned decisions offend these rights.

160 I have already outlined the flaws vitiating my right to administrative action that is lawful, reasonable and procedurally fair. I do not repeat and simply reference the entire section dealing with the causes of action in the preceding chapters of this affidavit.

161 My right firstly stems from having been duly elected by South Africans to represent them in Parliament. More on this below.

162 There is also the right to my good name. The findings made by the Committee are damning and they besmirch my reputation, which I said in my mitigating submissions, is unblemished. Unless these can be corrected fairly expeditiously, the "stench" will stay for a very long time. I have a right to my good name. It is not helpful to suggest that I can vindicate this by court processes. I am an MP, I have been judged by my peers. I have to remedy this offence. A suit in damages based on defamation simply does not hold. I must follow the same processes to vindicate my reputation.

163 The conduct of the Committee offends that right. The procedure in the Code is based on and is intended to be guided by the principles of promptness, fairness and consistency (clause 10.2.1).

Irreparable harm

164 Unless the interim relief is granted, I will suffer irreparable harm. My harm consists in my suspension from the parliamentary programme. I will not be able to participate in any of these.

165 The first term of the Parliamentary programme from which I have been suspended consists of the following:

165.1 NA Members' Training/ Committees;

165.2 Joint Sitting (SONA);

165.3 Debate on President's State-of-the-nation Address;

165.4 NA Plenaries/ Mini-plenaries;

165.5 Budget speech (Including tabling of Fiscal Framework, Appropriation Bill and Division of Revenue Bill);

165.6 NA Questions to the President;

165.7 NA Questions to the Deputy President;

165.8 NA debate on Fiscal Framework;

165.9 Tabling of departmental strategic plans;

165.10 NA plenary on Division of Revenue Bill;

165.11 NA Committees/ Oversight; and

165.12 NA Constituency Period.

166 The implementation of the sanction will have to be interdicted and restrained otherwise I am going to be missing out on the foregoing parliamentary programme for a term which includes debates, sitting, committee meetings and committee related functions and operations. I am an MP fully entitled to participate in the foregoing. It is a right, but it is also a duty as an MP to discharge these functions. If the sanction is not interdicted and restrained, I will suffer harm by virtue of my deprivation from participating in the parliamentary programme. That harm is irreparable because once the sanction commences and concludes, there is no reversing that. I will have lost the opportunity that comes with being an MP and discharging my responsibilities as such. That opportunity cannot be regained at a later stage, even if I prevail in Part B of the application. Everything depends on time and that cannot be reversed.

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172 As stated, I am entitled to just administrative action. Unless the implementation of a sanction is interdicted and restrained, the harm also reputational in nature that it works is irreparable. I cannot sue Parliament. I cannot sue the respondents

171 It is cold comfort to suggest that I should go ahead and review and set aside the impugned decisions without at the same time seeking to interdict and restrain the implementation of the sanction.

170 As for the reputational harm that comes with a suspension from the parliamentary programme, as I have said, even if I prevail in Part B of the application, I would have served the sanction. I cannot turn back the clock.

169 A suspension from the parliamentary programme severely limits the right of the people to be represented in the National Assembly and to ensure government by the people under the Constitution.

"The National Assembly is elected to represent the people and to ensure government by the people under the Constitution."

168 It goes without saying that given the constitutional importance of Parliament, a deprivation from participating in this programme is far reaching and does not only affect me, but the constituency that I represent. In this regard it bears repeating section 42(3) of the Constitution :

167 I represent a constituency. Was voted as an MP by this constituency. By depriving me of the opportunity to participate in the parliamentary programme, that will have a negative impact on the representation of the electorate that elected me as MP.

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success.

this Honourable Court facts which I submit grounds reasonable prospects of case. My presence in Parliament has no deleterious effect. I have placed before should not be allowed to take effect until the review court has considered my performed in my capacity as Minister of Transport is flawed, is defective and cause of action that the application of the Code to act on conducts that I would suffer simply because I have already said in the section dealing with the

174 The prejudice that I stand to suffer will be greater than the one that Parliament

not have.

application. I would have served the suspension in circumstances where I should harm is, with respect, unassuageable even if I did prevail in Part B of the I would have to suffer the consequences of a suspension by Parliament which reputational damage ensues until Part B is deliberated upon and until I succeed. not granted, however, it would mean that the suspension takes place, discharge my obligations as an MP as I have since I was sworn in. If the relief is continued presence and participation in its programmes. I will continue to if the interim relief is granted. Parliament will suffer no harm whatsoever with my

173 I stand to suffer more harm if the relief is not granted than would the respondents

Balance of convenience

recommended by the Committee to the House. unquantifiable. The sanction imposed is for egregious cases the greater sanction monetarily. I also cannot quantify the reputational harm. It simply is

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178 This matter is self-evidently urgent. I will not obtain the relief I seek now in due course. By the time this matter is heard in the ordinary course, the sanction would have been implemented, it is due to start in the first term of this year.

F. URGENCY

177 I submit for all the reasons above that I have made out a case for the relief sought.

Conclusion

176 I do not have adequate alternative remedy available to me to secure the suspension of the sanction pending the resolution of Part B of this application. There is also no other way of vindicating my rights in the interim. I therefore do not have a remedy open to me that will secure the same or substantially similar relief at a later stage. I cannot secure my continued participation in the parliamentary programme in the interim except by way of the interim relief.

Alternative remedy

175 There is no suggestion that my presence in the House and participation in the parliamentary programme would in any way affect the proper despatch of Parliament's business. I emphasise the irreparability and irreversibility of the harm I will suffer. That much is greater than any harm which Parliament could possibly suffer. I do not see how could possibly suffer from my discharge of my parliamentary responsibilities as an MP.

179 The sanction is for a period of three months. It is likely that if this matter waits its ordinary course in the court system, it is likely to be heard in the second term of 2024, at best.

180 On 28 November 2023, recommendation of the Committee was tabled before the House and the House accepted the recommendations made by the Committee and confirmed the sanction. Effectively, as of 6 December 2023, I have been suspended from my seat in all Parliamentary debates and sittings, from committee meetings and committee related functions and operations for one term of the parliamentary programme. The letter confirming that the penalty is imposed for the first term of 2024 Parliamentary Programme from the Acting Speaker is attached and marked "DP12".

181 As stated the Parliamentary Programme for 2024 commences with the leave period on 2-5 January and thereafter a Constituency Period from 2 – 26 January. The NA Committees/ Oversight start on 30 January.

182 I have been suspended from my seat in parliamentary debates , sittings and committee meetings and committee related functions. It is the implementation of the sanction in relation to the above activities that I seek to interdict. It is therefore important that the application be adjudicated before 30 January 2024 or soon thereafter so that if I do miss some portions of the activities, it is not a lot.

183 Thus, for these reasons the matter is self-evidently urgent.

184 It is the irreversible implementation of the sanction that renders the application urgent. For the sanction to be suspended, this matter will have to be heard on an urgent basis. It does not help me to bring this application in the ordinary course because then it would mean that I will have to serve the sanction whilst I await the matter to be heard in the ordinary course. The serving of the sanction is something that cannot be reversed.

185 I could not have brought this application at an earlier date, before the sanction was confirmed by Parliament. Before then, it was a mere recommendation to the House. The House only confirmed this on 28 November 2023. I have not wasted any time.

186 I took advice from my legal team to consider the matter in its totality and the prospects of bringing the application on an urgent basis and to draw these papers. This has entailed obtaining the State Capture Commission Report, the affidavits filed by me and Mr Montana, the then CEO of PRASA, as well as by Mr Molefe.

187 I was conscious and my legal representatives were advised by the Registrar of this Honourable Court that if the application was launched during the December break (i.e. 17 December 2023 when it was ready), the application would have had to be heard within a two weeks, thus first week of January 2024

188 The exigencies of the matter did not call for such super-urgency given that I seek to suspend the sanction which effectively kicks in on 30 January 2024. I have sought to comply with the directive advised by the Registrar. The time periods

do not prejudice the respondents. And I have not delayed the institution of this application.

189 I have afforded the respondents until 16 January 2024 to file any opposing papers if necessary. The application is not fact-laden. It deals with a narrow range of facts before the State Capture Commission, the same material supposedly considered by the Committee. The balance of the application consists of legal contentions.

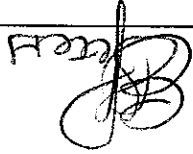
190 The respondents will not be prejudiced by the time periods. I propose to file my reply by 18 January 2024.

191 I submit that the time periods afforded to the parties are not unreasonable in the circumstances.

192 I submit that the application is thus urgent on that account.

G. CONCLUSION

193 I submit that I have established urgency and have satisfied the requirements for the grant of interim relief. I ask for the prayers set out in the notice of motion.

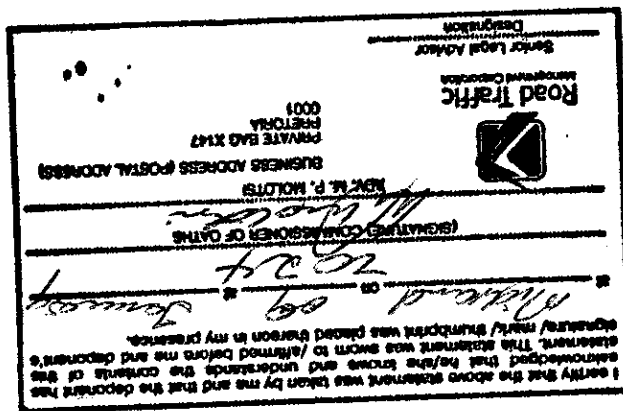


ELIZABETH DIPUO PETERS



I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Maseru on this the 09 day of January 2023, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS



Full names

Address:

Capacity:

"DP1"

COMPLAINT

The Joint Committee on Ethics and Members' Interests

First Complainant
Second Complainant
Third Complainant

#UnitBehind
Zackie Achmat
Zukiswa Vuka Fokazi

versus

Respondent

! Puro Peters
Mikolajczyk
Mikolajczyk

I, the undersigned,

ABDURRAZACK "ZACKIE" ACHMAT

hereby affirm and say:

1. I am an adult male, political activist and a director of #UnitBehind NPC, the applicant, whose offices are at First Floor, Methodist House, 46 Church Street, Cape Town, 8000.
2. I am duly authorised to depose to this affidavit and bring this complaint on behalf of #UnitBehind in the public interest, in the interest of commuters and in my personal capacity. In addition, this complaint is also brought by Mrs Zukiswa "Vuka" Fokazi.

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3. The facts contained in this affidavit are from my own personal knowledge, documentary evidence gathered by #UniteBehind, from the evidence led before the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector and Organs of State ("The State Capture Report"), and, from various official investigations.
4. I have coordinated #UniteBehind's legal work relating to state capture at Passenger Rail Agency of South Africa (PRASA) since 2017.
5. The complaint is brought to Parliament and specifically the Joint Committee on Ethics and Members' Interests based upon:
 - 5.1. The report of the former Public Protector, Ms Thulisile Madonsela in 2015;
 - 5.2. Investigations by the National Treasury on behalf of PRASA;
 - 5.3. Investigations by Werksmans Attorneys on behalf of PRASA;
 - 5.4. All records and judgments of the courts and other arising from state capture, corruption and fraud at PRASA;
 - 5.5. The Horwath Forensics Report produced by Mr Ryan Sacks on behalf of the Directorate of Priority Crimes Investigation (DPCI) into the Swifambo Rail Agency;
 - 5.6. The Ollerman Report prepared on behalf of the State Capture Commission into Sivanena Technologies;
 - 5.7. The affidavits, documents and oral evidence before the State Capture Commission in relation to PRASA;
 - 5.8. The final report and recommendations of the State Capture Commission and the duties of Parliament in relation to the Commission's report; and
 - 5.9. #UniteBehind's work, experience and evidence in relation to the collapse of the commuter rail services; state capture, corruption, fraud, malfeasance, maladministration and mismanagement at PRASA.

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6. The Parliamentary Ethics Committee and its Registrar must consider all these reports, aspects and evidence in its evaluation of our complainant.

THE COMPLAINANTS

7. The complainants include #UniteBehind, a juristic person acting in the public interest, Zackie Achmat, and Zukiswa Fokazi, political activists acting in their own capacity and on behalf of #UniteBehind. Over the last five years, the individual complainants have been integral to the political representations, public campaigns and litigation on state capture, mismanagement and maladministration at PRASA.

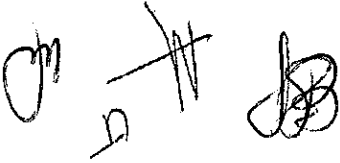
8. #UniteBehind is the first complainant in this matter and a not-for-profit company dedicated to the building of a just and equal society. It is also committed to ending state capture, particularly the corruption, maladministration, mismanagement and malfeasance at the Passenger Rail Agency of South Africa (PRASA) and has built a campaign known as #FixOurTrains.

9. I am the second complainant in this matter and my direct interest is the ending of state capture at PRASA and the construction of a safe, reliable, affordable, efficient and quality public transport system, specifically, a commuter rail service.

10. Zukiswa "Vuka" Fokazi is the third complainant in this matter, and her direct interest includes the ending of state capture at PRASA and the construction of a safe, reliable, affordable, efficient and quality public transport system, specifically, a commuter rail service. Ms Fokazi's affidavit will be submitted in the next few days.

THE RESPONDENT

11. The Respondent is Ms Dipuo Peters (MP) who currently serves as a member of the Standing Committee on Appropriations. She has served in numerous positions in government including as Premier of the Northern Cape and the Minister of Energy Affairs. Ms Peters' most controversial tenure was her role as Minister of Transport where she unlawfully sacked the PRASA Board of Control chaired by Mr Popo Molefe. The Molefe Board was sacked because of their role in resisting state capture through investigations, civil litigation and criminal



complaints. Ms Peters acted in the interest of those responsible for corruption and state capture.

STRUCTURE OF THE COMPLAINT AND EVIDENCE AVAILABLE TO THE PARLIAMENTARY ETHICS COMMITTEE

12. The complaint is structured as follows:

- 12.1. #UniteBehind's background and engagement with state capture at PRASA.
- 12.2. My personal background, work and experience as second complainant.
- 12.3. Constitutional and legal grounds for the complaint.
- 12.4. The destruction and collapse of PRASA.
- 12.5. Dipuo Peters: Political interference as obstruction of justice.
- 12.6. Breaches of the Code of Conduct.
- 12.7. Conclusion.

13. The voluminous evidence before the Judicial Commission of Inquiry into Allegations of State Capture is available to the Joint Committee on Ethics and Members' Interests (Parliamentary Ethics Committee) and its Registrar. #UniteBehind also has a record of evidence available to the Parliamentary Ethics Committee. I am advised that the evidence gathered by #UniteBehind for this complaint and which forms the basis of this affidavit complies with the law of evidence as used in ordinary legal proceedings in our courts. Every effort is made to rely on evidence under oath, published official documents including reports, unpublished documents revealed through protected disclosure (whistle-blower) evidence; submissions to Parliament, letters, court records, judgments, WhatsApp messages, complaints to the Judicial Service Commission and the Bar Council - this evidence is largely verifiable and common cause. There may be minor disputes of fact between the parties in media reports, press statements, pamphlets and audio-visual materials. These sources, however, largely confirm what is common-cause in relation official reports.

14. I have been personally and directly involved in the gathering of most of the evidence and I have studied all the documents attached to this affidavit. Alongside my colleagues and legal advisors, I have also been involved in drafting #UniteBehind reports, affidavits and letters

used in this affidavit. The protected disclosures used in this affidavit were handed over to me personally or to attorneys for #UniteBehind.

15. Evidence from commuters based on their individual experience of the decline of the Passenger Rail Service Agency of South Africa (PRASA) since around the year 2000 can also be made available to the Parliamentary Ethics Committee. Commuter experiences of crime, delays, lack of communication, inadequate rolling-stock and the largely disastrous and dysfunctional state of the rail service. They are made by #UniteBehind activists who use trains or commuters that self-organised through WhatsApp Groups or Facebook.

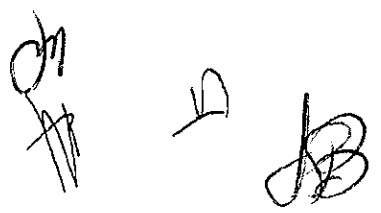
16. The Annexures attached to this affidavit will be supplemented, along with supporting affidavits from activists, commuters, trade unions, religious leaders, and other concerned individuals and organisations. ZAI details the evidence on state capture, corruption, fraud, malfeasance and mismanagement at that the Parliamentary Committee on Ethics must consider.

#UNITEBEHIND BACKGROUND AND ENGAGEMENT WITH STATE CAPTURE AT PRASA

17. #UniteBehind was formed as a coalition of people's movements, legal, policy and support organisations advocating for justice and equality. Coincidentally, it emerged out of the Ahmed Kathrada Memorial Service held at St George's Cathedral in Cape Town on 6 April 2017 to protest the assault on the democratic state epitomised by the Cabinet reshuffle that saw the removal of Mr Pravin Gordhan and Mr Mcebisi Jonas from the Ministry of Finance.

18. #UniteBehind is now a non-profit company (NPC) that supports organisations and coalitions such as the Ahmed Kathrada Foundation and Defend Our Democracy. In turn, #UniteBehind is supported by various movements such as Reclaim the City, Movement for Care, Ndifuna Ukwazi, Free Gender and others.

19. One of #UniteBehind's key missions is to build a just and equal society where all people share in the country's wealth, participate in the decisions that affect their lives, and where the environment is sustainably protected for future generations



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MY PERSONAL BACKGROUND, WORK AND EXPERIENCE

- 20. One of our central demands is the building of a safe, reliable, affordable, efficient and quality public transport system, in particular a commuter rail service. It seeks to achieve this by taking positive steps to end the following in respect of PRASA: the endemic corruption; its capture; political interference by the Executive; and incompetence and maladministration. We are committed to ensuring that commuter rail services are devolved to local and provincial governments in line with the Constitution, legislation and long-standing government policy.
- 21. In order to achieve these difficult and important aims, we study documents dealing with state capture in general and of PRASA. We study the functioning of the rail system, relevant laws and the history of rail services. We then pass that knowledge on to activists, organisations, Government and the public. In addition, we engage with and urge those in authority to prosecute companies and individuals against whom PRASA has laid charges and, where necessary, we hold protests and pickets.
- 22. We have also engaged with PRASA officials, Parliament, successive Ministers of Transport, the Office of the President, the Office of the Chief Justice, and others regarding state capture at the rail agency and the mismanagement, incompetence and collapse of the rail service. These engagements have largely been frustrating, leading to meetings after meetings with unfulfilled promises by those in power.
- 23. #UniteBehind has used the Courts to advance our goals, in opposition to PRASA (when it has been mismanaged) and the national government, and to support PRASA (when it has been correctly managed) in its efforts to eradicate corruption and mismanagement. At every point, we work from the perspective of the commuters whose right to decent (i.e. safe, reliable, affordable, accessible, and efficient) public transport has been impeded by the crisis that has devastated the commuter rail service in South Africa.
- 24. In this complaint, #UniteBehind acts in its own interests, the interests of its affiliates and their members; the interests of its commuter members, and the broader rail commuting community. We also act in the name of PRASA employees and whistle-blowers who cannot act in their own interest. Finally, we act in the public interest.

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25. In 1976, I joined the high school students' revolt and I have been a political activist and socialist since then. Over the last 44 years, my activism, experience, education and knowledge in the spheres of politics, history, economics, law and political campaign work was enriched by mentors and many comrades.
26. I was recruited to the African National Congress (ANC) when I was 18 years old by the late Johnny Issel and Hennie Ferrus at the then-Victor Verster Prison. I was detained in solitary confinement, convicted and held under preventative detention five times as a child. I was also part of the United Democratic Front and have worked in youth and civic movements, trade unions, gay and lesbian organisations and primary health care organisations. In 1985, I joined the Marxist Workers Tendency of the ANC.
27. During the advent of democracy, I worked at the AIDS Law Project (ALP) and was a member of the South African Law Commission Working Committee on HIV/AIDS. I was one of the founders of the Treatment Action Campaign (TAC). The TAC worked with Parliament until the ANC removed its MPs who were critical of its HIV/AIDS policy, such as Dr Abe Nkomo, Dr Essop Jassat and other members of the Health Portfolio Committee. Alongside the Arms Deal, the silencing of ANC MPs who were critical of the then-President and Minister of Health on HIV weakened Parliamentary oversight. TAC similarly worked with allies in the national and provincial Health Departments. Just as in the case of PRASA, we worked with whistle-blowers at every level of the state including Parliament.
28. I helped establish Equal Education; the Social Justice Coalition (SJC); Ndifuna Ukwazi and Reclaim the City among other organisations.
29. I have a personal interest in PRASA for the following reasons. My wider family, comrades, and I have been and are reliant on public transport (rail and buses) and semi-private transport such as mini-bus taxis, Uber and the cars of friends to commute or travel long distances. From 2001, I became conscious of the collapse of the commuter rail service because of the violent crime and deaths on the trains. The murder of Juan van Minnen, and his parents' fight for justice culminated in the CC's historic decision in *Rail Commuter Action Group and Others v the South African Rail Commuter Corporation (t/a Metrorail) and Others* and the final settlement in the Western Cape Court. One of the outcomes of that matter was the

investment of billions of Rands purportedly for new and improved infrastructure including rolling stock, secure access to train stations, communications and CCTV surveillance. This coincided with upgrades for the 2010 World Cup. Since that time, I have personally taken interest in developments at PRASA and as a consequence became aware of the corruption and later state capture at the rail agency. As detailed below, instead of reducing violent crime for train commuters, it has become much worse.

CONSTITUTIONAL AND LEGAL GROUNDS FOR THE COMPLAINT

30. State capture at PRASA, its mismanagement, maladministration and collapse must be attributed to the unlawful actions of among others, Ms Dipuo Peters.

31. The Respondents in this complaint violated the Constitution, a range of laws and Parliament's Code of Conduct.

32. In her executive, oversight and governance roles regarding the Passenger Rail Agency of South Africa, Ms Dipuo Peters has through her acts and omissions failed to prevent injury, loss of life, the destruction of infrastructure, the loss and persecution of competent, qualified, skilled and ethical professionals, the wholesale theft of assets, corruption worth billions of Rands and state capture. In fact, she have facilitated and enabled state capture and corruption through a failure of her ethical and legal duties of care.

33. The Respondent has directly contributed to violations of the rights of workers and work-seekers, students, the elderly, infirm, women to safe, reliable, affordable, accessible and efficient commuter rail service.

34. The collapse of the commuter rail services, for which the Respondents must assume leadership responsibility, has violated, among others, the rights to life, dignity, bodily and psychological integrity, work, education, health and freedom of movement.

35. The Respondent has violated section 195 of the Constitution which requires organs of state and individuals to, among others, promote and maintain a high standard of professional ethics, promote an efficient, economic and effective use of resources, and ensure an accountable public administration.

THE DESTRUCTION AND COLLAPSE OF PRASA AND ITS IMPACT ON
COMMUTERS

36. #UniteBehind's #FixOurTrains campaign aims to address the governance issues at PRASA, to root out corruption in PRASA, and to fix the dysfunctional commuter-rail services.

37. Violence and train delays have a severe impact on hundreds of thousands of commuters who are dependent on Metrorail services. The rail system is the most affordable mode of transport that is accessible to mainly Black African and Coloured working-class commuters, many of whom are women, children and people with disabilities. When commuters are prevented from using the trains due to the levels of crime on the trains, at train stations, and in areas surrounding the stations, as well as when trains are not working, they are forced to incur the added costs of alternative transport. Commuters are, as a result, often late for work, risking (and losing) their jobs. This plunges many families, already struggling with poverty and harsh prevailing socio-economic conditions, further into poverty.

38. Almost every week, crimes against women occur on trains operated by PRASA. Women and girls are often harassed and sexually assaulted with little-to-no security systems present to protect them. Delays lead to learners losing time at school and at home, as well as exacerbate crime – to which learners are particularly vulnerable. Whole carriages are at times held hostage and robbed when trains are stopped in-between stations. These stoppages result in further injuries when passengers have to jump-off the trains.

39. Workers lose income and face threats of dismissal, whilst small businesses are crippled by absenteeism and late coming. In short, organisational dysfunction and corruption in PRASA has, and continues to, cost lives. PRASA's failure has increased the suffering of commuters and their families and has simultaneously caused serious and major harm to the economy.

40. Currently, very few Gauteng commuter rail trains are running. In Cape Town, the Central Line, servicing over 120,000 commuters who are overwhelmingly working-class and poor African and Coloured people, has been intermittently shut down from 2017 to 2018 and completely shut down since 2019. Only 53 train trips are running per average weekday in the City, down from 444 in 2019. In 2013, 13% of workers (700,000) used trains across South Africa. In 2020, only 3.3% of workers (150,000) used trains. The figure is likely much lower,

given the continued irregular, inefficient or non-existent commuter rail service in much of the country.

41. The consequence of a broken commuter rail system, such as we see today, is that more commuters are forced to use buses and minibus taxis to get to work. This has produced an unexpected burden on our public and private road transport. The City of Cape Town estimated, in 2019, that R2.8 billion is lost annually because of the crisis in transport for commuters through lost productivity and other economic costs.² This figure is now likely much higher.

42. A commuter on an hourly wage of R17 who spent two hours traveling would have an effective hourly wage of R12.50, once time and expenses are accounted for; a 28% tax compared to a person who did not need to incur these costs.

43. Money that has been stolen and misspent at PRASA should have gone to making our rail system safe, reliable, accessible and affordable. We should have competent guards, secured entry, lights, communications, sufficient rolling stock, and no delays or cancellations; but we do not. Instead, people suffer daily injustice and indignity. The crookedness of the captured state is a sickness that produces terror, depression and deprivation in the working class and poor.

44. The capture of PRASA has brought about the above crisis in rail commuting and the extensive negative impacts on commuters. #TnitedBehind's complaint is against several current Members of Parliament who have been implicated in corruption and maladministration, relating to PRASA, and who are responsible for the breakdown of rail services and the terrible impact it has had on poor and working class commuters.

MS DIPUO PETERS

45. Ms Peters is a current Member of the Standing Committee on Appropriations

46. Ms Peters was identified as being neglectful of her ministerial duties in failing to appoint a permanent CEO of PRASA in her tenure as Minister of Transport. In her testimony

² See Cape Argus Traffic Congestion in Cape Town costs the City R2.8 billion a year

to the State Capture Commission, she stated that the reason for her failure to appoint a permanent Group CEO of PRASA was because PRASA was "not ready a new CEO. ... How a company that had been in existence and in operation for many years and had had a Group CEO for many years suddenly became not ready for a new CEO is incomprehensible. This was a bizarre decision by the Minister Peters for failing to ensure that a new CEO for PRASA was appointed." Further, "[h]aving regard to the totality of evidence of this issue, the inference is irresistible that there was some reason for not filling that important position. Former Minister Peters' failure to disclose it suggests that it was not a proper one. The consultation process in finding a new CEO, which amounted to nothing, cost the PRASA R1 767 000 in wasteful expenditure."

47. It was deemed a "direct financial cost ... [from] Ms Peters' decision not to act on the Board's recommendation [and]... It is recommended that the Board of PRASA consider taking legal steps to recover from her that amount plus interest." However, it is within Parliament's power to do likewise and, further, consider whether such conduct, while Ms Peters was a member of Parliament, is a contravention of the Code of Conduct.

48. Mrs Peters dismissed the Molefe Board, seemingly because it had uncovered R14Bn of irregular expenditure and instituted investigations into corruption at the PRASA. She did not provide any reasons for the dismissal and the dismissal was overturned in the High Court, who found her conduct to be "irrational", "unreasonable" and "unlawful."

49. She also attempted to stop the investigations into corruption at PRASA initiated by the Molefe Board. Further, when it came out that Mr Auswell Mashaba, the then-director of Swifambo, had paid R79 Million of PRASA-gained funds to people who would then transfer the monies to the ANC, she did not take action to investigate this clear case of corruption. As stated in the State Capture Report, "one would have expected that as the Minister to whom PRASA was accountable, she would have insisted that that embarrassing allegation was expeditiously pursued; either to clear the name of the ANC or bring wrongdoers to book. She did neither. She stood by." Minister Peters is rightfully identified as having mistreated the Molefe Board.

³ State Capture Report Part V Vol II, Para 2090, pp.800-1
⁴ State Capture Report Part V Vol II, Para 1800, pp.656-7
⁵ Molefe and Others v Minister of Transport and Others (17748/17) [2017] ZAGPPHC at 120
⁶ State Capture Report Part V Vol II, Para 1793, p.650
⁷ State Capture Report Part V Vol II, Para 2175, p.845

She, too, was "under a duty to ensure that corruption was rooted out from public entities. In this [she] failed."⁸

50. She also attempted and did, in fact, use PRASA transport (buses) for ANC events in 2014 and 2015, without ensuring that the ANC paid for such use. Per the State Capture Report, "[g]iven that she was the Minister, there would have been a duty to do so."⁹

51. Former CEO of PRASA Mr Lucky Montana, who is also widely implicated in state capture at the entity, outlines in great detail the interference of former Ms Peters in his evidence to the 2018 Parliamentary Inquiry into Eskom.¹⁰ In his submission, Mr Montana stated that Ms Peters attempted to influence procurement proceedings through pressuring the PRASA CEO and Board of Control simply because of the nationality of the tender applicants. She demanded changes to the procurement proceedings despite PRASA having obtained a legal opinion stating that the charges would be "in breach of the procurement laws of the country and provisions."¹¹

52. Ms Peters must be called to account for these serious cases of falling in her parliamentary duties, maladministration, and taking active role in inhibiting the work of ensuring that corruption and maladministration be arrested at PRASA. She must be suspended pending the outcome of the investigation.

BREACHES OF THE CODE OF CONDUCT

53. Parliament's Code of Conduct states that Members must "abide by the principles, rules and obligations of this Code."¹² The principles outlined in the code are: selflessness, integrity, objectivity, honesty, and leadership.¹³ Further, of course, Members must uphold the law,¹⁴ Members must "act on all occasions in accordance with the public trust placed in them; discharge their obligations, in terms of the Constitution, to Parliament and the public at large; by placing the public interest above their own interests; maintain public confidence and trust

⁸ State Capture Report Part V Vol II, Para 2031, p.778
⁹ State Capture Report Part V Vol II, Para 2044, p.783
¹⁰ Statement by Tshepo Lucky Montana, Former PRASA CEO, Parliamentary Inquiry Into Corporate Governance at ESKOM (Cape Town: 30 January 2018), pp. 21-27.
¹¹ Ibid., p.22
¹² Art. 4.1.1 of the Code of Conduct
¹³ Art. 2.4 of the Code of Conduct
¹⁴ Art. 4.1.2 of the Code of Conduct

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in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution.”¹⁵

CONCLUSION

54. #UniteBehind makes this complaint to ensure that our leaders, and the managers and employees of PRASA comply with their constitutional and statutory obligations, and, where they do not, the bodies to whom they are answerable hold them to account without fear, favour or prejudice. It is precisely because the repositories of power and those who are required to hold them to account have betrayed the public trust that the violation of the rights of vulnerable people who use trains – particularly the elderly, infirm, people with disabilities, women and children – occurs daily.

55. State capture at any organ of state undermines justice, equality and freedom for working-class people because it exacerbates inequality through the theft of financial resources required for infrastructure, assets and services in our society. There can be little doubt that state capture also impedes growth and stability. This is especially so at an institution like PRASA which is required to serve the interests poor and vulnerable people. #UniteBehind has a specific view on the causes of state capture in the current period which is set out below.


56. A critical set of causal factors underlie the success, scale and gravity of state capture which benefits local and global corporations. First, the unconscionable inequality in wealth and income based on the historical articulation of race, class and gender that has arisen through colonialism and apartheid. Second, a democratic project that has failed to redistribute wealth and to reduce income inequalities through state-owned enterprises, and the broader state economic apparatus, has created the material conditions for state capture. Instead, wealth and income inequality have worsened. Third, the existence of a Black (racially defined as African, Coloured and Indian) middle-class stratum who witnessed that the earlier “Black Economic Empowerment” project in the traditionally White-owned corporations grossly benefited a narrow band of politically connected individuals. Consequently, this “left-out” stratum of politicians, bureaucrats and their business allies sought to use the state-owned enterprises as a means to accumulate private wealth and to promote excessive managerial salaries and bonuses

through nepotism, fraud, corruption and malfeasance. This is also true for state capture at PRASA.

57. I reiterate that in relation to PRASA, we have made many submissions, written numerous letters, received and published information from whistle-blowers, picketed, organised marches and gatherings, litigated, and organized protests and pickets. Unfortunately, the relevant arms of the state and PRASA have failed to fulfill their constitutional and statutory obligations diligently and without delay.

58. Dipuo Peters must be suspended, investigated, charged and removed from Parliament. Criminal charges must be proffered and #UniteBehind will forward this affidavit to the National Director of Public Prosecutions, Advocate Shamilia Batohi.

59. I am available to provide more information, explanation, and any other assistance via oral or written communication.



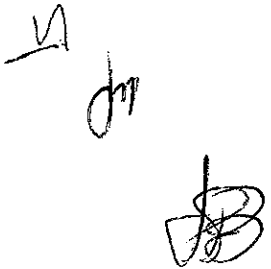
ABDURRAZACK "ZACKIE" ACHMAT

The terms of Regulation R. 1258 published in Government Gazette No. 3619 of

21 July, 1972 (as amended) having been complied with, I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at CAPE TOWN on this 9th day of September 2022

COMMISSIONER OF OATHS

SMITH TABATA BUCHANAN BOYES
LINDISWA TRUDY JAFTA
8th FLOOR, 6 ST. GEORGES MALL
CAPE TOWN
COMMISSIONER OF OATHS
PRACTISING ATTORNEY, R.S.A.



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Capacity:

Annexures

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The Evidence on State Capture, Corruption, Fraud, Malfeasance and Mismanagement at that the Parliamentary Committee on Ethics Must Consider

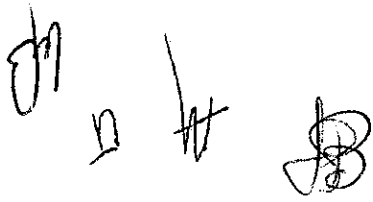
The Public Protector's *Derailed* Report

1. *Derailed*, the 2015 report of the then-Public Protector Advocate Thuli Madonsela, remains virtually undisputed in most of its conclusions of corruption, malfeasance and mismanagement at PRASA under then Board Chairperson Mr Siso Buthelezi and Group Central Executive Officer, Mr Lucky Montana, and a cast of corrupt managers, staff, business operators and others. The remedial action ordered by the Public Protector has led to at least three further sets of reports – the Treasury Reports, the PRASA Reports – conducted by Werksmans – and the final Public Protector's Report released at the end of April 2019 by Advocate Busiswe Mkhwebane.

The Treasury Reports

2. The *Derailed* Report contained remedial action that would require the National Treasury to investigate all contracts entered between PRASA and service providers above R10 million between 1 April 2012 and 30 June 2015. Treasury commissioned reports into approximately 216 contracts from about 14 legal and forensic auditing firms. These reports were completed in 2016. Even though these reports indicated that there was systematic corruption within PRASA at almost every conceivable level, no criminal prosecutions followed from their submission.
3. In October 2017, an undisclosed whistle-blower, hearing of #Unirebehind's mission to #FixOurTrains, leaked the Treasury Reports to the organisation through me. I have chosen not to reveal the name of the person who made the disclosure.

4. #UnireBehind gathered a team of 15 professionals working at universities, independent consultants and civil society bodies. I acted as conveyor of the body, and we produced a report titled #PRASALeaks. This report is summarised and attached (ZAI3). However, there are several shortcomings in the Treasury Reports.



5. The limitations of the evidence in the Treasury are:

5.1. Despite the remedial action of the Public Protector that Treasury and PRASA submit the Terms of Reference, it appears that there was no common methodology.

5.2. The absence of a common methodology means that comparative analysis on findings and recommendations are very difficult.

5.3. The format of the reports is not fixed, and so the quality of the evidence and the conclusions is limited.

5.4. Most firms employed to investigate the contracts draw very conservative conclusions appearing to disregard the prescripts of the Public Finance Management Act. A few of the forensic auditors draw obvious legal conclusions and recommend criminal investigations and prosecutions.

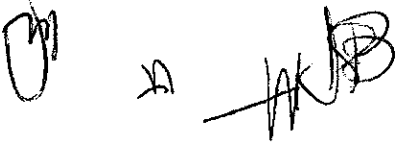
5.5. The 2012-time limit of the Treasury Reports excludes many contracts entered into by the Buthezi Board and the Montana management.

5.6. The reports that were leaked to us were not always the full reports, and often simply the executive summary. As such we were sometimes unable to evaluate whether a particular case required further investigation.

6. What is indisputable is that these investigations show that, under Lucky Montana and Siso Buthezi, there was corruption, concealment, mismanagement, fraud and an organised state capture project at PRASA. A general review of the Treasury Reports is sufficient to show that prosecutions are necessary.

The Werksmans Attorneys Reports

7. The Werksmans Reports are probably the most controversial because of their scale and depth. Those who have sought to discredit the Werksmans Reports are primarily people who are directly implicated – such as Lucky Montana and Siso Buthezi – or parliamentarians who failed to apply their minds. Charges against Werksmans include the fact that the costs of



the investigations were excessive (close to R300 million) leading to fruitless and wasteful expenditure; the appointment of the law firm was unlawful, and the investigations exceeded their mandate through spying or unlawful surveillance. However, there is no reason to question or disqualify the content of the Reports.

8. Though the bulk of the Werksmans work had been completed by 2016, these documents were not publicly released. In late 2018, these documents were released to #UniteBehind, who in turn released them to the news agency GroundUp, recognising that the contents of the reports were in the public interest. We also made them available to Parliament.

9. The Werksmans Reports are directed towards a smaller set of companies than the Treasury Reports. The Reports are company focused as the prevailing intention of the reports is to win back money for PRASA from corrupt tenderers, and not to pursue criminal action against individuals.

10. What is indisputable is that there are many instances of staggering criminality, both on the part of the executive and management of the rail agency, and on the part of private companies that did business with PRASA.

The Final Public Protector's Report

11. The investigations in the *Derailed* report were not complete and therefore the Public Protector committed to producing a second report that would consider all of the investigations done separately and actions taken to address the remedial action. This report

#UniteBehind holds no candle for Werksmans, we seek only to protect the integrity of reports that demonstrate almost beyond a reasonable doubt orchestrated corruption and state capture at PRASA. We agree with the detractors of Werksmans that the amount spent on the investigations appear to be excessive. However, this requires national regulation and capping on the fees charged by legal, accounting and investigating companies who milk the state. Werksmans is or was a formal part of the PRASA Legal Panel constituted under the PFMA, except, in the same way as the security contracts, this panel's term had expired nearly a decade or more ago. The Montana-controlled Supply Chain Management team had inexplicably failed to finalise a tender to establish a new Legal Panel and the roll-over and extension of the contracts of all the law firms on the panel was unlawful. As to the unlawful nature of the investigations as claimed by Montana and others, their incorrect and spurious claims can be objectively tested.

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was issued in April 2019 and #UniteBehind has taken this matter on review to the North Gauteng High Court (discussed below).

Court Records

12. There have been several court cases regarding State Capture at PRASA. Most of the matters have been brought by PRASA, some have been brought by companies implicated in corruption seeking payments from the rail agency, others are matters brought by #UniteBehind against PRASA or matters where we joined PRASA against corrupt companies. These court records are largely public except for about 7000 sealed pages in the matter between PRASA (Applicant) v Directorate of Priority Crime Investigations and the National Prosecution Authority. The Howarth forensic report into Swifambo for the DP/CI by Ryan Sacks has been unsealed and is available on the State Capture Commission website.

13. The following matters are before the Courts or have been completed and their records are available for scrutiny:

- 13.1. PRASA v Swifambo Rail Leasing Agency (completed).
- 13.2. PRASA v Daniel Mthembu (High Court trial completed).
- 13.3. PRASA v Sinyangena (First High Court review – matter dismissed because out of time).
- 13.4. PRASA v Sinyangena and #UniteBehind (amicus curiae) High Court set contracts aside and Sinyangena appealed to the Supreme Court of Appeal. The SCA reserved.
- 13.5. PRASA v Sinyangena (rescission – finalised).
- 13.6. #UniteBehind v Sinyangena, Sheriff of the High Court and PRASA (withdawn because of the subsequent action by PRASA against Sinyangena in the North Gauteng High Court).
- 13.7. Molefe and Others v Minister of Transport and Others (finalised).

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13.8. #UniteBehind v PRASA and the Minister of Transport (governance matter finalised through settlement and withdrawal)?

13.9. #UniteBehind v PRASA, Information Officer of PRASA and the Minister of Transport (Access to Information on security contracts and criminal records),

13.10. PRASA (Applicant) v Directorate of Priority Crime Investigations and the National Prosecution Authority with OITA intervening,

13.11. #UniteBehind and Others v PRASA and Others (Interdict on threats, violence and intimidation),

13.12. #UniteBehind v Minister of Transport and Others (Minister Mbalula's unlawful appointment of Mr Bongisizwe Mpondo as PRASA "administrator" judgment was granted with costs in favour of #UniteBehind),

13.13. #UniteBehind v Minister of Transport and Others (Case No: 19976/19) WC High Court on safety plan,

13.14. and

13.15. #UniteBehind v Public Protector (Review of Second Report).

14. The court records when used individually are limited because they handle discrete matters, but when read together speak to a project of state capture and the collapse of PRASA services. The matters deal with Ministerial interference; Board overreach and legality; and corruption by local and international companies while the recurring names of PRASA executives, managers and supervisors who defy the Constitution, the PFMA and others illustrate a criminal network. The PRASA against the DPCI (Hawks) and NPA case, together

² In December 2017, a special meeting of the Makhubele Board of Control decided that they would cancel the Werksmans investigations; #UniteBehind challenged this decision in court and gained access to the recording and transcript of this meeting through court order.

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with the #UniteBehind matter against the current Public Protector, illustrates the capture or connivance of investigating and oversight bodies.

Judgments in PRASA state capture and safety matters

15. The following judgments of the High Courts, Supreme Court of Appeal and Constitutional Court related to PRASA must guide the work of the Parliamentary Ethics Committee and – except for the *Mthimkhulu* matter, which is on appeal – they are final:

15.1. *PRASA v Swifambo Rail Leasing Agency* (High Court and Supreme Court of Appeal),

15.2. *Molefe and Others v Minister of Transport and Others* (finalised),

15.3. *PRASA v Snyga* (rescission – finalised),

15.4. *PRASA v Syngena & #UniteBehind (amicus curiae)*, and

15.5. *PRASA (Applicant) v Directorate of Priority Crime Investigations and the National Prosecution Authority with OLT's intervention* (Judgment on Molefe's standing to bring the application and OLT's admission as a party).

16. As stated above, these judgments have set a legal framework that measures functionality and state capture, but they represent more than this. The judgments illustrate the resistance to state capture, corruption and dysfunctional services by PRASA employees, previous Board members, commuters and organisations such as #UniteBehind and OLT.

Complaints to the Judicial Services Commission, the Pretoria Bar Council and High Court Application

17. The judiciary has been a bulwark against corruption, state capture and the attempts to destroy bodies such as the NPA, the DPCI and Parliament. In the PRASA state capture matters, the role of newly appointed Justice Nana Mahubele at the rail agency stands out as one of the exceptions to the integrity and independence of the judiciary. Former Minister of

Transport, Mr Maswangananyi's unlawful appointment of Justice Makhubela as chairperson of the Interim PRASA Board of Control is the direct result of this illegality. Various complaints and their outcomes will also be placed on the record before the Parliamentary Ethics Committee as evidence of state capture at PRASA. They include:

17.1. Justice Makhubela's complaint to the Judicial Service Commission against Justice Neil Tuchten for his remarks about her questionable role as Chairperson of the PRASA Board of Control and her unexplained, irregular intervention in the *Siyaya* matters.

17.2. Justice Tuchten's responses to Justice Makhubela.

17.3. The judgment of Western Cape Deputy-Judge President in the matter between Justices Makhubela and Tuchten.

17.4. Justice Makhubela's complaint to the Pretoria Society of Advocates against Advocate Francois Botes (SC).

17.5. #UniteBehind's complaint against Justice Makhubela to the JSC.

17.6. The finding against Justice Makhubela the Judicial Conduct Committee.

17.7. *TAN Makhubela v the Judicial Services Committee and Others* (#UniteBehind was one of the parties sued by Justice Makhubela. She withdrew the matter and tendered costs. The Court record is important.)

#UniteBehind Documents

18. #UniteBehind has had a range of engagements with PRASA, Parliament, the Presidency and foreign government representatives related to state capture and the general operational crisis at the commuter rail agency. They include:

18.1. Letters to the PRASA Board of Control,

18.2. Letters and Submissions to Parliamentary Portfolio Committee on Transport,

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- 18.3. Letters and Submissions to President Cyril Ramaphosa,
 - 18.4. Letters to German and European Union Ambassadors on Vossloh and Swifambo,
 - 18.5. Letters between #UnireBehind and the National Prosecuting Authority, and
 - 18.6. #UnireBehind statements, leaflets and other documents.
19. The evidentiary value of these documents is in the facts they contain on engagement, state capture and the failure of the various authorities to respond with the urgency required to deal with the consequent operational disaster at PRASA. This is nowhere more evident than the crisis of life and death on the trains.

Audio-Visual and social media material

20. #UnireBehind will submit a dimnutve sample of commuter social media traffic on WhatsApp and Facebook, as well as its own audio-visual material. Specifically:

- 20.1. Video taken with a phone at Mutual Station in Cape Town during peak hour demonstrating over-crowding,

- 20.2. Video of Shammese Abid whose son Keeno was killed on the trains in 2018, and

- 20.3. Various samples of social media.

21. These videos, Facebook posts and WhatsApp messages illustrate the plight of commuters. Should the Commission require, the administrators of the various WhatsApp groups based on the different rail lines (Central, Southern, Northern, Cape Flats and their sub-lines) would be willing to testify.

Additional Leaked Documents on Security and Other Matters

22. The protected disclosures include matters of security, state capture, unlawful conduct including theft and corruption, and are listed below:

22.1. Letters and court settlement between the Private Security Regulatory Authority (PSIRA) and PRASA on the failure to register security personnel,

22.2. Memo by the Western Cape Regional Security Head, Mr. Ernest Hendicks to Mr. Tiro Holele at PRASA Head Office on the state of PRASA,

22.3. Letters between PRASA and VBS executives, and

22.4. Provisional Western Cape Public Protector's Report on Mthura Swartz and other documents pertaining to his unlawful conduct.

Media Reports

23. Finally, we will place on record a compendium of media reports from news agencies who have focused on PRASA. They include:

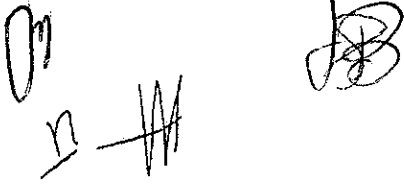
23.1. GroundUP

23.2. News24 Group

23.3. Daily Maverick

23.4. AmaBhungane

24. The consensus of the evidence above (and more) paints a picture of a rail agency that requires a disaster management plan. PRASA was captured by the corrupt inside and outside the organisation, mismanaged by a criminal network committed to self-enrichment rather than professional ethics and competence, ill-led and its resources plundered by profiteering companies in Europe and at home. All the evidence, despite its limitations, also points to possible solutions.



#UNITE BEHIND

A JUST AND EQUAL SOUTH AFRICA

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Submission to the Portfolio Committee on Transport on State Capture, Governance and an Emergency Safety Plan

6 February 2018

Introduction to #UniteBehind

1 We present this submission on behalf of #UniteBehind, a voluntary association of people's movements, legal, policy and support organisations advocating for justice and equality. The 20+ organisations which constitute #UniteBehind include, among others, the Alternative Information and Development Centre, the Centre for Environmental Rights, Women's Legal Centre, Social Justice Coalition, Ndifuna Ukwazi, Equal Education, Women and Democracy Initiative, Abdullah Omar Institute, Right2Know (Western Cape) and UDP Veterans Network. These organisations are supported by communities of faith such as the Western Cape Religious Leaders Forum and the South African Council of Churches and the Muslim Judicial Council. #UniteBehind is predominantly Western Cape-based but many of our constituent organisations operate across the country.

2 #UniteBehind emerged out of the Cape Town Ahmed Kathrada Memorial, held on 6 April 2017. This event brought together thousands of people from across Cape Town, equally motivated to honour the memory of Comrade Kathy and to protest the assault on the democratic state which at that time had just been epitomised by the cabinet reshuffle that saw the removal of Pravin Gordhan and Mcebisi Jonas from the Ministry of Finance. Gordhan addressed the memorial along with activist leaders from Black African and Coloured communities from across the Cape Flats.

3 Our key mission in #UniteBehind is to build a just and equal society where all people share in the country's wealth, participate in the decisions that affect their lives, and where the environment is sustainably protected for future generations. One of our central demands is the building of a safe, reliable, affordable, efficient and quality public transport system, in particular a commuter rail

service. Dealing with the endemic corruption, state capture, political interference by the Executive, incompetence and maladministration at the Passenger Rail Agency of South Africa (PRASA) is one of our most immediate and urgent campaigns to give effect to the right to safe, reliable, efficient rail transport for all.

URGENT LEADERSHIP INTERVENTIONS REQUIRED FROM PARLIAMENT; A NEW PRASA BOARD AND EXECUTIVE MANAGEMENT

4 Safety and security represents an urgent emergency and PRASA is mired in state capture, corruption, mismanagement and maladministration. The crisis in safety and security cannot be adequately resolved without simultaneously addressing the crisis in governance and management. We therefore request the following urgent action to bring relief to workers, students, commuters and the economy.

4.1 The Passenger Rail Agency of South Africa (PRASA) will not emerge from the current crisis unless and until a new board is appointed. Cabinet must instruct the Minister of Transport to appoint a credible new board with the requisite qualifications, experience, skills and competencies.

4.2 All those implicated in corruption, mismanagement, maladministration must be removed from PRASA. Parliament must instruct the Board to continue investigations and to support all criminal and civil proceedings against those involved in state capture and corruption at the rail agency.

4.3 Investigations must be concluded and the rapid prosecution of cases against all those involved in the criminal enterprise to capture PRASA must be prioritised. In particular, Siso Buthelezi, Makhensa Mabunda, Lucky Montana, Mtshu Swartz, Roy Moody, Maito Ferreira, Arthur Fraser, Manda Manzini, Ausrwell Mashaba, Josephat Phungula, Chits Mbatha, Daniel Mthimkulu, Rebecca Sedno, Maithe Bopape and Ernest Gow have cases to answer based on all the available evidence. See our attached annexures and submission to Parliament for further details on the above individuals.

4.4 Criminal investigations must also include international companies such as Vossloh Espana/Stadler Rail which has stolen billions of rand through contracts like Swifambo Rail (locomotives). The relevant European regulatory authorities must be contacted.

4.5 A qualifications, skills, competencies and life-style audit is urgently needed for PRASA management at every level, starting with head office and its Western Cape region. The new Board must lead this audit to ensure that people's needs are prioritised and the economy (particularly in Cape Town where the rail system forms the backbone of all public transport) is stabilised.

4.6 All PRASA appointments must be merit based with open competition. Only appropriately qualified, skilled, competent and experienced people must be appointed at managerial and supervisory levels.

4.7 An urgent safety plan is needed to enable commuters to travel without constant fear of being crushed to death, thrown from the train or attacked by criminals. We believe the following are among the immediate steps required:

4.7.1 The reopening of the Central Line with adequate security.

4.7.2 Security employed by PRASA must be qualified and PSIRA compliant. They must be supported by the South African Police Service and the Law Enforcement Officers of the City of Cape Town. All current security employees must be assessed; where possible redeployed and trained. Those with serious criminal records must be dismissed.

4.7.3 The protection of commuters and all workers, particularly women, children and other vulnerable people, must be prioritised. This can be partially achieved through securing of stations and their surrounds (including proper lighting and CCTV surveillance).

4.7.4 Separate compartments are needed for women, children and differently abled commuters. This has been successfully implemented in other countries such as India. Organisations such as #UniteBehind and the broader commuting public must be involved in the development of a plan with clear objectives; targets; deadlines and budgets.

4.7.5 Specific details and timeframes for any such safety plans or measures be communicated to all commuters.

4.8 In Cape Town the passenger rail service must be coordinated and at an appropriate time transferred to the relevant local authority as contemplated the Draft White Paper of the National Rail Policy – June 2017. Much of our work involves campaigning against the and-poor and anti-black policies of the City of Cape Town's DA administration, but in this instance the City has made a realistic set of recommendations which should be taken seriously. Most importantly however, is that the National Land Transport Act requires that all land transport including rail be integrated with municipal transport. This international standard is crucial to the provision of efficient, accessible and reliable integrated transport systems in our metros.

4.9 Alternative forms of transport, like busses, must urgently be provided to commuters who ordinarily use lines that are currently suspended or those facing constant delays.

4.10 In the medium term we need a proper plan: How do we stop delays? What new rolling stock is needed? Is there surplus rolling stock elsewhere? Which of the existing coaches, not in use, could be upgraded rapidly?

4.10.1 As much as possibly such rolling stock must be manufactured and procured locally to develop our manufacturing sector, creating employment and stimulating growth.

5 The above recommendations combine a set of priorities for parliament, a new board, and a Minister of Transport to stabilise the passenger rail service in every region. Government (all its different arms and spheres) cannot save our rail service alone. People who use public transport, business, trade unions, schools and communities and #UnitedBehind stand ready to assist.

THE URGENT ISSUES FACING PRASA COMMUTERS OF SAFETY AND SECURITY AND THE COLLAPSE OF SERVICE

6 The lack of safety on our country's passenger trains is a daily nightmare.

7 PRASA and Metrorail have never complied with the Constitutional Courts 2004 judgment and subsequent Court Order of 2009 in *Rail Commuter Action Group and 54 Others v Transnet Limited t/a Metrorail and 3 others* (see Annexure 1). This was a matter brought forward by Leslie van Minnen who tragically lost his son, COSATU, and many others.

8 PRASA Western Cape Region currently sources largely incompetent, unregistered and unskilled

security personnel who cannot protect themselves, passengers or the assets of the agency. Many have criminal records. For more information see the 31 May 2017 letter sent by PRASA's Mr Ernest Hendricks, Regional Security Manager, to Mr Tiro Holele and PRASA's Corporate Office (see Annexure 2). Over 80% of the security staff in the Western Cape are not registered with the Private Security Industry Regulatory Authority (PSIRA). Alarmingly the majority of this group are so-called Military Veterans who cannot be registered because they have criminal records. As #UniteBehind wrote, in a letter to Minister of Transport, Mr Mkhacani Joe Maswanangayi, on 18 October 2017, the manner in which security guards have been appointed and the failure to protect people and assets "can only be described as criminal negligence". (See Annexure 3)

9 The impression of criminal negligence was amplified when we were provided with a copy of a business plan prepared by the City of Cape Town, sent some time ago to PRASA Western Cape, offering that "an additional 100 law enforcement officers be added to the City's resources – split 40% to focus on infrastructure (cable theft and vandalism) and 60% on commuter safety." This offer was not responded to by PRASA. (see Annexure 4)

10 #UniteBehind has sent a letter demanding among other things an urgent safety and security plan to PRASA Western Cape's Regional Manager, Richard Walker, on 12 January 2018 (see Annexure 5).

GENERAL CRISIS AT PRASA: COLLAPSE OF THE SERVICE

11 The Rail Safety Regulator has reported that there were 495 fatalities, 2079 injuries, and 73 derailments or collisions of PRASA trains, in 2016/17 (see Annexure 6). Most recently there was a derailment or collision:

11.1 derailment at Bellville Station where 10 passengers were injured - 18 August 2017

11.2 derailment at Plumstead Station – 1 November 2017;

11.3 collision and derailment in the Free State where 254 passengers were injured and 18 were killed – 4 January 2018;

11.4 in Germiston where over 226 passengers were injured;

11.5 in Germiston – 17 January 2017;

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11.6 on the Cape Town Central Line (S11 suspended) where four trains derailed on a test run for the resumption – 18 January 2018.

12 The Central Line, servicing over 120 000 commuters whom are overwhelmingly working-class and poor African and Coloured, has been shut down since the 8th of January 2018 after a security guard was murdered. This has cascaded to other sectors of public transport causing unrest for bus and taxi commuters as well.

13 Around 43% of former passengers (~248 500) have stopped using the trains over the past four years; on average over 45% of trains are late and around 16% of all trains are cancelled (July 2017)? with the exception of the Central Line, which has faced far worse collapse.

14 Up to 57% of trains have been cancelled during certain weeks on the Central Line, with an overall 400% increase in train cancellations in the Western Cape between 2015 and 2017?

15 We have reason to believe that PRASA's management team at a national and regional level, is incompetent and dysfunctional. This stems from a decade of state capture, corruption, mismanagement and maladministration.

STATE CAPTURE, CORRUPTION AND MALADMINISTRATION

16 In August 2015, then Public Protector Advocate Thulisile Madonsela published her report "Derailed" (No.3 of 2015/16) based on 32 complainants of maladministration, procurement irregularities and corruption at PRASA. Her report dealt with serious allegations of tender fraud, nepotism, corruption and conflicts of interest involving former CEO Lucky Montana, amongst others. The Public Protector found that 19 of the 32 complainants were substantiated.

17 A new PRASA Board was appointed in August 2014, under the chairmanship of Mr Popo Molefe. On receiving the *Derailed* report, he set about addressing the extremely serious findings and binding

1 TDA Cape Town. Comprehensive Integrated Transport Plan 2017 – 2022. (Report by City of Cape Town Transport and Urban Development Authority - 2017), pg. 41.
2 Metrorail: Western Cape, Key Stakeholder Engagement Presentation – September 2017
3 Nceda Hlana, 400% increase in train cancellations worries the Western Cape. (Business Day, 2017). Available: [https://www.businesslive.co.za/bd/national/2017-08-15-a-400-increase-in-train-cancellations-worries-the-western-cape/]

remedial actions. According to a statement by Mr Molefe in 2017:

"in accordance with the recommendations of the erstwhile Public Protector in her report entitled Derailed, to address long-standing corruption and governance issues at PRASA... the board instituted and completed significant investigations at PRASA and, consequently, embarked on litigation to unwind unlawful and corrupt transactions... vindicated most recently by the judgment of Francis J in *PRASA v Swifambo Rail Leasing (Pty) Ltd*, in terms of which PRASA succeeded in setting aside an unlawful contract amounting to approximately R2.6bn... also taken steps to compel the law enforcement agencies, including the National Prosecuting Authority and the Directorate for Priority Crime Investigation, to act against the wrongdoers."

18 A crucial remedial action ordered by the Public Protector directed PRASA to assist the National Treasury in investigations of all contracts above R10 million for the period 2012-2015.

19 These investigations, commissioned by National Treasury, and conducted by 13 different prominent law firms and forensic agencies, implicate among others the current Deputy Minister of Finance Mr. Siso Buthelezi (former PRASA Board Chairperson) in possible criminal conduct along with politically connected persons known to President Jacob Zuma including Mr. Roy Moodley, Arthur Fraser, Mr. Mathemsa Mabunda and Mr. Mario Ferreira.

20 The reports reveal a systematic effort to loot the rail agency.

21 The major companies directly implicated include S-Investments or the "S Group" which includes Siyaya Energy, Siyaya DB Consulting Engineers and Siyaya Rail Infrastructure Solutions and Technology. Swifambo, Vosto Espana, Royal Security, Resurgent Risk Management and Thiretso Enza Construction are also directly implicated although these latter three are not dealt with further in this letter.

22 R15bn was the total value of the contracts investigated by Treasury for contracting periods between 2012-2015. Specifically, R2.5bn can explicitly be attributed to "irregular" and unlawful expenditure. Another R3.5bn is unverifiable due to missing documentation. The extent of missing documentation and/or missing steps in the procurement process can be attributed to fraud with criminal intent.

23 All the investigators for the Treasury report cited a lack of proper record keeping and missing

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documentation. In many instances the audit trail was destroyed and where it could be followed it showed lack of compliance with the PRASA's supply chain management process and the PFMA.

24 Tenders were awarded without any needs analysis having been conducted.

25 Tender and contract rigging was found to be commonplace. Where competitive tendering processes were followed on the surface, the specs and scoring were rigged to allow preferred suppliers to win.

26 The reports of these Treasury investigations were leaked to #UniteBehind and became known in the media under the heading #PrasaLeaks. #UniteBehind published a detailed report on the basis of the #PrasaLeaks. (See Annexure 7)

27 In 2015 the Auditor General issued several adverse findings against the PRASA board and management. However, it is noteworthy that the Auditor General failed to come close to detecting and exposing the systemic rot, corruption and fraud which has been ongoing for years.

28 Notably, the Parliamentary Portfolio Committee on Transport failed totally to hold PRASA accountable to date.

29 Further, on 3 July 2017, in setting aside the corrupt Swifambo tender award, Justice Francis stated as follows:

"This case concerns corruption by a public body concerning a tender that will affect the public for decades to come... Farn has been done in this case to the principle that corruption should not be allowed to triumph. Farn will be done to the laudable objectives of our hard-fought freedom if I was not to set aside the award. Farn will be done to all the hardworking and honest people of our land who refrain from staining themselves with corruption... Farn will be done if the benefactors of the tender were allowed to reap the benefits of their spoils... Corruption will triumph if this court does not set aside the tender."

30 Even a cursory perusal of the Auditor General's 2015 report, the Public Protector's *Detailed* report, the judgment in *Swifambo* and the affidavits filed in other matters, gives much reason to suspect that offences listed in Chapter 2 of the Prevention and Combating of Corrupt Activities Act 2004 have been committed in relation to PRASA.

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31 Most seriously, despite mountains of evidence of systemic corruption and state capture at PRASA, the Hawks and NPA have failed to act for more than two years (See paragraph 33.3).

PRASA, UNDER FORMER CHAIR POPO MOLEFE, GOES TO COURT TO RECOVER LOOTED FUNDS

32 During 2017 PRASA, on instructions from its then-Board of Control, under the chairmanship of Mr Popo Molefe, instituted legal proceedings against various companies, entities and individuals to address lapses in governance and recover looted funds. The institution of these legal proceedings followed the forensic investigation that was instituted by the BOC under Molefe and the report of the Public Protector entitled "Derailed".

33 The legal proceedings brought by PRASA were:

33.1 Siyngena Technologies (Pty) Ltd: This is a review application against an award of two contracts to Siyngena for installing security systems at 200 PRASA stations. Former Group CEO, Lucky Montana, and the Project Manager on this project, Luyanda Gantsho, are implicated. Gantsho has admitted to investigators that he received the beneficial use of a penthouse apartment. PRASA's court papers alleged that Montana had received kickbacks of R4.9-million. PRASA's internal legal department (see Annexure B) are confident of success in the review because the Constitutional Court has recently changed the law to allow a public entity to review its own decision and because new evidence has emerged that shows that Siyngena knew the contracts were irregular.

33.2 Swifambo Rail Agency (Pty) Ltd (Case No. 2015/42219): This is the famous case where 70 diesel-electric locomotives were acquired that exceeded the maximum height specified. The tender was worth R3.5bn. (For further details see from paragraph 68 below.) Justice Francis set aside the corrupt contract with a scathing judgment on numerous grounds including likely rigging of the tender, Swifambo's lack of tax clearance, PRASA's failure to secure approvals required by the PFMA and various other grounds. Swifambo was granted leave to appeal and the appeal is underway.

33.3 Directorate of Priority Crimes Investigation and the National Prosecuting Authority (Case No. 36337/17): This application is for an order directing the Hawks and the NPA to investigate complaints laid by PRASA in respect of Swifambo and Siyngena. To date the

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"The current minister of transport has, however, continued to attempt to thwart the operations of PRASA and prejudice its attempts to address Derailed... the new minister has refused to meet with the board; despite repeated requests... rather than dealing with the board, Minister notified the board, Minister notified the board of his intention to remove the Board in June 2017; and the minister has undermined the

2017. However, according to Mr Molefe, the same pattern continued:

39 President Zuma replaced Peters with Joe Maswanganyi in the cabinet reshuffle at the end of March

38 In March 2017, Peters went a step further and attempted to remove the PRASA board. This was successfully resisted in court as "unlawful" and "irrational".

into corruption that Werksman's Attorneys had been commissioned to carry out were to be curtailed.

37 The then Minister of Transport, Dipuo Peters, in August 2016, announced that the investigations

ATTEMPTS TO 'DERAIL' THE INVESTIGATIONS

36 It is important to note that PRASA has still not instituted any litigation flowing from the investigations of the National Treasury.

35 PRASA is also involved in arbitration with Siyaya before Justice Brand (see paragraph 65 below).

34 Apart from the last two matters, all the others are either pending or on appeal.

33.5 A case challenging the unlawful dismissal of the previous Board of Control by Ms Dipuo Peters, former Minister of Transport (Case No. 17748/17)

Appeal
Findings in the Public Protector's 'Derailed' report. KGP Media attempted to interdict the cancellation but PRASA opposed this application successfully up to the Supreme Court of

33.4 KGP Media: In this litigation PRASA cancelled an irregular tender based on evidence and

Hawks have refused, saying that when he signed an affidavit on behalf of PRASA, as Chairperson of the Board, which he then was, Dr Popo Molefe lacked the required authority.

authority of the board, including its authority to complete its investigations and take steps in addressing corruption at PRASA. The current minister's actions, unfortunately, dovetail with those of his predecessor, who once instructed the board to 'stop' the investigations; did not appoint a permanent CEO even after the board had followed all due processes; and unlawfully terminated the board's service prematurely and was rebuked by the court for having done so."

40 Mr Molefe's term ended on 31 July 2017. Since he left corrupt practices appear to have re-emerged, commencing with the appointment by the Minister of Transport, of an "Interim Board"

41 The Ministers of Transport at the relevant times: Ben Martins, Dipuo Peters and now Joe Maswanganyi appear to have deliberately turned a blind eye to corruption and mismanagement. In the cases of Peters and Maswanganyi, there appears to be collusion to obstruct justice.

UNLAWFUL APPOINTMENT OF AN "INTERIM" BOARD OF CONTROL "UNTIL FURTHER NOTICE"

42 The Minister of Transport appointed "an interim" Board of Control (BOC) for the Passenger Rail Agency of South Africa (PRASA) "until further notice", on the 19th of October 2017. This appointment is unlawful in terms of the Legal Succession to the South African Transport Services Act 9 of 1989 (the Legal Succession Act), which does not allow for the appointment of an "interim board". In the litigation referred to in paragraph 71.5, #UniteBehind has asked the Court to review the decision and to find that the BOC was improperly constituted.

THE INAPPROPRIATE APPOINTMENT OF JUSTICE MAKHUBELE AS PRASA INTERIM BOARD OF CONTROL CHAIRPERSON

43 On 5 October 2017, the Judicial Services Commission (JSC) formally recommended for appointment Adv Tintswalo Anah Nana Makhubele SC as a judge in the Gauteng High Court. This followed Makhubele's interview before the JSC.

44 On 19 October 2017, Makhubele was appointed by Mr. Joe Maswanganyi, Minister of Transport, as the Chairperson of the Interim Board of Control of PRASA "until further notice". The Minister seems not to have been concerned that he was appointing an Interim Chairperson who had already been recommended for appointment as a judge.

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Under our Constitution, the judiciary has a sensitive and crucial role to play in controlling the exercise of power and upholding the bill of rights. It is important that the judiciary be independent and that it be perceived to be independent. If it were to be held that this intrusion of a judge into the executive domain is permissible, the way would be open for judges to be appointed for indefinite terms to other executive posts, or to perform other executive functions, which are not appropriate to the "central mission of the judiciary." Were this to happen the public may well come to see the judiciary as being functionally associated with the executive and consequently unable to control the executive's power with the detachment and independence required by the Constitution. This, in turn, would undermine the separation of powers and the independence of the judiciary, crucial for the proper discharge of functions assigned to the judiciary by our Constitution. The decision, therefore, has implications beyond the facts of the present case, and states a principle that is of fundamental importance to our constitutional order."

- 45 Two weeks later, on 2 November 2017, Makhubele was indeed appointed by President Zuma as a Judge of the Gauteng Division of the High Court, with effect from 1 January 2018.
- 46 Makhubele confirmed her impending appointment as a Judge in her report to the Parliamentary Portfolio Committee on Transport chaired by Ms Dikeledi Magadzzi (MP) on 24 November 2018.
- 47 To this day, Makhubele remains Chairperson of the Interim Board of Control of PRASA.
- 48 Based on the above, #UniteBehind is concerned about a breach of the separation of powers. As chairperson of the interim PRASA Board of Control, Justice Makhubele is carrying out functions in the executive domain and is accountable to the Minister of Transport, Parliament, the Minister of Finance and the Auditor-General. Further, #UniteBehind is concerned about the possibility that the standing of the judiciary could be damaged by one of its incoming members appearing to condone ill-gotten gains.
- 49 The Constitutional Court dealt with this question in relation to former President Mandela's appointment of Justice Willem Heath as Head of the Special Investigating Unit. In *SA Association of Personal Injury Lawyers v Heath and Others* (CCT27/00) [2009] ZACC 22; 2001 (1) SA 883; 2001 (1) BCLR 77 (28 November 2000) the late President of the Constitutional Court, Arthur Chaskalson, held the following when declaring Heath's appointment unlawful:

50 #UniteBehind wishes to place on record that we have the fullest confidence that judges in our democratic constitutional dispensation have followed the precepts of the separation of powers because not one member of our judiciary has since occupied post in the executive's domain. Justice Makhubele is the only such appointment.

51 You will find annexed a confidential letter (see Confidential Annexure 9) sent to #UniteBehind by the appropriate ranking member of the judiciary in which #UniteBehind is advised of the steps being taken by said ranking member of the judiciary to manage the problems in regards to Justice Makhubele. The annexed letter was in response to a letter from #UniteBehind. We have not currently laid a complaint with the Judicial Services Commission pertaining to Justice Makhubele because we believe such a course of action can be averted along with any unnecessary tension or conflict. However, we believe that Justice Makhubele must resign from the Interim Board with immediate effect.

52 The latest egregious act of irregular and possibly corrupt action shows that under the Transport Minister Joe Maswanganyi and his "Interim" Board chaired by Justice TAN Makhubele, a decision was taken to "invest" R1 billion allocated to capital projects in the VBS Bank. President Jacob Zuma's unlawful expenditure on Nkandla was paid through this bank and in the attached memorandum we show that he has benefited directly from state capture at PRASA. Since at least November 2017, PRASA has been involved in negotiations with VBS Bank and unlawfully committed to invest monies allocated to improve commuter rail services. The Minister of Transport Joe Maswanganyi, Justice Makhubele and her Board colleagues along with most of the Executive Management are ethically and legally compromised. #UniteBehind has gained access (through whistle-blowers) to letters between PRASA and the VBS Bank. We will provide annexures after this hearing.

THE RECKLESS APPOINTMENT OF MTHURA SWARTZ AS ACTING PRASA RAIL CEO

53 On 3 January 2018, the Acting Group CEO of PRASA Mr. Cronet Molepo (who was himself improperly appointed by the unlawfully appointed Interim Board of Control) announced the appointment of a certain Mr. Mthura Swartz as head of PRASA Rail, the main subsidiary in the group.

54 Mr Molepo was appointed despite the fact that he was suspended by KwaZulu-Natal's Umgenti Water on grounds of serious financial conduct, illegal tapping of communications, and unauthorised expenditure. He resigned in order to prevent disciplinary action being taken against him. Molepo's

appointment of Swartz also features in our legal challenge mentioned in paragraph 71.5 above.

55 It is extraordinary that this appointment happened only days after PRASA's own lawyers, from a large reputable law firm, advised PRASA management to immediately suspend Mr. Mthura Swartz who was then Executive Manager for PRASA Mainline Passenger Services. This advice was given on 28 December 2017. The basis for the advice was because complainants and witnesses in new matters of victimisation, intimidation, irregular procurement processes and sexual harassment feared for their jobs and/or personal safety. Instead of suspension, Mr. Swartz was on 1 January 2018 promoted to the position of Acting PRASA Rail CEO where he has power and control over all whistle-blowers, complainants, potential witness and documentary evidence.

56 On 5 January 2018, we addressed a letter to Justice Makhubela (see Annexure 10) pointing out the following:

56.1 Mr. Swartz has provisional findings against him by the Western Cape office of the Public Protector for maladministration, specifically the improper appointment of unqualified and unskilled persons to senior security positions;

56.2 The Directorate for Priority Crime Investigation (DPCI) ("the Hawks") in the Eastern Cape is investigating Mr Swartz (now the head of PRASA's rail division) for organising the theft of rail lines and sleepers as well as corruption (Elliot CAS 35/02/2013);

56.3 Earlier in his career, Swartz was found guilty by the City of Cape Town on 8 charges relating to an irregular tender and over-payment by Rkm.

56.4 At PRASA, Swartz appointed senior security staff members despite them lacking the necessary qualification, security clearance, firearms training and Private Security Industry Regulatory Authority registration (see Annexure 11 for further details on this.)

56.5 Swartz is likely to face charges for a corrupt relationship with Spanish Ice, a "logistics company" used to transport the stolen PRASA assets.

56.6 We are reliably informed that sufficient evidence on oath exists to suspend Swartz on grounds of sexual harassment, victimisation, intimidation, irregular procurement and corruption.

56.7 As shown above, PRASA was advised on 28 December of the need to suspend Swartz, before he was promoted.

57 To date, we have not received any acknowledgment of, or reply to, our letter to Justice Makhubela that might provide a reasonable explanation for Swartz's appointment and continued presence at PRASA.

DECISION OF THE "INTERIM" BOARD UNDER JUSTICE MAKHUBELE TO SUSPEND PRASA'S LEGAL PANEL, ENDANGERING LEGAL PROCEEDINGS AGAINST LOOTING

58 On 1 December 2017, the interim BoC, under the chairpersonship of Justice Makhubela, convened a special meeting at the PRASA Corporate Office in Hatfield in Pretoria, at which various resolutions were taken.

59 One of these decisions was to suspend PRASA's legal panel, i.e. the group of attorneys that had provided legal services to PRASA for years. These were, of course, the attorneys working on all of the above cases intended to recover funds looted from PRASA. Instead, the BoC decided, any legal services were to be sourced not through Group Legal Services, but through PRASA's Supply Chain Management (SCM) department.

60 This decision received strong opposition from professionals within PRASA. On 5 December 2017, PRASA's Group Executive for Legal, Risk & Compliance, Martha Ngye and General Manager for Group Legal Services, Fani Dingiswayo, sent Interim Chairperson Makhubela a 15-page memorandum (see Annexure 12) in which they detailed their strong objections to the Interim Board's decision. They wrote: "We do not support the part of the draft resolution that states that procurement of legal services should be done through the SCM Department."

61 The memorandum expressed a number of fundamental concerns:

61.1 It says that the Board resolution "appears to be a termination of the panel of attorneys and not a suspension thereof";

61.2 It says and that the decision ignores "the risks of not having a panel of service providers that service PRASA on a daily basis". It explains: "There is always a need for legal advice and representation for project-related work, personal injury, labour issues that arise etc. It is not an exaggeration to indicate that this occurs almost daily. Without a list of service providers who

are immediately available to PRASA, the work of [Group Legal Services] GLS will be severely hampered."

61.3 That the Supply Chain Management (SCM) department to which the Boc has now delegated authority to procure legal services is in a "parious state", "paralysis" and that twice in three years the SCM Department showed itself to be "inept to procure a panel of attorneys". They noted to the Boc that the SCM Department was even unable to provide PRASA with ink charges or paper for over a month. "Our view", the memorandum states, "is that they cannot be entrusted with the responsibility to procure legal services almost every day."

62 #UniteBehind has reason to believe that the decision to disband the legal panel is party intended to scupper the attempts detailed at paragraph 33 above, against companies such as Sinyangena and Swifambo to recover looted funds.

63 Further, #UniteBehind has received credible information and has reason to believe that the decision to disband the legal panel is party intended to enable the settlement of all disputes with the S-Investments (which included Sinya) companies of Mr. Makhensa Mabunda.

S-INVESTMENTS AND MAKHENSA MABUNDA

64 S-Investments is a company whose sole director is Makhensa Mabunda, a former government official and erstwhile colleague of Lucky Mtonana, PRASA's former CEO. Mabunda and S-Investments control Sinya and are strongly linked to Swifambo.

65 Sinya DB Consulting Engineers (Pty) Ltd (now in liquidation) and Sinya Rail Solution (Pty) Ltd, are implicated in significant corruption and payments to them have been halted pending arbitration. The Boc's apparent intention to forego the arbitration and settle — in favour of Mabunda and to the severe detriment of PRASA (and in disregard of the arbitration process underway before Justice FDI Brand) — would in our view deprive PRASA of significant resources urgently required to address the crisis commuters face daily and is simply irrational.

66 In our court papers we contend that the resolutions taken by the Boc are unlawful for the reason that they were taken by an "interim" Boc that was unlawfully appointed and is improperly constituted; and further on the grounds that the resolutions themselves are irrational and accordingly unlawful because their impact would be to bury all corruption investigations, litigation and asset

protection. This would—indeed appears designed to—benefit entities such as Siyaya DB Consulting Engineers (Pty) Ltd and Siyaya Rail Solution (Pty) Ltd owned by Mr. Makhensa Mabunda.

67 In recent weeks it has become common knowledge that Vossloh España (named changed to Stadler Rail Valencia in 2016 and now owned by the Swiss-owned Stadler Rail AG) the supplier of the too-tall locomotives to PRASA, made a series of payments between February 2014 and October 2015 totalling R75m as a kickback to Mabunda's S-Investments.

68 Swifambo Rail Leasing was the company Mabunda set up to purchase the locomotives from Vossloh España for PRASA. Swifambo was set up only a year before PRASA first advertised the tender and had no track record in the rail industry. It nevertheless won the R3.5bn tender.

69 It is important to remember that Dr Popo Molefe stated on affidavit in 2016 that Vossloh España paid roughly R80m to an Angolan businesswoman, Maria Gomes, a friend of President Jacob Zuma, and to a local lawyer who'd introduced himself to Swifambo's managing director as a fundraiser for the ANC. This was allegedly done because Gomes had insisted that ten percent of the tender's value be paid to the ANC.

69.1 Lucky Montana's testimony to the Eskom inquiry has brought up this payment. He claimed it was initially demanded of him by Dr. Zwelli Mkhize, the former Treasurer of the ANC, that 10% of R465 million of the first payment that was due to Swifambo Rail Leasing be paid to him. Montana denies the payment was made and claims he met with Gomes who denied it as well.

69.2 There can be little doubt that Montana's partial truths revealed to the Eskom Inquiry is not whistle-blowing but in fact an attempt to cover-up that the criminal syndicate in PRASA is almost intact and that under his leadership and that of current Deputy Finance Minister Siso Buthelezi, they fiercely resisted a takeover by the Gupta syndicate.

#UNTEBEHIND'S ATTEMPTS TO DATE TO HAVE THE PROBLEMS ADDRESSED

70 We make this submission to Parliament after having made numerous attempts to raise our concerns at all the appropriate levels:

70.1 We have undertaken serious research and education into PRASA state capture (assisted by

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71.2.2 The Chairperson of the Standing Committee on Finance Mr Yunus Carrim re. the

2017 (see Annexure 3).

71.2.1 The Minister of Transport Mr. Joseph Maswanganyi (cc. Chairpersons of the Portfolio Committee on Transport and Standing Committee on Public Accounts) re. the Governance and Operational Emergency in Prasa/Metrorail - 18 October

71.2 We have sent letters to the following people:

71.1.3 On the 30th of November 2017 we organised "The People's Trial of Jacob Zuma and his PRASA 'Thieves'" where we presented excerpts of evidence to over 2000 people at Cape Town Station.

71.1.2 We have picketed outside of the Portfolio Committee on Transport

71.1.1 On the 1st of November we occupied the NPA demanding the immediate arrest of President Zuma after the SCA reinstatement of corruption charges and the revealing of his corrupt relationship with Roy Moodley. Eight of our activists were arrested and held overnight, however all charges were eventually dropped. This followed unsuccessful engagement with Shaun Abrahams, the National Director of Public Prosecutions by the UDF Veterans for more than two months;

71 We organised protests:

70.5 We hold monthly public meetings with activists from our affiliate organisations, engage regularly with commuter groups on social media platforms and have hosted workshops;

70.4 We have created a pamphlet on the crisis (see Annexure 13);

70.3 We have produced two podcasts that address state capture and its role in the increasingly unreliable, unsafe and undignified commuter rail service;

70.2 We have educated ourselves and the need for a decent rail service.

whistle-blowers);

Governance and Operational Emergency in Prasa/Metrorail – 8 December 2017
(see Annexure 14).

71.2.3 The Public Protector Advocate Busiswe Mkhwebane re. Urgent request for release of a report in the alleged maladministration, mismanagement and abuse of resources and irregular recruitment and labour processes by officials of Metrorail Western Cape most notably Mr. Mthura Swartz – 30 January 2018 (see Annexure 15).

71.3 Letter of demand by our attorneys Bradley Conradi and Halton Cheddie re:

71.3.1 The Minister of Transport Mr Joseph Maswanganyi re. the appointment of the interim BoC and the appointment of Cronet Molepo (see Annexure 16).

71.3.2 To the Chairperson of the interim BoC Justice Makhubela re. the BoC's resolution (see paragraph 59; Annexure 17).

71.3.3 To the National Director of Public Prosecution Mr Shaun Abrahams re. appointing a special investigator and on the protection of PRASA assets – 25 January 2018 (see Annexure 18).

71.4 On 7 August 2017, the UDF Veterans group presented the NPA with a petition demanding that the NDPP urgently proceed with the prosecution of those involved in bribery, corruption and other related criminal activities in various institutions, which included PRASA. The NDPP, Shaun Abrahams, responded that the responsibility for investigating crime lies with police and the Hawks. However, section 22 of the Prevention and Combating of Corrupt Activities Act 2004 empowers the NDPP to appoint a Special Director of Public Prosecutions to investigate, whenever the NDPP has reason to believe that there may be in any building or in the possession or custody or control of any person any property which may have been used, or is connected with the commission of an offence listed under Chapter 2 of the Act, or may be the proceeds of such an offence. Our attorneys wrote to NDPP Shaun Abrahams to explain this elementary legal point and to request that he exercise his powers accordingly (see Annexure 18). In that letter our attorneys named individuals that we believe, based on the evidence in reports by the Auditor General and Public Protector as well as the Swifambo judgment and other affidavits, have committed offences in terms of Chapter 2 of the Act, namely Mr Makhensa

Mabunda, Mr Mario Ferreira, Mr Roy Moodley, Mr Lucky Montana and Mr Sifiso Buthelezi, to name a few. We have advised the NDP that should he not respond affirmatively we will be left with no choice but to bring an urgent application to compel him to do so. To date we have received no further response from the NDP.

71.5 On 18 December 2017 #Unite Behind and one of its affiliate organisations Equal Education launched legal proceedings against the Minister of Transport, the NPA and PRASA (regrettably, including Justice Mkhubele in her capacity as Interim Board Chairperson of PRASA) and others (Case No. 23200/2017) in the Western Cape Division of the High Court. On 22 December 2017, Justice Sira Desai postponed the hearing to 19 February 2018, which is less than two weeks away (see Annexure 19).

CONCLUSION

72 Thank you for giving this important issue your attention. It literally affects the daily lives of millions of people. These are poor and working-class people that the Constitution insists must be the state's first priority.

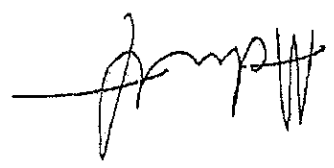
73 We intend to make this letter public one week from today, not in order to embarrass you but because we believe that in order to take the necessary action you will need public support.

74 We hope you have a fruitful year and trust that this letter is received in the spirit of demonstrating our commitment towards building an equal and free society under the rule of law.

Yours Faithfully,

Members of the #UniteBehind Organising Secretariat

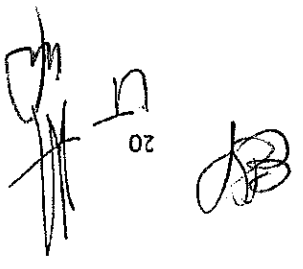
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LIST OF ANNEXURES:

1. Settlement Agreement between the Rail Commuter Action Group and 54 Others v Transnet Limited t/a Metrorail and 3 others [8232/2005] – 12 June 2009;

2. Letter from PRASA's Mr Ernest Hendricks, Regional Security Manager, to Mr Tiro Holele and PRASA's Corporate Office – 31 May 2017;

3. Letter from #UniteBehind to Minister of Transport Joe Maswanganyi re. the Governance and Operational Emergency at PRASA – 18 October 2017;

4. Project Business Plan: Project entered into by and between: Transport for Cape Town (TCT) and the Passenger Rail Agency of South Africa – 22 January 2018;

5. Letter from #UniteBehind demanding among other things an urgent safety and security plan to PRASA Western Cape's Regional Manager, Richard Walker - on 12 January 2018;

6. Rail Safety Regulator, *State of Safety Report 2016/2017*, pp 98 – November 2017;

7. #UniteBehind, *Rig, Conceal, Destroy and Falstify: How State Capture Happened at PRASA*, #PRASALeaks – January 2018;

8. Application for leave to appeal in the matter between Passenger Rail Agency of South Africa v Sityangena Technologies (PTY) LTD and 2 others [2016/7839] – 21 August 2017;

9. Letter from ranking member of the Judiciary to #UniteBehind re. Justice Makhubele – 29 January 2018;

10. Letter from #UniteBehind to Justice Makhubele re. the appointment of Mthunzi Swartz – 5 January 2018;

11. Progress Report: Alleged maladministration and mismanagement and abuse of resources and irregular recruitment and labour processes by officials of Metrorail Western Cape [001076/13/WC], Office of the Public Protector – 17 November 2015;

12. Memorandum to the Chairperson of the Board of Control of PRASA from Group Executive: Legal, Risk and Compliance – 5 December 2017;

13. #UniteBehind pamphlet for the #FixOurTrains campaign – 31 October 2017;

14. Letter from #UniteBehind to Chairperson of the Standing Committee on Finance Yunus Carrim – 8 December 2017;

15. Letter from #UniteBehind to Office of the Public Protector re. the release of final report (see Annexure 10) – 30 January 2018;

16. Letter of demand from #UniteBehind attorneys to the Minister of Transport Joe Maswanganyi re. the appointment of the interim BOC and the appointment of Cromer Molepo – 8 December 2017;

17. Letter of demand from #UniteBehind attorneys to the Chairperson of the interim BOC Justice Makhubele re. the BOC's resolution – 8 December 2017;

18. Letter of demand from #UniteBehind attorneys to National Director of Public Prosecutions re. investigation and protection of PRASA property – 25 January 2018;

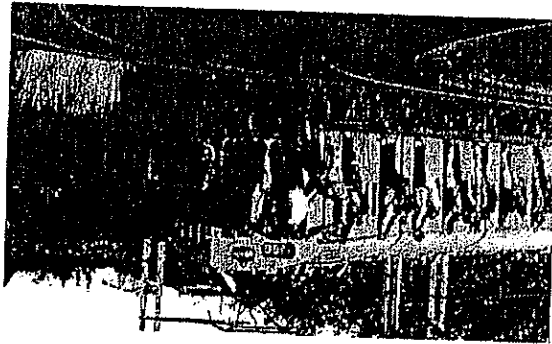
19. Notice of Motion and Founding Affidavit in the matter between #UnitéBehind and Equal Education v the Minister of Transport and the Passenger Rail Agency of South Africa [23200/2017] – 18 December 2017.

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Compiled by the #UniteBehind Merorail Monitoring Project: December 2017
#UniteBehind is a coalition of people's movements and their support organisations. We are supported by trade unions, faith-based organisations, community groups, women's organisations and individuals.
#UniteBehind works for a just and equal South Africa where all people share in the country's wealth and participate in the decisions that affect their lives, and where the environment is sustainably protected for future generations.



#UniteBehind Report for the Standing Committee on Public Accounts and the Portfolio Committee on Finance on leaked forensic investigations by Treasury of about 200 contracts worth approximately R15 billion at the Passenger Rail Agency of South Africa (PRASA)

R2.5 Billion Irregular Expenditure

Happened at PRASA.

Rig, Conceal, Destroy and Falsify: How State Capture

#PRASALBAKS

1. Introduction

Corruption and state capture compromises the provision of social goods and basic public services, directly devastating the lives of people, especially the working-class and poor. This includes unnecessary increases in the costs of electricity, water, and transportation. In the case of the Passenger Rail Agency of South Africa (PRASA), state capture and corruption directly disrupt and harm the lives and livelihoods of people every day.

This year close to 500 passengers have died and over 2000 have been injured according to the Railway Safety Regulator¹. Beyond this terrible cost of lives, such accidents and crime costs railway operators almost a billion rand (R961 million)². Almost all passengers routinely suffer physical and psychological harm. It is estimated that 43% of former passengers (~248 500) have stopped using Metrorail in the Western Cape over the past four years³. On average over 73% of trains are late and around 7% of all trains are cancelled. However, up to 57% of trains have been cancelled during certain weeks on the Central Line, with an overall 400% increase in train cancellations in the Western Cape between 2015 and 2017⁴.

The most extreme example of this took place in the week of Monday 11th December 2017, when Metrorail issued a statement that all services on the Cape Town Central Line would be suspended until further notice. They blamed this on extreme vandalism. The full service was still not fully restored three days later. This time services commuters from Langa, Bonteheuwel and Gugulethu through to Mitchell's Plain and Khayelitsha.⁵

The crisis means that passengers are consistently missing work and losing their pay and leave. Such passengers often lose their jobs as well. Consequently, commuters are desperate to get onto trains and this is regularly responsible for the deaths and injuries mentioned above. It leads people to run across the tracks, hang out of doors and windows, travel between carriages, or ride on the roofs of overcrowded and shortened trains. If passengers do make it to work on time, they will probably get home late, leaving them with less time for their families, let alone for themselves. Such a lifestyle is prone to anxiety, stress and depression. Individual households can suffer catastrophic consequences and the local economy suffers greatly, while corrupt actors at PRASA, the companies that captured them, and our public representatives revel in luxury, with no fear of prosecution or consequences.

¹ Railway Safety Regulator, *State of Safety Report 2016-2017*. Available: <https://www.rsr.org.za/metadata/news/afgshub>
² Bratton, L. Railway's R1 billion accident and crime bill. (GroundUp, 2017). Available: <https://www.groundup.org.za/railexpectations-and-crime-bill/>
³ TDA Cape Town, *Comprehensive Integrated Transport Plan 2017 - 2022*. (Report by City of Cape Town Transport and Urban Development Authority - 2017), pg. 41.
⁴ Neelba Hinnam, *400% increase in train cancellations worries the Western Cape*. (Business Day, 2017). Available: <https://www.businessday.co.za/hd/2017-08-13-a-400-increase-in-train-cancellations-worries-the-western-cape/>
⁵ Chabata, J. *Metrorail suspends all train services on Cape Town central line*. (News24, 11-12-2017; 10:18). Available: <https://www.news24.com/SAfrica/News/transport/suspends-all-train-services-on-cape-town-central-line-20171211>

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#PRASALeaks - Treasury Forensic Investigation

In 2012, the South African Transport and Allied Workers Union (SATAWU) laid 37 complaints with the Public Protector. These implicated Lucky Montana the then PRASA General Chief Executive Officer (GCEO) and other functionaries at PRASA. The complaints alleged maladministration and related improper conduct involving procurement irregularities, conflicts of interest, nepotism and human resources mismanagement, including victimization of whistleblowers. When SATAWU tried to withdraw its complaint, the National Transport Movement pursued the complaint.

On 24 August 2015, Advocate Thulisile Madonsetla released "*Derailed: A report on an investigation into allegations of maladministration, financial mismanagement, tender irregularities and appointment irregularities against the Passenger Rail Agency of South Africa (PRASA)*". The Public Protector found evidence of systemic maladministration at nearly all levels of PRASA's financial management, tendering and appointment processes.

One of the most important remedial actions prescribed by Advocate Madonsetla required the Chairman of the PRASA Board to "commission the National Treasury in conducting a forensic investigation into all PRASA contracts above R10 million since 2012 and take measures to address any findings regarding systemic administrative deficiencies allowing ongoing maladministration and related improprieties in its procurement system." One of the reasons this finding was made was because she could not get access to documents relating to procurement:

"I must record that the investigation team and I had immense difficulty piecing together the truth as information had to be clawed out of PRASA management. When information was eventually provided, it came in dribs and drabs and was incomplete. Despite the fact that the means used to obtain information and documents from PRASA included a subpoena issued in terms of section 7(4) of the Public Protector Act, many of the documents and information requested are still outstanding."

"I must also indicate that the authenticity of the documents submitted by PRASA management as evidence, principally relating to procurement, is doubtful. Many of the memos for approval of tenders and related documents submitted by PRASA management as evidence, principally relating to procurement is doubtful. ..."

In February 2016, the National Treasury, in compliance with the Public Protector's directions, commissioned forensic investigations into 216 contracts awarded by PRASA between 2012 and 2015. Of these, only 13 were found to have been above-board.⁶

⁶ Public Protector South Africa, *Derailed (2015)*, Sec. 33, (b), 5, p. 49

⁷ Public Protector South Africa, *Derailed (2015)*, (xviii), p. 20

⁸ Public Protector South Africa, *Derailed (2015)*, (xix), p. 21

⁹ Paul van Wyk, *Scorpio: Prasa - Treasury investigation recommends Siso Bulhezi be criminally charged*, (Daily Maverick, 2017). Available: <https://www.dailymaverick.co.za/article/2017-06-10-scwipo-prasa-treasury-investigation-recommends-siso-bulhezi-be-criminally-charged/#:~:tid=VIFd2N-W6IU>

During most of the period covered by the Treasury Investigations, PRASA was led by the then Board Chairperson, Mr. Siso Buthelezi (now Deputy Minister of Finance) and Mr. Lucky Montana, GCEO. A mostly new Board under the leadership of Mr. Popo Molefe was appointed in August 2014 when it became clear that PRASA's main subsidiary, Metrorail, which transports more than 1 million people daily, was in crisis. The new Board worked with Treasury under former Minister of Finance Pravin Gordhan, former Director-General of Treasury Mr. Lesetja Kganyago and the former Chief Procurement Officer of Treasury Mr. Kenneth Brown to implement the findings of the Public Protector. PRASA's reconstituted Board under Molefe also implemented other findings of the Public Protector while the Treasury Investigations into the 216 contracts over R10 million continued. Wherever they found corruption, they tried to act swiftly.

The subsequent dismissal of successive Ministers of Finance (Nhlanhla Nene and Pravin Gordhan) and of Mcebisi Jonas (Deputy Finance Minister), as well as the departures of key Treasury staff, is the direct result of efforts to protect the interests of those involved in state capture and systemic corruption. A great deal of evidence and analysis has proven the command, capture and control of government departments and state-owned entities by private interests, including the Gupta and Zuma clans as well as their networks. State capture has become synonymous with the Gupras. This is true but not the whole story.

On the 14th of November 2017, the Parliamentary Portfolio Committee on Transport suddenly called a hearing to discuss corruption at PRASA to follow-up on the former Public Protector's Derailed Report.¹⁰ #UnitéBehind activists and commuters attended the hearing where it became clear that the Transport Minister Joe Maswanganyi, egged on by the Committee Chairperson Dikeledi Magadzi, wanted to focus on investigators hired by former Board chairperson Popo Molefe, rather than on Siso Buthelezi, the billions lost to corruption and the criminal enterprise that had captured PRASA. Unlike the credible inquiry into State Capture at Eskom by the Portfolio Committee on Public Enterprises, the Transport Committee appeared to start a white-washing process that would target those wanting to expose the corruption and weaken or conceal the findings of the Treasury Investigations.

In response to this threat to bury the investigation, whistleblowers provided #UnitéBehind with the documentation, in the belief that our work against state capture in PRASA/Metrorail demonstrated that the coalition could be trusted with the findings of the Treasury Investigations. The #PRASALeaks expose a staggering level of corruption and non-compliance with the constitutional and legal obligations of the rail transport agency.

#PRASALeaks indicates that Jacob Zuma may have other criminal enterprises involved in state capture. Makhensa Mabunda, Roy Moodley and Mario Ferreira, among others, may be implicated in capturing PRASA. They parallel the Gupta's modus operandi acting with the protection of Zuma, Buthelezi and Montana. The Treasury Investigations threatened to expose the capture of PRASA/Metrorail. Those implicated fought back by forcing out Popo Molefe, the then PRASA Board Chairperson, and those helping him to fix the problems at PRASA, shutting down all forensic investigations including that of Treasury. The complete findings of the Treasury Investigations have not yet seen the light of day, until now.

¹⁰ Minister of Transport on PRASA state capture allegations: SASSA & ATNS audit challenges. (Parliamentary Monitoring Group, 2017). Available: [https://pmg.org.za/committee-investigation/25489/]

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#UniteBehind received about 1500 pages in reports based on forensic investigations by about 13 forensic and legal entities. We believe that this information must be made public because the impact of state capture at PRASA has led to the virtual collapse of the passenger rail network, including the obliteration of professional capacity and the drastic breakdown in infrastructure and rolling-stock at Metrorail. The impact on passengers is devastating.

These documents are of vital public interest. We have therefore released the documents to the community news site, GroundUp, to assist with investigation and dissemination. We chose GroundUp as they have consistently held Metrorail accountable for its failures to people who suffer (not use) trains every day.

This Interim Report highlights evidence which points to a level of criminal collusion and widespread breakdown in professional ethical conduct on the part of the then Board, PRASA senior management, officials and suppliers. Under Popo Molefe's short-lived leadership, PRASA laid about 40 charges with the Directorate of Priority Crimes Investigation (DPCI or Hawks) and the National Prosecution Authority more than two years ago.

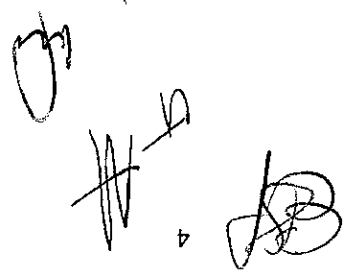
At present, the criminal justice agencies such as the Hawks and the National Prosecuting Authority are engaged in obstructing investigations and prosecutions. For this reason, #UniteBehind appeals to academics, journalists, researchers and activists to expose the criminal enterprise that captured PRASA and demand and take action in the public interest.

While the majority of cases investigated by the Treasury have yet to result in legal action, the PRASA Board under Popo Molefe took the two biggest cases to court in order to declare the contracts worth about R7 billion unlawful. The courts have pronounced on these major cases involving Sityangena Technologies and Swifambo Rail Agency. In the case of Sityangena, the court declined to hear the matter because it was out of time. PRASA has appealed the case. In the case of Swifambo, the tender process was found to be rigged to provide a European company, Voshlo Espana, the contract to provide PRASA with locomotives. Swifambo has appealed this outcome.

On 3 July 2017, High Court Justice Francis said the following in *Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd*:

"This case raises issues of fundamental public importance. This case concerns corruption by a public body concerning a tender that will affect the public for decades to come. This case is not merely a case about the public purse being used to acquire assets that will be used by the state or public officials. The public will make use of these locomotives for a considerable period of time and be directly affected by the benefits of harm arising from the decision to acquire them from Swifambo. ...

Harm has been done in this case to the principle that corruption should not be allowed to triumph. Harm will be done to the laudable objectives of our hard fought freedom if I was not to set aside the award. Harm will be done to all the hardworking and honest people of our land who refrain from staining themselves



with corruption. Harm will be done were I to allow an unlawful tender to remain intact. Harm will be done to the whistleblowers who were able to blow a whistle to members of the reconstituted board. Harm will be done if the benefactors of the tender were allowed to reap the benefits of their spoils. Harm will be done to the administration of justice if this award is not set aside from the onset. Corruption will triumph if this court does not set aside the tender." 11

Swifambo appealed this judgment and the Supreme Court of Appeal is expected to hear this matter next year.¹² The courts have often come to the rescue but it is the decent women and men in PRASA, Treasury, Transport and the public service generally who resist state capture by being professional and hard-working. This report has been made possible by working people who fear for their livelihoods and often for their lives when they refuse to turn a blind-eye to corruption. They choose instead to defend an ethical public service that places the needs of Metrorail passengers first. We are indebted to these public servants.

2. PRASA Governing Framework

"One of the cornerstones of democracy is that government leaders should be held accountable for how they use their power, including how they manage public funds. Through organizations and elected representatives, the public has a duty and a right to monitor government performance and draw attention to broken promises and mismanaged public resources." 13

2.1 Constitutional Obligations of PRASA

The Minister and Department of Transport, the PRASA Board, management and staff have a constitutional duty to put the needs of passengers first. The Constitution of South Africa is the cornerstone of the legal, regulatory framework within which PRASA must function. In terms of the injunctions of the Constitution,

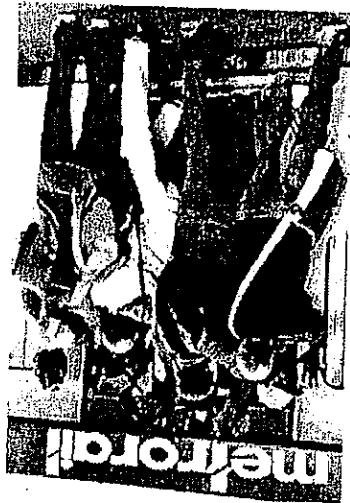
- Has a duty to promote and maintain high standards of professional ethics;
- Has a duty to make efficient and effective use of resources;
- Is required to be transparent, accountable and encourage public participation in policy making;
- Should be development oriented and provide fair, equitable, unbiased services that are responsive to community needs;
- Should procure goods and services in a manner which is fair, equitable, transparent, competitive and cost-effective, providing or advancing people or categories of people who are disadvantaged by unfair discrimination.¹⁴

¹¹ The High court of South Africa Gauteng Local Division, *Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd* (2015/42219) [2017] ZAGPJHC 177; [2017] 3 All SA 971 (GJ); 2017 (6) SA 223 (GJ) (3 July 2017). Available: [http://www.saflii.org/za/doc/cases/zacj17177.html?query=Swifambo] ¹² Engineering News, *Swifambo welcomes granting of leave to appeal on contract with PRASA*, (2017). Available: [http://www.genetnews.co.za/article/swifambo-welcomes-granting-of-leave-to-appeal-on-contract-with-prasa-2017-09-04/rep/id:4136] ¹³ van der Westhuizen, Carlene: *Monitoring Public Procurement in South Africa: A Reference Guide for Civil Society Organizations*: (2015). Available: [https://www.internationaljournalofpublicprocurement-south-africa-uk/id/]. ¹⁴ Constitution of the Republic of South Africa, 1996

2.2 Legislative Obligations

Various laws, regulations and policies apply to the governance of PRASA. By law, PRASA must provide a passenger rail service that is safe, reliable, affordable, accessible and of an acceptable standard. The Minister of Transport must ensure that PRASA has sufficient funds, infrastructure and rolling stock to give effect to this obligation¹⁵. Financial management, procurement and asset protection are the responsibility of the PRASA Board and Executive Management.^{16 17}

Over the last ten years, PRASA failed to fulfill almost every one of its constitutional and legal mandates as state capture and corruption appears to have become the norm. The #PRASALeaks provides damning evidence of the scale and institutionalisation of the corruption.



3. Summary of Findings

The National Treasury commissioned forensic investigations into all contracts PRASA had entered into after 2012 with a value in excess of R10 million, in compliance with the remedial action contained in *Derived* (2015), the then Public Protector Advocate Thuli Madonsela's report on the passenger rail service.

¹⁵ National Land Transport Act, 5 of 2009;

¹⁶ In addition, the following Acts and Policy apply: Legal Succession to the South African Transport Services Act 9 of 1989; Legal Succession to the South African Transport Services Amendment Act, No. 38 of 2008; Public Finance Management Act, 9 of 1999; Preferential Procurement Policy Framework Act 5 of 2000; Broad-based Black Economic Empowerment Act 53 of 2003; National Treasury guidelines and regulations; Construction Industry Development Board Act, 38 of 2000

National Treasury contracted 13 forensic and legal firms to carry out the investigations: Bowmans, Deltolite, ENS, Fundudzi, Gobodo, JGL, KPMG, Nexus, PPM, Strategic Investigations and Seminars, PWC, Sekela Xabiso and TGR.

Although the reports do not constitute fully fledged forensic audits, they make damning findings and, where they had access to sufficient information, make firm recommendations based on the information, documentation and data made available to them by PRASA and the suppliers. The Treasury Investigations represent what auditors call "the smell test", an inquiry into all available paperwork for procurement and contract management supplemented by interviews with relevant management officials, staff and suppliers. In virtually every case, the investigator did not have access to the full set of documentation and were therefore unable to verify whether critical steps had been carried out according to Policy or whether they had been carried out at all. In most cases investigators were unable to undertake site visits to verify whether work was actually done, often because the lapse of time would not make this meaningful.

Despite these cautions, the forensic reports point to gross corruption which goes well beyond the bounds of financial mismanagement and maladministration, too often identified by Parliamentary oversight bodies and the Auditor-General with respect to government departments and other State entities.

Our review of the vast majority of the reports of the investigators reveals dangerous trends and findings. The Treasury Investigations reveal the following:

- The extensive, institutionalised corruption at PRASA/MetroRail directly implicates Deputy Finance Minister Sifiso Buthelez, in his then capacity as chair of the PRASA Board and members of the Board in criminal collusion and negligence.

- There is evidence that President Jacob Zuma's network of friends and associates including Makhensa Mabunda, Roy Moodley, Mario Ferreira, Arthur Fraser, Mianala Manzini, Auswell Mashaba and others unduly benefited through their companies from contracts which were irregularly obtained or for which little or no documentation exists that can prove legality.

- The Ministers of Transport at the relevant times: Ben Martins, Dipuo Peters and now Joe Maswanganyi appear to have deliberately turned a blind eye to corruption and mismanagement. In the case of Peters and Maswanganyi, there appears to be collusion to obstruct justice.

- The investigation points to Lucky Montana (CEO), Josephat Phungula, Chris Mbatha, Daniel Mthinkulu, Rebecca Setino, Malshe Bopape and Ernest Gow as key members of the network in PRASA that appear to have facilitated the capture of the institution for the benefit of the President's Keepers.

- The companies that are directly implicated include the "S Group" which includes Siyaya Energy, Siyaya DB Consulting Engineers and Siyaya Rail Infrastructure Solutions and Technology; Royal Security; Resurgent Risk Management; Tshireletso Enza Construction.

- R15 billion was the total value of the contracts investigated by Treasury and R6 billion of this amount constitutes questionable expenditure. Specifically, R2.5 billion can explicitly be attributed to "irregular" and unlawful expenditure or due to irregular appointments, while a further R3.5 billion is unverifiable, due to lack of documentation.

- All the investigators found that there was an absence of record keeping and/or documentation. Information, documents and data were either missing altogether, misplaced, possibly destroyed or not made available to the auditors. In many instances, where documents were found, they revealed that the process did not comply with PRASA's Supply Chain Management policy. Irregular documentation, in turn, renders expenditure to be irregular. The problem of irregular or non-existent record keeping spanned the entire supply chain process. Given how widespread the lack of documentation and/or record keeping is, it is reasonable to make an assumption that this is not simply a case of poor or incompetent record keeping but rather a deliberate act to facilitate corruption, where processes were either not followed at all or failed to follow the prescribed processes. Without an audit trail, it is not possible to verify whether critical steps in the procurement process were in fact followed. Without an audit trail there is the ability to syphon public funds and resources with impunity.

- One of the consistent gaps across all investigation reports is the lack of any information on needs analysis for individual tenders. This created serious risk of non-delivery and shoddy work. The lack of a proper needs analysis laid the foundation for tender evaluations which were not based on providing the best possible outcome for PRASA, but rather on ensuring a preferred provider was successful. Deviation from laid down professional standards were recorded in a number of the investigations, where there were specific lowering of the legislated standards applicable to projects, depending on the value of the work.

- Tender or contract rigging was commonplace. Procurement processes routinely defied the requirements of both PRASA's own Supply Chain Management policies as well as the Public Finance Management Act and other legislation. Astonishingly, PRASA only established a Bid Specification Committee in 2015. The failure to undertake proper demand management undermined virtually every tender under investigation, ensuring that bids could not be properly assessed, scoring would not result in the best supplier being selected, pricing could not be easily judged, contracts were inadequate and payments could be made which were unrelated to actual delivery against an objective specification. This failure was too widespread to be considered a reflection of inadequate technical expertise. It was more likely to be a deliberate attempt to manipulate the tender process, to allow preferred corrupt suppliers to be appointed.

- Where competitive tendering processes were followed on the surface, the scoring of tenders was manipulated to allow suppliers without the required technical or financial capability to win bids. A significant number of contracts were awarded through non-competitive processes, in direct breach of policy and legislation.

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Handwritten marks: a large 'W' with an arrow pointing to the right, a signature, and the number '9'.

ii Gobodo Forensic and Investigative Accounting (Pty) Ltd. Appointment of Enza Construction (Pty) Ltd - Saulsville Station: Appointment of Enza Construction (Pty) Ltd - Upgrade of warehouse facilities at Durban Station (Forensic investigation into various PRASA contracts. Consolidated summary findings of final reports, 2016) Available: [https://www.ircmb.org.za/mediaworld/documents/PRASA%20Lucky%20Gobodo%20Consolidated%20summary%20report%20-%2013%2007%202016_v0b.pdf]

ENZA Construction has been awarded over R310 million for three PRASA contracts over the period that was reviewed; in each case there were a variety of irregularities involved. With regards to the first of these contracts, PRASA published an invitation to tender for the restoration and upgrade of facilities at Saulsville Station, in Tshwane. This was published on 23 November 2013. Due to the fact that this construction was estimated to cost R70 million, a Bid Evaluation Committee (BEC) and a Corporate Tender and Procurement Committee (CTPC) would be a legal requirement. These committees would be responsible for adjudicating the awarding of the contract. At the outset of this tender process the forensic reviewers noted that the BEC was not properly constituted and there was no evidence that a CTPC was ever constituted. The auditors note that it was Chief Procurement Officer, Josephat Phungula, who irregularly recommended ENZA Construction to the then CEO Lucky Montana and ENZA was subsequently appointed on the 19th of June 2014. No proper procurement procedures were followed and as of May 2016 a total of R26,749,481.04 had been paid to the company.

Case Study 1: ENZA Construction¹⁸

4. Case Studies: The Mechanisms of Corruption and Maladministration

- The investigation reports do not say much about contract management, but where there was the capacity to investigate, there was evidence of serious non-delivery on contracts, despite the supplier being paid in full for the services. There was also evidence of price inflation and overcharging.
- There is a shocking absence of accountability throughout PRASA, from the Board, through to senior management, as well as the Finance, Supply Chain and Internal Audit Departments. Some staff members were disciplined and others dismissed but the leaders of the criminal enterprise remain unscathed.
- The Auditor-General failed to detect the systemic corruption and state capture for several years.
- The Parliamentary Portfolio Committee on Transport continues to fail in its oversight of PRASA duties by ignoring clear evidence of state capture and systemic corruption.
- Most seriously, despite mountains of evidence of systemic corruption and state capture at PRASA, the Directorate for Priority Crimes Investigation (the Hawks) and the National Prosecuting Authority have failed to act for more than two years.

PRASA or SDFC and (1c) does not state to whom SDFC should report, (2) payments were not supported by any timesheets and/or supporting documentation as would usually be required for this type of service, and (3) that during forensic investigations (concluded in 2016), no evidence of any forensic reports being issued by SDFC could be found or accounted for, despite the company being paid more than R36 million.

Nothing that there were large gaps in documentation around these contracts, interviews with pertinent staff were conducted. While these may be less objective than formal documentation, the findings of these interviews are summarised below and provide important insights. It was noted that SDFC were paid according to a flat rate and the payment schedule was adhered to irrespective of proof that services were provided, or the quality of those services. SDFC was noted, in various interviews, to be reporting directly to Mr. Montana. An office manager noted that he had never been able to see the content of these reports as they were provided directly to Mr. Montana in sealed envelopes. The office manager went on to describe that upon receiving invoices from SDFC, Mr. Montana had always confirmed that he was satisfied with the work performed, where after the invoices were approved for payment. At a time when the contract between SDFC and PRASA was initially coming to an end (in 2013), individuals reported being criticized by Mr. Montana for raising the topic of this contract ending, during Executive Committee meetings. Mr. Montana seemed to be very supportive of this contract continuing and extensions to this contract ultimately led to it running until 2015.

Damning findings, highlighted above, were made by SDFC during their time of being contracted to Siyaya Energy - regarding fuel fraud of at least R20 million. These findings were recognised by PRASA (as confirmed in CTPC meeting minutes from 10 April 2013) but evidence of disciplinary action or criminal charges arising from this investigation are severely lacking. On the contrary, contracts with Siyaya Energy and other companies in the Siyaya Group were renewed after findings made by SDFC. The majority of interviews conducted by forensic investigators gave the impression that nothing had ever transpired out of the work done or the reports written by SDFC. Noting that Mr. Montana was the individual reading and handling these reports, it would seem that he should be able to give further comment regarding subsequent investigations and their findings and recommendations. However, Mr. Montana declined the invitation to any interviews on this topic.

Case Study 3: Fantique Trade 664 (R.26)

PRASA entered into two contracts with Fantique Trade 664 CC (Fantique) in early 2012. This company has no website and it is unclear which individuals are involved, but they appear to be based in Benoni. Both contracts were to do drainage upgrade works. Forensic investigators who were asked to look into this contract did not receive any documents relating to Fantique's appointments, the method used to appoint Fantique or when the appointment was made. After struggling to obtain these documents and details, the investigators concluded that, "the documents relating to the appointment of Fantique on both contracts do not exist and/or PRASA does not want to provide these documents and/or that these documents may have

26 Deloitte, Findings relating to the appointment of Fantique Trade 664 CC and the payments to this supplier, (Final report: Forensic investigation into the appointment of and payments made to various service providers of the Passenger Rail Agency of South Africa (PRASA), 2016), Section 18. Available: https://www.environmentalmediainform.org/attacheddocuments/PRASA%20Leak%20-%202012%20to%2016%20Final%20Report_15%2010ccen.pdf

been destroyed." In light of these glaring gaps in documentation, the total contract value of R29 million was deemed to be possibly irregular expenditure.

Missing documentation in this case study goes further than the above. The forensic investigators experienced and noted the following in their hunt for documentation: (1) unknown PRASA officials had signed necessary checklists on certain invoices prior to payment, (2) for three payments, totaling R8.2 million, there was no proof that PRASA had completed this necessary checklist or had invoices signed off whatsoever, (3) for five payments, totaling R1.7 million, no supporting documentation could be provided at all, and (4) Farique could only provide a statement, with amounts, for one payment of R2.8 million. With reference to points (1) and (2), it is important to note that without valid signatures and completed checklists, PRASA ultimately had no proof that the relevant services or goods had actually been provided before they made these payments.

In the view of the investigators, the PRASA Board has contravened the law (Section 50(1)(a) of the PFMA) in that it failed to exercise reasonable care to ensure the proper safekeeping of procurement related documents. Furthermore, in terms of the relevant laws, (Section 83(2) of the PFMA), all of the PRASA board members are individually and severally liable for financial misconduct.

Case Study 4: Marble Arch Cleaning Services²⁷

In 2012, PRASA identified various stations in Gauteng North, Gauteng West and Gauteng East that needed to be cleaned. After issuing a request for proposals, Marble Arch Cleaning Services submitted a tender for the cleaning of stations in Gauteng West on 25 May 2012. Forensic investigators reported that there was no evidence of a tender submitted by this company for Gauteng North or East. Marble Arch Cleaning Services have no website or information available online and therefore we were unable to establish the individuals involved in this company. PRASA issued a Notice to Proceed to Marble Arch on 1 November 2012 at a cost of R802,000.08 per month for the cleaning of stations in Gauteng West, and on the same date a Notice to Proceed at R113,867.91 per month, for Gauteng North. The reason for a Notice to Proceed for Gauteng North, when it doesn't appear that a tender application was submitted, is unclear. The contract period was stipulated at 12 months.

On 25 February, 2013, Marble Arch signed a contract agreement stating they would deliver cleaning services at a cost of R126,881.09 per month for Gauteng West. This value is very different to that in the Notice to Proceed. PRASA never actually signed this contract agreement. The cumulative value of this contract over a period of 12 months would be R1,522,573.08.

²⁷ Deloitte, *Findings relating to the appointment of Marble Arch Cleaning Services and the payments to this supplier*. (Final report: Forensic investigation into the appointment of and payments made to various service providers of the Passenger Rail Agency of South Africa (PRASA), 2016.). Section 11. Available: https://www.eraundun.org.za/media/undundevelopment/PRASA%20Final%20Deloitte/PRASA_Final%20Report_15%20Decem%202016.pdf

Forensic investigators were able to estimate a cumulative value paid to March Arch by PRASA for the period under investigation. This total came to R58,997,221.93. This is more than 35 times the contract value expected by March Arch Cleaning Services. R54,868,144 of this amount was in payments that had no supporting documentation whatsoever and moreover, certain invoices were signed off by unknown PRASA officials. Overall, it is still not clear how many contracts PRASA awarded to Marble Arch due to missing documentation.

The forensic investigators believed that PRASA's Board at the time should be held accountable for financial misconduct in that it may have contravened Section 50(1)(a) of the PFMA in failing to exercise reasonable protection of procurement and financial documents. In terms of section 83(2) of the PFMA, all members of PRASA's board should be held liable. The investigators also recommend that PRASA (in collaboration with the national treasury) consider disciplinary action against PRASA board members at the time for contravening Section 50(1)(a) of the PFMA.

Case Study 5: SA FENCE & GATE (SAFG)²⁸

SA Fence and Gate (SAFG) falls under the SA Security Solutions and Technologies (SASSTEC) group²⁹. Former employees and whistleblowers have already made explosive allegations of corruption against this group in the media³⁰. PRASA's original contract to SAFG was awarded at R209,874,559.79³¹. At the conclusion of forensic investigation into this contract, payments to the value of R295,292,897.77 had been made, despite less than fifty percent of the work being completed. The forensic investigators have deemed that all of these payments should be reported to the National Treasury as irregular expenditure. The evidence behind the conclusions of irregular expenditure comes from the fact that the tender was not properly advertised (as should have been done by the acting Chief Procurement Officer, Chris Mbatia and the Senior Manager for Procurement, Matshidiso Moshohle)³². SA Fence and Gate's B-BBEE certificate could not be verified, and significant other documentation was missing. The correct processes regarding the constitution of the bid evaluation committee (BEC) were not followed.

With regards to specifics of contracts with this company, SAFG had been contracted to do a fencing project at the Wolmerston Depot. Due to various problems with the contract, PRASA had to accelerate its completion at a cost of R8,909,342 which could have easily been avoided, as explained below. SAFG had also provided a bid quote to PRASA for 236 lights valued at R2,471,061. In addition to this, an employee committed PRASA to procure additional lights at a cost of R58 million. Correct, legislated procedures were not followed in the procurement of these additional lights. At the completion of forensic investigations in 2016, only 24 lights of a total contract for 2000 lights had been provided³³ - this despite 92% (R53,618,790) of the contract already being paid. Based on a comparison of payments made and goods provided, PRASA has ultimately paid about R2,2 million per light.

²⁸ Nexus, SA FENCE AND GATE - EXECUTIVE SUMMARY. Available: https://www.researchgate.net/publication/320206202Nexus_SA_FENCE_AND_GATE_-_EXECUTIVE_SUMMARY. Available:

²⁹ SA Fence and Gate website. Available: <https://www.fencing.co.za/index.php/about-us>

³⁰ amaBhungane, Insider claims collusion with 378M Prisons Tender. Available: <http://amaBhungane.co.za/article/2017-06-26-insider-claims-collusion-with-378m-prisons-tender>

³¹ Nexus, SA FENCE AND GATE - EXECUTIVE SUMMARY, Section 6.

³² Nexus recommends disciplinary action against Mbatia and Moshohle for contravening Sec 75 of the PFMA

³³ Nexus, SA FENCE AND GATE - EXECUTIVE SUMMARY, Section 7.

A person identified as Lebeka allegedly instructed SAFG to procure additional lights through Top 6 Holdings (Pty) Ltd, resulting in additional costs amounting to R 27 986 245. According to Nexus, "this cost could have been avoided had PRASA procured it directly from the supplier Beka-Schreder (with whom it had done business before) and thus are seen to be fruitless and wasteful". The procurement through Top 6 Holdings raises a reasonable suspicion, which is reportable in terms of the Prevention and Combating of Corrupt Activities Act (PRECCA).

PRASA failed to provide the forensic investigator, Nexus with copies of evaluations concluded by the Corporate Tender & Procurement Committee (CTPC) to the GCEO as well as the recommendations from the GCEO to the Finance, Capital Investment and Tender Committee (FCIP). In the absence of the documents, Nexus concludes that "PRASA failed to do it, which renders the process irregular".³⁴

PRASA entered into a formal contract with SAFG (signed on 20 February 2013 and 25 March 2013 respectively). The CTP recommended a deviation of R40,341,400.89 be awarded to SAFG on 15 March 2013, subject to approval of the GCEO of PRASA. A Notice to Proceed was issued by the Senior Manager Procurement (Mosholi) to SAFG and confirmed the award of R47,083,730.37. As the FCIP awarded the initial contract, it also had to approve the deviation. PRASA failed to provide any documentation explaining the difference between the R40,341,400 recommended by the CTPC and the R47 million confirmed by Mosholi. PRASA failed to provide any proof that the FCIP approved the variation. Nexus concludes that in the absence of documentation that "the award was not fair, equitable, transparent, competitive and cost effective and thus regarded as irregular".

Serious questions must be asked as to who stood to gain from this gross abuse of public resources. The networks of corruption appear to be pervasive, with SAFG also having been awarded tenders at Eskom and the Department of Correctional Services.³⁵ As reported by amaBhungane, a whistleblower has made a series of explosive allegations against the Department of Correctional Services (DCS) and the SA Security Solutions and Technologies (SASSTEC) group, which is the holding company of SA Fence and Gate.³⁶ The whistleblower alleged extensive collusion between DCS officials and SASSTEC leading up to the awarding of a R378 million tender for the Integrated Inmate Management System (IIMS) — a software solution to keep track of South Africa's 160 000 strong prison population. The whistleblower detailed the allegations in a letter to the standing committee on public accounts (Scopa), which is probing irregularities in the contract, awarded in November 2015.

SASSTEC, is also already embroiled in a dispute with the National Treasury over the tender, which was awarded to one of its subsidiaries. Treasury attempted to intervene even before the award, warning the National Commissioner for Correctional Services (Zach Modise) that the fact that only one bidder met the technical threshold risked rendering the process unfair, unreasonable and uncompetitive.³⁷ News24 reported

³⁴ Nexus, SA FENCE AND GATE - EXECUTIVE SUMMARY, Section 6.

³⁵ Basson, A., Van Wyk, P., Khosa, A. *Exclusives: R378m prisons tender scandal* (News24, 2016). Available: <https://www.news24.com/SouthAfrica/News/R378m-prisons-tender-scandal-20160414>

³⁶ amaBhungane, *Insider claims collusion with 378M Prisons Tender*. Available: <http://amaBhungane.co.za/article/2017-06-26-insider-claims-collusion-with-378m-prisons-tender>

³⁷ amaBhungane, *Insider claims collusion with 378M Prisons Tender*. Available: <http://amaBhungane.co.za/article/2017-06-26-insider-claims-collusion-with-378m-prisons-tender>

In 2016 that National Treasury, had instructed Modise to apply steps to cancel the contract with any fruitless and wasteful expenditure incurred through cancelling the contract should be recovered from Modise personally.³⁸

Case Study 6. Resurgent Risk Management (RRM)³⁹

Resurgent Risk Management (RRM) are a security company that were co-founded by former State Security Agency Director General Arthur Fraser and former National Intelligence Agency boss Mr. Manala Manzini. Mr. Fraser already "stands accused of flouting tender processes and submitting false tax certificates" (Daily Maverick, 2017)⁴⁰. A contract to the value of R 52,871,837 was awarded to RRM on the basis of confinement. This confinement was at the instruction of the CEO, Mr. Montana but the Corporate Tender and Procurement Committee (CTPC) did not recommend or approve the confinement application, as alleged in the recommendation report that was signed by the CEO. The confinement application was also substantially unjustifiable in that there was no urgency, emergency, expertise that was unique, or grounds for secrecy. A budget was not even secured for the project before or after the CEO signed the confinement request. With respect to the appointment of RRM through confinement, forensic investigators concluded that "it cannot be excluded that the disregard for proper process...was as a result of, or in lieu of, gratification as defined in PRECCA".

Forensic investigators also found that "there are numerous and irreconcilable contradictions between the CTPC's resolution in December 2014 and the approved conditions in the approved memorandum". In light of this, they recommend that criminal action be taken against Dr Phungula and Mr. Mantzane on a charge of fraud, seeing as they misrepresented what the CTPC had approved. In addition, the investigating company Nexus recommended to Treasury and PRASA that criminal action should be taken against Mr. Lucky Montana, the then CEO for failing to comply with his fiduciary and general duties in his capacity as a member of the Accounting Authority. The Board is advised to report the RRM contract to the SAPS in terms of section 34 of PRECCA, to ensure compliance with its reporting duty. Furthermore, PRASA officials who would have known or at least suspected that the approval of the confinement was irregular, failed to take effective and appropriate steps to prevent irregular expenditure.

Further details pertaining to this contract include the fact that the payment plan was a result of an irregular approval; included a mobilisation fee that was not justified; and that investigators were unable to make any finding with respect to the goods or services received due to the lack of evidence and documentation within PRASA. The available evidence begs the question why PRASA then under the leadership of Deputy Minister Siso Buthelezi and Mr. Lucky Montana had no interest in monitoring this contract.

³⁷Dasson, A., Van Wyk, P., Khoza, A. *Exclusive: R378m prisons tender scandal*. (News24, 2016). Available: [https://www.news24.com/News24/legislation/178m-prisons-tender-scandal-20160414] [Accessed 14/04/2017].
³⁸Nexus. *EXECUTIVE SUMMARY*. Available: [https://www.streunthorpe.com/media/uploads/documents/RRASA_ciks/s%20Nexus%20RRM%20EXECUTIVE%20SUMMARY.pdf] [Accessed 14/04/2017].
³⁹Thomson, M. *The Principal Agent Network (PAN) Dossier, Part 1: Zuma and Khabobo knew about Arthur Fraser's rogue intelligence programme*. (Daily Maverick, 2017). Available: [https://www.dailymaverick.co.za/article/2017-12-04-the-principal-agent-network-pan-dossier-zuma-and-khabobo-knew-about-arthur-fraser-s-rogue-intelligence-programme/#:~:v1=DJC-nH11] [Accessed 14/04/2017].

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41 Bowers, PRASA SN Project Management cc (Report - Department of National Treasury, 2016). Available: [https://www.groundup.org.za/media/uploads/documents/PRASA%20Bowers/PRASA%20SN%20PRC%20MA...]

PRASA SCM Policy provided for the CPO to procure, through an open tender process, a Competitive Database of professionals with set remuneration rates which would be valid for three years. The Database would have a minimum of five approved professional service providers per area of professional expertise. The professionals would be appointed on a rotational basis, to ensure equitable

In the case of the SDP, the business case was drafted by Mr. Bopape, the former senior manager of PRASA's Supply Chain Management Department on 2 May 2012 and signed off by the CEO, Lucky Montana, on 14 May 2012. The GCEO approved the PEPCI on the 15th May, 2015, following a tender process.

PRASA initiated a Supplier Development Programme (SDP) and the Panel of Emerging Professional (sic) in the Construction Industry (PEPCI) in 2012 in order to broaden the base of suppliers to PRASA and to ensure that the existing established construction and consulting/professional companies had more competition to bring down prices. They were intended to enable emerging black entrepreneurs and professionals to establish themselves as independent suppliers over a three-year period by partnering them with established companies.

Case Study 8: Supplier Development Programme and the Panel of Emerging Professional (sic) in Construction Industry?

During the evaluation process of tenders for this contract, the Tender Evaluation Committee (TEC) members all scored S N Projects Management identically, creating the suspicion that there was some collusion between TEC members with regards to the awarding of this contract. Furthermore, only three of the four TEC members signed Declaration of Interest confidentiality forms. Additional findings relating to this contract include the fact that the total value paid does not correspond with that stipulated in the contract. In terms of the contract, S N Project Management would receive 50% of the contract value once work was completed, with the balance after PRASA inspected the work. However, PRASA paid 8.5% (R1,925,893) after approximately six weeks.

This contract, for vegetation control services, was awarded by closed tender to S N Projects Management, and that for spraying herbicides is 22 cents per square meter. According to the S N Project Management invoice, PRASA were charged R6,60 per square meter, which is significantly inflated. S N Projects Management operates out of a residential property in Klerksdorp but was awarded this vegetation control contract in KwaZulu Natal. The company has no website or internet presence. Although classified as being owned by a black woman, the sole director and shareholder is listed as a Mr. Fesi.

Case Study 7: S N Projects Management CC⁴¹

distribution of work. Each award of such work based on technical proposals, every time such services were required.

The use of both the databases was restricted by legislation and policy to work valued under R350,000 and even then, a limited competitive process was required, requesting quotations and proposals for how the work would be undertaken. All the contracts under investigation exceeded R350,000 and the database therefore should not have been used, or should only have been used in exceptional cases.

Against PRASA policy, the GCEO signed off on a request to approve the appointment by "confinement" of companies listed in a memo dated 14 May 2012. 62 out of 63 SDP contractors were appointed as "confinement suppliers". A similar blanket appointment was not provided for the PEPPI. However, the appointments from that panel were either justified using "confinement" or no justification was provided at all.

In all cases where the database was used without an open tender, the investigators were unable to verify the justification for such use. In the words of one investigator, TGR, "the automatic selection from the database, one that stipulates that companies are selected on a rotational basis, suggests the database usurped the functions of BSC."⁴³

The investigators were unable to establish how and why particular suppliers were selected to the SDP or how and why particular professionals were appointed to do work from the PEPPI. In all cases PRASA's own process of limited quotations, assessment of proposals and use of rotation appears to have been flouted. The findings in all these cases where a competitive process was not followed, were that the tenders constituted irregular expenditure. This is a significant finding given that over R1.5b was allocated through the two programmes.

While the Panel of Emerging Professional in the Construction Industry was established in terms of Supply Chain Management Policy, the design of this Supplier Development Programme contravenes the law and PRASA policy.

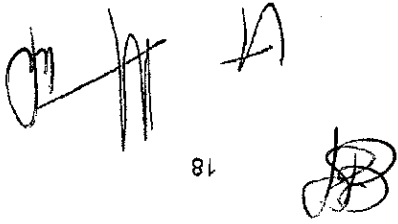
Further details on the findings in relation to the SDP are contained in Annexure 2.

Case Study 9: Swifambo⁴⁴

PRASA urgently required locomotives and tendered to lease about 80 train engines in 2013. The Swifambo case investigations was not a part of the Treasury Investigation, it was investigated by PRASA under Mr. Popo Molefe and it is the only matter that has been considered by a court. The judgment's conclusions is

⁴³ TGR, Section 9.5. Available: [https://www.standardscourt.za/technical/updates/documents/PRASA%20Al%20s%20TGR/NT-2013/PRASA%20report.pdf]

⁴⁴ Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd (2015/42219) [2017] ZAGPJHC 177; [2017] 3 All SA 971 (GJ); 2017 (6) SA 223 (GJ) (3 July 2017). Available: [http://www1.scalli.org/eng/bw/dlsn.nsf/file=zcscsc/A%20PR%2017/177.html&server=Swifambo]



6. The inference is therefore irresistible that the specifications were tailored to benefit Swiftambo. Swiftambo did not attempt to provide an alternative explanation. The tailoring of the specification was insufficient for Swiftambo to achieve the required 70% technical compliance threshold. Further manipulation of the scoring bids by members of the BEC was required. Without that intervention Swiftambo would have been disqualified. The impact of the tailoring and intervention was so marked that Swiftambo was the only bidder to achieve the technical threshold of 70%.

7. It is my finding that the methodology adopted in the scoring process was irrational and/or unreasonable. The items contained in the specification were weighted according to their technical importance. The very purpose of the weighting is to discriminate between more and less important items. The weighting is critical to the proper assessment of the bids. The scoring was not done according to the allocated weights given to each item. The failure to do so contravenes paragraph 9.9 of the SCM procurement policy which expressly states that the evaluation of bids should be in terms of the evaluation criteria and the weightings. The scoring of diesel locomotives and hybrid locomotives on the same score sheet and combining and averaging the scores resulted in an illogical evaluation.

The Court also found that Swiftambo and its sole Director Auswell Mashaba was a front for the Spanish multinational company Vostoh:

"There is sufficient evidence placed before me that proves on a balance of probabilities that the arrangement between Swiftambo and Vostoh constituted 'fronting'. It is clear that Swiftambo under the agreement with Vostoh was merely a token participant that received monetary compensation in exchange for the use of its B-BBEE rating. The B-BBEE points were the only aspect that Vostoh could not satisfy. Vostoh could not bid on its own. Instead it concluded an agreement with Swiftambo in which its B-BBEE points were exchanged for money. Vostoh maintains complete control over the operations of the business and Swiftambo's role is constrained to minor administrative activities. There is no substantive empowerment evident under the agreement between Vostoh and Swiftambo. There is no transfer of skills during the agreement or after.

The public has a clear interest in the social and economic rights sought to be given effect to in the B-BBEE Act. At the core of B-BBEE is viable, effective participation in the economy through the ownership of productive assets and the development of advanced skills. The B-BBEE Act criminalises conduct that retards the objectives of the Act. Section 130 of the B-

BEE Act creates an offence where any person knowingly engages in a fronting practice.⁴⁵

Abusing one's racial classification to corruptly front for any White company or business person and in this case a European multinational is not only unlawful but immoral. Auswell Mashaba received R800 million for essentially doing nothing. From the judgment, it is also clear that Makhensa Mabunda had a direct stake in the Swifambo deal and investigative reporters have found that the then Board Chairperson Siso Buthelezi and his brother Nkanyiso Buthelezi were subcontracted "to manage the shipping and logistics" of the imported locomotives.⁴⁶ Forensic evidence uncovered by PRASA points to Angolan business woman Maria Gomes (a close friend of Jacob Zuma) and the ANC beneficiaries of corruption.

The Spanish multinational Vosloh (now owned by a Swiss company Stadler Rail Valencia) altered the contract from a sale and the specifications of the locomotives which do not fit our rail lines. On 15 January 2018, investigative journalist Pieter-Louis Myburgh reported that Treasury investigations uncovered "payments of over R75m" made to "S-Investments whose sole director is Makhensa Mabunda" by Vosloh Spain.⁴⁷ Justice Francis held:

Before doing so, if I take into account all the irregularities and the various steps that were taken by some employees of PRASA to hide those irregularities, this let Swifambo to gain a dishonest advantage which in this case was financial over other bidders and its intention to fraud. Fraud is defined as an act or course of deception, an intentional concealment, omission or perversion of truth to gain and unlawful or unfair advantage. The irregularities raised in this case have unearthed manifestation of corruption, collusion or fraud in this tender process. There is simply no explanation why Swifambo was preferred to other bidders.⁴⁸

The #PrasaLeaks case studies demonstrate intentional concealment and perversions of truth by the Board, its Group CEO and a range of the agency's employees from executive managers and chief procurement officers to middle-level staff. Corruption in these cases has caused immense harm to millions of people.

⁴⁵ The High Court of South Africa Cause No. 177 of 2017 (6) SA 223 (GJ) (3 July 2017). Available at: <http://www.saflii.org/za/cases/ZAGPJHC/2017/177.html&query=swifambo>
⁴⁶ Myburgh, P.L. Deputy Finance Minister scored PRASA tenders as agency chair (News24 June 2017) accessed 31 January 2018 <https://www.news24.com/SouthAfrica/News/exclusive-prasa-tenders-as-agency-chair-20170605>
⁴⁷ News24 accessed 31 January 2018 <https://m.news24.com/SouthAfrica/News/exclusive-prasa-tenders-as-agency-chair-20170605>
⁴⁸ Swifambo judgment (para 84)

5. Findings: What the investigative reports tell of PRASA irregular expenditure

In compliance with the remedial action in the Public Protector's report, *Derived* (2015), National Treasury commissioned forensic investigations into all contracts PRASA had entered into after 2012, which had a value in excess of R10 million. In order to do this, Treasury contracted 13 forensic investigatory firms to carry out the investigations. These investigatory firms were: Deloitte, PwC, KPMG, Bowman Gillfillan, ENS, Nexus, PPM, Funduzi, Strategic Investigations and Seminars, JGL Forensic Services, Gobodo Forensic Investigative Accounting, Sekela Xabiso and TGR.⁴⁹

The scope of the work carried out by the above forensic investigators was framed by a limited mandate, lack of investigative powers such as accessing bank records and time span. As such they do not constitute fully-fledged forensic audits, yet, they expose criminal syndicates and massive corruption in PRASA. The recommendations made by investigators are not legal opinions, but rather the reasoned conclusions drawn from the information, documentation and data made available to investigators by PRASA and the suppliers. The reports also reveal extreme levels of financial mismanagement and maladministration at PRASA.

5.1 R 2.5 billion in irregular expenditure: A look at the numbers

The 193 leaked forensic investigations available to Unite Behind reveal startling levels of corruption at PRASA. All thirteen investigators encountered a lack of documentation, irregular tendering or payment procedures relating to the contracts investigated. On various occasions, investigators noted an apparent unwillingness of senior PRASA officials to cooperate with the investigators and that for particular documents, PRASA either did not have, did not want to share, or had destroyed documents. For 124 out of the 193 reports, investigators cited a lack of documentation provided to them by PRASA. This figure represents the portion of investigations for which a lack of data was specifically mentioned in the report summaries/recommendations. Only 10 out of 193 reports mentioned that they had access to all necessary documentation. As a result, investigators were cautious in labelling expenditure as irregular, due to the insufficient evidence available to them, but noted that the lack of documentation in itself constitutes an irregularity which warrants disciplinary action and at times criminal action.

⁴⁹ All reports are available via GroundUp: <https://www.groundup.com.za/topics/prasabank/>

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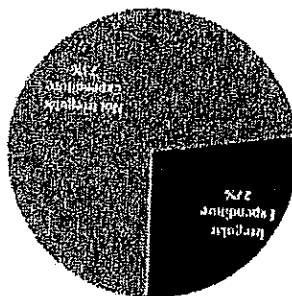
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In deriving the figures for expenditure presented here, expenditure was flagged as irregular when the relevant report *explicitly* deemed it "irregular expenditure" or as an "irregularly awarded" contract or extension, in the findings. It should be noted that many reports used more conservative language to describe clearly flawed or inadequate procurement processes and thus, the methodology we adopted to derive these figures is likely to yield a conservative estimate. Using this methodology, we were able to derive that R2.5 billion in irregular expenditure had taken place in the context of the 193 investigative reports we reviewed. This represents more than a quarter of expenditure in all the investigated contracts. Missing information could have implications for an additional R3.5 billion in irregular expenditure.

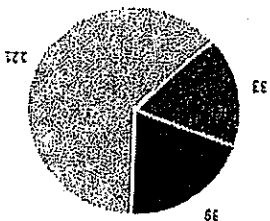
In addition to the revelations concerning the extreme levels of irregular spending, these reports also make recommendations that PRASA be compliant with both its own internal policies as well as national legislation, such as the Prevention and Combating of Corrupt Activities Act (PRECCA). When we survey PRASA officials, we find that one in five investigative reports recommend that criminal charges be laid against PRASA officials. An additional 33 reports recommended disciplinary action against PRASA officials, including, on various occasions, the then CEO Lucky Montana, the Board of Control including its then chairperson and current Deputy Minister of Finance Siso Buthelezi.

For 127 out of the 193 reports available to us, the investigators attest to compromised procurement procedures. Related to this, we find that a significant proportion of tenders were awarded via confinement, a non-competitive process that is usually only indicated in very specific and recognised circumstances, such as emergencies arising from disasters. In the majority of these cases, investigators find that the reasoning for confinement was not warranted and led to an irregular procurement process. In addition, we also find

R2.5 Billion Irregular Expenditure at PRASA



1 in 5 Forensic Investigations Recommend Criminal Proceedings



None • Disciplinary action • Criminal proceedings

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Of particular concern are instances where tender specifications were found to be lacking. This has far reaching implications as it not only results in a flawed tender process but also impacts negatively on contract specifications, the ability to manage and monitor implementation and delivery and ultimately on the actual tenders; bid scoring sheets; inventories and unsigned documents.

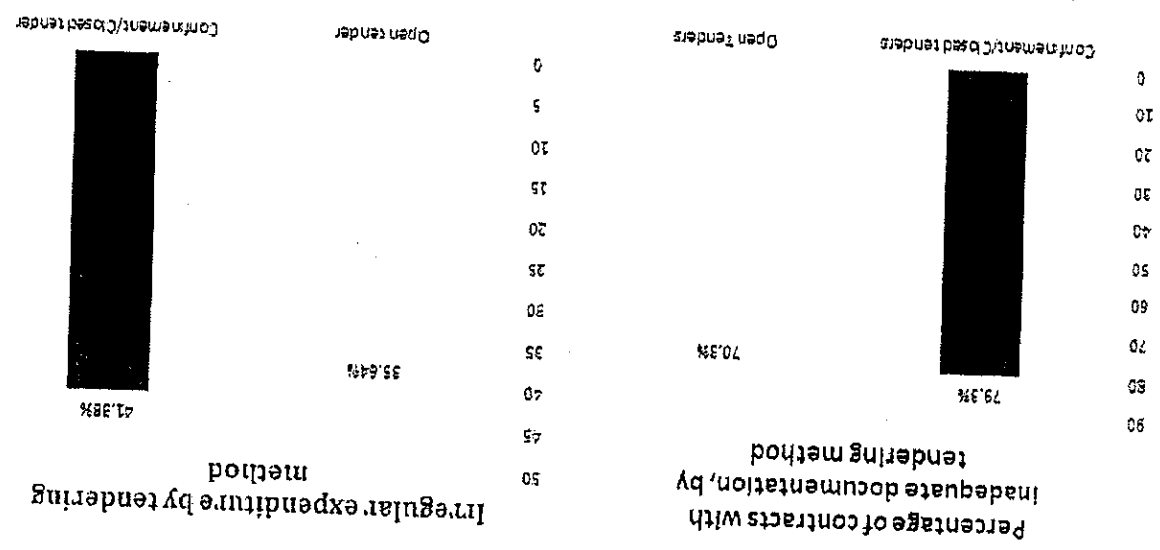
There is a specific legislative requirement to keep an audit trail from the very start of a procurement process - i.e. from the needs analysis. The following are just some of the examples found in the forensic reports of documents on the tender process; tender evaluation sheets; bid submission documents from unsuccessful tenders; bid scoring sheets; inventories and unsigned documents.

A further inference which may be drawn, based on the extent of the missing documentation, is that many of the steps in the normal supply chain process were simply not followed.

As indicated above, a key finding in all the forensic reports that were reviewed is the lack of record keeping. Despite numerous requests for access, documents and data were either missing altogether, misplaced, possibly destroyed or not made available to the auditors. In many instances, where documents were found, they tended not to comply with PRASA's Supply Chain Management (SCM) policy. Irregular documentation, in turn, renders expenditure to be irregular. We found that the problem of irregular or non-existent record keeping spanned the entire supply chain. All key SCM related offices in PRASA are implicated in the poor record keeping.

5.2 Documentation: Leaving no paper trail

that the proportion of contracts which did not have adequate documentation was higher for contracts awarded through confinement than those awarded via open tendering processes.



services delivered. In some of the most important areas of engineering technical competency, scores were not noted or were accepted well below the minimum threshold⁵⁰.

In a number of instances, the forensic auditors reported that findings could not be made regarding payments because of lack of documentation. The absence of an audit trail facilitates the siphoning off of public funds and resources with impunity.

Given how widespread the lack of record keeping is, it is not unreasonable to assume that this is a deliberate strategy and not simply a case of poor or incompetent record keeping. In the Swifambo case the judge found that documents had been concealed, spited away or destroyed. This judge found further that even after the then CEO, Montana, had left PRASA,

...he managed to obstruct the distribution of relevant information through a network of associates who were collaborating with him. Employees who did not follow were victimised or unfairly dismissed⁵¹

It is therefore probable that the lack of documentation is, in many cases, a deliberate failure to undertake many of the critical steps in the procurement process, combined with a deliberate attempt to hide corrupt actions. Where one or two cases emerge, it may be reasonable to recommend that PRASA institute more adequate document management and disciplinary action against staff responsible for poor record keeping.

While all the investigators made similar findings, they were not all equally bold in their recommendations, sometimes erring on the side of caution, given the paucity of records available for scrutiny.

However, this investigation had access to 193 investigations and the patterns of process abuse emerge across the board. Where this is so widespread as to affect the overwhelming majority of tenders and involve all levels of management, different conclusions are unavoidable. This, coupled with an apparent lack of delivery, irregular procurement processes and extensions and inflated prices, point to criminal conspiracy.

5.3 Capture of the procurement process

...it is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner", and further that "...deviations from fair process may themselves too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may be taken a deliberately skewed process. Hence the insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the

⁵⁰ Gobodo, *Gobodo Building and Projects CC Forensic Investigation into various PRASA contracts - consolidated summary findings of final reports*, 2016). Available: https://www.grandhighcourt.co.za/wildfire/ibids/documents/114521/Leaves%20in%20the%20books%20of%20the%20investigator%20-%2031%20October%202016_enb.pdf

⁵¹ *Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd* (2015/42219) [2017] ZAGPJHC 177; [2017] 3 All SA 971 (GJ); 2017 (6) SA 223 (GJ) (3 July 2017). Available: <http://www1.southafrica.net/eng-ber/ber/ber/2017/07/2017/17/17/177.html&query=Swifambo>

likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influence."⁵²

- Justice Froneman, in his judgement in Allpay Consolidated Investment Holdings (Pty) Ltd v CEO of SASSA

Various reports highlighted complete disdain on the part of PRASA senior management for both PRASA's own Supply Chain Management policies as well as the Public Finance Management Act and other legislation and regulations. While not all the reports covered the full spectrum of the supply chain process, those that did reflected disregard of the entire supply chain process, from demand management requirements all the way through to contract management.

Demand Management

The Reports showed that PRASA only established a Bid Specification Committee (BSC)⁵³ in 2015. Prior to the establishment of the BSC, the Enterprise Project Management Office (EPMO) was responsible for approval of budget in respect of each project. It is unclear what further role the EPMO played in complying with PFMA demand management obligations. In the Swifambo case different committees failed dismally in meeting the Demand Management requirements, as illustrated by the following extract from the Swifambo court judgement:

"In terms of the procurement policy, specifications should have been designed by the Cross Functional Sourcing Committee (CFSC). Instead the specifications were prepared by Mr. Minkhulu, who was masquerading as an engineer with a doctorate. He did not have such qualifications. The specifications ought to have been drafted to promote the broadest possible competition, to be based on relevant characteristics or performance requirements, and to avoid brand names or similar classifications"⁵⁴

The failure to undertake proper demand management undermined virtually every tender under investigation, ensuring that bids could not be properly assessed, scoring would not result in the best supplier being selected, pricing could not be easily judged, contracts were inadequate and payments could be made unrelated to actual delivery against an objective specification. This failure was too widespread to be considered a reflection of inadequate technical expertise. It was more likely to be a deliberate attempt to manipulate the tender process, and to allow corrupt suppliers to be appointed.

Methods of procurement

A range of different procurement methods were used by PRASA management. There appear to have been very few instances where any of these methods were implemented in ways that were legislatively and policy

⁵² Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC); 2014 (1) BCLR 1 (CC) (29 November 2013)
⁵³ TGR Attorneys (TGR), *Swifambo Rail Infrastructure Solutions and Technology (Pty) Ltd*, (Investigation into Certain Supply Chain Management and Contract Award Irregularities by the Passenger Rail Agency of South Africa (PRASA), 2017) Section 9.5. Available: [https://www.stonemountain.org.za/media/investigationdocuments/PRASA%2017%20TGR/NT-92017/ASA%20Kge.html]
⁵⁴ Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd (2015/42219) [2017] ZAOPJHC 177; [2017] 3 All SA 971 (G1); 2017 (6) SA 223 (G1) (3 July 2017). Available: [http://www.saflii.org/za/doc/cases/zacc/2017/177.html&query=Swifambo]

compliant. This resulted in 203 out of the 216 tenders being deemed by the investigators as, at the very least, irregular. The scale of irregularity in the methods of procurement supports our conclusion that this is more likely to have been the result of criminal collusion than poor management.

Competitive tenders are the legally required default process, whether through open advertised tenders or whether through calling for quotations from an approved database of suppliers. In only a few instances was a competitive tender process followed. Even in these cases, there were examples of manipulation in the scoring framework through to the actual scoring, and allowing suppliers without the required technical or financial capability to be awarded tenders⁵⁵.

PRASA made generous use of supplier databases, suggesting that "the database usurped the functions of Bid Specification Committee,"⁵⁶ as noted by forensic investigators TGR Attorneys. PRASA's SCM policy encouraged the establishment of databases in order to support the development of emerging professionals and businesses, but limited to contracts under R350 000. However, all the tenders under investigation fall above this threshold, meaning supplier databases should not have been used. Secondly, when using the databases, assessing the proposals from the suppliers, and then awarding on a rotational basis to those who met the technical requirements.

There was no evidence submitted of any attempt to comply with PRASA policy or the PFMA when using the supplier or professional databases. Contracts were awarded both under the Supplier Development Programme and the Panel of Emerging Professional (sic).

The use of these databases was made worse in some cases, by allowing the appointed supplier to choose their own sub-contractors to support them. This meant contractors were undertaking PRASA work without having gone through any of verification on any of the required factors, from financial through to technical and B-BBEE status.

Confinement was the preferred method of procurement for many of the contracts, with the CGEO approving or ratifying the awarding of tenders based on this method. Confinement had strict rules which were routinely flouted by PRASA management. In the majority of such tenders, no documentation was provided to motivate or justify the use of confinement. Where documentation was provided to the investigators, the use of confinement could not be justified in terms of the SCM Policy.^{57 58}

⁵⁵ Goboda, Appointment of Supercare Service Group (Pty) Ltd. (Forensic Investigation into various PRASA contracts - consolidated summary findings of final reports, 2016). Available: https://www.republican.org.za/media/2016/06/2016062016_gob.pdf

⁵⁶ TGR Attorneys (TGR), INVESTIGATION INTO CERTAIN SUPPLY CHAIN MANAGEMENT AND CONTRACT AWARD REGULARITIES BY THE PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA), Page 78. Available: https://www.republican.org.za/media/2016/06/2016062016_gob.pdf

⁵⁷ Deloitte, Findings relating to the appointment of Lufthansa Consulting and the payments to this supplier. Available: https://www.republican.org.za/media/2016/06/2016062016_gob.pdf

⁵⁸ ENS Forensics (ENS), EXECUTIVE SUMMARY OF SIYAYA DB CONSULTING ENGINEER CONTRACTS Available: https://www.republican.org.za/media/2016/06/2016062016_gob.pdf



To repeat our conclusions above, it is not unreasonable to assume that this lack of detailed contracting was deliberate. It meant suppliers could not be held accountable for the work they were contracted and paid to deliver.

In any event, where the investigators had the capacity to check what work had been done, they found instances of either a partial or a complete lack of delivery⁶³, even though the suppliers had been paid in full, and in some cases, escalated amounts.

5.5 Payment processes

Across virtually every contract reviewed by the investigators, concerns are raised about payment processes. These include issues that range from simple ineptitude to gross legal violations. The various issues can be grouped under the following headings:

- Late payment, and paying contractors from the incorrect accounts;
- Incomplete payment documentation, including no records of payments or no sign-off on invoices where they do exist⁶⁴;
- Making payments outside of the contract period (both before and after);
- Payments made by persons with no authorisation to do so⁶⁵;
- Payments above the contractually agreed sum⁶⁶;
- Payments broken down into smaller components in order to bypass the approval processes required for large amounts;
- Payments unrelated to delivery.

These violations are the deliberate consequence of the absence of sound demand, procurement and contract management, all pointing to criminal intent.

5.6 Total absence of accountability

Audit and Risk Committee statement from 2012:13 Annual Report "no matters were reported that indicate any material deficiencies in the system of internal control or any deviations there from. Accordingly, we can report that the system of internal control over financial reporting for the period under review was efficient and effective." - M Salanje, Chairperson of ARMIC

⁶³ Nexus, SA FENCE AND GATE - EXECUTIVE SUMMARY. Available: <https://www.transparency.org/document/PRASA%20%20Vexus%20%20Fence%20%20Gate%20%20Executive%20Summary>. Available: [https://www.transparency.org/document/PRASA%20%20Vexus%20%20Fence%20%20Gate%20%20Executive%20Summary]
⁶⁴ Nexus, INTENSE - EXECUTIVE SUMMARY. Available: [https://www.transparency.org/document/PRASA%20%20Vexus%20%20Intense%20%20Executive%20Summary]
⁶⁵ Gobodo, Appointment of Inyati Construction (Pty) Ltd : Appointment of Enza Construction (Pty) Ltd - Sautsville Station: [https://www.transparency.org/document/PRASA%20%20Vexus%20%20Intense%20%20Executive%20Summary]
⁶⁶ Gobodo, Appointment of Reutech Solutions (Pty) Ltd : Available: [https://www.transparency.org/document/PRASA%20%20Vexus%20%20Intense%20%20Executive%20Summary]
⁶⁷ Gobodo, Appointment of Reutech Solutions (Pty) Ltd : Available: [https://www.transparency.org/document/PRASA%20%20Vexus%20%20Intense%20%20Executive%20Summary]
 PAVEMENTS, 2016) p16. Available: <https://www.transparency.org/document/PRASA%20%20NT%20%20Pavements%20%202016>. [https://www.transparency.org/document/PRASA%20%20NT%20%20Pavements%20%202016]

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The reports point to a complete absence of accountability throughout PRASA, from the Board, through to senior management, the Finance, Supply Chain and Internal Audit Departments, as reflected in the above quotation. While PRASA adopted generally sound Supply Chain Management policies which were aligned to national legislation, in practice the then Board and the senior management failed to implement both the letter and spirit of the policies and broader legislation.

The Board failed to exercise their duty to ensure the responsible protection of PRASA resources and services to the public and to hold the senior management to the highest professional and ethical standards. Deloitte made the following observation in their general findings:

"There is no evidence to suggest that the PRASA board questioned any of the deviations. There is no evidence that the board intervened at any stage to question the procurement procedures followed. The board did not act with the necessary fidelity, honesty and integrity in the best interests of PRASA in managing its financial affairs as the PFMA requires of an accounting authority and in fact appears not to have played any role in relation to exercising care to protect the assets and records of PRASA. This warrants further investigation by the SAPS for possible contraventions of sections 50 and 51 of the PFMA read with sections 49, 83 and 86."⁶⁸

The senior management failed to honour their duty of care when carrying out the delegated authority of the then Board. Instead, they appear to have led a process which resulted in the systematic hemorrhaging of PRASA resources and a concomitant deterioration of PRASA services. This failure is reflected in the daily suffering of commuters across the Metrorail services.

6. #UniteBehind's #PRASALeaks

Recommendations

Parliament oversees the immediate implementation of the following recommendations:

6.1 Remove and investigate Sifiso Buthelezi
Parliament to demand that the President immediately remove Sifiso Buthelezi from his post as Deputy Minister of Finance, pending the outcome of further investigation into his fitness to hold office.
The Standing Committee on Public Accounts (SCOPA) and the Portfolio Committee on Finance to immediately begin an inquiry into the fitness of Sifiso Buthelezi to hold office.

Parliament through the Portfolio Committee on Transport must amend the *Legal Succession to South African Transport Services Act* (No. 9 of 1989) to make the appointment of the PRASA Board an open process and accountable to the National Assembly.

⁶⁸ Deloitte, *General conclusions and Recommendations*, (National Treasury: Forensic investigation into the appointment of and payments made to various service providers of the Passenger Rail Agency of South Africa (PRASA) 15 December 2016), <https://www.roadim.org.za/interimfindings/documents/PRASA%20Final%20Report%2015%2016.pdf>

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6.5 National public procurement reform
Amendments to the relevant legislation and Treasury guidelines to provide for much greater consequences for individuals and entities implicated in negligence, corruption and malpractice related to Public Procurement.

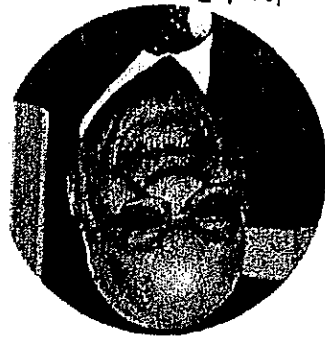
6.4 Investigation into the PRASA Board
The Hawks/SIU to provide a timely and professional forensic investigation into the then PRASA board to determine whether members of the Board benefited individually from the siphoning of public money to selected suppliers.

6.3 Prosecution
The Directorate for Priority Crime Investigation (the Hawks/SIU) must be requested by Parliament to conduct an urgent and immediate investigations of all named people and companies, with the view to urgent prosecutions of all those who are implicated in corrupt activities relating to PRASA tenders, as required in terms of Section 17B and 17D of the *South African Police Service Act, 1*

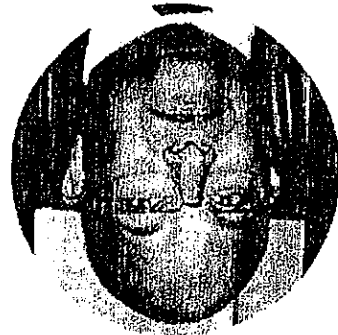
6.2 Asset seizure & recovery of expenditure
The National Director of the National Prosecuting Authority (NPA) be requested and if necessary compelled through a court order by the Minister of Justice, to protect PRASA's assets and to institute asset forfeiture and investigations in terms of Section 22 of the *Prevention and Combating of Corrupt Activities Act (12 of 2004)* as well as the *Prevention of Organised Crime Act (121 of 1998)*.
Assets of all local and international entities complicit in corrupt tenders to be frozen, pending the appointment of an independent comprehensive forensic audit into all the irregular PRASA contracts and the recovery of all fruitless and wasteful expenditure.

7. The Rogues Gallery: The network of corrupt individuals who stole from the public and wrecked passenger rail for millions

WANTED LIST - POLITICS & BUSINESS



Jacob Zuma
President of South Africa.
At the centre of State Capture.



Arthur Fraser
State Security Agency Director General.
Involved in corrupt company dealings with PRASA.



Roy Moodley
Owner of Royal Securities.
Close friend of Jacob Zuma.
Engaged in corrupt deals at PRASA



Makhensa Mabunda
Director of S-Group & Siyaya.
ANC donor and accused of corrupt dealings with PRASA.

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Peter Spuhler
Ex-CEO of Stadler Rail – parent company
involved in corrupt rail contract with
Swifambo.



Auswell Mashaba
MD of Swifambo – criminal front
company for corrupt rail deal with
PRASA.



Mario Ferreira
Co-owner of Sivanjena Technologies.
Company won irregular PRASA tenders
worth billions.



Wanted List - PRASA

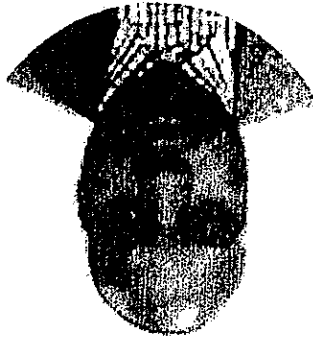
Lucky Montana
Group CEO
Presided over looting and widespread corruption, signed hundreds of
dodgy deals.
Deloitte: "Numerous appointments happened via deviations. Mr
Montana ... appears to have been involved in all such appointments
we investigated"



Siso Buthelezi
Board Chair for 6 years. Current Deputy Finance
Minister.



Josephat Phungula
Former Chief Procurement Officer.
Falsified qualifications.
"Fraud charges should be instituted against Dr
Phungula..."
- ENS



A67

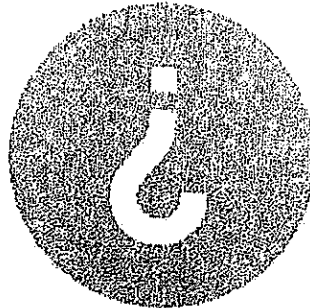
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Daniel Mtshkulu
Chief Engineer. Falsified qualifications. Involved in
awarding of irregular and illegal tenders.



Chris Mbatha
Former PRASA Chief Information Officer and Procurement
Officer
"Institute disciplinary action against Mr Mbatha for failure to
comply with Section 45 of the PFMA" - Gobodo



Rebecca Setino
Former PRASA Head of Supply Chain Management
Current Country Head Procurement & Supply Chain for Bombardier
Transportation SA. Bombardier received a contract in excess of R1
billion for signalling from PRASA.
"...Institute disciplinary action against Rebecca Setino in accordance
with section 64B(4) of the Public Service Act, 1994 for "irregularly
appointing BEC members in breach of the PRASA SCM policy" -
Gobodo

W

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B

PRASA Board 2012/2013

Tshepo Lucky Montana
Group CEO



Mfenyana Salanje
Audit and Risk Management
Chairperson



Zanele B Gasa
Finance, Capital Investment
and Procurement
Chairperson



Xolile George
Safety, Health and Environment
Committee Chairperson



Marisa Moore
Board Member



Namhla Mxenge
HR and REM
Committee
Chairperson



Siso Buthelezi
Board Chairperson



Lindikaya Zide
Company Secretary



Mawethu Vilana
Board Member



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8. Annexures

Annexure I: Legal Framework: Legislation and policies

The Constitution of the Republic of South Africa, 1996
The Constitution provides the overarching framework for PRASA. The Constitution sets out the basic principles which must be followed when PRASA procures goods or services. Section 195 of the Constitution sets out the basic values and principles governing the PRASA administration. These pieces of legislation call for the promotion and maintenance of high standards of professional ethics as well as efficient, economic and effective use of resources. The use of these resources, and PRASA as a whole, should be transparent, accountable and should encourage public participation in policy-making. Furthermore, PRASA should be development-oriented and provide fair, equitable, unbiased services that are responsive to our needs. PRASA should provide us with timely, accessible and accurate information. Good human resources management and career-development practices should be cultivated in a way that is broadly representative of the South African people. Employment and personnel management should be based on ability, objectivity and fairness, while also focusing on the need to redress the imbalances of our past in order to achieve this broad representation.

Section 217 of the constitution deals with procurement of goods and services by PRASA. The legislation states that any procurement should be "*fair, equitable, transparent, competitive and cost-effective*." Procurement policy is allowed to have categories of preference in the allocation of contracts but should protect or advance people or categories of people who are disadvantaged by unfair discrimination.

Legal Succession to the South African Transport Service Act, 9 of 1989 & the Legal succession to the South African Transport Services Amendment Act, 38 of 2008
These Acts set up PRASA as a State owned company. Sections 15 & 23 of the Act require the PRASA to provide a service that is in the public interest. Section 17 requires PRASA to act in the strategic and economic interests of the Republic and Section 3 of the Amendment Act requires PRASA to have due regard to key government social, economic and transport policy objectives.

National Land Transport Act, 5 of 2009
This Act places an obligation on the Minister of Transport to aim to further the process of transformation and restructuring of the national land transport system and to give effect to national policy, prescribe national principle, requirements, guidelines, frameworks and national norms and standards that must be applied.

The Minister must prescribe principles that apply to the determination, formulation, development and application of land transport policy in the Republic. The Minister must, among other, facilitate the increased use of public transport; ensure that the money available for land transport matters is applied in an efficient, economic, equitable and transparent manner.

The Minister must accommodate national and international benchmarks and best practice; promote the safety of passengers; encourage efficiency and entrepreneurial behaviour on the part of operators and

encourage them to tender competitively for contracts and concessions; promote a strategic and integrated approach to the provision of public transport; promote the efficient use of energy resources, and limit adverse environmental impacts in relation to land transport.

The Minister must also promote public transport that is effective in satisfying user needs; operates efficiently as regards the use of resources; is of an acceptable standard and readily accessible and is operated in conjunction with effective infrastructure provided at reasonable cost; is safe;

The Public Finance Management Act 1 of 1999 (PFMA) Principles from the Constitution are set out in various pieces of legislation - the most important being the Public Finance Management Act, and various National Treasury Guidelines set out in terms of that Act. The PFMA places detailed obligations on the Board of PRASA and the CFO to avoid unauthorised, irregular, fruitless and wasteful expenditure and to put in place controls to prevent those forms of expenditure occurring. The PFMA also defines these forms of expenditure. Unauthorised expenditure relates to overspending on a particular allocated budget or when expenditure not in accordance with the particular budget. Irregular expenditure is any expenditure, excluding unauthorised, which is in contravention of or not in accordance with any legislative requirement. Fruitless and wasteful expenditure is expenditure which was made in vain and would have been avoided if reasonable care had been exercised.

The Broad-based Black Economic Empowerment (B-BBEE) Act 53 of 2003 This Act aims to redress the legacy of exclusion of black people from the economy pre-1999 through imposing preferential treatment for business composition and equity considerations in the tendering process.

The Preferential Procurement Policy Framework Act 5 of 2000 (PPFA) This Act provides guidance on striking a balance between weighting the functionality of the goods and services, incorporating pricing and ability to deliver, including considerations of equitable access to state contracts based on B-BBEE status.

The Prevention and Combating of Corrupt Activities Act, 12 of 2004 (PCCA) The PCCA Act requires any person who holds a position of authority at any level in PRASA or a supplier or anyone else who knows or ought to have known or suspected that another has committed an offence of corruption, fraud or theft involving R100 000 or more, to report this to SAPS.

PRASA Supply Chain Management (SCM) Policy PRASA, like all other SOEs, are required to adopt Supply Chain Management policies so that the various pieces of legislation and regulations mentioned above are put into practice. PRASA's SCM policy was adopted by their Board in February 2009 and amended in September 2013. Compliance with this policy is critical. Vast sums of money are spent by PRASA on goods and service providers; the incentive for corruption is equally large.

Strict compliance with the SCM Policy by all levels of management is a critical check in curbing corrupt practices. This includes maintaining a full audit trail (paper or electronic) for scrutiny of all actions, recommendations and decisions.

The key Policy steps in PRASA's procurement process

1 Declaration of interest

All PRASA employees involved in bids must declare any conflict of interest and withdraw from the process if the employee, a close family member, partner or associate has any relationship of any kind with a bidder.

2 Demand Management

Treasury requires that there must be an *identified need* for the service and this need must be to fulfil one or more of PRASA's functions. A needs analysis must be undertaken and there should be a defined procurement strategy. Precise specifications of this need must be determined and it should be linked to budget. The industry which could supply this need should be fully analysed.

A Bid Specification Committee (BSC) must be established for all tenders above R350,000. This committee will undertake to develop the technical specifications for the tender document. The technical specifications will set out a need-specific method for procuring and disposing of the specific goods or services at PRASA. This should include preferential requirements, an appropriate preference point system for evaluation of any tenders, and deliverable or performance indicators against which the tender will be assessed. The BSC must also ensure that the technical specifications of tenders are legislatively compliant. These specifications will form the foundation on which the proposals from different service providers are evaluated. These will also form the substance of the contract with the selected service provider and the basis on which the contract is managed and paid for.

3 Inviting Tenders

The default process for inviting tenders is a competitive one and differs according to the value of the tender. A professional services database exists, from which tenders under R350,000 can be awarded. This process would involve requesting quotes from service providers who are established on the database and quotes can be approved by the CPO. The database should however, in the first instance, be created through a competitive process, which would also have verified the capability and preferential status of the various service providers. Any service provider on this database would be there for three years and their rates will also be set for those three years. Furthermore, the work must be allocated on a rotational basis to ensure equitable distribution. The competitive data base cannot be used for tenders over the value of R350,000.

The PPPFA sets out the preferential points system for all procurement above R30 000. A weighted points system is applied to those bidders who do not fall on the technical assessment (which will be described below):

- 80/20 price/B-BBEE for bids up to R1 million
- 90/10 price/B-BBEE for bids over R1 million

The following Preference Point Systems are applicable from 1 April 2017 to all Organ of State bids:

- the 80/20 Preference Point System for bids with a Rand value of more than R30,000-00 but not exceeding R50,000,000-00 (all applicable taxes included); and
- the 90/10 Preference Point System for bids with a Rand value above R50,000,000-00 (all applicable taxes included).

The Bid Evaluation Committee (BEC) makes recommendations to the Bid Adjudication Committee (BAC) that the tender be awarded to the bidder with the highest score, unless there are objective criteria which justify awarding the tender to another bidder. The BEC is required to maintain records relating to this process, to ensure the existence of an audit trail.

As a general rule, all other tenders (bar the exceptions set out below) must be competitive. This competitive process requires tenders to be publicly advertised with detailed information to prospective bidders on the specifications and bid assessment process. Exceptions to a competitive tender are allowed in cases of emergency, sole source, confinements and unsolicited bids.

The case of an *emergency* tender may occur in cases of disasters, system failures and security risks. When procuring emergency goods, work or services, this may be obtained by means of quotation, preferably using the departmental supplier database. The GCEO would have to rally the motivation for emergency purchases.

Sole sourcing applies when there is actually only one supplier in the market. The GCEO must approve the use of sole sourcing prior to opening negotiations with a supplier.

Confinement occurs where it is not possible to use a competitive bidding process and for practical reasons, only one bidder is asked to provide a quotation, however this can still only be used in certain instances. This may include: the appointment of professional services such as legal, financial, technical or security where unique expertise and/or security are required, in cases where the task represents a natural continuation of previous work carried out by a service provider and/or when only one or a limited number of firms are qualified and have met certain requirements. Confinement was used extensively by PRASA during the period under review. Any motivation for confinement would need to be approved but the GCEO.

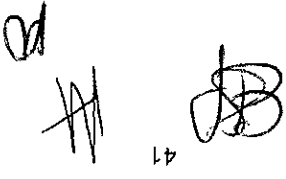
Unsolicited bids are those bids where a reverse situation occurs in that the supplier approaches PRASA with a proposal outside of any request put out by PRASA. Accepting such bids can only be done after PRASA confirms a need for the goods or services and once they have tested the market through an "Expression of Interest". This would help to ensure that the concept is unique and that there is no one else who can provide this good or service.

4 Assessing Bids

A Bid Evaluation Committee (BEC) is established to evaluate any bid against the specifications and points system set out in the Tender document (prepared by the Bid Specifications Committee described above).

The BEC is required to conduct (and document) the following verifications:

- Administrative compliance including tax clearance certificates, B-BBEE verification, capacity signatory, accreditation, VAT registration, price, number of items and declaration of past SCM practices. Failure to provide any of this information should result in the bid being disqualified.
- Bidders whose company or directors are on a restricted database, those who don't provide a valid tax clearance certificate from SARS, or those who have failed to perform against a previous contract, may not be awarded a tender.

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7 Managing the contract

Information about the award should be published, including contract number and description, name of successful bidder, details of B-B-B-E-E preference points of bidder, contract price, date the contract ends and when goods are being supplied, the brand name of these goods. The contract is not published.

Once the bidder has been cleared, a contract is signed between the parties which assumes all original bid documents are part of the contract. The contract may include a service level agreement. Neither document may deviate from the original bid specifications.

Once a bid is awarded, the Accounting Officer is required to undertake checks, once again, that the bidder and all directors, shareholders or trustees, are not registered on a restricted database or tender defaulting register. The bidder must also be assessed, once again, to confirm they have the necessary facilities, capacity, capabilities and financial resources to deliver the goods and services promised. For contracts over R10 million, the financial capability must be confirmed in writing.

6 Entering into the contract

- GCEO: R100 million
- CEOs of subsidiaries: R50 million
- CFO: R50 million
- Maintenance & materials
- CEOs of subsidiaries: R20 million
- CFO: R20 million
- CFO: R10 million

The Bid Adjudication Committee (BAC) recommend to the delegated authority who the bid should be awarded to. The SCM policy sets out who has the authority to sign off on tenders and contracts, subject to the total value of the contract. The thresholds approved by the Board authorised the following people to approve contracts within PRASA:

5 Awarding a tender

- Evaluation in accordance with the technical criteria specified in the bid document and the prescripts of the PPPFA
 - The capability of the bidder to execute the contract, from a technical, managerial and financial perspective
 - Whether the bid is to specification in respect of quality, functionality, dimensions, design, customer support, guarantee, etc.
 - The number of contracts granted in the previous 12 months
 - Allocation of preference points
 - Representativity in the composition of the bidder and the possibility of fronting
 - Whether it is value for money
- Ensure all potential suppliers are legally compliant through ensuring completion of background checks

The National Treasury published Contract Management Framework and Contract Management Guidelines in 2010. The Framework and guidelines support various sections in the PFMA which set out PRASA's financial managerial functions, including the effective, efficient, economic and transparent use of resources; and that all contractual obligations are settled and monies owing are paid within terms.

The two documents apply to the whole of government, including PRASA. They set out best practice and are not binding in the same way legislation and regulations are.

The Framework is a high level document and is supported by the detailed Guidelines. They recommend PRASA manage all stages of a contract life cycle. This starts with demand management and continues through to managing supplier relationships, managing the performance of suppliers according to the specifications in the contract, paying suppliers against actual services delivered, applying incentives and penalties and managing risks they emerge during a contract.

The Framework explains how poor contract management would result in poor supplier, buyer or other stakeholder relationships, negative public perception of PRASA, drawn out legal disputes, cost overruns, goods and services being purchased outside of specifications and in the worst case scenario, a complete failure of service delivery. The current dire state of services across PRASA's rail services are close to collapse and highlight the importance of proper contract management.

Consequences of failure to follow legislation and policy
The PRASA SCM Policy contains a Code of Conduct which provides for all role players involved in procurement processes to adhere to the National Treasury's Code of Conduct for SCM practitioners.
The consequences of PRASA's GCEO, CFO and SCM management not following proper processes range in severity. These include:

- Disregarding/dissqualification of a bid
- Termination of tender process and instituting of legal processes
- Termination of contract and instituting of legal processes
- Disciplinary action which could result in dismissal
- Recovery of unauthorised, irregular or fruitless and wasteful expenditure from an employee who is responsible for non-compliance
- Asset forfeiture in the case of any individual who has benefited from a corrupt act
- Criminal charges

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Annexure 2: Summary of Bowman's detailed findings on the Supplier Development Programme (SDP) and the use of confinement⁶⁹

The contracts awarded by confinement constitute irregular expenditure. The key finding of investigators is that all 62 contracts awarded by confinement constitute irregular expenditure. This is a significant finding given that R1.5b was allocated through this programme. In the view of investigators, all payments are irregular expenditure given the appointment irregularity. Procurement procedures used in SDP are in contravention of PRASA SCM policy and the PFMA. The PRASA Supply Chain Management (SCM) Policies do not make any specific provision for the SDP process.

The investigators note that the conditions for not applying a competitive tendering process in the allocation of contracts and, instead applying 'confinement' do not apply to the SDP. According to PRASA SCM policy "confinement" occurs "where the needs of the business preclude the use of the competitive tendering process and for practical reasons only one or a select number of tenderers are approached to quote for goods and/or services". Situations where the method of 'confinement' are used include but are not limited to the following:

1. The task that represents a natural continuation of previous work carried out by the firm;
2. An assignment where only one or a limited number of firms are qualified or have experience of exceptional worth for the assignment;
3. Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/or security are required; and
4. It is an emergency.

Ad hoc contracts terminated by PRASA as declared irregular in December 2015 PRASA internal audit declared all confinements irregular and all relevant contracts were stopped or cancelled. Reasons given were that:

1. The preferential point system had not been applied as required by the Preferential Procurement Policy Framework Act for contracts above R30 000, especially the application of the 90/10 point system.
2. The lack of transparency of placing emerging suppliers on the ad hoc supplier list for the provision of infrastructure and rolling stock on an 'as and when' basis.
3. The technical capability and capacity of suppliers placed on the ad hoc supplier lists was not assessed as contractors were not appointed on the basis of a confinement.
4. The suppliers placed on the ad hoc list did not have the CIBC grading applicable to their allocated contract values in case of construction projects.

Apart from the fact that the design of the SDP contravenes PRASA SCM policy and the provisions of the PFMA in general, significant specific additional irregularities were found in contracts falling under the programme in relation to the process of appointment, the payments and the services rendered. The following summarises issues arising from the investigator's findings into only 12 of the 63 contracts and in

⁶⁹ Bowman, EXECUTIVE SUMMARY OF FINDINGS AND OPINION. Available: <https://www.environment.gov.za/media/10400/attachments/PRASA%20GRC%202017.pdf>

9 of those, investigators were unable to make findings on payments or goods supplied due to the absence of relevant information or documents. In all cases, missing documentation posed a significant challenge for investigators.

Additional irregularities with the process of appointment:

1. The investigators do not mention any evidence that the emerging suppliers were partnered with established suppliers and were eventually accredited as having the capacity and competence to undertake the work; the suppliers appear to have been simply granted technical and mechanical refurbishment of coaches when the nature of their business is registered as 'agriculture, hunting, forestry and fishing' with the Companies and Intellectual Property Commission (CIPC). This obviously poses significant safety risks for passengers and staff of PRASA apart from the potential for fruitless and wasteful expenditure it suggests.
2. Irregular contract periods were applied - for example, a contract was awarded for a period of 5 years in breach of PRASA SCM policy which does not allow for contracts exceeding a 3 year period.
3. Possible evidence of grooming/ manufacturing of companies in order to specifically benefit from the SDP which is contrary to the design of the programme which was intended to target existing emerging suppliers. In one case, the company appears to have been registered only shortly before being allocated a contract.
4. Companies were appointed to the SDP which were not registered in the CIPC data base as working in a relevant industry, for example as noted above, two companies that received contracts to provide "ad hoc repair work, call out and technical support on an 'as and when' required basis", indicate on the CIPC that the nature of their business is 'agriculture, hunting, forestry and fishing'.
5. Contracts were awarded in instances where there is no evidence that the supplier had been issued with an accreditation certificate before being awarded the contract or had accreditation certificates that would expire before the contract was completed. An accreditation certificate is issued when the competence and capacity of a supplier has been verified.
6. Contracts were awarded without any evidence of a competitive bidding process or evidence that the supplier awarded the contract had provided a quotation.
7. Vendor registration information could not be provided by PRASA for particular suppliers.
8. Contracts were awarded to people who had been directly implicated in previous cases of fraud, one for example, involving R3.6m, and where the PRASA contract was also found to include over-charging of approximately R9m where the goods were not supplied as specified.
9. In at least one instance, two directors of one supplier awarded a contract were also directors in a large and well-established long term supplier to PRASA already benefiting from large tenders.
10. In one case, investigators found that the exact matching of bid evaluation scores suggests collusion may have taken place and in other cases, there is no clear reason evident for the selection made.
11. In one case, an approximately R22m contract was awarded to a company that had not been approved for the SDP list of suppliers and did not appear on the list.

Additional irregularities related to payments found by investigators:
1. Investigators were not able to verify a significant percentage of the amounts paid by PRASA to suppliers in the SDP because documentation was incomplete. In one example, the investigators were unable to verify 81% of the amounts paid by PRASA, that is, they were unable to verify just under R7m, against physical invoices. In another case 64% of payments or approximately R22.5m could not be verified against

physical invoices. Out of just 12 of the 63 contracts, therefore, R29,5m in payments could not be matched to invoices.

2. Over-invoicing was not picked up / corrected by PRASA. In one example, PRASA failed to notice / correct over-invoicing amounting to R4 360 500 overcharge over 24 months in the case of a company contracted to supply 16 minibuses and 16 drivers but which only supplied 10 minibuses with the remaining 6 being supplied by PRASA depots. In this case the contract was extended by a further 5 months and then a further 4 months while a new tender was prepared. This company was then again awarded the new contract and continued to over-charge by R4 360 500. This resulted in at least R9m payment for goods not provided, that is fruitless and wasteful expenditure. In a second case, the investigators establish that the standard contract price for vegetation control was R0,15 per square meter for clearing and R0,22 for spraying herbicides when the actual contractor was paid R6,60 per square meter.

3. Payments were made contrary to the terms stipulated in the contract, for example, just under R2m payment was made to a company before the conclusion of the contract despite the contract stipulating that no payment would be made until completion.

4. Significant percentages of payments could not be verified against acceptance certificates. An acceptance certificate indicates that all conditions required to be met have been met before payment is made. In one instance, investigators were unable to reconcile R7 207 991 (86%) against PRASA acceptance certificates indicating that all conditions have been met for payment. In another case, investigators were unable to reconcile 81% of the total of just under R33m paid against acceptance certificates.

Bowmans' conclusions and recommendations for action

1. Appointment of vendors in terms of the SDF are in contravention of the PRASA SCM policies and the PFMA.
2. All awards and appointments of contractors made under SDF can be considered in contravention of PRASA's SCM policy and should be regarded as irregular expenditure and reported as such.
3. The PRASA board should consider its legal remedies against individuals involved with regard to possible disciplinary action, criminal investigation and / or civil recovery of losses. Further investigation would be needed.
4. All fruitless and wasteful expenses should be recovered from the supplier.
5. Internal control processes as per National Treasury guidelines for irregular expenditure should be developed and implemented.
6. The identical scoring of the Technical Executive Committee creates the suspicion that there was at least some collusion or discussion between TBC members with regard to the awarding of this contract.

Specific PRASA staff involvement

Requests for approval of suppliers to Supplier development programme were compiled by:

1. Request 1: Mr. Bopape (Snr manager SCM),
2. Requests 2 and 3: Dr Mtimkhulu (EM: Engineering Services). Dr Mtimkhulu was fired in August 2015 for falsely claiming to have engineering qualifications. He claimed to have designed the Afro 400 while in fact he had ordered it. It was later delivered and proved to be unsuitable for the gauge used on South African railways.
3. Request 4: Dr Phungula (Group CPO).

4. Requests were recommended by Mr. Mofi PRASA Rail CEO and Mr. Zainxaka PRASA Technical CEO.

5. Requests were approved by GCEO Lucky Montana or acting GCEO Ms Ngoye.

The four Technical Executive Committee members whose bid evaluation scoring of a contract worth just over R22.5m, and reported to be highly inflated in relation to standard pricing, was so identical that the investigator suspected collusion were:

1. Ms Phumeza Cwayi
2. Mr. Vukosi Shirinda
3. Ms Sarah du Plessis
4. Mr. Sydney Bonongo.

It should be noted that the responsibility of the Board in regard to the SDP was not mentioned in the investigations. Given that the programme ran from 2012 to 2015, it seems likely that the Board will have been aware of it. It is not clear who initiated the process of declaring the SDP programme irregular in 2015 and who decided it should be closed.

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In respect of the first allegation, the Committee found that your client breached item 10.1.1.3 of the Code read with items 4.1.3 and 4.1.4 of the Code.

- 1. failed to appoint a Group CEO for the Passenger Rail Agency of South Africa (PRASA) which resulted in R1 767 000, 00 fruitless and wasteful expenditure for PRASA;
- 2. irrationally dismissed the PRASA Board under Chairperson Molefe; and
- 3. misused the assets of PRASA in the form of bus services to the African National Congress (ANC) which was not paid for by the ANC.

The Committee dealt with the following allegations. That your client-

I write on behalf of the Joint Committee on Ethics and Members' Interests ("the Committee") who at its meeting of 20 October 2023 finalised its deliberations on the complaint by #UniteBehind against your Client, Hon. D. Peters, MP. The allegations relate to her tenure as the Minister of Transport.

The above matter refers.

**RE: UNITE BEHIND // HON. D PETERS, MP
ALLEGED CONTRAVENTION OF THE CODE OF ETHICAL CONDUCT AND
DISCLOSURE OF MEMBERS' INTERESTS: PRASA**

Dear Mr Majavu

Per email: sybll@majavattorneys.co.za
Your ref: ZM/Peters

Zola Majavu
Director: Majavu Inc.
Majavu House
170 Columbine Avenue
MARSHALTON

24 October 2023

PO Box 15 Cape Town 8000 Republic of South Africa
Tel: 27 (21) 403 2911
www.parliament.gov.za

PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA



"DP2"

In respect of the third allegation, the Committee found that your client breached item 10.1.1.3 of the Code, read with item 4.1.4 of the Code.

When she dismissed the PRASA Board on the same day when Mr. Molefe wrote to the Portfolio Committee on Transport. This dismissal was ruled by the High Court in *Molefe and Others v Minister of Transport and Others* (17748/17)[2017]ZAGPPHC to be irrational, unreasonable and unlawful.

4.1.5 maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution;

4.1.3 act of all occasions in accordance with the public trust placed in her; 4.1.4 discharge her obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above her own interests;

That your client failed to -

In respect of the second allegation, the Committee found that your client breached item 10.1.1.3 of the Code, read with items 4.1.3, 4.1.4 and 4.1.5 of the Code.

When she failed to appoint a Group CEO after the PRASA Board had commissioned a recruitment process which resulted in a financial loss of R 1 767 000.00

4.1.3 act of all occasions in accordance with the public trust placed in her; and 4.1.4 discharge her obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above her own interests;

That your client failed to -

That your client failed to -

4.1.4 discharge her obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above her own interests;

when she requested buses from PRASA that was used for the ANC 2015, January 8th celebrations that was not paid for by the ANC.

The Committee finalised its deliberations on the sanctions after your client had the opportunity of presenting her representations in person to the Committee on 28 September 2023.

The Committee will make the following recommendations to the House in terms of item 10.7.8.1 of the Code.

Breach 1

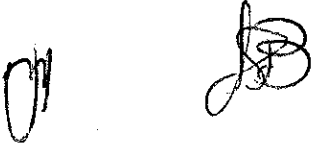
That your client be suspended from her seat in all parliamentary debates and sittings, and from committee meetings and committee related functions and operations for one term of the Parliamentary program.

Breach 2

That your client be suspended from her seat in all parliamentary debates and sittings, and from committee meetings and committee related functions and operations for one term of the Parliamentary program.

Breach 3

That your client be suspended from her seat in all parliamentary debates and sittings, and from committee meetings and committee related functions and operations for one term of the Parliamentary program.



MD

JB

COPY TO:
Per email: Dipuo8@icloud.com
Cell: 0730551501 / 0820450241

ADV A GORDON
ACTING REGISTRAR OF MEMBERS' INTERESTS



That the suspension in respect of all three breaches as set out above, run concurrently during a term of the Parliamentary program as determined by the House.
The Committee Report in this matter will be published in the Announcements, Tablings and Committee Reports (ATC) Journal of Parliament.

IN RE:

MS DIPUO ELIZABETH PETERS

AND

REGISTRAR OF MEMBERS' INTERESTS

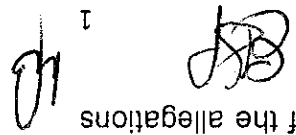
SUBMISSIONS *APPROPOS* SANCTION

A. Introduction

1. I make these submissions at the request and direction of the Registrar of the relevant Members' Interests Committee dealing with members' interest in Parliament of the Republic of South Africa ("the Committee").

2. This is against the backdrop of the findings of the Chairman of what was colloquially dubbed the State Capture Commission ("the Commission"). For the sake of brevity and convenience, I will refer to it as the Committee, in so far as it relates to me in my capacity as the former Minister of Transport. For purposes of these submissions, it is important to mention that under my watch, resorted 12 state owned entities, of which PRASA was part.

3. I have noted that the Committee has already found me "guilty" of the allegations

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"DP3"

listed in the notice calling on me to make submissions *apropos* the sanction yet to

be meted out me. I am grateful for the opportunity so granted, however, I had

previously, through my attorneys of record (Majavu Inc., in particular, Mr Zola

Majavu) requested that I be afforded an opportunity to make the submission orally

before the Committee. To date, my request has not been received favourably. I

accordingly proceed on the basis that I reserve my right to do so at a later stage if

so, afforded that opportunity by the Committee. For avoidance of doubt, I reiterate

my request and submit that there is no prejudice that could conceivably be suffered if

my request were to be granted. It is my respectful view that the Committee will have

the benefit of engaging further and directly with me and clarify some aspects that

might otherwise not have been clearer, on a mere reading of my written

submissions.

4. I proceed on the basis mentioned above and reiterate my utmost respect for the

Committee, and fully appreciate the importance of the mandate they are charged

with. To that end, I fully pledge my commitment to co-operate fully with the

Committee.

5. I am acutely aware of the seriousness of the matter, and self-evidently, the

consequences that might flow from my conviction by the Committee. I am truly

concerned about this matter, hence my request. I will deal with my professional and

political journey to date hereunder, which I hope would be considered by the Committee when it determines my fate. I underscore this because, notwithstanding the findings by the Chairman of the State Capture Commission, as well as the latter findings¹ by the Committee, there is absolutely NO finding, let alone suggestion, that I stood to benefit anything personally from what has been found to be shortcomings on my part and in my official capacity. Most importantly, in my view, nowhere have I been found guilty of *corruption or otherwise aiding such acts*, even with the shortcomings which morphed into findings, and the resultant recommendations. By stating the above, I do not, by any stretch of logic, seek to reduce the significance of the findings. I merely seek to place the matter in its proper context, with specific reference to my prayer for leniency.

6. While I fully respect the work of the Committee, I also do not wish to be sacrificed at the altar of political expediency. I also make this point in all humility and hope for a just and equitable outcome.

B. My abridged resume (personal circumstances)

7. A useful starting point is my introduction to government service commenced with the advent of our democracy since 1994.

¹ I fully recognize that the committee has already found me guilty on the allegations levelled against me by the complainants. In order to avoid prolixity, I elect not to restate the allegations on these submissions, save to ask that they be read as if specifically incorporated herein.

8. I served diligently and without any blemish to date, in various legislative bodies since 1994 to date, or at the very least, until the recent findings in respect of which I am making these submissions. I state this point upfront to demonstrate that irrespective of the adverse findings, when the Committee looks at my personal circumstances and history in public service, it will become apparent that on the whole, I executed my tasks and duties to the best of my abilities and most importantly, without breaking any laws.

9. I straddled various roles, including but not limited, to a whip in the National Assembly, chief whip at the Northern Cape Legislature, Member of the Executive Council of Health, Northern Cape ("the MEC of Health"), Premier of the Northern Cape ("Premier"), Minister of Energy ("Minister"), Minister of Transport, Member of Parliament, with specific responsibility in the Appropriations Committee and most recently, Deputy Minister of Small Business Development. It is clear from this journey, that, I spent my entire adult life in public service and served with distinction. To the extent that I have recently been found to have erred by a Court of Law, it is noteworthy that within days of such judgement, I was recalled from the office as the Minister of Transport, just as I was intending to appeal that adverse decision. It remains my considered view that had I proceeded with my appeal with specific reference to how I dissolved the Board of Prasa is concerned, I might have been



vindicated. Sadly, that was never to be, as a result of the decision² taken by the then President Jacob Zuma, which I respected as a disciplined cadre and deployee of the African National Congress ("the ANC"). Beyond that, barring the findings of the Commission and the Committee, my track record has been unassailable and beyond reproach. I am asking that this should weigh favorably in the minds of those charged with deciding my fate. At all material times, I never ran away from taking responsibility and most importantly, being held accountable, to date.

10. Even in instances where I was found wanting, I was never the sole decision maker in a vacuum, or, at the very least, I relied on the reports and *bona fides* of those with whom I was working. I also had a cordial and professional relationship with all the Boards of the 12 entities for which I was responsible, including Prasa, which was chaired by an all-time, comrade, fellow deployee of the ANC and friend Mr. Popo Molefe ("Molefe"). The significance of this point is simply to indicate that at all material times, I was never motivated by any ulterior motives in taking the decisions I took, rightly or wrongly, perhaps with hindsight. I acted with *bona fides* and take full responsibility for my decisions.

11. It is also noteworthy that out of the 12 entities resorting under my span of oversight

² I was recalled as Minister of Transport around midnight on 30 March 2017

and authority, it was only Prasa that seemed to have systemic challenges over time. This is not to suggest that others were plain sailing, however, given the magnitude of the mandate of Prasa, as well as the long-standing internal strife, it occupied most of the public attention at the expense of their core mandate.

12. In an attempt to intervene, I engaged with various stakeholders, including Molefe, the Chair of the board. Sadly, my interventions were misconstrued as taking sides with a particular faction and in the result, my dissolution³ of the board, was seen in that light and later challenged in a Court of Law. While I respected the court's decision, I had made it clear that I was intending to appeal against that ruling. I never got a chance to do so, hence I am now saddled with that adverse decision. I am advised that, absent an appeal process, that decision remains extant.

C. PRASA

13. The challenges at PRASA got accentuated from the implementation process of the report by the then Public Protector⁴ in her report styled and titled "derailed" euphemistically referring to the trains which became the focus of the ongoings at Prasa, *inter alia*.

³ With hindsight, I appreciate that I had erred in not giving the Board prior warning of my intention, to dissolve them, however it remains my considered view that I was correct in putting an end to unhelpful public spat
⁴ Advocate Thuli Madonsela



14. One of the recommendations or remedial action directed by the Public Protector, was that the Department of National Treasury ("treasury") assisted by the Chief Procurement Office ("CPO") should investigate all contracts or tenders above R 10 m (ten million rand).

15. Further, based on the Audit and Risk Committee ("the ARC") outcomes, I agreed with both the board Chairman, as well as the Chairman of the ARC, that, as the Executive Authority, I would institute a forensic audit. Parallel to that, the Chairman of the Board had also enlisted the services of a law firm called Werksmans. I supported Molefe fully on that aspect. The only problem and for which I seem to have been chastised, was when I raised a concern about what I regarded as a runaway train (with regard the legal costs) which at that stage was just under R200 million (two hundred million rand) with the final report nowhere in sight. In the result, I was accused of stopping a law firm that was conducting investigations to deal with corruption. My point at the time was simply to ask that until they provided us with a report on work up done until that stage, no further expenditure should be incurred. It is also noteworthy that at that stage, the appointment and related expenditure by Werksmans had already been flagged by the Auditor General ("the AG") as irregular. In so doing, I seemed to have attracted the ire of Molefe, the Chairman of the State Capture Commission and later the Committee. It is now water under the

bridge; however, I deemed it prudent to place this context before the decision-makers, *apropos* my fate.

16. It seems all my interventions at Prasa were misconstrued from then onwards. To the extent that I dissolved the PRASA report, that was seen in a negative light. The context and what animated my decision was *inter alia* the public spat between Molefe and the then Chief Executive Officer ("the CEO") Mr Lucky Montana ("Montana"), later, to some degree Mr Collins Letsoalo ("Letsoalo") was as the then acting CEO.

17. I took the view that their attention was more on their respective egos and public spats, which I considered to be detrimental to the main objectives of PRASA, mindful of the imminent difficulties, especially their respective levels of seniority. Put differently, it was my view then, and it still remains my view to date, that the situation could have been saved, had the two gentlemen or main role players, all of whom I still hold in high esteem, had acted professionally and with the requisite level of maturity.

18. I was treated with suspicion on both sides. I was doomed whichever way I acted.

19. On the issue of the failure to appoint a CEO, again, I exercised my discretion based

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on the material conditions that were prevalent at the time and took the view that we

needed to stabilize Prasa first, to enable conducive conditions prevailed by the time

a CEO is appointed. From historically experience based on my observation over

time, I believe that had we proceeded with the appointment at that stage, such an

incumbent was bound to fall because of the internal strife. If I misread the sign of

the times or erred in that value judgement call, at best, that could have been an

error on my part, but certainly, nothing close to having been derelict or acting

maliciously.

negligence

20. I at all material times, I was acutely aware of my oath of office, as well as the duty

of skill, care and diligence required of me, as the Executive Authority. I still believe

that I exercised my powers correctly and without any malice or otherwise prompted

by any ulterior motives. I stood to gain nothing for my personal benefit, even from

error I am now found to have committed.

21. A lot of the difficulties at PRASA had to do with being egos placed ahead of the

main mandate of PRASA. This was epitomized further by the ongoing fight between

the then acting CEO of Prasa, Letsosalo and Molefe. Again, this played out publicly,

much to the reputational damage of PRASA. I do not wish to dwell much on the

fight between Letsosalo and Molefe, except to state that I genuinely believed that

Letsosalo was doing well in starting to stabilize the financials and Capex of PRASA.

In expressing that view, I was accused of siding with Letsaalo. I further called for more procedural correctness to ensure that when we approach the Cabinet for concurrence on the appointment of a permanent CEO, all vetting and other related processes were indeed finalized. I was privy to what could potentially happen in Cabinet, if all these administrative issues were not clarified or resolved. If anything, that would have resulted in a further delay. I have now become the victim of the good I sought to do.

22. Because PRASA was considered by some as a *honeypot*, whatever intervention I sought to make, was misconstrued either way. To the extent that I am found wanting on delaying the appointment of a permanent CEO, such was animated by a lot of weighty issues, which resulted in internal strife. I generally did not want a situation where someone is appointed and instead of focusing on the strategic objectives of PRASA and bringing about much needed stability, they end up being sucked into factional and egotistical battles. In as much as I am found to have delayed such an appointment, I humbly submit that the delay was commensurate with what I sought to stave off. If the ultimate view is that I was remiss in delaying, such a delay was neither negligent nor malicious at all.

D. The Buses for ANC Conference

23. I simply deny that I have any knowledge of machinations regarding the procurement

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of any mode of transport, especially the PRASA trains, used by the ANC at its rally⁵. What I do know, is that, upon being approached by organizer of ANC rally, I was asked to shed light on the procedure to be followed, if that the organizers wanted to hire trains under the auspices of PRASA to convey its members to the venue where the rally was to be held. I indicated that I would ask Montana, the then CEO of PRASA, to provide that information and assist accordingly.

24. At no point did I discuss the use of any buses and/or otherwise assisted with the procurement thereof with anyone who was my subordinate. I therefore reject, with the contempt it deserves, the suggestion that I have abused my authority as the Minister of Transport in that regard or as alleged. Throughout my service in various ministries, I have never abused my authority, let alone been accused of such. At this late stage of my career, to be found having abused my powers, is a low blow, which, on pain of my conscience, I cannot leave unchallenged. If anything, I have never embarrassed or otherwise brought to the ANC, government and most importantly my family. This specific finding brings me immense pain and as a result, my health has deteriorated significantly since these findings came out. That notwithstanding, I remain a dedicated and disciplined cadre of the ANC, hence I have refrained from making any public pronouncements on how I feel about what I

⁵ Such a rally was scheduled to take place on 10 January 2015, and by Montana that the normal schedule of trains was commenced on 11 January 2015. I am unaware of mode of transportation that was eventually used by the organizers.

perceived to be the unfairness perpetrated against me. Even now, I am co-operating fully with the Committee and place my fate in their hands.

25. The issue of the PRASA busses used as a result of my alleged abuse of power is simply unfounded and unsubstantiated. In fact, nothing could be further from the truth. I take serious umbrage at this finding because it goes directly to the core of my existence. It is not a nice thing to be accused of abuse of power, especially where there is no truth to such an allegation. Intrinsicly, the abuse of power talks to the individual's personal traits. It stands on a different footing to instances where one could be found wanting on a value judgement call. Abuse of power is a direct ^{intentional} and deliberate action. I needed to spend time dispelling this myth and setting the record straight, regardless of what the committee might eventually decide. I feel quite strongly about this aspect. [emphasis added]

26. There is a lot that one could say about the nature of the goings on at PRASA at different times relevant to the allegations with which I stand convicted, however, I believe that in order to do justice to all these relevant factors beyond what I had summarized above, one could only do so through oral presentation and subsequent fielding of questions from any member of the Committee. Hence my earlier request for that opportunity.

E. Conclusion

27. It remains my considered view that, at all material times, I discharged my duties with adequate duty of care, diligence and circumspection. Where I am found to have erred, I am comforted by the fact that there is no suggestion that I acted maliciously or was motivated by personal or any form of undue benefit.

28. It is also important to note that, to date, five (5) years post my departure as the Minister of Transport, PRASA remains besieged. It is therefore something to be considered, to the extent that I might have been paraded as one of the contributors to the systemic challenges at PRASA. Nothing could be further from the truth.

29. I appeared voluntarily on a few occasions before State Capture Commission testified, under oath, subjected myself to further questioning by the evidence leaders, as well as the Chairman of the Commission. I did so when others avoided appearing before the Commission and being held accountable. Where I was constrained to concede and acknowledge the error of some of my ways, with hindsight, I did so without hesitation. That was even applauded by the Chairman himself. This demonstrates the fact that I am not one who runs away from accountability and criticism. I am not perfect, however, I can also emphatically state that I am neither a malicious person, in all my dealings with others,

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formally or informally. I place a high premium on integrity and absolute good faith, even in my humanly imperfections.

30. I am currently at an advanced age (63 years) and working towards my retirement, after giving significant portion of my adult life to public service. It is therefore paramount to me and my integrity, which is *sacrosanct* that I do not leave such a negative legacy behind, while I take accountability.

31. I humbly ask that considerations of fairness and equity should weigh heavily in the minds and hearts of the decision-makers. I also hope and pray that I would not be used for political expediency and to jumpstart political careers of others in the exercise of their constitutionally guaranteed rights, which I fully respect. In the same vein, I also pray for reciprocity and collegiality. I verily believe that my unblemished record over the years, obviously until the recent findings, should stand me in good stead from a sanction point of view. I also need closure so that I can focus on my current position and the rigours of that mandate. I firmly believe that I am still worthy of the trust and confidence which the Honourable President of the Republic of South Africa, his Excellency, Mr Cyril Matamela Ramaphosa, bestowed upon me when he appointed me deputy Minister in March 2023, which position I still occupy to date.

32. I remain willing and committed to shed further light to the Committee to ensure that,

as they deliberate, they have all the facts before them. I do not by any means seek to pre-empt the outcome, however, it is important for my unblemished record to be placed on the correct footing in determining the appropriate sanction.

33. The State Capture Commission occurred in the midst of rampant corruption and lack of accountability by many. For my part, I have remained accountable and continue to do so. The fact that I am not tainted with a hint of corruption should count in my favour. Equally, the fact that I stood to benefit nothing personally, directly, or indirectly, should equally count in my favour. My length of service in government, with a clean disciplinary record, is also not a mean feat. As at the time of writing the submissions, I have not been subjected to any prosecution or approached by any law enforcement agencies, except the Committee.

34. I plead for leniency and submit that I am a candidate worthy of a "second chance" in the manner of speak. I am NOT incorrigible and should not be treated as such. I also appreciate that the complainants are part of an open democratic society, which we all fought hard for, however, salutary as their intents might appear to be, the Committee must also be unduly swayed. They are actually riding on the back of processes that have already unfolded and in which I participated fully and voluntarily. There is an adage that says "hindsight is always the best teacher". I submit that it is relatively easier to criticize from a position of privilege, especially,

when one was not in the actual "trenches" at the time and having to make decisions based on one's reading and analysis of the situation. In spite of all the criticism, my integrity still remains unassailable. There has been no suggestion, even in the face of harsh criticism as recorded in the actual complaint itself, to suggest any underhanded or bad faith conduct on my part. I pray that such be considered in my favour.

35. I remain a fervent advocate of the rule of law, and all its sub tenets, animated by

fairness and equity.

36. In the light of the foregoing, and hopefully, a further opportunity to address the

Committee, my fate is firmly in your hands. Ke beha bophelo ba ka matsohong le

dipelong tsa lona. Amen.

Dated 18 May 2023

Dipuo Elizabeth Peters

Deputy Minister: Small Business Development

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Dismissing the Molefe Board
That the Member dismissed the Molefe Board, seemingly because it had uncovered 14BN of irregular expenditure and it instituted investigations into corruption at PRASA. The High Court in *Molefe and Others v Minister of Transport and Others*

Failure to appoint a Group CEO
The Complainant states that the Member during her testimony before the State Capture Commission indicated that she did not appoint a permanent Group CEO because PRASA was not ready for a new Group CEO. Her failure to act on the recommendation by the Board resulted in a loss of R1 767 000.00 that was paid to the recruitment company.

The Complainant states as follows:
The Member, at the time when the complaint was lodged, served as a member of the Standing Committee on Appropriations. She was neglectful in her previous portfolio as Minister of Transport by failing to appoint a Group CEO of PRASA.

SUMMARY OF THE COMPLAINT

INTRODUCTION
Mr Abdurrazack Achmat on behalf of, himself, Zukiswa Fokazi and #Unite Behind, non-profit organisation, ("the Complainants") submitted a complaint to the Committee concerning Honourable Dipuo Peters, MP in her former portfolio as the Minister of Transport ("the Member"). The Office of the Registrar of Members' Interests received the complaint on 12 September 2022 for an alleged breach of the Code.

The Joint Committee on Ethics and Members' Interests ("the Committee") having considered the complaint against Honourable Dipuo Peters, MP, the Deputy Minister of Small Business Development, reports its finding on breach and recommendation on penalty, in terms of item 10.7.8.1 of the Code of Ethical Conduct and Disclosure of Members' Interests ("the Code").

1. REPORT OF THE JOINT COMMITTEE ON ETHICS AND MEMBERS' INTERESTS ON THE COMPLAINT AGAINST HONOURABLE DIPUO PETERS, MP IN HER FORMER PORTFOLIO AS MINISTER OF TRANSPORT



(17748/17)[2017]ZAGPPHC found that the conduct by the Member was irrational, unreasonable and unlawful.

The Member also attempted to stop the investigations into corruption at PRASA that was initiated by the Molefe Board. That the Member failed to investigate the allegation of the R79 Million of PRASA money paid by Swifambo to other people for alleged distribution to the African National Congress (ANC). The Member was under a duty to ensure that corruption as rooted out from public entities.

Misuse of PRASA assets- Busses

The Member also utilised PRASA busses for ANC events during 2014 and 2015 without ensuring payment from the ANC.

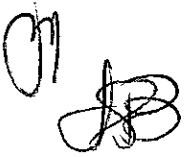
The Member is alleged to have influenced procurement proceedings through pressurising the PRASA CEO and Board of Control (BOC) because of the nationality of tender applicants. The Member allegedly demanded a change of the procurement prescript despite a legal opinion that indicated that changes to the procurement prescripts would be in breach of the procurement laws of the country.

The Complainants state that the Member must be called to account for these serious cases in failing in her Parliamentary duties, maladministration and inhibiting the work that tried to ensure that corruption and maladministration is stopped at PRASA.

The Complainants argues that the Member breached items has not abided by Items 4.1.1, 4.1.2, 4.1.3, 4.1.4 and 4.1.5 of the Code of Ethical Conduct and Disclosure of Members' Interests.

Item 4.1 of the Code provides as follows:

- "4.1 Members must:
 - 4.1.1 abide the principles, rules and obligations of this Code;
 - 4.1.2 by virtue of the oath or affirmation of allegiance taken by all elected Members, uphold the law;
 - 4.1.3 act of all occasions in accordance with the public trust placed in them;
 - 4.1.4 discharge their obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above their own interests;
 - 4.1.5 maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution; and ..."



The Member never acted on the Board's recommendation and PRASA paid R1 767 000,00 to the company that was contracted to conduct the recruitment process.

That the Member gave the following reason for failing to appoint a Group CEO - "Minister Peters thought that PRASA was not ready for a new CEO. This went on for about a year and new Group CEO was never appointed.

Mr Molefe testified that after Mr Montana left PRASA, the Board commenced a recruitment process to appoint a new Group CEO. In terms of clause 15.8 of the Board of Charter, the Group CEO is appointed by the Minister, on the recommendation by the Board. A candidate well versed in rail matters was recommended. But the Minister wanted Mr Collins Letsosa, the then CFO of the Department of Transport to act as CEO.

Failure to appoint a Group CEO

THE REPORT OF THE STATE CAPTURE COMMISSION: PART V, VOLUME 2: PRASA

The Member reserves all her rights.

Committee.

The Member requested that any further process by the Committee be held in abeyance until the President of the RSA's implementation plan is put in place. The Member elects not to engage with the conclusions in the State Capture Report at this stage. The Member remains available and willing to engage with the Office of the Registrar and the

will await the action plan by the President of the RSA.

The Member is taking legal advice on the possible remedies that are open to her. The Member intends taking the State Capture Report on judicial review, to the extent that it relates to her. The Member is awaiting the President of the RSA to put in place an implementation plan on how these matters are to be dealt with by Parliament. She will deal with the matter in a holistic manner and not in a piecemeal fashion and therefore

"accountability".

The Member indicates that the Complainants regurgitate the findings and recommendations of the State Capture Report and in the result demands

Incorporated Attorneys as follows:

The Member was given an opportunity to respond and responded via Majavu

SUMMARY OF RESPONSE BY THE MEMBER

the busses.

In the Ministers testimony she states that the busses were never meant to be without charge and that she asked Mr. Montana for a quotation from Autopax. The Report indicates that on her own version, the Minister asked Mr Montana for transport to assist the ANC in 2014 and in 2015 succeeded in securing the transport. The Minister failed to follow up with Mr Montana on the issue of payment considering that she said that she expected an invoice. The Minister, had a duty to do ensure that payment was made for

ANC, and he indicated that he would put together a plan.

Through the testimony of Mr Montana he indicated that the ANC through instructions from the Minister of Transport had over the years used PRASA transport services without paying. And PRASA also provided dozens of trains and more than 200 buses for the ANC Centenary Celebrations. In 2014 he was approached by the Minister to provide buses for a large gathering of traditional leaders in the Northwest Province. He did not approve the use of the buses because Autopax would have lost R40 million. In 2015 he was asked by the Minister to provide transport for the January 8th celebrations of the ANC, and he indicated that he would put together a plan.

Misuse of PRASA assets- Busses

stood by.

The Report states that when it became public knowledge that Mr Mashaba said that after his firm was awarded the Swifambo contract, he paid money to persons who would pay it to the ANC, one would have expected the Minister to whom PRASA was accountable, to insist that the allegation be expeditiously pursued. The Minister did not do this and

The Report indicates that after the letter was sent to Parliament, Mr Molefe made a similar request to the Portfolio Committee on Transport. Instead of getting protection, it was announce in the Portfolio Committee meeting on the same day that the Minister had dismissed the Board. The High Court set aside the decision to dismiss the Board.

the Board.

The Report states that the Member herself attempted to stop the investigations but the Board refused to stop the investigations that it had commissioned Werksmans attorneys to conduct. The Board applied to the High Court to review and set aside the awarding of the contract between PRASA and Swifambo. In 2016 the Board applied to have the contract between PRASA and Siyangena reviewed and set aside on the basis of irregularities and corruption. Mr Molefe and the Board sought protection from the then Speaker of the National Assembly, Ms Mbete as the Minister was frustrating the work of

Dismissing the Molefe Board

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4.1.3 act of all occasions in accordance with the public trust placed in her; and

In terms of item 10.1.1.3 of the Code, the Committee found that the Member breached items 4.1.3 and 4.1.4 of the Code, i.e. that the Member failed to -

Failure to appoint a Group CEO

The Committee found as follows:

FINDING

The Committee noted that the Commission found that the Minister was under a duty to secure payment for the buses that were provided in 2015 by PRASA for the ANC celebrations.

Misuse of PRASA assets- Busses

The Committee noted that the Report clearly states that the Member dismissed the Board on the same day when the Mr. Molefe wrote a letter to the Portfolio Committee on Transport. The testimony of the Member before the Commission also indicates that she was irrational in that decision. Her testimony before the Commission indicates the following: "It was my decision to dismiss the board, I was irrational. The Board stretched my patience for a long time, the timing was wrong". <https://www.iol.co.za>

Dismissing the Molefe Board

The Report states that the Member conceded that her reason for not appointing a Group CEO was not sound and that she could have been wrong at the time. In essence the Member conceded that she was wrong in not appointing a Group CEO. Her failure to appoint a Group CEO amounted in a loss of R1 767 000.00 for PRASA.

GROUP CEO.

The Commission found this reason to "shock everyone because I do not think anybody has ever heard it in relation to any business entity". The Report indicates that the PRASA Board gave the Member names to be recommended as Group CEO, but she did nothing. Mr Molefe denied that he agreed with the Member that PRASA was not ready for a

CEO. Later her testimony changed for the reason for not appointing a Group CEO. Her testimony is reflected in the Report. She is on record stating that the reason she did not appoint a Group CEO is because she thought that PRASA was not ready for a new CEO. The Committee noted that the Member gave testimony before the State Capture Inquiry.

Failure to appoint a Group CEO

COMMITTEE DELIBERATIONS

4.1.4 discharge her obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above her own interests;

when she failed to appoint a Group CEO after the PRASA Board had commissioned a recruitment process which resulted in a financial loss of R 1 767 000, 00

Dismissing the Molefe Board

In terms of item 10.1.1.3 of the Code, the Committee found that the Member breached items 4.1.3, 4.1.4 and 4.1.5 of the Code, i.e. that the Member failed to –

4.1.3 act of all occasions in accordance with the public trust placed in her;

4.1.4 discharge her obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above her own interests;

4.1.5 maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution;

when she dismissed the PRASA Board on the same day when Mr. Molefe wrote to the Portfolio Committee on Transport. This dismissal was ruled by the High Court in *Molefe and Others v Minister of Transport and Others (17748/17)[2017]ZAGPPHC* to be irrational, unreasonable and unlawful.

Misuse of PRASA assets- Busses

In terms of item 10.1.1.3 of the Code, the Committee found that the Member breached item 4.1.4 of the Code, i.e. that the Member failed to –

4.1.4 discharge her obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above her own interests;

when she requested buses from PRASA to be used for the ANC 2015, January 8th celebrations that was not paid for.

SANCTION

The Member was requested to provide written representations on the sanction to be recommended to the House. The Member provided representations dated 18 May 2023. The Member also requested to address the Committee in person. The Member addressed the Committee on 28 September 2023.

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1. The Member states that she is acutely aware of the seriousness of the matter.
2. The Member asks that her political journey to date, be taken into account.
3. She did not benefit personally from anything where there were found to be shortcomings on her part.
4. She was not found guilty of any corruption or aiding such acts.
5. She asks for leniency.
6. After the court ruled that her dismissal of the PRASA Board was unlawful, she was removed within days from the position of Minister of Transport.
7. She intended to appeal the court ruling just as she was recalled from her position. Had she not been recalled, her appeal she says, would have been successful.
8. Other than the findings of the Commission (State Capture) and the Committee, her track record is clean.
9. She was never the sole decision maker. She relied on advice and acted in good faith.
10. Things at PRASA became accentuated after the report by the Public Protector "Derailed".
11. She instituted a forensic audit and Mr Molefe enlisted a law firm called Werksmans. The costs escalated to about R200 million, and she queried the expenditure.
12. She held the view that the public spat between Mr Molefe and Mr Montana was about their egos and that it was detrimental to PRASA.
13. The situation at PRASA could have been saved had the two men behaved professionally.
14. On the issue of not appointing a CEO, she acted on her discretion on the material conditions that were prevalent at the time. Had she appointed a CEO the person would have failed because of the internal strife at PRASA.
15. Her failure to appoint a CEO was not done through negligence or maliciousness but because she did not want a new CEO walking into factional and egotistical battles.
16. She denies having any knowledge of the procurement as PRASA.
17. She was approached by the organizer of the rally about the procurement process to be used if they wanted to use trains from PRASA. She indicated that she would ask Mr Montana, the then CEO.
18. She did not discuss the use of, or procurement of busses.
19. She rejects, with contempt, the finding that she abused her authority as Minister of Transport in relation to the issue of the use of busses.
20. She has never abused her authority and this finding brings her immense pain.
21. The issue of the use of busses is simply unfounded and unsubstantiated.

The representations state the following:

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That the Member be suspended from her seat in all parliamentary debates and sittings, and from committee meetings and committee related functions and operations for one term of the Parliamentary program.

Breach 1

The Committee recommends to the House to impose the following penalty-

"In the event of the Committee finding that a Member is guilty of contravening clauses 10.1.13 ... of this Code, the Committee shall not impose any of the above mentioned sanction, but shall recommend any greater sanction it deems appropriate to the House, and the House shall decide the appropriate sanction to be imposed after consideration of the recommendation of the Committee.

Item 10.7.7.2 of the Code states:

The Code determines what penalty must be applied.

RECOMMENDATION ON PENALTY

The Committee noted that the court judgment in respect of the irrational finding for dismissing the PRASA Board, still stands. That the Member should never have forwarded the details of Mr Montana to secure PRASA assets for the use during the ANC 2015, January 8th celebrations. The Committee further noted that the time in the delay of appointing a Group CEO at PRASA resulted in a financial loss at PRASA.

The Member indicated that she cannot be held liable for the issues at PRASA as she always discharged her duties with diligence and care. She indicated that she never acted maliciously or in her own personal interests. That the delay in appointing a Group CEO at PRASA was a short delay of a few months. That she had the intention of appointing a Group CEO but before she could do so, she was removed as the Minister of Transport. The Member indicated that she does not know anything about buses that were used by the Africa National Congress. She only remembers receiving a call to obtain a contact number of Mr Montana to authorise the release of trains during the holiday season as the trains were not "running" during the holiday time.

During the meeting of 28 September 2023, The Member amplified certain matters further. The Members of the Committee interacted with the Member by posing questions after her address to the Committee.

dm [Signature]

**REPORT TO BE CONSIDERED
BEKIZWE SIMON NKOSI
MOJI LYDIA MOSHODI
CO-CHAIRPERSONS OF THE JOINT COMMITTEE ON ETHICS AND MEMBERS'
INTERESTS**

House.
concurrently during a term of the Parliamentary program as determined by the
That the suspension in respect of all three breaches, as set out above, run

operations for one term of the Parliamentary program.
sittings, and from committee meetings and committee related functions and
That the Member be suspended from her seat in all parliamentary debates and

Breach 3

operations for one term of the Parliamentary program.
sittings, and from committee meetings and committee related functions and
That the Member be suspended from her seat in all parliamentary debates and

Breach 2



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

THE SPEAKER
PO Box 16 Cape Town 800 Republic of South Africa
Tel: 27(21) 403 2595 Fax: 27(21) 461 9462
speaker@parliament.gov.za

"DP5"

Ms E D Peters MP
Parliament of RSA
CAPE TOWN
8000

By email: epeters@parliament.gov.za
Dipuog@icloud.com

Dear Ms Peters,

RESOLUTION OF THE NATIONAL ASSEMBLY ON REPORT OF THE JOINT COMMITTEE ON ETHICS AND MEMBERS INTERESTS FOR CONTRAVENTION OF CODE OF ETHICAL CONDUCT

On 28 November 2023, the National Assembly adopted the report of the above Committee, with its findings and recommendations.

The Assembly resolved to accept the recommendation of the Joint Committee on Ethics and Members' Interests in finding you in breach of item 10.1.13 of the Code and imposed the following penalty:

That the Member be suspended from her seat in all parliamentary debates and sittings, and from committee meetings and committee related functions and operations for one term of the Parliamentary programme. This penalty will be imposed for the first term of the 2024 parliamentary session.

Copies of the Announcements, Tablings and Committee Reports document (2 October 2023, p36) containing the report of the Committee, and Minutes of Proceedings of the National Assembly dated 28 November 2023, are attached.

Yours sincerely,

Ms M G Boroto MP

Acting Speaker of the National Assembly

cc Mr X George
Secretary to Parliament

Date: 06-12-2023

Mr B S Nkosi MP and Ms M L Moshodi MP, Co-chairpersons: Joint Committee on Ethics and Members Interests

Mr C T Frolick MP
House Chairperson: Committees

"DP5.1"

PARLIAMENTARY PROGRAMME 2023

FOURTH TERM

AS AGREED TO BY THE PROGRAMME COMMITTEE ON 21 SEPTEMBER

FOURTH TERM	
10 October - 1 December (8 weeks)	
NCP Committees	10 - 13 October
NA Committees (BRR Reports)	10 - 20 October
NA Plenaries/Miniplenaries	24 October - 1 December
NA Questions to the President	2 November
NA Questions to the Deputy President	9 November
NCP Plenaries/ Committees/ Legislation	17 October - 1 December
NCP Questions to the President	October/ November (p)
NCP Questions to Cluster 1: Peace and Security	October/November
Tabling: 2023 Medium Term Budget Policy Statement and Adjustments Budget	1 November
Adjusted Fiscal Framework	November
NA Division of Revenue Amendment Bill	
November	
NA Decision on Adjustments Appropriation Bill by Parliament	
November	

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Enquiries: A Mbangwa
071 611 8373
E-mail: amdbangwa@parliament.gov.za

November	NCP Division of Revenue Amendment Bill
November	NCP Questions to Deputy President
13	Taking Parliament to the People - Report Back: KZN
- 17 November	
November	NCP Annual Address by the President/ Deputy President
1	NCP Decision on Adjustments Appropriation Bill by Parliament
December (7)	
4 - 15	Constitutional Period
December (2 weeks)	
	Reconciliation Day: Saturday, 16 December
18 December - 5 January 2024	Leave Period

CLUSTERING OF MINISTRIES: A GUIDE FOR QUESTIONS FOR ORAL REPLIES

CLUSTER 1 - Peace and Security	<ul style="list-style-type: none"> Defence and Military Veterans Home Affairs International Relations and Cooperation Justice and Correctional Services Police State Security
CLUSTER 2 - Social Services	<ul style="list-style-type: none"> Basic Education Health Higher Education Science and Innovation Human Settlements Social Development Sport, Arts and Culture Water and Sanitation
CLUSTER 3 - Governance	<ul style="list-style-type: none"> Cooperatives Government and Traditional Affairs Government and Information Services and Media Development Agency for Women, Youth and Persons with Disabilities Planning, Monitoring and Evaluation Public Service and Administration
CLUSTER 4 - Economics	<ul style="list-style-type: none"> Agriculture, Land Reform and Rural Development Forestry, Fisheries and the Environment Communications and Digital Technologies Employment and Labour Finance Mineral Resources and Energy Electricity
CLUSTER 5 - Economics	<ul style="list-style-type: none"> Public Enterprises Public Works and Infrastructure Small Business Development Tourism Trade, Industry and Competition Transport

INTERNATIONAL RELATIONS AND EXTERNAL BODIES DIARY:

- 1) Judicial Service Commission: 2 - 6 October
- 2) ICT 18th Internet Governance Forum: 8-12 October in Kyoto, Japan
- 3) Ninth G20 Parliamentary Speakers' Summit (P20): 12-14 October in New Delhi, India
- 4) 147th IPU Assembly and related meetings: 23 - 27 October in Luanda in Angola
- 5) COP28 - 28th session of the Conference of Parties (COP 28) to the UNFCCC: 30 November - 12 December in Dubai, UAE

WEEK 24

NATIONAL ASSEMBLY	NATIONAL COUNCIL OF PROVINCES
MONDAY, 9 OCTOBER	CONSTITUENCY DAY
TUESDAY, 10 OCTOBER	COMMITTEES (BRR REPORTS)
WEDNESDAY, 11 OCTOBER	10:00 Chief Whips' Forum (Closed meeting) (P) COMMITTEES (BRR REPORTS)
THURSDAY, 12 OCTOBER	10:00 CAUCUS COMMITTEES (BRR REPORTS)

WEEK 26

NATIONAL ASSEMBLY	
MONDAY, 23 OCTOBER	CONSTITUENCY DAY
MONDAY, 23 OCTOBER	CONSTITUENCY DAY
TUESDAY, 24 OCTOBER	
TUESDAY, 24 OCTOBER	10:00 - 13:00 Committees 14:00 - PLENARY (HYBRID) 1. Legislation 2. Committee reports
WEDNESDAY, 25 OCTOBER	
WEDNESDAY, 25 OCTOBER	09:00 - 13:00 Committees 10:00 Chief Whips' Forum (Closed meeting) 15:00 - 18:00 PLENARY (HYBRID) Questions for Oral Reply: (180) * Cluster 5: Economics
THURSDAY, 26 OCTOBER	
THURSDAY, 26 OCTOBER	08:30 Programme Committee 10:00 MPW Caucus 14:00 - PLENARY (HYBRID) 1. Legislation 2. Committee reports
FRIDAY, 27 OCTOBER	
FRIDAY, 27 OCTOBER	10:00 - 13:00 MINI-PLenary SESSIONS (VIRTUAL) (Committee reports, reports on petitions, international relations matters etc)

WEEK 25

NATIONAL ASSEMBLY	
MONDAY, 16 OCTOBER	CONSTITUENCY DAY
MONDAY, 16 OCTOBER	CONSTITUENCY DAY
TUESDAY, 17 OCTOBER	
TUESDAY, 17 OCTOBER	COMMITTEES [BRR REPORTS]
WEDNESDAY, 18 OCTOBER	
WEDNESDAY, 18 OCTOBER	09:00 - 13:00 Committees 10:00 Chief Whips' Forum (Closed meeting) COMMITTEES [BRR REPORTS]
THURSDAY, 19 OCTOBER	
THURSDAY, 19 OCTOBER	08:30 Programme Committee 10:00 CAUCUS 14:00 - 17:30 PLENARY (City Hall) (Fully physical) Consideration of Recommendation of a person for appointment as Public Protector (Report of Ad hoc Committee to Nominate a Person for Appointment as Public Protector. see ATC, 29 August 2023, p 4) (76)
FRIDAY, 20 OCTOBER	
FRIDAY, 20 OCTOBER	COMMITTEES [BRR REPORTS]

FRIDAY, 13 OCTOBER	COMMITTEES [BRR REPORTS]
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NATIONAL ASSEMBLY		NATIONAL COUNCIL OF PROVINCES	
MONDAY, 6 NOVEMBER		CONSTITUENCY DAY	
TUESDAY, 7 NOVEMBER		CONSTITUENCY DAY	
TUESDAY, 7 NOVEMBER		TUESDAY, 7 NOVEMBER	
WEDNESDAY, 8 NOVEMBER		WEDNESDAY, 8 NOVEMBER	
THURSDAY, 9 NOVEMBER		THURSDAY, 9 NOVEMBER	

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WEEK 28

The Division of Revenue Amendment Bill (prop s76) and Tax Administration Laws Amendment Bill (prop s75) will also be tabled and introduced

NATIONAL ASSEMBLY		NATIONAL COUNCIL OF PROVINCES	
MONDAY, 30 OCTOBER		CONSTITUENCY DAY	
TUESDAY, 31 OCTOBER		CONSTITUENCY DAY	
TUESDAY, 31 OCTOBER		TUESDAY, 31 OCTOBER	
WEDNESDAY, 1 NOVEMBER		WEDNESDAY, 1 NOVEMBER	
THURSDAY, 2 NOVEMBER		THURSDAY, 2 NOVEMBER	
FRIDAY, 3 NOVEMBER		FRIDAY, 3 NOVEMBER	

WEEK 27

Mini-plenary 1:	
Mini-plenary 2:	
Mini-plenary 3:	

WEEK 30

NATIONAL ASSEMBLY	MONDAY, 20 NOVEMBER	CONSTITUENCY DAY
NATIONAL COUNCIL OF PROVINCES	MONDAY, 20 NOVEMBER	CONSTITUENCY DAY
TUESDAY, 21 NOVEMBER	TUESDAY, 21 NOVEMBER	10:00 - 13:00 Committees 14:00 - PLENARY (HYBRID) 1. Members' statements (50) 2. Legislation

WEEK 29

NATIONAL ASSEMBLY	MONDAY, 13 NOVEMBER	CONSTITUENCY DAY
MONDAY, 13 NOVEMBER	MONDAY, 13 NOVEMBER	CONSTITUENCY DAY
TUESDAY, 14 NOVEMBER	TUESDAY, 14 NOVEMBER	10:00 - 13:00 Committees 14:00 - PLENARY (HYBRID) 1. Legislation 2. Consideration of Budgetary Review and Recommendation Reports 3. Decision of question on reports debated in mini-plenary
WEDNESDAY, 15 NOVEMBER	WEDNESDAY, 15 NOVEMBER	09:00 - 13:00 Committees 10:00 Chief Whips' Forum (Closed meeting) 15:00 - ±19:15 PLENARY (HYBRID) 1. Questions for oral reply: 180 • Cluster 2: Social Services 2. Consideration of Report of Standing Committee on Finance on 2023 Revised Fiscal Framework and Revenue Proposals (ATC, November 2023, p) (77) (p)
THURSDAY, 16 NOVEMBER	THURSDAY, 16 NOVEMBER	08:30 Programme Committee 10:00 CAUCUS 14:00 - ±17:00 MINI-PLENARY SESSIONS (VIRTUAL) Mini-plenary 1: 1. Subject for discussion (EFF) (90) 2. Subject for discussion (ANC) (90) Mini-plenary 2: 3. Subject for discussion (AIC) (90) 4. Subject for discussion (ANC) (90) Mini-plenary 3: 5. Subject for discussion (DA) (90) 6. Subject for discussion (ANC) (90)
FRIDAY, 17 NOVEMBER	FRIDAY, 17 NOVEMBER	COMMITTEES

FRIDAY, 10 NOVEMBER	FRIDAY, 10 NOVEMBER	10:00 - ±13:00 MINI-PLENARY SESSIONS (VIRTUAL) Committee reports, reports on petitions, international relations matters etc) Mini-plenary 1: Mini-plenary 2: Mini-plenary 3:
FRIDAY, 10 NOVEMBER	FRIDAY, 10 NOVEMBER	10:00 Caucus 14:00 - ±16:30 PLENARY (HYBRID) Questions to the Deputy President

NATIONAL ASSEMBLY		NATIONAL COUNCIL OF PROVINCES	
MONDAY, 27 NOVEMBER		CONSTITUENCY DAY	
TUESDAY, 28 NOVEMBER		TUESDAY, 28 NOVEMBER	
14:00 - PLENARY (HYBRID) 1. Legislation 2. Committee reports 3. Decision of question on reports debated in mini-plenary 4. Debate on 16 Days of Activism on no violence against women and children (88) (p)		WEDNESDAY, 29 NOVEMBER	
09:00 - 13:00 Committees 10:00 Chief Whips' Forum (Closed meeting)		WEDNESDAY, 29 NOVEMBER	
15:00 - 18:00 PLENARY (HYBRID) Questions for oral reply: 180 • Cluster 4: Economics		THURSDAY, 30 NOVEMBER	
08:30 Programme Committee 10:00 MPW Caucus		THURSDAY, 30 NOVEMBER	
14:00 - PLENARY (HYBRID) 1. Consideration of Report of Standing Committee on Finance on Rates and Monetary Amounts and Amendment of Revenue Laws Bill (B - 2023) (ATC, November 2023) (no debate) (p)		THURSDAY, 30 NOVEMBER	

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WEDNESDAY, 22 NOVEMBER		3. Consideration of Budgetary Review and Recommendations Reports (p) 3. Motions without notice 4. Notices of motion	
09:00 - 13:00 Committees 10:00 Chief Whips' Forum (Closed meeting)		15:00 - 19:15 PLENARY (HYBRID) 1. Questions for oral reply: (180) • Cluster 3: Governance 2. Consideration of Report of Standing Committee on Appropriations on Division of Revenue Amendment Bill (B - 2023) (ATC, November 2023) (no debate) (p) 3. Second Reading debate: Division of Revenue Amendment Bill (B - 2023) (77) (p)	
08:30 Programme Committee 09:15 Joint Programme Committee (p)		THURSDAY, 23 NOVEMBER	
16:00 Caucus 14:00 - PLENARY (HYBRID) 1. Legislation 2. Committee reports		THURSDAY, 23 NOVEMBER	
10:00 - 13:00 MINI-PLENARY SESSIONS (VIRTUAL) Mini-plenary 1: Mini-plenary 2: Mini-plenary 3: (Committee reports, reports on petitions, international relations matters etc)		FRIDAY, 24 NOVEMBER	

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NA CONSTITUENCY PERIOD: 11 - 15 DECEMBER 2023
 LEAVE PERIOD: 18 DECEMBER - 5 JANUARY 2024

WEEK 32	
NATIONAL ASSEMBLY	NATIONAL COUNCIL OF PROVINCES
MONDAY, 4 DECEMBER	MONDAY, 4 DECEMBER
CONSTITUENCY DAY	
TUESDAY, 5 DECEMBER	TUESDAY, 5 DECEMBER
14:00 - PLENARY (HYBRID)	
1. Legislation (p)	
2. Committee reports	
10:00 - 13:00 Committees	
WEDNESDAY, 6 DECEMBER	WEDNESDAY, 6 DECEMBER
10:00 - PLENARY (HYBRID)	
1. Consideration of Report of Standing Committee on Appropriations on 2023 Medium Term Budget Policy Statement (ATC, November 2023) (no debate) (p)	
2. Consideration of Report of Standing Committee on Appropriations on Adjustments Appropriation Bill [B - 2023] (s77) (A.T.C, November 2023) (no debate) (p)	
3. Debate on 2023 Medium Term Budget Policy Statement & First Reading debate: Adjustments Appropriation Bill [B - 2023] (s77) (90) (p)	
4. Consideration of Votes and Schedule: Adjustments Appropriation Bill [B - 2023] (s77) (98) (p)	
5. Second Reading: Adjustments Appropriation Bill [B - 2023] (s77) (no debate) (p)	
THURSDAY, 7 DECEMBER	THURSDAY, 7 DECEMBER
COMMITTEES	
FRIDAY, 8 DECEMBER	FRIDAY, 8 DECEMBER
COMMITTEES	

FRIDAY, 1 DECEMBER	FRIDAY, 1 DECEMBER
COMMITTEES	
2. Consideration of Report of Standing Committee on Finance on Taxation Laws Amendment Bill [B - 2023] (ATC, November 2023) (no debate) (p)	
3. Consideration of Report of Standing Committee on Finance on Tax Administration Laws Amendment Bill [B - 2023] (ATC, November 2023) (no debate) (p)	
4. First Reading debate: Rates and Monetary Amounts and Amendment of Revenue Laws Bill [B - 2023] (s77) and Taxation Laws Amendment Bill [B - 2023] (s77) & Second Reading debate: Tax Administration Laws Amendment Bill [B - 2023] (s75) (77) (p)	
5. Second Reading: Rates and Monetary Amounts and Amendment of Revenue Laws Bill [B - 2023] (s77) (no debate) (p)	
6. Second Reading: Taxation Laws Amendment Bill [B - 2023] (s77) (no debate) (p)	

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AIDS HELPLINE: 0800-123-22 Prevention is the cure



No. 699
7 June 2004
it is hereby notified that the President has assented to the following Act, which is hereby published for general information:—
No. 4 of 2004: Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act, 2004.

THE PRESIDENCY

Vol. 467 Cape Town 7 June 2004 NO. 26435

REPUBLIC OF SOUTH AFRICA

Government Gazette



"DP6"

*(English text signed by the President)
(Assented to 31 May 2004.)*

ACT

To define and declare certain powers, privileges and immunities of Parliament, provincial legislatures, members of the National Assembly, delegates to the National Council of Provinces and members of provincial legislatures; and to provide for incidental matters.

WHEREAS the Constitution of the Republic of South Africa, 1996, sets out certain powers, privileges and immunities of Parliament and provincial legislatures and their members;

AND WHEREAS sections 58(2), 71(2) and 117(2) of the Constitution provide that other privileges and immunities of the respective legislatures and their members may be prescribed by national legislation;

AND WHEREAS it is considered essential to provide for such further privileges and immunities in order to protect the authority, independence and dignity of the legislatures and their members and to enable them to carry out their constitutional functions;

AND WHEREAS it is expedient to regulate certain other incidental matters relating to the functioning of Parliament and provincial legislatures;

B E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

DEFINITIONS

Definitions

1. In this Act, unless the context indicates otherwise—

5 "Chairperson" means the Chairperson of the National Council of Provinces or, when applicable, the office-bearer acting as Chairperson of the Council;

10 "committee" means a committee or subcommittee consisting of members and established in terms of the standing rules or legislation, including a joint committee;

15 "disturbance" means any act which interferes with or disrupts or which is likely to interfere with or disrupt the proceedings of Parliament or a House or committee;

20 "House" means the National Assembly or the National Council of Provinces, as the case requires;

25 "joint committee" means a committee consisting of members of both Houses of Parliament;

30 "joint rules" means the rules referred to in section 45 of the Constitution;

35 "journals" means any recording of the proceedings of Parliament or a House or committee, including minutes, transcripts and tape recordings;

40 "member", in relation to—

45 (a) the National Assembly, means a member of the Assembly, and includes a Minister or Deputy Minister who is not such a member;

50 (b) the National Council of Provinces, means—

55 (i) a permanent delegate to the Council; or

60 (ii) a special delegate to the Council, while acting as a special delegate.

65 "Parliament" means the National Assembly and the National Council of Provinces;

70 "precincts", means the precincts of Parliament referred to in section 2;

75 "provincial legislature" means a provincial legislature referred to in section 104 of the Constitution;

80 "Secretary" means the Secretary to Parliament;

85 "security services" means the security services referred to in section 199 of the Constitution;

90 "Speaker" means the Speaker of the National Assembly or, when applicable, the office-bearer acting as Speaker;

95 "staff member" means the Secretary or any other person employed or contracted by Parliament, whether in a permanent or temporary capacity;

100 "standing rules" means the rules made by the National Assembly or the National Council of Provinces under section 57 or 70 of the Constitution, as well as the joint rules;

105 "the Constitution" means the Constitution of the Republic of South Africa, 1996.

CHAPTER 2

PRECINCTS OF PARLIAMENT

Description of precincts of Parliament

45 2. (1) The precincts of Parliament is the area of land and every building or part of a building under Parliament's control, including—

50 (a) the chambers in which the proceedings of the Houses are conducted and the galleries and lobbies of the chambers;

55 (b) every part of the buildings in which the chambers are situated, and every forecourt, yard, garden, enclosure or open space appurtenant thereto;

60 (c) committee rooms and other meeting places provided or used primarily for Parliament's purposes; and

65 (d) every other building or part of a building provided or used in connection with the proceedings of Parliament, while so used.

Handwritten initials: "dm" and a signature.

Handwritten initials and a signature.

1 In terms of the Constitution, the following persons have freedom of speech in the respective Houses and committees:
(a) National Assembly and its committees: Cabinet members, Deputy Ministers and members of the Assembly (section 58(1)).
(b) National Council of Provinces and its committees: Cabinet members, Deputy Ministers, delegates to the Council, officials in the national executive or a provincial executive referred to in section 66(2) of the Constitution, and the local government representatives referred to in section 67 of the Constitution (section 71(1)).
(c) Joint committees: Cabinet members, members of the National Assembly and delegates to the National Council of Provinces (section 45(2)).
Sections 58(1) and 71(1) of the Constitution provide that the persons who have freedom of speech in the respective Houses and committees in terms of those sections are not liable to civil or criminal proceedings, arrest, imprisonment or damages for—
(i) anything that they have said in, produced before or submitted to the relevant House or any of its committees; or
(ii) anything revealed as a result of anything that they have said in, produced before or submitted to the House or any of its committees.

6. The President and members have the same privileges and immunities in a joint sitting of the National Assembly and the National Council of Provinces as they have before the Assembly or the Council.
Freedom of speech in joint sittings 30

PROTECTION OF MEMBERS AND PARLIAMENT

CHAPTER 3

5. A person may not within the precincts—
(a) execute or serve or tender for service any summons, subpoena or other process issued by a court; or
(b) except as authorised by section 4 or 11, arrest another person, without the express permission of, or in accordance with the directives of, the Speaker or the Chairperson or a person authorised by the Speaker or the Chairperson.
Execution of process and arrest of persons within precincts of Parliament 20

4. (1) Members of the security services may—
(a) enter upon, or remain in, the precincts for the purpose of performing any policing function; or
(b) perform any policing function in the precincts, only with the permission and under the authority of the Speaker or the Chairperson.
(2) When there is immediate danger to the life or safety of any person or damage to any property, members of the security services may without obtaining such permission enter upon and take action in the precincts in so far as it is necessary to avert that danger. Any such action must as soon as possible be reported to the Speaker and the Chairperson.
Presence of security services in precincts of Parliament 10

3. The Speaker and the Chairperson, subject to this Act, the standing rules and resolutions of the Houses, exercise joint control and authority over the precincts on behalf of Parliament.
Control over precincts of Parliament 5

(2) In so far as it may be necessary for the achievement of the objects of this Act in a case where a House or committee convenes beyond the seat of Parliament, this Act applies as if the premises where the House or committee is sitting were within the precincts of Parliament.

Prohibited acts in respect of Parliament and members

7. A person may not—
- (a) improperly interfere with or impede the exercise or performance by Parliament or a House or committee of its authority or functions;
 - (b) improperly interfere with the performance by a member of his or her functions as a member;
 - (c) threaten or obstruct a member proceeding to or going from a meeting of Parliament or a House or committee;
 - (d) assault or threaten a member, or deprive a member of any benefit, on account of the member's conduct in Parliament or a House or committee;
 - (e) while Parliament or a House or committee is meeting, create or take part in any disturbance within the precincts; or
 - (f) fail or refuse to comply with an instruction by a duly authorised staff member regarding—
 - (i) the presence of persons at a particular meeting in the precincts; or
 - (ii) the possession of any article, including a firearm, in the precincts or any part thereof.

Improper influence of members

8. (1) A person may not by fraud, intimidation, force, insult or threat of any kind, or by the offer or promise of any inducement or benefit of any kind, or by any other improper means—
- (a) influence a member in the performance of the member's functions as a member;
 - (b) induce a member to be absent from Parliament or a House or committee; or
 - (c) attempt to compel a member to declare himself or herself in favour of or against anything pending before or proposed or expected to be submitted to Parliament or a House or committee.
- (2) A member may not ask for, receive or accept any fee, compensation, gift, reward, favour or benefit, for the member or another person, for or in respect of—
- (a) voting in a particular manner, or not voting, on any matter before a House or committee;
 - (b) promoting or opposing anything pending before or proposed or expected to be submitted to a House or committee; or
 - (c) making a representation to a House or committee.

Attendance of members before court

9. (1) When a member is required to attend a court as a witness in any civil or criminal proceedings, or as a defendant in any civil proceedings, the Speaker or the Chairperson or a person designated by the Speaker or Chairperson may issue a certificate stating that the member is required to attend to business in Parliament.
- (2) Such a certificate is sufficient proof that the member is in attendance on Parliament, and the member shall be absolved from attending the court pending completion of that business.

Giving evidence of proceedings

10. (1) No member or staff member may give evidence in any court or place outside Parliament regarding the contents of the journals or the evidence given before, or any document submitted to, Parliament or a House or committee, without first having obtained the leave of the Houses or the House concerned.
- (2) During a recess or adjournment of a House the Speaker or the Chairperson or a person designated by the Speaker or Chairperson may give such leave.

Persons creating disturbance

11. A person who creates or takes part in any disturbance in the precincts while Parliament or a House or committee is meeting, may be arrested and removed from the precincts, on the order of the Speaker or the Chairperson or a person designated by the Speaker or Chairperson, by a staff member or a member of the security services.

CHAPTER 4

DISCIPLINARY ACTION AGAINST MEMBERS FOR
CONTEMPT OF PARLIAMENT

Disciplinary action against members for contempt

12. (1) Subject to this Act, a House has all the powers which are necessary for enquiring into and pronouncing upon any act or matter declared by or under section 13 to be contempt of Parliament by a member, and taking the disciplinary action provided therefore.
- (2) A House must appoint a standing committee to deal with all enquiries referred to in subsection (1).
- (3) Before a House may take any disciplinary action against a member in terms of subsection (1), the standing committee must—
- (a) enquire into the matter in accordance with a procedure that is reasonable and procedurally fair; and
- (b) table a report on its findings and recommendations in the House.
- (4) The fact that the standing committee is enquiring into a matter or that a House has taken disciplinary action against a member does not preclude criminal investigation or proceedings against the member in connection with the matter concerned.
- (5) When a House finds a member guilty of contempt, the House may, in addition to any other penalty to which the member may be liable under this Act or any other law, impose any one or more of the following penalties:
- (a) A formal warning;
- (b) a reprimand;
- (c) an order to apologise to Parliament or the House or any person, in a manner determined by the House;
- (d) the withholding, for a specified period, of the member's right to the use or enjoyment of any specified facility provided to members by Parliament;
- (e) the removal, or the suspension for a specified period, of the member from any parliamentary position occupied by the member;
- (f) a fine not exceeding the equivalent of one month's salary and allowances payable to the member concerned by virtue of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998);
- (g) the suspension of the member, with or without remuneration, for a period not exceeding 30 days, whether or not the House or any of its committees is scheduled to meet during that period.
- (6) When a House finds a member guilty of contempt, the House may, where appropriate, instead of or in addition to the imposition of a penalty under subsection (5), refer the matter to the National Director of Public Prosecutions.
- (7) A fine payable under subsection (5)(f) may be recovered—
- (a) by deducting instalments from the members' salary, as specified by the House in imposing the fine; or
- (b) if not so recovered, by means of civil action in a competent court.
- (8) All fines under subsection (5)(f) which are paid or recovered must be paid into Parliament's bank account.
- (9) A member may not be suspended under subsection (5)(g) unless the House has found that—
- (a) the member is guilty of a serious or repeated contempt; and
- (b) none of the other penalties set out in subsection (5) will be sufficient.

- (10) A member who has been suspended under subsection (5)(g) must leave the precincts, and may not, during the period of suspension, without the written permission of the Speaker or the Chairperson—
- (a) enter the precincts for whatever purpose; or
- (b) participate in any activity of Parliament or any committee.
- (11) Despite the Remuneration of Public Office Bearers Act, 1998, a member who has been suspended without remuneration under subsection (5)(g) is not entitled to any salary or allowances under that Act for the period of suspension.
- (12) Except as provided in the Constitution, a House does not have the power to terminate a member's membership of the House.
- (13) This section does not affect the power of a person presiding at a meeting of a House or a committee, or a joint meeting of the Houses, to maintain order and discipline in the meeting.

Conduct constituting contempt

13. A member is guilty of contempt of Parliament if the member—
- (a) contravenes section 7, 8, 10, 19, 21(1) or 26;
- (b) commits an act mentioned in section 17(1)(a), (b) or (c) or (2)(a), (b), (c), (d) or (e);
- (c) willfully fails or refuses to obey any rule, order or resolution of a House or the Houses; or
- (d) commits an act which in terms of the standing rules constitutes—
- (i) contempt of Parliament; or
- (ii) a breach or abuse of parliamentary privilege.

CHAPTER 5

WITNESSES

Summoning of witnesses

14. (1) A joint committee may—
- (a) summons any person to appear before it to give evidence on oath or affirmation, or to produce documents; or
- (b) require any person or institution to report to it.
- (2) A summons in terms of subsection (1), or section 56(a) or 69(a) of the Constitution, to appear before a House or committee to give evidence or to produce documents² must be issued by the Secretary on the instructions of—
- (a) the Speaker or the Chairperson; or
- (b) the chairperson of the committee concerned, acting in accordance with a resolution of the committee and with the concurrence of the Speaker or the Chairperson.
- (3) The summons must state—
- (a) the name of the person summoned;
- (b) the name or designation of the person who must serve the summons;
- (c) the time, place and venue at which the person summoned is required to appear;
- (d) the subject of the enquiry;
- (e) the purpose for which the evidence of that person is required; and
- (f) a description of the document, if any, which that person is required to produce.
- (4) The summons must be served by the sheriff, or by a person designated by the Secretary, by delivering a copy of the summons—
- (a) to the person mentioned in the summons; or
- (b) at that person's usual or last known place of residence or of employment or business, to a person apparently over the age of 18 years and apparently residing or employed there.

² In terms of sections 56(a) and 69(a) of the Constitution, the respective Houses of Parliament or any of their committees may summons any person to appear before them to give evidence on oath or affirmation or to produce documents.

(5) A return by the person who served the summons that service thereof has been effected in accordance with subsection (4) is *prima facie* proof of the service.

(6) A person summoned in terms of this section or requested by a House or committee to attend a meeting of the House or committee, as approved by the Speaker or Chairperson in accordance with the standing rules.

Examination of witnesses

15. When a House or committee requires that anything be verified or otherwise ascertained by the oral examination of a witness, the person presiding at the enquiry may—

(a) call upon and administer an oath to, or accept an affirmation from, any person present at the enquiry who was or could have been summoned in terms of section 14; and

(b) examine that person, or request the person to produce any document in the person's possession or custody or under his or her control which may have bearing on the subject of the enquiry, subject to any limitation provided for in the standing rules with regard to the type of subject matter about which a witness may be questioned or the type of document that a witness may be requested to produce.

Privilege of witnesses

16. (1) Subject to subsection (2), the law regarding privilege as applicable to a witness summoned to give evidence or to produce a document before the High Court of South Africa applies to the examination of a person in terms of section 15.

(2) A person who is being examined under oath or affirmation in terms of section 15 may be required to answer any question put to him or her in connection with the subject of the enquiry, and to produce any document that he or she is requested to produce under that section, despite the fact that the answer or the document would incriminate him or her or would tend to expose him or her to criminal or civil proceedings, or damages.

(3) Evidence given under oath or affirmation by a person before a House or committee may not be used against that person in any court or place outside Parliament, except in criminal proceedings where the person concerned stands trial on a charge of perjury or a charge contemplated in section 17(1)(c) or (2)(d) or (e).

Offences relating to witnesses

17. (1) A person who—

(a) has been duly summoned in terms of section 14 and who fails, without sufficient cause—

(i) to attend at the time and place specified in the summons; or

(ii) to remain in attendance until excused from further attendance by the person presiding at the enquiry;

(b) when called upon under section 15(a), refuses to be sworn in or to make an affirmation as a witness; or

(c) fails, without sufficient cause—

(i) to answer fully and satisfactorily all questions lawfully put to him or her under section 15(b); or

(ii) to produce any document in his or her possession or custody or under his or her control which he or she has been required to produce under section 15(b);

commits an offence and is liable to a fine or to imprisonment for a period not exceeding 12 months or to both the fine and the imprisonment.

(2) A person who—

(a) threatens or obstructs another person in respect of evidence to be given before a House or committee;

(b) induces another person—

- (i) to refrain from giving evidence to or producing a document before a House or committee; or
- (ii) to give false evidence before a House or committee;
- (c) assaults or penalises or threatens another person, or deprives that person of any benefit, on account of the giving or proposed giving of evidence before a House or committee;
- (d) with intent to deceive a House or committee, produces to the House or committee any false, untrue, fabricated or falsified document; or
- (e) whether or not during examination under section 15, willfully furnishes a House or committee with information, or makes a statement before it, which is false or misleading,
- is false or misleading, and is liable to a fine or to imprisonment for a period not exceeding two years or to both the fine and imprisonment.
- (3) Subject to section 13(b), subsections (1) and (2) do not apply to a member.

CHAPTER 6

PUBLICATIONS AND BROADCASTING

Protection in respect of publications

18. (1) No person is liable to civil or criminal proceedings in respect of the publication of any report, paper or minutes of Parliament or a House or committee by order or under the authority of the Houses, or the House or committee concerned.
- (2) No member or staff member is liable to civil or criminal proceedings in respect of the publication to a member of a document that has been submitted to or is before Parliament or a House or committee.

Unauthorised publishing

19. No person may willfully publish—
- (a) any document if the publication of that document is prohibited by or in terms of the standing rules or an order or a resolution of a House;
- (b) any document purporting that it has been published under the authority of Parliament, a House, a committee, the Speaker or the Chairperson, while it has not been published under such authority; or
- (c) any document purporting that it is a verbatim account of proceedings of Parliament or a House or committee, while it is not such an account.

Admissibility of journals as evidence

20. In any proceedings before a court or any other tribunal in which the proceedings of Parliament or a House are relevant, a copy of the journals printed or purporting to have been printed by order of the Houses or the House concerned or the Speaker or Chairperson, is admissible as evidence of the journals without any proof being given that the copy was so printed.

Broadcasting of proceedings

21. (1) No person may broadcast or televise or otherwise transmit by electronic means the proceedings of Parliament or of a House or committee, or any part of those proceedings, except by order or under the authority of the Houses or the House concerned, and in accordance with the conditions, if any, determined by the Speaker or Chairperson in terms of the standing rules.
- (2) No person is liable to civil or criminal proceedings in respect of the broadcasting, televising or electronic transmission of proceedings of Parliament or a House or committee if it has been authorised under subsection (1) and complies with the conditions, if any, determined under that subsection.

CHAPTER 7

GENERAL

Liability for acts done under authority of Parliament

22. No person is liable in damages or otherwise for any act done in good faith in terms of this Act, or under the authority of a House or committee and within the legal powers of the House or committee, or under any order or summons issued by virtue of those powers.

Civil proceedings against Parliament

23. (1) In any civil proceedings against Parliament or a House or committee, the State Liability Act, 1957 (Act No. 20 of 1957), applies, with the necessary changes.
(2) For the purposes of subsection (1), where appropriate, a reference in the State Liability Act, 1957, to the Minister of a department must, where the proceedings are against—
(a) Parliament or a House, be construed as a reference to the Speaker or the Chairperson, or to both the Speaker and the Chairperson, as the case requires;
(b) a committee, be construed as a reference to the chairperson of the committee.

Duty of criminal courts in respect of members

24. When a member of the National Assembly or a permanent delegate to the National Council of Provinces has been convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine—
(a) the registrar or clerk of the court sentencing that person must in writing inform the Speaker or the Chairperson, as the case requires, of the nature of the offence and the sentence imposed; and
(b) if an appeal is noted against the conviction or sentence, the registrar or clerk of the court hearing the appeal must in writing inform the Speaker or the Chairperson, as the case requires, of the nature of the appeal and of the outcome thereof.

Protection of members of public

25. (1) A person, other than a member, who feels aggrieved by a statement or remark made by a member or a witness in or before a House or committee about that person, may submit a written request to the Secretary to have a response recorded.
(2) The committee referred to in section 12(2) must, subject to the standing rules, consider the request and, if approved, publish the response of the person in the appropriate parliamentary paper.

Hindering or obstructing staff members

26. A person may not hinder or obstruct a staff member in the execution of the staff member's duties or while the staff member is proceeding to or going from Parliament or a House or committee in the course of or in connection with his or her duties.

Offences

27. (1) A person, including a member, who contravenes section 7 or 8(1) commits an offence and is liable to a fine or to imprisonment for a period not exceeding three years or to both the fine and the imprisonment.
(2) A person, including a member, who contravenes section 19, 21(1) or 26 commits an offence and is liable to a fine or to imprisonment for a period not exceeding 12 months or to both the fine and the imprisonment.
(3) A member who contravenes section 8(2) commits an offence and is liable to a fine or to imprisonment for a period not exceeding 15 years or to both the fine and the imprisonment.

CHAPTER 8

PROVINCIAL LEGISLATURES

Application of Act to provincial legislatures

28. (1) Sections 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 18, 19, 20, 21, 22, 25, 26, and 27 apply, with the necessary changes, to provincial legislatures as well.

(2) In such application, a reference in those sections to—

(a) Parliament or a House, must be construed as a reference to the provincial legislature concerned;

(b) a committee, must be construed as a reference to a committee of the provincial legislature;

(c) the Speaker or the Chairperson, must be construed as a reference to the Speaker of the provincial legislature;

(d) a member, must be construed—

(i) as a reference to a member of the provincial legislature; and

(ii) except in sections 12 and 13, as including a permanent delegate of the province to the National Council of Provinces;

(e) the Secretary, must be construed as a reference to the Secretary of the provincial legislature;

(f) standing rules, must be construed as a reference to the rules made by the provincial legislature in terms of section 116 of the Constitution.

Civil proceedings against provincial legislatures

29. (1) In any civil proceedings against a provincial legislature or any of its committees, the State Liability Act, 1957 (Act No. 20 of 1957), applies, with the necessary changes.

(2) For the purposes of subsection (1), where appropriate, a reference in the State Liability Act, 1957, to the Minister of a department must, where the proceedings are against—

(a) a provincial legislature, be construed as a reference to the Speaker of the legislature;

(b) a committee of a provincial legislature, be construed as a reference to the chairperson of the committee.

Duty of criminal courts in respect of members of provincial legislatures

30. When a member of a provincial legislature has been convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine—

(a) the registrar or clerk of the court sentencing that person must in writing inform the Speaker of the provincial legislature of the nature of the offence and the sentence imposed; and

(b) if an appeal is noted against the conviction or sentence, the registrar or clerk of the court hearing the appeal must in writing inform the Speaker concerned of the noting of the appeal and of the outcome thereof.

CHAPTER 9

REPEAL OF LEGISLATION AND SHORT TITLE

Repeal of laws

31. The laws mentioned in the Schedule are repealed to the extent specified in the third column.

Short title

32. This Act is called the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004.

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No. and year of law	Short title	Extent of repeal	5
Act No. 91 of 1963	Powers and Privileges of Parliament Act, 1963	The whole, except sections 31 and 39	10
Act No. 62 of 1967	Powers and Privileges of Parliament Amendment Act, 1967	The whole	10
Act No. 33 of 1974	Parliamentary Service Act, 1974	Sections 13,14,15,16,17 and 18	15
Act No. 95 of 1984	Powers and Privileges of Parliament Amendment Act, 1984	The whole	15
Act No. 99 of 1985	Powers and Privileges of Parliament and the Constitution Amendment Act, 1985	The whole	20
Act No. 98 of 1992	Powers and Privileges of Parliament Amendment Act, 1992	The whole	

(section 31)

LAWS REPEALED

SCHEDULE

POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES ACT, 2004

"DP7"

PROFILE

PERSONAL INFORMATION:

NAME : Ms. Elizabeth Dipuo Peters

DATE OF BIRTH : 1960 MAY 13

MARITAL STATUS : Single

GENDER : Female

DRIVERS LICENSE : Code B

NATIONALITY : South African

LANGUAGE PROFICIENCY : English;

Afrikaans; Setswana; Zulu;
Xhosa

PHYSICAL ADDRESS : 3 Field Street,
Monument Heights,
Kimberley, Northern
Cape

EMAIL ADDRESS :

dipuo8@icloud.com

CONTACT DETAILS :

073 055 1501

EDUCATION BACKGROUND:

Ms. Peters underwent schooling at Tidimalo Junior
Secondary and Tshireletso Senior Secondary School.

She obtained a Bachelors' Degree in Social Work
from the then University of the North, a Certificate in
Development and Public Policy from the University of
the Western Cape; a Certificate in Executive
Management from the University of Cape Town's
Graduate School of Business; and a Certificate in
International Policy Management from Havana, Cuba.

COMMUNITY AND POLITICAL INVOLVEMENT:

Ms. Peters has vast experience ranging from several
fraternities including Religious and Faith Based;
Student Organisations; Youth formations; Women;
and Trade union movements.

As a humanitarian at heart, she served the United Nations High Commission for Refugees, a structure which worked for the repatriation of political exiles and re-integration of political prisoners after the unbanning of political organisations.

A member of the Young Christian Students, who also participated in their respective youth formations.

She was Deputy Chairperson of the Women's Forum of AZASO at the then University of the North.

A member of the Galeshewe Youth Congress.

Volunteered as a Regional Organiser for the South African Domestic Workers' Union, whereby amongst her responsibilities was recruiting, organising, educating and counselling domestic workers in the Northern Cape.

Between 1987 and 1990, she served as Head of the Women's Secretariat of the South African Youth Congress (SAYCO).

Member of the Provisional National Youth Committee, a team that worked towards the re-establishment of the African National Congress Youth League (ANCYL).

Youth League's Secretary for Women's Affairs, upon its re-launch.

From 1997 to 2003, served as the Provincial Treasurer of the ANC in the Northern Cape.

The period between 2003 and 2004 became first female Provincial Chairperson of the African National Congress in the Northern Cape, having previously served as Deputy Provincial Chairperson of the ANC from May to December 2003.

Member of the African National Congress National Executive Committee from 1998 to 2002 and from 2002 to 2007. In 2015 was co-opted as National Executive Committee member of the 53rd National Conference till 2017.

Member of the African National Congress Women's League National Executive Committee from 2001 to 2003 and from 2003 to 2008.

Currently, serving in the National Task Team of African National Congress Women's League to rebuild the Women's League and also in the African National

GOVERNMENT AND PARLIAMENT INVOLVEMENT:

Ms. Dipuo Peters served in the National Assembly between 1994 and 1997, serving in the Parliamentary Portfolio Committees of Home Affairs; Public Works; Social Services; and Health during that period.

LEADERSHIP POSITIONS:

April 1994 – January 1997 served as Parliamentary Whip responsible for Northern Cape contingent of Members of Parliament at the National Assembly as well as the administrator of attendance and leave of absence of all the members of the National Assembly.

CHIEF WHIP

In 1997, she was redeployed to the Northern Cape Provincial Legislature where she served as a Chief Whip until 1999.

MEMBER OF EXECUTIVE COUNCIL

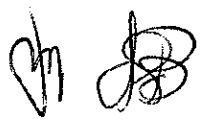
Served as the Northern Cape MEC for Health from 1999 to 2004, spearheading amongst others the health care management system turnaround, the revitalization of the Kimberley Hospital Complex and overseeing the extension of primary health care and maternal health services.

It was during this period that the NC experienced the broadening of rural access to health care facilities, with the roll out of clinics and hospitals for example, Calvinia, Colesberg, Uppington etc.

PREMIER OF NORTHERN CAPE

Appointed to serve as Premier of the Northern Cape, from April 2004 to May 2009.

Key amongst the achievements of the time was: The Municipal and Provincial Financial Management



turnaround plan,
Broadening Clinics, Hospitals, Schools, and Road
Infrastructure and enabling and facilitating the
partnerships with the private sector to establish the
Mime Reka Thusa Trust Fund which was the vehicle
to help women to access financial support for
economic ventures.

Enabled the establishment of the Kumba sponsored
BEE deal community development trust which today
owns shares in Airlink and other business ventures.
This trust is responsible for broadening of human
resource development in the rural district named John
Taolo Gaetsewe. The trust is also responsible for
funding projects for the disabled, women, youth and
other community initiatives, etc.
Working together with the private sector, state-owned
agencies and entities, the Premier enabled the roll out
of the much-needed skills development programme.

MINISTER OF ENERGY - REPUBLIC OF SOUTH AFRICA

Deployed as the Minister of Energy in the Republic of
South Africa in 2009 until 2013.

While serving as the Minister of Energy, the
Department of Energy was bestowed with several
international recognized accolades, including the
Infrastructure Regulator of the Year Award and the
Power Deal of the Year Award.

She was a member of the renowned UAE Zayed
Future Energy Prize; and being appointed as a
member of the United Nations Secretary General's
High-Level Panel on Sustainable Energy for All.

Also credited with leading the charge for the
progressive introduction of renewable energy
technologies into the South African Energy mix and
has seen successes such as the adoption of the
country's first ever Integrated Resource Plan for
Electricity.

It was during her tenure; when the country's
Renewable Energy Programme was voted by the
Global Infrastructure Leadership Forum in New York
as the Green Energy Infrastructure Programme of the

10

Year, globally.
She headed the charge in the transformation of the liquid fuels sector and was actively championing women and previously disadvantaged groups' participation in the sector.

During her time in office at the Department of Energy, she processed the following pieces of Policies and Legislation:

- Integrated Resource Plan (IRP2010), as the basis for the South African Power Programme for the next 20 years.
- Endorsement of the International Atomic Energy Agency's (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources

- The Electricity Regulation Amendment Act
- The National Energy Regulator Amendment Act, 2011

- The Carbon Capture and Storage Roadmap for South Africa
- The Draft National Energy Efficiency Strategy (NEES)

- The Electricity Distribution Asset Management (EDAM) Turn-around Programme
- Draft Revised Strategic Stocks Policy and Implementation Plan

- New Households National Electrification Strategy for the Integrated National Electrification Programme (INEP) in South Africa
- The Draft Integrated Energy Planning Report for stakeholder consultation

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MINISTER OF TRANSPORT - REPUBLIC OF SOUTH AFRICA

On 09 July 2013, Ms. Peters was appointed as the first female Minister of Transport of the Republic of South Africa until May 2014, marking the end of the 4th term administration.

She was redeployed as the Minister of Transport of the Republic of South Africa again on May 2014 for the 5th term Administration until 31 March 2017.

As the Minister, she appointed the first ever black female Director of Civil Aviation (CEO) for South African Civil Aviation Authority (SACAA), who went on to become the Chairperson of the ICAO Aviation Security Panel. A historical appointment for a Black African female.

She was instrumental and singlehandedly pioneered the reclaiming and the subsequent control of ENATIS (Electronic National Administration Traffic Information System) which is the backbone of national traffic information and system for the security of the country from the hands of the private sector after a period of 17 years. This was preceded by a constitutional court judgement setting aside a R1b contract for the supply of Country's driving licenses card by a private company for a period of 18 years.

Over and above many road safety, infrastructure, engineering initiatives, she facilitated the upgrading of the R61 in the Eastern Cape passing through Umtata and the R71 in Limpopo leading to, and passing through Morija City. As well as the infamous Moloto Road which traverse three Provinces of Gauteng, Mpumalanga and Limpopo. These three are listed as the most dangerous roads to drive on the SA network.

In support to SANRAL, worked together with the traditional leaders to resolve challenges that delayed the much needed N2 Highway development.

She was appointed as the Chairperson of the Inter-Ministerial Committee on the implementation of the Yamoussoukro Decision concerning the liberalization of access to air transport markets in Africa as espoused in the AU Agenda 2063.

At the time she left Government, she had initiated the process of rationalization and harmonization of state

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entities under Transport with the view of reducing their number and thus the cost of doing business.

During her tenure at Transport she facilitated the passing of the following pieces of Policies and Legislation:

- Review of the Taxi Recapitalisation Programme (TRP)

- Merchant Shipping Amendment Bill, 2014

- Establishment of the Transport Sector Broad-Based Black Economic Empowerment (B-BBEE) Charter Council and appointment of its Members.

- Development of a Road and Public Transport Safety Improvement Strategy

- National Learner Transport Policy

- Green Paper on National Rail Policy

- Accession to the International Convention on the Civil Liability for Bunker Oil Pollution Damage, 2001

- National Land Transport Amendment Bill, 2015

- The National Transport Master Plan (NATMAP) 2050, Synopsis Update Report

- The Draft Comprehensive Maritime Transport Policy (CMTTP) 2016

- White Paper on National Civil Aviation (NCA)

- National Road Safety Strategy (NRSS) 2016 to 2030

- Road Accident Benefit Scheme (RABS) Bill, 2017

UP

MEMBER OF PARLIAMENT (MP): 2019 TO DATE

MP serving in the Standing Committee on Appropriations and an Alternate on the Standing Committee on Finance. Served in Powers, Privileges and Immunity of Members of Parliament Committees and The Committee for Section 194 Enquiry into the Public Protector (PP) Busisiwe Mkhwebane's fitness to hold office.

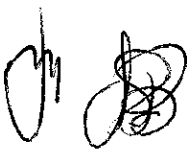
DEPUTY MINISTER OF SMALL BUSINESS DEVELOPMENT - REPUBLIC OF SOUTH AFRICA

Deployed as the Deputy Minister of Small Business Development in the Republic of South Africa in March 2023 to date.

REFERENCES:

Mr Joe Mojapelo
Mrs Lyndall Shope-Matfole
Mr Conny Molusi
Mr Pakes Dikgetsi
Ms Connie Seoposengwe
Mr Jomo Khasu
Ms Sylvia Lucas

PROFILE OF MS DIPUO PETERS



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Minister		Deputy Minister	
Oversight on the following Departmental Activities			
<ol style="list-style-type: none"> 1. SME Finance 2. Enterprise and supplier development 3. SME products and markets 4. Business support infrastructure 5. Legislation, regulations, policies, 6. Plan for SME participation 7. Establishment of SME ombuds office 8. Establishment of the new Small Business Development Entity 9. SME Advisory Council 	<ol style="list-style-type: none"> 1. Implementation of the Integrated Cooperatives Development Strategy 2. Redtape (SME) Reduction programme 3. Support Programme for entrepreneurs with disability 4. Corporate Banks Development Agency (CBDA) 5. Legislation, regulations and policies 6. Program to address non-payment of SMMEs 	International Engagements	
Executive oversight on the following agencies and their related activities			
1. SEDDA	1. CBDA	Parliament	
2. SEFA			
<ol style="list-style-type: none"> 1. Participate in Study Groups 2. Respond to written Parliamentary Questions emanating from both the National Assembly and National Council of Provinces. 3. Respond to oral Parliamentary Questions emanating from both the National Assembly and National Council of Provinces. 4. Participate in Budget Vote Debates. 5. Attend the Portfolio and Select Committee Meetings and other Parliamentary structures on ad-hoc basis 6. Attend Party Caucus meetings 	<ol style="list-style-type: none"> 1. Participate in Study Groups 2. Respond to oral Parliamentary Questions emanating from both the National Assembly and National Council of Provinces 3. Participate in Budget Vote Debates 4. Attend the Portfolio and Select Committee Meetings and other Parliamentary structures on ad-hoc basis 5. Attend Party Caucus meetings 	<ol style="list-style-type: none"> 1. Participate in Study Groups 2. Respond to written Parliamentary Questions emanating from both the National Assembly and National Council of Provinces. 3. Respond to oral Parliamentary Questions emanating from both the National Assembly and National Council of Provinces. 4. Participate in Budget Vote Debates. 5. Attend the Portfolio and Select Committee Meetings and other Parliamentary structures on ad-hoc basis. 6. Attend Party Caucus meetings 	<ol style="list-style-type: none"> 1. Participate in Study Groups 2. Respond to written Parliamentary Questions emanating from both the National Assembly and National Council of Provinces. 3. Respond to oral Parliamentary Questions emanating from both the National Assembly and National Council of Provinces. 4. Participate in Budget Vote Debates. 5. Attend the Portfolio and Select Committee Meetings and other Parliamentary structures on ad-hoc basis. 6. Attend Party Caucus meetings

Outlined below is division and allocation of responsibilities between Minister Stella Tembisa Ndabeni-Abrahams and Deputy Minister S'dumo Mbongeni Dlamini



- a) The Deputy Minister will lead and coordinate an integrated approach to the promotion and development of cooperatives, and ensure an enabling legislative and policy environment to support their growth and sustainability in full alignment to the mandate of the department.
- b) The Deputy Minister will oversee the implementation of the Integrated Cooperatives Development Strategy and its review.

2.1. OVERSIGHT WITH RESPECT TO THE IMPLEMENTATION OF THE INTEGRATED COOPERATIVES DEVELOPMENT STRATEGY

2. OUTLINE OF DELEGATIONS AND ALLOCATION OF RESPONSIBILITIES

- 1.1. The Executive Oversight will include engagement with relevant stakeholders and the media regarding matters that fall within the scope of the programmes the Deputy Minister is duly delegated.
- 1.2. The Minister may, in circumstances when she is not able to attend to matters of Parliament and other structures of government or government stakeholders, request the Deputy Minister to attend on her behalf.
- 1.3. These delegations are reviewable at any given time subsequent to discussions between the Minister and Deputy Minister and, as and when the work and other needs of the Department makes it necessary, subject to necessary concurrence with the Honourable President.
- 1.4. The overall executive oversight of the Department and the agencies over which the Department has Shareholder oversight will remain with the Minister.

1. GENERAL

DELEGATIONS AND ALLOCATION OF RESPONSIBILITIES FROM MINISTER TO DEPUTY MINISTER OF SMALL BUSINESS DEVELOPMENT

Minister	Deputy Minister
Cabinet	
1. Cabinet meetings	1. Cabinet Committees
2. Cabinet Committees	2. Extended Cabinet Meetings
3. Extended Cabinet Meetings	
Other	
1. Inter-Ministerial Committee meetings	Inter-Ministerial Committee meetings

- a) The Deputy Minister will ensure that legislation, regulations and policies in his areas of delegations are complied with
- b) The Deputy Minister will recommend to the Minister review of legislation, regulations and policies where applicable.

2.5. LEGISLATION, REGULATIONS AND POLICIES

- a) The Deputy Minister will ensure that all CBDA complies with all the system that will ensure its incorporation to Seda towards the formation of the new Small Business Development Agency

2.4. INCORPORATION OF CBDA TO Seda

- a) The Deputy Minister will ensure the Department develops and implements a dedicated programme to support entrepreneurs with disability

2.3. OVERSIGHT WITH RESPECT TO THE PROGRAMME TO SUPPORT ENTREPRENEURS WITH DISABILITY:

- c) The Deputy Minister will ensure that the Department puts systems in place for processing, implementation, monitoring and evaluation of the redtape reduction programme.
- b) The Deputy Minister will initiate a redtape elimination campaign to simplify regulated procedures and to eliminate biases against small businesses, for instance in zoning requirements, and report to the Minister on a quarterly basis.
- a) The Deputy Minister will oversee the effective implementation of the redtape reduction programme and plan to minimize regulatory burden to SMMEs and cooperatives.

2.2. OVERSIGHT WITH RESPECT TO THE REDTAPE REDUCTION PROGRAMME SMMEs:

- e) The Deputy Minister will recommend to the Minister areas requiring review in legislation and policies that are within his delegations
- d) The Deputy Minister will ensure that CBDA is integrated to the newly formed Small Business Development Agency
- c) The Deputy Minister will ensure that the Department meets the target to support target number of cooperatives as outlined in the Departmental Annual Performance Plan.

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- 4.1.4. Interactions on reporting should not impede other interactions that might need to take place occasionally to deal with urgent issues that cannot wait for the scheduled meetings.
- 4.1.3. Although reporting is expected to be in writing, however, it is encouraged that this must be characterised by direct engagements with or among the principals.
- 4.1.2. There should be monthly meetings between the Minister, Deputy Minister and Director-General to jointly plan for their respective activities and also to deal with any constraints or other impediments that are impacting either party's ability to deliver on their commitments in order to seek agreement on how to resolve those constraints.
- 4.1.1. There is a need for a closer collaboration between the Department, Office of the Deputy Minister and Office of the Minister in planning to avoid clashes and to ensure fair allocation of resources. This will ensure that each of the political principals receive optimal support for their programs and activities.
- 4.1. It is important that an enabling environment is fostered for the Deputy Minister to deliver on her responsibilities and commitments. In this regard the following should be adhered to:

4. ORGANISATION AND MANAGEMENT COORDINATION

- 3.5. Should the Deputy Minister be unable to attend to any of the obligations set out herein, she shall forthwith inform the Minister.
- 3.4. In the event that the Deputy Minister encounters any urgent or serious challenges in the areas of responsibility assigned to her, this shall immediately be brought to the attention of the Minister.
- 3.3. Notwithstanding the Deputy Minister's obligations to report, the reporting envisaged shall take the form of interaction from both parties taking note that the Minister remains the overall executive authority accountable for all activities of the Department.
- 3.2. The reports shall be in writing and shall, *inter alia*, include defined targets and challenges relating to the delegated programmes.
- 3.1. In order to allow the Minister and the Deputy Minister to discharge their obligations in terms of their performance agreements, the Deputy Minister and the Minister shall meet at least once monthly and the Deputy Minister shall report on her areas of responsibility.

3. REPORTING

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4.1.5. The routing of the documents, memoranda or other submission for processing and decision making shall be channelled from the Director-General, to Deputy Minister for recommendation and ultimately to Minister for approval. The documents shall not exceed two (2) days from date of receipt without being processed for efficient administration.

DELEGATING MINISTER

Ms Stella Tembisa Ndabeni-Abrahams, MP
MINISTER FOR SMALL BUSINESS DEVELOPMENT



SIGNATURE:

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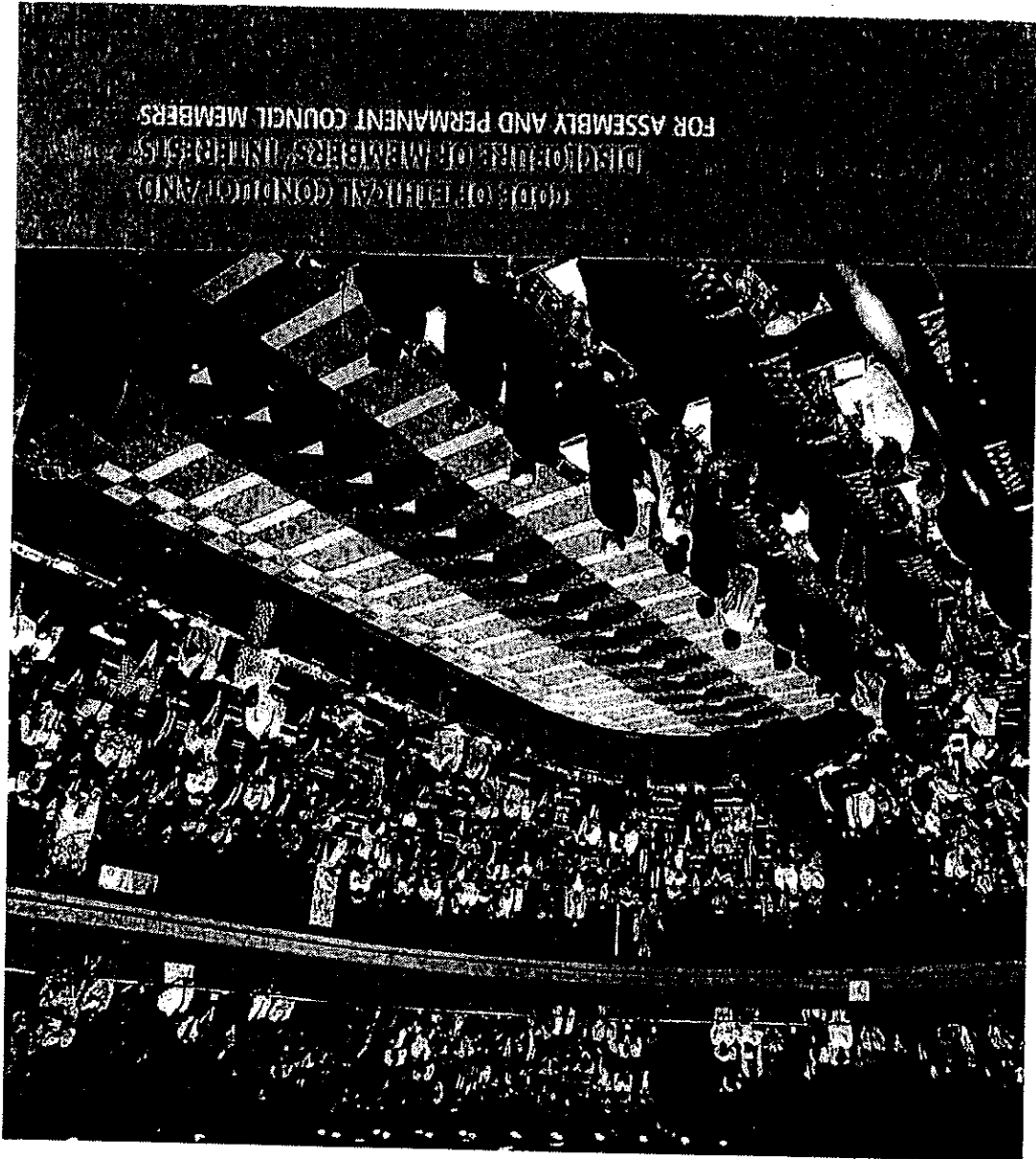
DELEGATED DEPUTY MINISTER

Mr S'dumo Mbongeni Dlamini, MP
DEPUTY MINISTER FOR SMALL BUSINESS DEVELOPMENT

SIGNATURE: 

DATE: 03 February 2022

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PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA



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**CODE OF ETHICAL CONDUCT AND DISCLOSURE OF MEMBERS' INTERESTS
FOR ASSEMBLY AND PERMANENT COUNCIL MEMBERS**

PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA



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1. DEFINITIONS

"Business Partner" means a person who shares a financial interest with a Member or that Member's immediate family;

"Code" means the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members;

"Committee" means the joint Committee on Ethics and Members' Interests as established by the joint Rules of Parliament;

"Conflict of Interest" except for the purpose of clause 5, means a situation in which a Member contrary to the obligation and duty to act for the benefit of the public exploits the relationship for personal or pecuniary benefit;

"Constitution" means the Constitution of the Republic of South Africa of 1996;

"Immediate Family" means a Member's spouse, permanent companion or dependents;

"Member" means a Member of the Assembly or Permanent Council Member;

"Organ of State" has the same meaning as defined in section 239 of the Constitution;

"Parliament" means the Parliament of the Republic of South Africa;

"Permanent Companion" means a person who is publicly acknowledged by a Member as that Member's permanent companion;

"Public Interest" means an outcome which affects any right of the public, public finances or the public good;

"Register" means the Register of Members' Interests;

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2.4.1 Selflessness: take decisions solely in terms of public interest and without regard to personal financial or other material benefits for themselves, their immediate family, their business partners, or their friends;

2.4. A Member must adhere to the following:

Principles

- 2.3 The purpose of the code is to create public trust and confidence in public representatives and to protect the integrity of Parliament.
- 2.2 The code cannot anticipate or prescribe behaviour in hypothetical cases. While public interest and just cause cannot be defined in the abstract, the Committee must, over time, develop a body of interpretation and clarification in respect of individual cases and contemporary values.
- 2.1 The Code of Ethical Conduct and Disclosure of Members' interest for Assembly and Permanent Council Members hereinafter referred to as the Code is intended to provide a framework of reference for Members of Parliament when discharging their duties and responsibilities. The Code outlines the minimum ethical standards of behaviour that South Africans expect of public representatives, including upholding propriety, integrity and ethical values in their conduct.

2. PURPOSE AND SCOPE OF THE CODE

"Spouse" means a partner in any marriage.

"Registrar" means the Registrar of Members' Interests;

"Registrable interest" means interests required to be disclosed in terms of the Code;

CODE OF ETHICAL CONDUCT AND DISCLOSURE OF MEMBERS' INTERESTS

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- 3.1 The Code applies to all Members of Parliament including those Members who are Members of the Executive, however Members of the Executive are also subject to the "Handbook for Members of the Executive and Presiding Officers".
- 3.2 The Code must be read with the Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act, Act 4 of 2004; Prevention, Combating of Corrupt Activities Act, Act 12 of 2004; and the Financial Management of Parliament Act 10 of 2009; amongst others.

3. SCOPE AND REQUIRED COMMITMENTS

- 2.4.2 Integrity: steadfastly avoid placing themselves under any financial or other obligation to any outside individual or organization where this creates a conflict or potential conflict of interest with his or her role as a Member;
- 2.4.3 Objectivity: in carrying out public business, including making public appointments, do so only on the basis of merit and in accordance with Constitutional imperatives;
- 2.4.4 Openness: Members should be as open as possible about all decisions and actions, bearing in mind the constitutional obligation for openness and transparency;
- 2.4.5 Honesty: Members must declare private interests relating to public duties and resolve any conflict arising in a way that protects public interest; and
- 2.4.6 Leadership: promote and support ethical conduct by leadership and example.

4. STANDARDS OF ETHICAL CONDUCT

4.1 Members must:

- 4.1.1 abide by the principles, rules and obligations of this code;
- 4.1.2 by virtue of the oath or affirmation of allegiance taken by all elected Members, uphold the law;
- 4.1.3 act on all occasions in accordance with the public trust placed in them;

- 4.1.4 discharge their obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above their own interests;

- 4.1.5 maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution; and

- 4.1.6 in the performance of their duties and responsibilities, be committed to the eradication of all forms of discrimination.

5. CONFLICT OF FINANCIAL OR BUSINESS INTERESTS

5.1 A Member must:

- 5.1.1 resolve any financial or business conflict of interest in which he or she is involved in his or her capacity as a public representative, in favour of the public interest; and

- 5.1.2 always declare such interest, and where appropriate, the Member should recuse himself or herself from any forum considering or deciding on the matter.

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5.2 A Member must -

5.2.1 not accept any reward, benefit or gift from any person or body:

(i) that creates a direct conflict of financial or business interest for such Member or any immediate family of that Member or any business partner of that Member; or the immediate family of that Member;

(ii) that is intended or is an attempt to corruptly influence that Member in the exercise of his or her duties or responsibilities as a public representative;

5.2.2 not use his or her influence as a public representative in his or her dealings with an organ of State in such a manner as to improperly advantage the direct personal or private financial or business interests of such Member or any immediate family of that Member or any business partner of that Member or the immediate family of that Member;

5.2.3 not engage in any personal or private financial or business activity, which leads to his or her using information or knowledge acquired in his or her dealings with an organ of State as a public representative which is not available in the public domain, in such a manner as to improperly advantage the direct personal or private financial or business interests of such Member or any immediate family of that Member or any business partner of that Member or the immediate family of that Member;

5.2.4 declare any direct personal or private financial or business interest that that Member or any immediate family of that Member or any business partner of that Member or the immediate family of that Member may have in

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- 6.2 a Member's immediate family may not receive any benefit including but not limited to a tender, or a contract with an organ of state arising out of the relationship with the member or any influence arising out of that relationship;
- 6.1 a Member may not receive any benefit including but not limited to a tender, or a contract with an organ of state;

6. PROHIBITED BUSINESS ACTIVITY

- 5.2.7 not lobby for any remuneration or receive any reward, benefit or gift for that Member or for the immediate family of that Member or the business partner of that Member or immediate family of that Member, for making such representation as a Member on behalf of any person or body;
- 5.2.6 if he or she makes representations as a Member to a Cabinet Member or any other organ of State with regard to a matter in which that Member or the immediate family of that Member or any business partner of that Member or the immediate family of that Member has a direct personal or private financial or business interest, that Member must declare that interest to that Cabinet Member or organ of State; or
- 5.2.5 withdraw from the proceedings of that committee or forum when that matter is considered or decided on, unless that committee or forum decides that the Member's interest is trivial or not relevant; and
- a matter to be considered or decided on before any parliamentary committee or other parliamentary forum of which that Member is a Member or in which that Member is participating; or

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- 7.1 No Member shall perform or undertake remunerated employment or work outside of Parliament, which does not strictly fall within the employment or work sanctioned in terms of clause 7.2 and which has been recorded in the ATC in terms of clause 7.3;
- 7.2 A Member may only perform or undertake remunerated employment or work outside of Parliament when such employment or work is sanctioned by the political party to which the Member belongs and is compatible with that Member's function as a public representative; and
- 7.3 In the event of a party agreeing to such employment of a Member outside of Parliament in terms of clause 7.2, the party must within 30 days provide the Registrar, in writing, with all the relevant details in this regard. If the Registrar is not satisfied that all the relevant information has been provided he or she must indicate to what extent the information must be supplemented and the party must within 30 days. When the Registrar is satisfied that all relevant information has been adequately provided by the relevant party, the Registrar must within 7 days cause such decision to be recorded in the ATC.

7. REMUNERATED EMPLOYMENT OUTSIDE OF PARLIAMENT

- 6.3 a Member's business partner may not receive any benefit including but not limited to a tender or any contract with an organ of state arising out of the association with the member or any influence arising from that relationship.

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9.2.2 The first disclosure must be within 60 days of the opening of Parliament or 60 days of the appointment as a Member who was not a Member at the opening of Parliament. If a Member has no registrable interests, a "nil" return must be submitted;

9.2.1 Members must disclose to the Registrar, on the form prescribed for this purpose by the Committee, particulars of all their registrable interests;

9.1.2 be in a format approved by the Committee.

9.1.1 contain the information regarding the Members' registrable interests as the Committee may determine; and

The register must:

9.1 The Registrar must maintain a Register of Members interests, which consists of public and confidential sections; and

9. DISCLOSURE OF REGISTRABLE INTERESTS

8.2 A former Member must avoid any abuse or improper use of Members' facilities or any benefit provided to the former Member by Parliament and strictly observe and adhere to the administrative rules that apply to such facilities or benefits.

8.1 A Member must avoid any abuse or improper use of Members' facilities or any benefit provided to Members by Parliament, and strictly observe and adhere to the administrative rules that apply to such facilities or benefits.

8. MEMBERS' FACILITIES

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- 9.3.8 foreign travel (other than personal visits paid by the Member, business visits unrelated to the Member's role as a public representative, and official and formal visits paid for by an organ of State or the Member's party);
 - 9.3.7 any other benefit of a material nature;
 - 9.3.6 gifts and hospitality in excess of R1500, from a source other than a family Member or permanent companion or gifts of a traditional nature provided that this does not create a conflict of interest for the Member;
 - 9.3.5 sponsorships;
 - 9.3.4 consultancies;
 - 9.3.3 directorships and partnerships;
 - 9.3.2 remunerated employment outside Parliament;
 - 9.3.1 shares and other financial interests in companies and other corporate entities;
- 9.3 The following kinds of financial interests are registrable interests and must be disclosed:

INTERESTS TO BE DISCLOSED

- 9.2.4 Where there is a substantial change in the financial interest of the Member the Member must notify the Registrar of the change within 30 days of the change in interests.
- 9.2.3 After the first disclosure Members must disclose annually at a time determined by the Committee; and

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- 9.5.5 details of publication in the ATC
- 9.5.4 copy of written permission obtained from the Chief Whip of the Member's political party.
- 9.5.3 the amount of the remuneration received for such employment
- 9.5.2 the name, and type of business activity, of the employer, and
- 9.5.1 the type of employment;
- 9.5 Remunerated employment outside Parliament
- 9.4.3 the nature and value of any other financial interests held in a private or public company or any other corporate entity.
- 9.4.2 the name of that company; and
- 9.4.1 the number, nature and nominal value of shares of any type in any public or private company;
- 9.4 Shares and other financial interests in companies and other corporate entities:

DETAILS OF REGISTRABLE INTERESTS TO BE DISCLOSED

- 9.3.13 encumbrances.
- 9.3.12 trusts;
- 9.3.11 public contracts awarded;
- 9.3.10 pensions;
- 9.3.9 ownership in land and property including land and property outside the Republic;

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- 9.6 Directors and partnerships
 - 9.6.1 the name, and type of business activity;
 - 9.6.2 the corporate entity or partnership; and
 - 9.6.3 the amount of any remuneration received for such directorship or partnership
- 9.7 Consultancies and retainerhips
 - 9.7.1 the nature of the consultancy or any retainerhip of any kind;
 - 9.7.2 the name, and type of business activity, of the client concerned; and
 - 9.7.3 the amount of any remuneration or other benefits received for such consultancy or retainerhip
- 9.8 Sponsorships
 - 9.8.1 the source and description of direct financial sponsorship or assistance from non-party sources; and
 - 9.8.2 the value of the sponsorship or assistance.
- 9.9 Gifts and hospitality
 - 9.9.1 a description, the value and source of a gift with a value in excess of R1500;
 - 9.9.2 a description and the value of gifts from a single source which cumulatively exceed the value of R1500 in any calendar year; and
 - 9.9.3 hospitality intended as a gift in kind.

9.10 Benefits
9.10.1 the nature and source of any other benefit of a material nature; and
9.10.2 the value of that benefit.

9.11 Travel

9.11.1 a brief description of the journey;

9.11.2 particulars of the sponsor; and

9.11.3 the estimated value of travel, accommodation and subsistence and travel allowances.

9.12 Land and property

9.12.1 a description and extent of the land or property;

9.12.2 area in which it is situated;

9.12.3 nature of interest; and

9.12.4 properties outside the state.

9.13 Pensions

9.13.1 the source of the pension; and

9.13.2 the value of the pension.

9.14 Public contract

9.14.1 the organ of state from which the contract was obtained;

9.14.2 the value and period of the contract;

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- 9.14.3 the nature of the contract; and
- 9.14.4 where a pre-existing contract prevails, disclose the terms and details of the contract.
- 9.15 Trusts
 - 9.15.1 details of the trust;
 - 9.15.2 details all benefits accruing from the trust; and
 - 9.15.3 all other direct and indirect benefits received from a trust.
- 9.16 Encumbrances
 - 9.16.1 details of long term loans; and
 - 9.16.2 registered mortgage bonds against any property of any Member.
- 9.17 Entries in Register
 - The Registrar may record the following in the confidential part; all other information must be contained in the public section of the Register:
 - 9.17.1 The value of financial interests in a corporate entity other than a private or public company;
 - 9.17.2 The amount of any remuneration for any employment outside Parliament;
 - 9.17.3 The amount of any remuneration for any directorship or partnership;
 - 9.17.4 Details of foreign travel when the nature of the visit requires those details to be confidential;

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- 9.17.5 Details of private residence;
- 9.17.6 The value of any pensions;
- 9.17.7 Details of all financial interests of a Member's spouse, dependent child or permanent companion to the extent that a Member is reasonably aware of;
- 9.17.8 Details of any encumbrance, including registered mortgage bonds and long term loans, existing against any asset or property of the Member; and
- 9.18 Interpretation of the Code
- Where any doubt exists as to whether any financial interests must be disclosed, the Member concerned must act in good faith.
- 9.19 Confidentiality
- 9.19.1 Only a Committee Member, the Registrar and staff assigned to the Committee, have access to the confidential part of the Register, and only when performing their duties or responsibilities in terms of this Code.
- 9.19.2 A Member who requests a copy of his or her confidential record, must do so in writing and be signed by the Member concerned.
- 9.19.3 The Registrar must keep a strict record of every person who is given access to the confidential part of the Register.
- 9.19.4 No person who has access to the confidential part of the Register may, except when a court so orders, disclose particulars of any entry in the confidential part to anyone other than the Member concerned or another person who has such access.

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- 9.19.5 The Registrar, parliamentary staff in the Registrar's office and Committee Members must not provide any confidential information to any person who is not authorised to receive it.
- 9.19.6 A Committee Member who contravenes clauses 9.19.4 and 9.19.5 is liable to a reduction of up to 90 days' salary and becomes ineligible to continue as a Committee Member and must be immediately removed as a Committee Member, and is subject to further disciplinary action.
- 9.19.7 The Registrar or a staff member who contravenes clauses 9.19.3 and 9.19.4, is subject to disciplinary action applicable to parliamentary staff, including dismissal.
- 9.19.8 Despite 9.17 the Committee may on good cause instruct the Registrar to record any details of any of a Member's registrable interests in the confidential part of the register.
- 9.19.9 A Member may waive the right to confidential disclosure.
- 9.20 Public part of Register
- 9.20.1 Any person has access to the public part of the Register on any working day during office hours.
- 9.20.2 The Registrar must publish the public part of the Register after adoption by the Committee in a manner determined by the Committee.

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10. BREACHES OF THE CODE OF CONDUCT AND THE INVESTIGATION PROCEDURES

The Code is meant to encourage ethical conduct and the registration of Members' interest, and the Committee must champion and enforce compliance with the Code. The Code sets out what constitutes a breach, how it is dealt with, what powers are available, and where ultimate responsibility for action lies.

10.1 What constitutes a Breach

10.1.1 A Member breaches the Code if the Member -

10.1.1.1 contravenes or fails to comply with the requirements of the provisions for disclosing interests;

10.1.1.2 when disclosing registrable interests, willfully or is grossly negligently, provides the Registrar with incorrect or misleading details; or

10.1.1.3 contravenes clauses 4.1, 5.1, 5.2, 6.1, 6.2, 6.3, 7.1, 8.1, and 9.19.4 and 9.19.5 of this Code; and

10.1.2 A former Member breaches this Code if the former Member contravenes clause 8.2 of the Code.

10.2 Procedure for the investigation of complaints

10.2.1 General:

This procedure is based on and intended to be guided by the principle of promptness, fairness and consistency.

10.2.2 Processing Complaints

10.2.2.1 The Committee may only consider complaints based on an alleged breach of the Code, as contemplated in clause 10.1 of the Code.

10.2.2.2 Any person or body may submit a complaint to the Office of the Registrar concerning a breach of the Code, as contemplated in clause 10.1 of the Code by a Member. The complaint may be in the form of a sworn affidavit or an affirmation stating the facts upon which the complaint is based.

10.2.2.3 The Committee acting on its own may consider any breach or alleged breach of the Code.

10.2.2.4 The Registrar must within seven days of receiving a complaint inform the Member concerned of the complaint, including all the relevant information relating to the alleged breach available to the Registrar or Committee, and inform Members of the consequences of the failure to respond. The Members must be informed personally of the complaint and should sign for the receipt of the complaint.

10.2.2.5 Where a Member refuses to receive or accept service of a complaint such a service will then be effected on the chief whip of the Members party.

10.2.2.6 The Member must respond within seven days of being informed of the complaint.

10.2.2.7 Should the Member fail without good reason to respond within seven days the Committee may proceed with the investigation.

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10.3 Upon receipt of a response from a Member or where the Member has not responded the Registrar must:

10.3.1 assess the authenticity or validity of the complaint based on the information at his or her disposal;

10.3.2 collate such further information as may be necessary to enable him/her to make an informed recommendation to the Committee Members;

10.3.3 consult the Chairperson, and conduct a preliminary investigation as may be necessary to enable him or her to make a recommendation to the Committee. In this instance, the Member must be immediately informed that a preliminary investigation is underway, upon completion of the collation of further evidence and the preliminary investigation referred to above; and

10.3.4 all documents, evidence and information in the possession of the Registrar must, up to this stage, remain confidential. 10.4 the Registrar must make a recommendation to the Committee -

10.4.1 that the complaint is frivolous, vexatious or unfounded; or 10.4.2 that a specific finding be made on the available evidence together with a recommended sanction to be imposed; or 10.4.3 that a further investigation be instituted with a suggested procedure to be followed with an elaboration of issues and facts to be investigated; and

10.4.4 indicate who will conduct the investigation and the duration of such a proposed investigation; or

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- 10.45 that a hearing should be held without any further investigation; or
- 10.46 any other recommendation as may be supported by available facts and circumstances of each case which may not be provided for above; or
- 10.47 that he or she is unable to make a recommendation on the available evidence.
- 10.5 Consideration of the report of the Registrar by the Committee-
- 10.5.1 The meeting to consider the report of the Registrar will be closed to the public and non-committee Members; and
- 10.5.2 The Registrar will formally table his or her report.
- 10.6 The Committee will then consider the Registrar's report and-
- 10.6.1 may accept the report with or without amendments; or
- 10.6.2 may reject the report or sections of the report and return the same with specified instructions to the Registrar; or
- 10.6.3 may finalise the matter as proposed by the Registrar; or
- 10.6.4 may determine whether any issues requires further investigation and instruct the Registrar to conduct further investigation on such specific issues; and
- 10.6.5 if a further investigation is required, the Registrar must proceed on the basis of the instruction of the Committee; and
- 10.6.6 must determine the terms and parameters of such an investigation and the duration of the investigation must be determined to avoid long drawn investigations; and

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[Redacted]
[Signature]

10.7.2.1 a short description of the complaint against the Member;

The notice must contain the following:

10.7.2 A ten day notice of a hearing must be issued to the Member by the Registrar, signed by the Chairperson of the Committee; and

10.7.1 Hearings must be held when the facts are in dispute. The Committee may decide to call a hearing if the investigation of the Registrar is inconclusive or if the Registrar is unable to make a finding or the Committee decides that a hearing must be held.

10.7 Hearings

10.6.12 the proceedings remain confidential until this stage.

10.6.11 the Committee must consider the report and must proceed as in clause 10.6 above; and

10.6.10 the Registrar must table his or her final report to the Committee in the prescribed manner;

10.6.9 take or adopt any course of action as may be deemed necessary in the prevailing circumstances; and

10.6.8 that a hearing be conducted without any further investigation; or

10.6.7 if such further investigation required is such that it requires specific expertise the Committee will make a determination and, when appropriate, instruct the Registrar to implement; or

Ch B

- 10.7.2.2 date, time and venue of the hearing;
- 10.7.2.3 estimated duration of the hearing;
- 10.7.2.4 an indication that he or she should not bring a legal representative but that he or she may be assisted by another Member;
- 10.7.2.5 a list of the names of all witnesses to be called by the Committee and an offer to the Member to obtain a copy of each witnesses' statement;
- 10.7.2.6 that he or she may bring witnesses and in that event the affected Member will be liable for all expenses incurred by such a witness;
- 10.7.2.7 that an interpreter will be available on request provided that such request is made at least three days before the hearing; and
- 10.7.2.8 a summary of the consequences of failing to attend such a hearing, which may include a fine and the continuation of the hearing in the absence of the Member; and
- 10.7.3 the Committee calls witnesses in terms of the general powers conferred on Committees, summon any person to appear before it to give evidence on oath or affirmation, or to produce any document;
- 10.7.4 A maximum notice period of 30 days may be given to witnesses and such notice must contain the following -
- 10.7.4.1 the name against whom the hearing will be conducted;

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[Redacted] [Signature]

- 10.7.42 a summary of the complaint against the affected Member;
 - 10.7.43 attach a copy of the statement of that witness;
 - 10.7.44 any other documents or objects that are required from that witness must be specified;
 - 10.7.45 date time and venue of the hearing;
 - 10.7.46 estimated duration of the hearing;
 - 10.7.47 an indication of any indemnity that may be granted or claimed; and
 - 10.7.48 an indication of how attendant expenses will be defrayed.
- 10.7.5 sub-committee
- 10.7.5.1 the Committee will form a sub-committee for each hearing.
 - 10.7.5.2 The sub-committee shall be :
 - 10.7.5.2.1 constituted in terms of the proportional representation formula applied by Committees;
 - 10.3.5.2.2 the Committee will elect one of the Chairpersons to chair the Subcommittee during the hearing;
 - 10.7.5.2.3 all the meetings of the sub-committee will be closed;

10.7.5.2.4 while the sub-committee has the discretion regarding weight to be attached to different forms of evidence and the extent of cross-examination of witnesses the minimum standards of justice and fairness must be maintained;

10.7.5.2.5 the hearing will be on an inquisitorial basis;

10.7.5.2.6 the Registrar presents evidence on behalf of the committee and may call witnesses;

10.7.5.2.7 in conducting proceedings the sub-committee may adopt any procedures it deems necessary, reasonable, just and fair;

10.7.5.2.8 the affected Member must always be apprised of the procedure the subcommittee intends to follow and his or her rights;

10.7.5.2.9 the affected Member may at an appropriate stage call his/her witnesses to give evidence;

10.7.5.2.10 all proceedings before the sub-committee must be recorded in full;

10.7.5.2.11 at the conclusion of the hearing the sub-committee must make recommendations to the committee, all differing views and recommendations must be recorded and presented to the committee;

10.7.5.2.12 the committee must consider the recommendations of the sub-committee and make a finding;

10.7.5.2.13 a copy of the recommendations of the sub-committee must be given to the Member concerned and the Member concerned should be informed of the date that the Committee will consider the recommendations of the sub-committee;

10.7.5.2.14 the affected Member may if he or she wishes address the full committee on the recommendations of the sub-committee and may advance reasons why he or she has not breached the Code as alleged, provided notice to address the meeting of the committee is given five days before the meeting; and

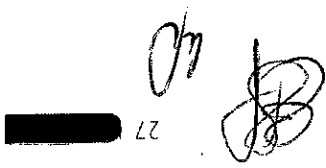
10.7.5.2.15 the Member may not attend the meeting of the committee when it considers the recommendation of the sub-committee.

10.7.6 Findings

10.7.6.1 At the conclusion of its investigation on the alleged breach of the Code, the committee must make a finding supported by reasons; a Member must only be found to have breached a provision of the Code, whether a hearing was held or not, if the committee is satisfied that the Member contravened such provision on the balance of probabilities.

10.7.6.2 The finding and the reasons for the finding must be made public;

10.7.6.3 In the event of a hearing, a summary of the facts must be disclosed; and

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10.7.7.2 In the event of the Committee finding that a Member is guilty of contravening clauses 10.1.1.3 or 10.1.2 of this Code, the Committee shall not impose any of the above sanction, but shall recommend any greater sanction it deems appropriate to the House, and the House shall decide on the appropriate sanction to be imposed

(v) in event of a breach considered minor by the committee the Member may be ordered to rectify the breach and be counselled on the requirements of the Code.

(iv) the suspension of certain privileges or a Member's right to a seat in Parliamentary debates or committees for a period not exceeding 30 days;

(iii) a reduction of salary or allowances for a period not exceeding 30 days; or

(ii) a fine not exceeding the value of 30 days' salary;

(i) a reprimand in the House;

10.7.7.1 The Committee must recommend the imposition of one or more of the following penalties where a Member has breached clauses 10.1.1.1 and 10.1.1.2 of this Code

10.7.7 Penalties

10.7.6.4 The findings of the Committee on any matter may only be communicated to the public by the Chairpersons.

after consideration of the recommendation of the Committee.

10.78 Committee to report to appropriate House

10.78.1 The Committee must report its finding and its recommendations as to penalties, if any, to the appropriate House.

10.78.2 If the Committee recommends a penalty, the House must either-

- (i) accept or reject the recommendations; or
- (ii) refer the matter back to the Committee for further consideration.

10.78.3 If the House has accepted the Committee's recommendation, the findings become final and the Speaker or the Chairperson of the Council must act on such decision promptly.

10.79 Referral of misconduct not covered by Code to Presiding Officer of the appropriate House

if the Committee, during the course of an investigation, is placed in possession of information or becomes aware of a Member who may be guilty of conduct that falls outside of this Code, but which could amount to misconduct by a Member or conduct unbecoming of a Member of Parliament, then the Committee must refer such matter, including all information available on the matter, to the Speaker in respect of a Member of the National Assembly or the Chairperson of the Council in respect of a Permanent Member of the Council, to take the necessary action.

10.7.10 If a Member resigns at any stage of the investigation, the investigation process will continue in order for the Committee to make a finding.

11. ROLES AND FUNCTIONS

11.1 Role of Committee

The Committee is established in terms of joint Rule 121 and performs the functions mentioned in joint Rule 124 in accordance with this Code.

11.2 Registrar of Members' Interests

The Committee must be served by a senior official, on the staff of Parliament, appointed by the Speaker and the Chairperson of the Council, acting jointly, after consulting the leaders of parties represented in the Assembly and the Council. The Registrar must be assisted by staff assigned by the Secretary for the work of the Committee.

11.3 Registrar's functions

The Registrar performs the functions of office in accordance with the directions of the Committee.

The Registrar must:

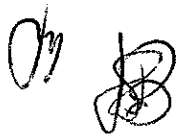
- 11.3.1 open and keep a register for the purposes of this Code, called the Register of Members' Interests; and
- 11.3.2 record in the Register particulars of members' registrable interests;
- 11.3.3 amend any entries in the Register when necessary;

- 11.3.4 perform the duties in respect of investigations of breaches of the Code as prescribed in this Code; and
- 11.3.5 perform the other duties of this code as required by the Committee.

Tabled for consideration.

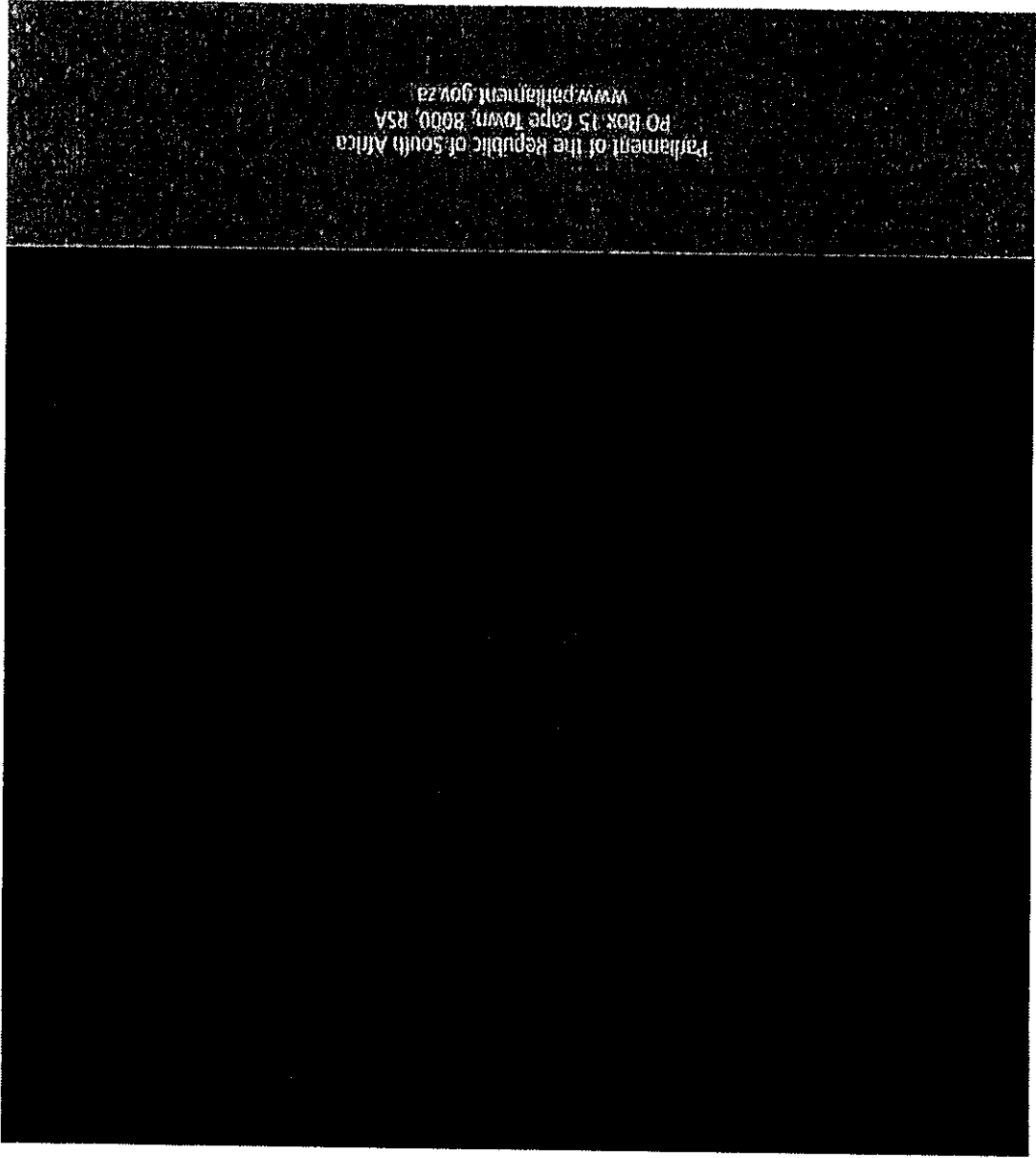
Approved

Co chairperson Mr BL Mashile



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"Chairperson, like I indicated there were those processes that we were involved in but there was also the consultation process that I was busy with. That was what I was saying to Mr Motefe, and I did say to Mr Motefe that at that particular moment we are not ready to conclude on this process of appointing a Group CEO. In the same paragraph Chairperson, he gives an indication of the work they are doing and also the workshops that they are convening, and like I said earlier on yes, with hindsight I could have been wrong at that particular time and I concede."

2089. Ms Peters further testified that it was in January 2017 that she changed her view from saying that PRASA was not ready for a new CEO to saying that PRASA was ready. She said that that is when she set in motion the process that would lead to the appointment of a new CEO for PRASA. However, by March 2017, when she was dropped from the Cabinet, she had not gone far with the consultation process. One would have thought that her successor would have continued with the process where she left off but, as will be seen below, this was not to be.

2090. At this stage it is perhaps important to place on record what the direct financial cost to PRASA was of Ms Peters' decision not to act on the Board's recommendation. The evidence heard by the Commission was to the effect that the Board had paid R1 767 000,00 to the company that it had engaged to undertake the recruitment process. What this means is that, since Minister Peters frustrated the process for the appointment of the CEO for PRASA arising out of that recruitment process for which PRASA paid so much money, through her conduct Minister Peters rendered that amount fruitless and wasteful expenditure. During the course of Ms Peters' evidence, the evidence leader put it to her that her delay in the appointment of the new Group CEO for PRASA rendered the amount of R1 767 000 fruitless and wasteful expenditure and she conceded that this was so. She had no valid reason for not doing what she was required to do, or certainly what everyone thought she was required to do, and which would have led to the appointment of a new CEO of PRASA. Therefore, she should

"...I even said to him [Mr Montana] I do not think that you and the company is ready for the new CEO. Let us deal with these particular issues and we agreed with him that when you appoint a CEO then you will have an indication of this is what was a problem. This is how we dealt with them..."

PRAASA. In this regard, Ms Peters said in her evidence:

2084. On was that, according to her, there were certain investigations that were going on at

a new permanent Group CEO.

2083. Ms Peters gave other, and different, reasons or explanations for her refusal to appoint

was not ready for a new CEO, Mr Molefe denied this.

2082. In her evidence Ms Peters said that she and Mr Popo Molefe had agreed that PRAASA

for PRAASA was appointed.

2081. The following reason given by Ms Peters for delaying the appointment of PRAASA's Group CEO is one that will shock everyone because I do not think anybody has ever heard it in relation to any business entity. That reason is this: Minister Peters thought PRAASA was not ready for a new CEO. This is the view that she articulated to the Board after the PRAASA Board had given her the names of the three candidates it recommended. This continued to be the view of Minister Peters for the rest of 2016. Ms Peters testified that close to the time when she left Cabinet, she changed her mind and accepted that a new CEO for PRAASA should be appointed. How a company that had been in existence and in operation for many years and had had a Group CEO for many years suddenly became not ready for a new CEO is incomprehensible. This was a bizarre reason for the decision by Minister Peters for failing to ensure that a new CEO for PRAASA was appointed.

Minister Peters' role

"DP11"

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In order to be of assistance to you, please be informed that your client did not provide any substantive representations on the complaint, even though she was given an opportunity to do so. Your client via Majavu elected to not engage the conclusions of the Report of the Judicial Inquiry into State Capture ("the Report"). Your client indicated that she was seeking legal advice to review the Report. As your client did not provide substantive representations, the Committee found that

Please be informed that your client was not served with Committee findings on 24 October 2023 as alleged by you. The finding of breach by the Committee was concluded on 17 April 2023 and communicated to Majavu Attorneys Inc ("Majavu") on 18 April 2023. The letter dated 24 October 2023, while it contains the three breaches, communicates the sanction that the Committee has recommended to the House to impose. I attach a copy of the ATC for your record.

Your letter dated 24 October 2023 refers.

**RE: UNITE BEHIND // HON. D. PETERS, MP
BREACH OF THE CODE OF ETHICAL CONDUCT AND DISCLOSURE OF
MEMBERS' INTERESTS: - PENALTY /SANCTION**

Dear Mr Selepe

Your ref:

Per email: dexter@selepelekattonrves.co.za
info@selepelekattonrves.co.za

Dexter Selepe
Selepe Attorneys
61 Langerman Drive
Kensington South
JOHANNESBURG
2094

26 October 2023



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

PO Box 15 Cape Town 8000 Republic of South Africa
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"DP12"

your client breached the Code, based on the available evidence that it had before it in respect of the Report and the High Court judgment.

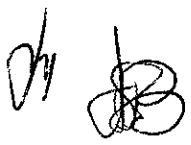
After your client was informed of the finding of breach in April 2023, she then requested to address the Committee in person. She then provided written representations on the sanction to be imposed.

The Committee honoured her request to address the Committee and engaged your client on 28 September 2023. The Committee noted that your client's version before the Committee did not differ from the evidence that it had before it in respect of the Report and the High Court judgment.

During the meeting your client was categorically asked whether she agreed that the decision of the High Court in *Molefe and Others v Minister of Transport and Others (17748/17)[2017]ZAGPPHC* which ruled that her decision to dismiss the Molefe Board was irrational, unreasonable and unlawful, still stands and therefore is binding. Your client's response to this was, "yes".

During the meeting your client was categorically asked about her failure to appoint a CEO at PRASA. Your client tried to explain her failure to appoint a CEO on the basis that it was only for a few months that she did appoint a CEO. The Committee noted that your client did not appoint a CEO even though a recruitment process recommended a candidate. The Committee noted that the period of a few months as explained by your client was irrelevant to the question. She was then categorically asked whether she appointed a CEO at PRASA and she said, "No".

During the meeting, your client was categorically questioned about the use of trains and busses for the ANC January 8th, 2015 celebrations. Your client denied having authorised the use of busses. She admitted to receiving a telephone call while on holiday in Durban. The caller asked her for Mr. Montana's telephone number to obtain the release of trains during the holiday period in January for the ANC, January 8th celebrations. The Committee put it to your client that the fact that she forwarded Mr. Montana's telephone number, showed her involvement in the authorisation of PRASA assets for use by the ANC. As the Minister of



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ADV A GORDON
ACTING REGISTRAR OF MEMBERS' INTERESTS



Sincerely

Transport, she should not have allowed the use of the trains for the ANC celebrations. This action by your client resulted in the use of busses and as the Minister, she should not have allowed this to happen.

I reiterate, that your client did not enter any substantive representations (even though she was given an opportunity to do so) prior to the Committee's finding of breach on 17 April 2023.

As the Committee Report has been ATC'd the matter is now within the jurisdiction of the House and no longer in the jurisdiction of the Committee.