22 November 2017

**Presentation by Minister of Public Enterprises Lynne Brown to the Parliamentary Inquiry into Eskom**

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Chairperson…

Members of the Committee…

Evidence leader…

Ladies and gentlemen…

Introduction

Before beginning my prepared statement I would like to respond to Mr Zola Tsotsi's accusations of an hour or two ago.

I have never consulted with anyone on my executive functions. Not Tony Gupta or Salim Essa or anyone else. Why would I hand over my functions to anyone else?

In as far as Board appointments are concerned, I report to Cabinet, and Cabinet decides who serves on Boards. Recommendations to establish Board sub committees come to me from the Boards in writing and I generally approve them as they know their members better than I do.

In addition, I am astonished that Mr Tsotsi found it appropriate to attend a meeting with the President without conferring with me before the meeting nor bothering to share with me the outcomes of his engagement with the President.

Thank you.

**Now let me get to my reasons for being here today**

* Allegations of corruption at SOCs must be investigated
* Instead the allegations are being manipulated and abused

Let me begin by stating the obvious: There is overwhelming circumstantial evidence of malfeasance at some of our State-Owned Companies.

This includes information contained in the former Public Protector’s *State of Capture* report, investigative reports commissioned by the Eskom Board, reports that I have requested in my capacity as Shareholder Representative, Treasury reports, annual financial results and leaked email correspondence.

Some of those who have been accused of being leading actors in this tragedy are under investigation, some are in the throes of disciplinary proceedings, and some have resigned hoping to escape the fuss.

The information must be tested. We must insist that people suspected of wrongdoing are investigated and prosecuted where appropriate. Those falsely implicated must be exonerated. The ill-gotten gains of crime must be returned to State-Owned Companies. And focus must turn to bolstering State-Owned Companies’ capacity to deliver the mandate demanded of them by the developmental state.

But there’s no time for that. Not right now, anyway. Right now, cleaning up the SOCs is of secondary importance to using the trouble they’re in to achieve short-term political and business objectives – regardless of the cost to the company or country.

And because there’s no time to wait for investigations by law enforcement agencies following due legal process – the word is that they have all been compromised, anyway – the information is constantly regurgitated as if repeating it often enough will prove that it is true.

The same allegations levelled against the same group of individuals goes around and around, destroying the reputations of companies that form the spine and ribs of our economy – and people who have been associated with them, including me.

Let me be very clear: The best thing for the country, for the economy, for Eskom – and for me, personally – is a comprehensive investigation. It was very heartening to read yesterday that the NPA has established a crack investigative team. In addition, the Special Investigations Unit probe into Eskom that I have requested is awaiting proclamation – and it appears that the announcement of a commission of inquiry is imminent.

It presently feels as if Eskom has been beaten to the ground and is being pinned down by the weight of untested allegations while being kicked to death.

It is said that the wheels of justice grind slowly. We desperately need to speed them up.

**Ladies and gentlemen…**

* A toxic environment at the worst possible economic time
* Retarding necessity for economic transformation

In this way we have conspired to create a thoroughly toxic environment at the worst possible time for the country.

* Our economy has remained stubbornly slow to recover from the ravages of the 2007 global recession;
* Too many Black people continue to be excluded from the economy.
* Our Sovereign has been downgraded;
* Our establishment, dominant business community feels threatened by radical economic transformation and is not investing in the future of the country as it should.

This, while our ruling party is in the midst of a gruelling and divisive countdown to an elective conference, which will be seamlessly followed by campaigning for General Election 2019.

Like a rare stellar event, disparate forces including members of the ruling party, opposition parties, business and media are in alignment to try and influence these events. State-Owned Companies are their chosen battleground.

One has to ask: When the battles are over, what will be left?

Surely we should also focus on rebuilding the companies’ credibility, our self-confidence, and others’ confidence in us. And we should focus on how to position our giant SOCs, with their giant procurement budgets, at the forefront of economic transformation.

It is not just about coal contracts, 80% of which are still in the hands of historically white companies – Anglo, Exxaro, Section 32 and BHP Billiton – and are now coming up for renewal. Some of these contracts, signed by my predecessors – without being considered scandalous at the time – were of up to 60 years duration, covering the entire life of the mines.

There was affirmative action of a different kind in those days; in many instances, the mineshafts were sunk by Eskom, itself.

If a few of the larger SOCs were to spread the wealth they generate through transforming their supplier pipelines they would have a significant effect improving the quality of lives on the ground.

Given the unsustainable levels of inequality, poverty and unemployment in the country – and the limited success we have had in changing apartheid patterns of economic privilege and spreading the country’s wealth, it is critical to be able to discuss the means of transformation

But we are so divided that even mentioning the term radical economic transformation has been poisoned and using it is considered evidence of corruption.

**Colleagues…**

* I welcomed inquiry but it has proven disappointing
* An unconstitutional process

While uncertain how it would dovetail with other investigations and processes, I welcomed the establishment of an inquisitorial parliamentary investigation into Eskom.

Since January I must have made 10 public calls for the urgent investigation of allegations made in the former Public Protector’s report. I hoped that parliament would contribute to elevating some of the swirl of allegations into the realm of usable fact.

I made my support for the inquiry clear in all three letters I have addressed to the committee on the subject. At the same time, understanding that the committee comprised politicians, not forensic investigators, I sought to push the inquiry to follow fair and proper processes.

We live in a Constitutional democracy that upholds the rights of all people to human dignity. Many people were imprisoned, abducted, tortured, maimed, banned and murdered in the struggle for this democracy.

One of the load-bearing legs of the democracy is our system of justice. Mass murderers and rapists are entitled to be informed of allegations witnesses will make against them in order to defend themselves. They are entitled to cross-examine those making allegations against them.

But not Eskom nor the DPE.

I note that none of the committee members have insisted on a more balanced process. You certainly didn't cover yourself in glory by blithely listening to Ms Daniels contradict evidence that she has given you in the past – without pointing the different versions out. The same criticism would apply to certain members of the Fourth Estate.

Several months ago the Honourable Mazzone came to see me in my office to warn me that if I didn't “come clean” I would be made the scapegoat for Eskom’s mismanagement. Is that the objective of the inquiry? Surely, if she was a juror she would be disqualified from jury duty.

**Colleagues…**

* The way SOCs work is more complex than in cartoons
* Investigations take longer than publishing emails

I have not answered your invitation to appear before you today in order to fight with you, or to defend Eskom. That’s not my job.

I received legal advice to decline your invitation on the basis that your process was unfair, inappropriately accusatorial, and that my appearance would only serve to legitimize a pre-determined interim report containing a rehash of untested information designed to embarrass particular politicians.

I did not take that legal advice because the constitutional principles that members of the executive should account to parliament, and the peoples have the right to know, is more important than any of us.

So, let me begin by explaining the responsibilities of the Shareholder Representative. I know that many of the committee members already have this information, but it is probably important to place it on record in this forum.

The way relationships work between Shareholder Representative, company boards and executives is considerably more complex.

In the cartoons, the Shareholder Representative is a sort of Super CEO with an all-seeing eye and special powers to detect and smite the enemy.

This is obviously not entirely accurate. While I sometimes wouldn't mind being able to zap the baddies. The reality is that the shareholder’s superpowers are severely constrained by legislation and regulation.

**Chairperson…**

* The Denel Asia illustration of information manipulation

In the cartoon narrative, for example, the so-called Denel Asia deal is depicted as a centrepiece of state capture.

In fact, the business argument Denel put forward in its Public Finance Management Act application at the time was not insensible; it appeared legally sound, and the proposed business partners had yet to be branded “untouchables”. On the papers, appeared equipped for the task.

In terms of Section 54 (2) of the PFMA, the accounting officer of a State-Owned Company must seek approval from the Shareholder prior to entering significant partnerships. The application appeared to pass legal muster, and I gave it my in-principle approval subject to Denel meeting a number of conditions. Critically, I forbade the proposed company from trading before it also obtained the approval of Treasury.

In a letter addressed to the Denel chairperson in November 2015 I outlined the comprehensive information Denel should supply Treasury in order to protect its status as the holding company.

If Treasury had grounds to block the deal it could simply have done so, freeing Denel to pursue alternative business avenues in Asia. But Treasury neither approved nor denied Denel’s application.

The next thing, Denel Asia popped up as “evidence” of state capture due to the proposed business partners alleged association to the Guptas. Months later, frustrated by its inability to extract a decision from Treasury, Denel lost its cool and dragged the former Minister of Finance to court. Not, mind you, to force him to approve the deal; just to make a decision.

I ultimately prevailed on Denel to drop the proposal and the court action. By then, extensive reputational damage had been done, and Denel had lost 18 months worth of business in a lucrative market.

The point is that instead of being dealt with decisively, I believe the Denel Asia deal was deliberately hung out to rot in the marketplace of public opinion.

But let us return to the matters at hand…

**Members…**

* SOCs legislative framework
* Functions of the Executive Head
* Companies Act

South Africa is the only country in the world to have constitutionalised procurement as outlined in section 217 of the Constitution.

State-Owned Companies are incorporated as public companies under the Companies Act. Five of the six companies in the DPE portfolio (with the exception of Denel) are governed by their own unique enabling legislation (for example, the Alexkor Limited Act 116 of 1992 and the South African Express Act 34 of 2007).

Other applicable prescripts include the Public Finance Management Act, the Companies Act, Sector Legislation and governance codes such as King IV.

All of these instruments are ultimately subject to the Constitution, as I am in discharging my duties as the executive head of the Department of Public Enterprises.

My functions as the Executive Head include:

* Implementing National Legislation;
* Developing and implementing National Policy;
* Coordinating the functions of the DPE and Administrations;
* Repairing and initiating legislation; and
* Performing any other executive function provided for in the Constitution or in National Legislation.

My functions do not fully traverse operational responsibilities.The new Companies Act 71 of 2008 addresses, *inter alia*, standards of Directors’ conduct (in section 76) and liabilities of Directors and prescribed officers (in section 77).

For the first time in South African corporate law, the fiduciary duties of directors, and the duty to exercise reasonable care and skill, have been statutorily defined. By “director”, the Act includes alternate directors, prescribed officers, and persons who are members of committees of a board of a company irrespective of whether or not the person is also a member of the company’s board.

The Directors of Eskom owed duties based on the concept of good faith in acting in the best interest of Eskom by exercising the appropriate degree of care, skill and diligence.

Fiduciary duties are imposed upon directors for the protection of the company and its shareholders, and a breach thereof results in liability for the directors, themselves.

With respect to the duties of care, skill and diligence expected of them, the principle is that directors are liable for damages that emanate from their negligence in the performance of their duties.

On this basis, Directors of Eskom, the Chairperson of Eskom’s Board and the Chairperson of Eskom’s Risk and Audit Committee have all the reasons in the world to be concerned about issues of governance at the company.

A thorough understanding of the Companies Act will assist the Committee to understand my Executive role, and the context in which I exercise my oversight functions in respect of State owned entities are concerned including Eskom.

**Madam Chairperson…**

* Delegation of authority
* Constitutional responsibilities
* Manner of SOCs procurement processes

The principle of delegation of authority is still part of the South African law. I do not intend hiding behind my exercise of delegation of duties to the various Boards of SOCs.

In my written submission to the inquiry I demonstrate in response to the questions you have posed that I exercised my delegation of authority and functions where necessary in a responsible, transparent, accountable, legitimate, regular, valid and lawful manner.

Besides being incorporated in terms of the country’s company laws, Eskom is a Schedule 2 entity as set out in the Public Finance Management Act (the PFMA).

It is an institution performing a public function in terms of legislation. Eskom qualifies to be an organ of State as set out in section 239(b)(ii) of the Constitution.

As an organ of State, when procuring goods or services Eskom complies with its Supply Chain Management Policy guided and informed by section 217 of the Constitution.

Whether it contracts for goods or services, be they IT services and/or Boiler refurbishment and/or any type of service, it must do so in accordance with the system which is fair, equitable, transparent, competitive and cost effective. The process leading to the procurement of goods or services at Eskom is inclusive of the following committee processes:

* Specifications of the type of contract for goods or services that Eskom seeks are prepared by specially constituted committees;
* Then there would be the Bid Evaluation Committee; and
* A Bid Adjudication Committee.

I do not participate in these committees. There are persons better qualified to do so. My oversight function goes as far as ensuring that where procurement of goods or services is applicable the Supply Chain Management policy of Eskom as informed by section 217 of the Constitution guides the process.

Let me also briefly draw the committee’s attention to a very important Eskom procurement policy called the Significance Materiality Framework. Contracts above this threshold amount – R1.5 Billion in respect of Eskom – are regulated by section 54(2) of the PFMA. The same piece of legislation regulates proposed partnerships SOCs seek to enter, as in the Denel Asia matter, above.

Given the significant value of these deals, it is fitting that the Board and Shareholder assume additional responsibility.

In these instances, the Board seeks my approval as the Executive Authority. I exercise my executive function to assure that such procurement as envisaged by the significance materiality framework also complies with the requirement of fair, equitable, transparent, competitive and cost effective procurement.

Section 54(2) of the PFMA further requires me to inform National Treasury about the particularity of the transaction.

This is an onerous process calling upon me as the Executive Head to act accountably and responsibly.

Clearly, I’m not expected to do this on my own. The significant role of Eskom’s Board and Directors as envisaged by the relevant and applicable provisions of sections 76 and 77 of the Companies Act bears relevance in this regard.

**Members…**

* Shareholder Oversight through MOIs
* Board appointments
* Board responsibilities
* Executive committee responsibilities

The Shareholder exercises oversight, non-operational powers through determining State Owned Company’s memoranda and articles of association, also referred to as the Memorandum of Incorporation or “MOI”, and through entering into Shareholder Compacts with the Boards, which are in essence performance agreements (with measures and indicators) that direct the company’s strategic and business plans.

Before signing off MOIs or Shareholder Compacts the Shareholder must consider the financial sustainability and competitiveness of the companies, as well as their specific contributions to socio-economic development.

The inquiry has asked about Board appointments: The processes to appoint Boards are informed by the State Owned Company’s Memoranda of Incorporation which commonly provide that the Shareholder shall appoint the Directors of the Company from time to time, with a proper balance of Executive and Non-Executive directors.

After placing public advertisements for applications and/or nominations, the Department (often with an external service provider such as a legal or auditing company) verifies CVs for suitability and fitness to serve on SOC’s boards (qualifications, skills, references, credit history, possible conflicts of interest, and criminal backgrounds). In this way a shortlist is compiled.

These are not executive functions. The Shareholder does not conduct interviews and verify qualifications. The Shareholder receives the list from the Department, and asks for any necessary clarifications before taking it for consultation to the Deployment Committee and then to Cabinet for approval. The list of board members approved by Cabinet are appointed by the Shareholder.

I have never had occasion to change the shortlist. I know there have been allegations that boards have been loaded in favour of particular individuals or agendas. From my experience of the system, the only way this would be feasible would be arrange for the nomination of seemingly disconnected, qualified people who tick all the necessary boxes to get onto the shortlist.

The Boards are empowered to lead, control and ensure the effective management and performance of State Owned Companies.

They fulfil an intermediary function between the Shareholder and company management, and are ultimately responsible for strategy and policy, ensuring that the Company is a responsible corporate citizen, and the supervision of management and financial matters, including the efficient management of available working capital, ensuring appropriate procurement and provisioning systems, and avoiding irregular, fruitless or wasteful expenditure.

The Boards also have responsibility:

* To supervise appropriate disciplinary procedures against employees who fail to comply with provisions of the PFMA or commit acts undermining the financial well-being of the company;
* To manage risk (as recommended by King IV);
* To manage compliance and controls with all applicable laws, regulations, codes (ethics, in particular) and standards; and
* To manage stakeholders, including through the submission of reports, returns, notices and other information to Parliament, the Shareholder or National Treasury as required by the PFMA.

Executive Committees are responsible for the day-to-day management – the operations – of the company. These committees are appointed by the Boards, to whom they report. Executive Committees advise Boards on important decisions and business matters ranging from strategic planning to policy, investment and risk, and receive organisational and operational direction from the Boards. In addition to serving the needs of the board, Executive Committee members serve the needs of the workplace.

**Members of the committee…**

* In response to the committee’s questions
* Procurement of T-Systems and Dongfang (for Duvha)
* The suspension of four executives in 2015
* The War Room and Dentons Report

I appreciate your sending me a list of questions last week in advance of my appearance at the inquiry. Many of the questions fall outside the Shareholder’s remit, but I have nonetheless included comprehensive answers to the best of my ability in the written submission.

I shall also attempt to assist you where I can, here, in order to help build as full and accurate a picture of events as possible.

Your first two questions relate to procurement matters.

Board Procurement and Tender Committees are not Statutory Committees requiring Shareholder approval. Once a Board Committee is established it is expected to function and operate within the prescript of the Board Charter and other governance structures including but not limited to the SOC Memorandum of Incorporation (MOI). Decisions and resolutions passed at Board or Committee meetings are not submitted to the Minister unless where the transaction in question is (i.) a subject of the section PFMA application and (ii.) is within the Significant and Materiality Framework (SMF) threshold. These questions should therefore rightfully be asked of Eskom.

The decision to suspend four Eskom executives in March 2015 was taken by the Eskom Board. I was not cited as a party in any of the proceedings following the suspensions, including the proceedings instituted in the Labour Court by Mr Matona.

By way of context: In December 2014 Cabinet approved a Five Point Plan to address electricity challenges facing Eskom and the country. Eskom was experiencing serious operational challenges caused by the generating capacity that was not able to meet demand for electricity. The low reserve margin meant that Eskom had little room to undertake crucial maintenance to improve the reliability of the electricity system and as such some of the critical maintenance had to be delayed. This led to load-shedding. In order to achieve coordination and expedited decision making, Cabinet further approved the setting up of a War Room.

Numerous concerns were raised by participating departments about the level of details Eskom was providing to Government, the accuracy of the information and the delays in responding to the public on concerns relating to the load shedding. In April 2015, the Eskom Board appointed the law firm, Dentons, to conduct an investigation into the operational status of the company.

The investigation was triggered by my concerns about the credibility, reliability and slow flow of information submitted to her, the War Room and the IMC on energy led by the Deputy President.

According to Dentons’ terms of reference: “For the past two years the Office of the Chairman and the Board (both the new and old boards) have been inundated with complaints… with regard to unreliable power supply, escalating build project costs, escalating maintenance costs, high costs of primary energy and fuel… In addition to the above, in the last few months, load shedding has become the order of the day…”

Dentons delivered its final report to the Board and same was submitted to the Ministry on 07 September 2015. The report noted systemic failings experienced by the company that compromised some of Eskom’s business processes and intended outcomes. Eskom could explain the steps the company took in response to the report.

**Colleagues…**

* The appointment of Mr Molefe

Although made up of Ministers and high-ranking Government officials, the War Room did not substitute the oversight role of the Minister as Shareholder Representative, nor that of the Eskom Board. The duties and fiduciary responsibilities of the Board remained in full force and effect as far as they related to the business operations of the company. However, it became extremely difficult for the Board to maintain proper oversight of the company given the challenges at executive level that were compounded by the suspension of the four executives including the then CEO Mr Matona.

In April 2015 the Minister approved the request by the Board to second Mr Brian Molefe from Transnet to Eskom to act as the CEO. My decision to approve the secondment was preceded by negotiations between the Eskom and Transnet Board Chairpersons and a joint submission supporting the secondment. Mr Molefe had a very positive reputation from the periods he had spent at Treasury, the PIC and Transnet, and his secondment to Eskom was widely applauded. The markets responded positively, too.

It did not take Mr Molefe long to settle in. It’s not popular to say these things today, but he brought cohesion to the executive team, built staff morale, and helped develop a clear plan on reviving public and investor confidence in Eskom. He also provided assurance to the War Room and Cabinet on improving Eskom plant performance and addressing load-shedding.

At a meeting on 9 September 2015, Eskom’s People and Governance Committee resolved that Mr Molefe be appointed to the position of CEO and further that Anoj Singh be appointed to the position of CFO to fill the critical vacancies that had been created by the resignations of the then CEO and CFO.

The Board provided the Shareholder with an assessment report indicating its satisfaction with Molefe’s performance. In terms of the report, Molefe’s combined competencies (qualifications, skill and experience), his proven track record of turning around ailing companies as well as the work he had done thus far at Eskom, had motivated the Board to recommend his appointment without a formal recruitment process. The Board further pointed out that public confidence in Eskom had improved exponentially.

However, because the Board’s recommendation was not in line with the MOI and the Guidelines on the appointment of CEOs and CFOs, the Department requested Eskom to obtain a legal opinion to confirm Molefe and Singh’s appointment. The legal opinion was submitted to the Department and was also used as motivation when submitting Molefe and Singh’s appointment to Cabinet. Cabinet approved both appointments on 23 September 2015.

**Ladies and gentlemen…**

* Mr Molefe’s pension, re-coming and going

It is regrettable that the inquiry did not take the opportunity to obtain more details from Ms Daniels, wearing both her hats as head of legal and company secretary, on the subject of Mr Molefe’s pension benefits and departure from Eskom.

You might have compared her version to that given to the Portfolio Committee on 23 May 2017. It would have been particularly useful to obtain the legal opinion Eskom claims to have used to reinstate Mr Molefe. After requesting to see the opinion on numerous occasions, I can only conclude that it is phantom.

On 11 November 2016 I issued a statement noting that I was saddened by Mr Molefe’s resignation but respected his decision. This followed a meeting Mr Molefe requested with me to explain his decision to step down. During the meeting and based on what Mr Molefe described as the basis of his departure, I expressly referred to his proposed departure as a “*resignation*”. Mr Molefe did not correct or challenge this terminology.

On 8 March 2017 I sent a letter to Eskom requesting a resolution recording Molefe’s resignation and the formal appointment of Mr Koko as the Acting CEO. The Department was duly furnished with Mr Koko’s appointment letter but no resolution on Molefe’s resignation or retirement.

My view that Mr Molefe had resigned persisted until 16 April 2017 when I read in a newspaper that he had received a R30 Million pension payout.

I was surprised to discover that the Board had concluded an agreement with Molefe for an early retirement, but did not consider it to be irregular at that point. Subsequent events have persuaded me that the “early retirement agreement” was not only irregular but possibly an ex post facto fabrication.

Curiously, when Ms Daniels appeared before you she said the first she’d learned of the pension arrangements was when she read about it in a Sunday newspaper… Yet the last time she appeared before you she defended the arrangements?

On 19 April 2017, I convened an urgent meeting with the Board represented by the former Chairperson Dr Ngubane, Head of Legal Ms Daniels and the then Chairperson of the People & Governance Committee Ms Klein to discuss the revelations about Mr Molefe’s pension package. The Board confirmed that it had concluded an early retirement agreement with Molefe in November 2016, and was unable to provide a plausible explanation as to why it had not corrected me after I had publicly referred to Mr Molefe’s departure as a resignation.

My primary concern at this meeting was to understand the pension payment and the rationale behind it. Both my Department and I expressed strong disagreement with the pension payout. I instructed the Board to consult with Mr Molefe and to come back to her with an appropriate proposal.

On 9 May 2017 I again met the Board to discuss its proposals on how to deal with the matter. I was accompanied to the meetings by my Director-General and two Deputy Directors-General responsible for energy and legal governance and risk. Eskom was represented at the meeting by the Chairperson of the Board, Dr Ngubane, and Company Secretary and Acting Head of Legal, Ms Daniels.

It was here that the Board informed me that it had obtained an opinion from a Senior Counsel advising that Mr Molefe did not qualify for early retirement in terms of the Eskom Pension Fund Rules. They said the agreement had been based on what they termed a shared misunderstanding.

The Board presented four options to fix the matter, indicating a preference for the first. The options presented were:

* Consensual rescission of the early retirement, in terms of which the Parties would agree to cancel the early retirement agreement, Mr Molefe would pay back the monies already received pursuant to his early retirement and resume employment at Eskom.
* Non-consensual rescission of the early retirement agreement.
* Advising Mr Molefe that his early retirement had been rescinded and he could opt to resign from Eskom’s employ, in which case he would be entitled to ordinary retirement benefits in terms of the retirement rules.
* The final option was a payment in settlement of a dispute.

I applied my mind to the matter, accepting the Board’s bona fides that it had obtained advice from senior counsel and also accepting the correctness of this advice. Since the meeting, however, officials from the Department requested a copy of this opinion and have been repeatedly rebuffed by the former Company Secretary Ms Daniels, and the Board.

On 11 May 2017 the Board sent me a letter with its preferred option, including as annexures a letter to Molefe and the Reinstatement Agreement. The letter, signed by Dr Ngubane, informed me that, in counsel’s opinion, neither the Minister nor Cabinet’s formal approval was required as this was merely a reinstatement of Molefe’s employment. Subsequent consultation with my own senior counsel indicates that there was a flaw in the Board’s view and that my consent should have been sought.

On 12 May 2017 I issued a media statement confirming Molefe’s reinstatement as Eskom CEO. I said that I was satisfied with the Board’s re-evaluation process and recognised the merits of its proposal – “on the proviso of its legality”.

On 1 June 2017, after considering various affidavits in the High Court application relating to Mr Molefe’s reinstatement including that of Mr Molefe, himself, it became apparent that the circumstances surrounding his pension arrangement and reinstatement were irregular. This was also the view of the Inter-Ministerial Committee appointed by President Zuma on 24 May 2017 to consider the implications of the Eskom Board’s decision to re-instate Molefe.

The IMC resolved that it would be in the best interests of Government, Eskom and the country as a whole, that I direct the Eskom Board to rescind its decision to reinstate Mr Molefe as Eskom CEO.

On 2 June 2017, the Board resolved to comply with the directive and rescinded its decision to reinstate Mr Molefe.

As the Committee is aware, this matter is on the roll at the Pretoria High Court from 29 November 2017.

In my affidavit filed with the court I conclude that Mr Molefe resigned and was therefore not dismissed as he has claimed. His reinstatement as CEO was premised on an invalid agreement. The 2016 Memorandum of Incorporation, which ought to have been applicable was rendered inapplicable by the reinstatement agreement.

**Chairperson…**

* Eskom’s lies
* The inquiry’s reluctance to prise secrets from Ms Daniels

Like most human beings I’ve heard of, there is some stuff I know, some stuff I don’t know and some stuff I should know but don't.

Then, my dealings with Eskom have taught me, there is stuff I thought I knew because someone had misinformed me – and some stuff that is difficult to know because it is being actively concealed.

Over the past eight or nine months – as more allegations have been leaked into the public domain – it has become increasingly apparent that I could no longer rely on information that Eskom was supplying me.

It began with the Brian Molefe pension matter. Until then, the questions that I asked Eskom had received plausible answers. But when I intervened to ask the Board to come to a more appropriate arrangement it opened a can of worms.

It was at this point that I briefed my Department to start working on the terms of reference for a Special Investigations Unit probe into procurement and contract management, to expose systemic challenges at Eskom. I believe it is the most suitable agency to conduct this investigation.

I hoped that your cross-examination of witnesses, Ms Daniels in particular, would add substance to the ever-grinding rumour mill. But the members of inquiry didn't seem particularly interested in pursuing the issue of Mr Molefe’s pension with Ms Daniels.

Soon after the pension debacle the media published information that Eskom had paid millions of Rands to a company called Trillian. This information directly contradicted the response Eskom had given me when the matter was raised in a Parliamentary question in December 2016. (The payments had not come to me for approval, so I was reliant on Eskom for accurate information.) It became clear that I had been manipulated into lying to Parliament, I demanded an explanation from Eskom’s CFO Mr Anoj Singh. I subsequently instructed the Board to institute an investigation into the matter.

I believe that Eskom deliberately lied to me about the Trillian matter. It was not a matter that came to me at any stage for approval. When I became aware of it through a Parliamentary Question, followed by media reports, I took immediate corrective action.

The Optimum Mine deal has been another of the pillars of the state capture narrative. It is alleged that former mine owner Glencore was deliberately squeezed by Eskom so that Tegetta could buy the mine.

On the basis that the transaction did not meet the threshold of the Significant and Materiality framework agreement, I did not receive a request for approval of this deal in terms of section 54(2) of the PFMA. It was a matter within the authority of the Board of Eskom and its executives, in line with the governance framework within Eskom.

As the Shareholder I am not privy to contract negotiations, but after the media picked up that Eskom had radically reduced the penalty that forced Glencore to sell the mine in the first place. I asked DG Seleke to write to Eskom to request details of the arbitration settlement. Ms Daniels has already testified before the inquiry on this matter and I would urge that the Committee to solicit further information from her on the arbitration, the terms and conditions and the process that led to the settlement

**Colleagues…**

* Eskom’s peculiar culture of closedness
* Perfect environment for influence peddling

There is what I can only describe as a “peculiar culture of closedness” at Eskom. I think it was deliberately set up that way in 1923. Its purpose was to supply abundant energy to industrialise the economy. A global recession was around the corner – the Great Depression – and Eskom was identified as a buffer against white poverty and sanctuary of white economic aspiration.

On the guaranteed cash flow from their special relationships and coal contracts with Eskom, giant mining houses expanded their holdings and became gargantuan. Eskom is continuing to service some of these apartheid-era contracts today, 23 years into our democracy.

These special relationships, conducted in a culture of secrecy and riddled with conflict of interest, included things like advance payments and expedited payments (because mine development is expensive and Eskom needed coal) – things we still see today.

The culture of secrecy creates a perfect environment for opportunism, cronyism, influence peddling and manipulation. It was designed that way.

In this environment, access to members of the executive, the Board – or the Ministry and Department of Public Enterprises – becomes a powerful calling card.

Relationships that appear innocent may in fact be deeply compromising; or they may be perfectly legitimate but due to individuals’ association to others they are perceived as compromised.

**Ladies and gentlemen…**

* Mr Koko

Another of the Eskom names that’s been much in the news is that of the man who acted as Group Chief Executive after Mr Molefe’s first departure, Mr Matshela Koko. Mr Koko has been accused of alleged conflict of interest with respect to the award of a coal contract to his stepdaughter.

When I appointed an interim chairperson and brought new blood onto the board following the resignation of Dr Ben Ngubane, my first instruction to the board was to institute investigations into Mr Singh, in respect of Trillian, and Mr Koko.

I would like to plead with the Committee to appreciate that Eskom is critical SOC for the South African economy and at times, I am required to consider a different approach and put in place austerity measures in assisting the company to address its challenges. Therefore in other matters I have been working closely with the board to assist them in managing the stability and continuity at company. I do not regard this as interference with the board’s functions.

In observing the separation of roles between the Board and Shareholder, I cannot speak on behalf of the Board on what actions are underway. But because I am not seen to be leading disciplinary processes, which are the purview of the Boards, doesn't mean that I am sitting on my hands.

State-Owned Companies are required to report to me on a quarterly basis on their operational, sustainability as well as governance and leadership activities or challenges. As part of this reporting framework, I was provided a copy of the investigation report by *Cliffe Dekker* relating to the case of Mr Koko. My office identified serious gaps in the report, which were shared with the Company Secretary and Head of Legal, Ms Daniels.

Mr Koko is presently suspended and his disciplinary hearing is underway.

Do members of this committee honestly believe that what I’ve just described is a fair process, or that it is getting any closer to revealing the facts?

**Chairperson…**

I would like, now, to thank you for providing me the opportunity to make this presentation.

I assume that I will be given an opportunity to present further information to the inquiry should the inquiry gather further material requiring my response.

Thank you.

Ends…