

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

**AFFIDAVIT OF PRAVIN JAMNADAS GORDHAN
IN OPPOSITION TO APPLICATION FOR LEAVE TO CROSS-EXAMINE BY
THOMAS SWABIHI MOYANE**

I, the undersigned,

PRAVIN JAMNADAS GORDHAN

do hereby make oath and state that:

INTRODUCTION AND DEPONENT

1. I am an adult male Member of Parliament and the Minister of Public Enterprises. I am based at the Department of Public Enterprises, located at Commission House, 80 Hamilton Street, Arcadia, Pretoria.
2. I am the former Commissioner of the South African Revenue Service (“SARS”), having held that position from 1999 to 2009. I also am the former Minister of Finance, having been appointed to that position by

former President Jacob Zuma for the period 10 May 2009 to 25 May 2014, and again from 14 December 2015 until 30 March 2017.

3. The facts contained in this affidavit fall within my personal knowledge, or appear from documents under my custody or control, or from copies of documents I have seen. To the best of my knowledge and belief, the facts set out in this affidavit are true and correct.
4. Where I make legal submissions, I do so on the basis of advice received from my legal representatives, which advice I believe to be correct.

GROUNDS OF OPPOSITION

5. This application seeks leave to cross-examine me regarding the evidence I have placed before the Commission. I oppose it for several reasons.
6. First, the application fails to comply with the requirements of Rules 3.4 and 3.7 of the Commission's Rules:
 - 6.1. Contrary to those requirements, the application fails to "make it clear what parts of the witness's statement are disputed or denied and the grounds upon which those parts are disputed or denied."
 - 6.2. Nor does it establish that cross-examination is "necessary and in the best interests of the work of the Commission to do so."
 - 6.3. This defect is a basis to dismiss the application in its entirety.

7. Second, I am advised that the purpose of cross-examination is to test my evidence against an alternate set of facts provided by the party that seeks to cross-examine.
 - 7.1. Mr Moyane puts up no alternate set of facts or any evidence that contradicts the evidence that I have provided to the Commission.
 - 7.2. This application is a poorly disguised attempt to use the Commission as a political platform by Mr Moyane, through his legal representatives. It seeks to use the Commission to advance a political campaign against me, led by a political party whose senior office bearers include Mr Moyane's legal representative, as well as the deponent to an affidavit on which he relies heavily.
8. I testified about Mr Moyane in three respects (though only the third was considered by the Commission to implicate him).
 - 8.1. I testified about my concerns regarding his appointment and his resistance to my executive oversight when I was the Minister of Finance to whom he was accountable;
 - 8.2. I provided evidence to the Commission regarding the apparent irregularity of a contract approved by Mr Moyane, in terms of which New Integrated Credit Solutions ("NICS") was appointed as a debt collector at SARS, and Mr Moyane's misleading statements to Parliament regarding his involvement; and
 - 8.3. I testified about the campaign against me when I was re-appointed as Minister of Finance that included the launching, and

subsequent withdrawal, of criminal charges against me arising from a docket opened by Mr Moyane. I testified regarding its impact on me personally.

9. Mr Moyane has not placed a competing factual version before the Commission with which to test any of this factual evidence through cross-examination. His disagreement with my personal impressions and experience does not assist the Commission.
10. Third, all three of the issues identified above regarding which I testified have been confirmed by Justice Nugent in the work of the Commission of Inquiry into Tax Administration and Governance by the SARS (“Nugent Commission”). As set out below, that judicial commission has investigated, considered and made several findings that render this application by Mr Moyane redundant. I explain those below.
11. In turn, three additional areas are identified by Mr Moyane in his application as the topics he wishes to canvass in cross-examination of me: (i) my political and personal history, (ii) the so-called “rogue unit” allegations and (iii) the NICS/Patrick Monyeki issue at SARS.

11.1.1. The first and second are irrelevant to, and outside of, this Commission’s Terms of Reference.

11.1.2. The second also has been thoroughly examined by the Nugent Commission.

11.1.3. The third cannot be taken further through cross-examination of me since it is Mr Moyane who should testify if he

wishes to place facts before the Commission that contradict what was contained in the evidence I placed before the Commission and what has now been established by the Nugent Commission. I have no further personal knowledge on these matters with which to assist the Commission.

11.1.4. I note that the NICS issue is the only issue identified by the Commission in its Notice in terms of Rule 3.3 as being a matter regarding which it considers that I implicated Mr Moyane in my evidence.

12. In summary, I oppose this application for leave to cross-examine because:

12.1. This application does not advance the purposes of cross-examination, primarily because Mr Moyane does not put before the Commission facts and evidence that contradict my factual evidence; no contrary factual version is put up by Mr Moyane against which to test my evidence;

12.2. It will not advance the important work of the Commission since Mr Moyane fails to place any new facts or evidence before the Commission that are responsive to its Terms of Reference; and

12.3. Nor is there any purpose served by it other than to afford a disgruntled Mr Moyane a public platform to attempt to denigrate me and my record of public service through cross-examination by his legal representatives, utilising outlandish conspiracy theories, a racist and populist political script, all in pursuit of a personal

vendetta against me. This is not a legitimate purpose for which to occupy the Commission's schedule.

13. Mr Moyane is the former Commissioner of SARS, his tenure having been terminated by the President on 1 November 2018.

13.1. His termination followed the findings of Justice Nugent in that Commission's Interim Report.

13.2. Mr Moyane's grievances regarding my executive oversight of him and SARS when I was Minister of Finance are irrelevant to the work of this Commission, and have been addressed by the Nugent Commission.

13.3. This Commission has a daunting set of Terms of Reference, and the scope of its work and the limited public resources at its disposal should not be further strained at Mr Moyane's insistence to repeat the work of the Nugent Commission.

13.4. All of his legal challenges to his employment predicament have failed (twice in the Constitutional Court and once in the High Court). This Commission cannot afford to become the next forum where he seeks to ventilate his personal and political objections regarding his termination, against me, Justice Nugent or President Ramaphosa. It was his choice not to accept a multi-million Rand settlement that was offered to him (Annexure "PG1"), and to instead embark upon a litigious campaign challenging the steps taken to remove him.

- 13.5. As the Nugent Commission has found, his removal was necessary so that the rehabilitation of SARS from his calamitous tenure could commence. This Commission cannot be asked to re-do the work of the Nugent Commission, the Constitutional Court (twice) or the High Court.
- 13.6. The application should be dismissed in its entirety.
14. I address the following specific reasons to dismiss this application in turn below in this affidavit:
- 14.1. Mr Moyane's application fails to establish grounds that serve the purposes of cross-examination;
- 14.2. Specifically, Mr Moyane fails to provide any facts that dispute the evidence that I have provided to the Commission under oath and therefore fails to provide a basis for my evidence to be tested in cross-examination, nor does he raise any factual basis to impugn my credibility;
- 14.3. Mr Moyane fails even to provide information falling within the Commission's Terms of Reference.
- 14.3.1. The one issue regarding which the Commission advised him he may wish to adduce evidence is simply ignored by him in his voluminous papers (the NICS appointment as a debt collector at SARS). As shown below, those aspects of my evidence are incontrovertible in light of the findings of the Nugent Commission,

and cross-examination would serve no purpose useful to the Commission.

14.4. Another factual issue raised by Mr Moyane (whether he was the complainant in the criminal case with which I was charged) has been clarified in his supplementary affidavit and, in light of those concessions, there is no reason to allow cross-examination on that point by him.

14.4.1. It is true that he places at issue his motivation for laying those charges, but that is irrelevant.

14.5. A further issue raised by him is an attempt to have this Commission repeat the work of the Nugent Commission regarding the establishment, lawfulness and work of a specialised investigative unit within SARS tasked with enforcement against the illicit trade and tax evasion.

14.5.1. Even this is a repeat of what he attempted to do before the Nugent Commission.

14.5.2. As Justice Nugent ruled "*The content of the document [submitted there by Mr Moyane] is directed also at throwing bait before the media aimed at, amongst others, reviving in the media an allegation that a 'rogue unit' existed within SARS. . . . If it is relevant to the Commission's Terms of Reference whether or not there was what has been called a 'rogue unit' within SARS, then this Commission will inquire into it through proper and credible*

evidence received in the ordinary course.” A copy of the Ruling is attached, marked Annexure “**PG2.**”

- 14.6. The application also is no more than an attempt to publicly air Mr Moyane’s racist vendetta against me;
 - 14.7. The application also is a political attack on me and, by extension, the governing party, the African National Congress, through a repetition of personal and political attacks made on me, primarily by leaders of the opposition party, the Economic Freedom Fighters, as the explicit basis for this application (see the affidavit of Mr Floyd Shivambu relied on by Mr Moyane). This Commission is not the appropriate forum for my political detractors to air their views of my performance in government. It is of no assistance to the Commission; and
 - 14.8. Instead of granting leave to Mr Moyane to cross-examine me, in a distraction from and derailment of the Commission’s important work, the Commission ought to summons him, and others, to provide evidence of corruption and state capture regarding which he is likely to have personal knowledge, and which does fall within the Commission’s Terms of Reference.
15. I have nothing to hide from this Commission. Whatever further assistance I can provide will be willingly given, in a continuation of my cooperation and support for its work to date. However, I will strenuously oppose this attempt to derail those efforts with political grandstanding and vitriolic personal insult.

16. Accordingly, I submit that the application should be dismissed in its entirety.

PURPOSES OF CROSS-EXAMINATION

17. I am advised that there are two main purposes of cross-examination: to ventilate competing factual versions of disputed, material and relevant events or to undermine the credibility of a witness.

18. To be of assistance to a decision-maker such as the Chairperson of the Commission. Both purposes require the party seeking to challenge evidence through confrontation to allege and establish facts of which they have personal knowledge or other admissible evidence that would either

18.1. contradict the purportedly disputed factual version of events; or

18.2. provide a factual basis to challenge a witness' credibility.

19. Mr Moyane has done neither in his application, and it should be dismissed.

20. Mr Moyane wants to contest my evidence before the Commission, but fails to set out a contradictory factual version of any of the events regarding which I provided evidence. Nor does he provide any substantiation in support of allegations, or admissible evidence establishing any credible basis to discredit me before the Commission.

21. Instead, his affidavits are filled with unsubstantiated statements. He attempts only to undermine my life-long service to all of the people of South Africa. Most of the allegations in his affidavit are unbecoming of a former senior public official.
22. As a result, his application will not serve either of the two purposes of cross-examination. There are no true factual disputes that he raises with my evidence, and he raises no credible facts on which to attack my credibility as a witness before the Commission.

MR MOYANE FAILS TO PROVIDE FACTS OR INFORMATION RELEVANT TO THE COMMISSION'S TERMS OF REFERENCE

Nugent Commission

23. **First**, 5 of the 7 areas for cross-examination identified by Mr Moyane in each of paragraphs 6 and 7 of his founding affidavit in this application already were the subject of the Nugent Commission and they fall wholly outside of this Commission's Terms of Reference.
24. They also overlap to some extent with the pending Disciplinary Inquiry before Adv A Bham SC, which also is now moot given Mr Moyane's removal as SARS Commissioner by the President.
25. The Nugent Commission, in particular, was the appropriate forum for Mr Moyane to have provided factual evidence to contradict the evidence collected against him.

26. That Commission's investigation, hearings and reports regarding Mr Moyane's appointment, performance and conduct as SARS Commissioner, his removal and other matters raised by him here (such as the lawful establishment and work of the High Risk Investigative Unit within SARS) are complete and have been provided to the President.
27. This Commission should not waste its limited time and resources to traverse the identical terrain covered in depth and detail by the the Nugent Commission.
28. Tellingly, Mr Moyane refused to participate in the Nugent Commission and spurned repeated invitations from Justice Nugent to provide evidence to it, as reflected in the Final Report of the Nugent Commission. The relevant excerpt from that Final Report attached, as Annexure "PG3", found:

"[45] The former Commissioner of SARS, Mr Tom Moyane, kept away from the Commission from inception, appearing on one occasion only, and then only to disparage and attempt to derail the inquiry, which has continued relentlessly since then. It is clear that Mr Moyane does not have, and never has had, any intention of accounting for what occurred during his tenure at SARS, or of confronting the evidence the Commission has received.

[46] Mr Moyane was pertinently notified each time public hearings were held but neither he nor any representative on his behalf was ever present, except on the occasion I have mentioned. Indeed, on that occasion he protested at evidence being heard in his absence, but then left the hearing before the next witness was called. He was pertinently asked whether he wished to respond to evidence that had been given in public, much of which was damning of his management of SARS, but he declined. Prior to the submission of the interim report he was afforded the opportunity to make submissions on why it should not be recommended that he be removed from

office, which he spurned. Instead he remained in the shadows, defiantly spewing invective at the Commission, through his own mouth and through that of his attorney. His conduct throughout the inquiry fortifies our view that he is and was not fit to be Commissioner of SARS. . . .”

29. Those were the appropriate, and missed, opportunities for Mr Moyane to provide his version of events to the relevant Commission regarding his tenure at SARS and any other issue he wished to raise.
30. The Interim Report prepared by the Nugent Commission (Annexure “**PG4**”) is instructive as to its findings regarding Mr Moyane’s tenure as Commissioner. In sum, it found that

“[25] The day Mr Moyane took office was a calamity for SARS. Almost immediately, and then continuously for the next eighteen months, SARS was thrown into turmoil, with tragic consequences for the lives of many people, tragic consequences for the reputation of SARS, and tragic consequences for the country at large. ”

31. The Final Report of the Nugent Commission(Annexure “**PG3**”) confirmed a widely-held view of Mr Moyane’s tenure at SARS. The following excerpts from that report are instructive and confirm that this application is no more than a political ploy to undo the findings of that Commission.

“[4] The conclusion we reach at the end of this inquiry is that there has been a massive failure of integrity and governance at SARS, and all else follows from that. What SARS was, and what it has become, is sufficient proof in itself that integrity and governance failed on a massive scale.

[5] I reported in my interim report that that was brought about by at least reckless mismanagement on the part of Mr Moyane. We have heard much evidence since then. What has become clear is that what occurred at SARS was inevitable the moment Mr Moyane set foot in SARS. He

arrived without integrity and then dismantled the elements of governance one by one. This was more than mere mismanagement. It was seizing control of SARS as if it was his to have.”

32. More important for purposes of this application, the Nugent Commission specifically found that the so-called “rogue unit” was lawfully established, and recommended that it ought to be re-established urgently. Specifically, the Interim Report found that

“[35] An account of what brought SARS to its present condition must start with the extraordinary consequences of reports in the Sunday Times that an unlawful ‘rogue unit’ existed within SARS. The unit concerned was a unit that had come into existence in about 2008 under the name ‘Special Operations’, to investigate the illicit trades in tobacco, liquor, counterfeit goods, and so on. It later changed its name to the ‘National Research Group’ and again metamorphosed into the ‘High Risk Intelligence Unit’, which comprised six members.

[36] I have not yet found why the creation and existence of the unit was said to have been unlawful, which is how it was consistently and uncritically depicted. I find no reason why the establishment and existence of the unit was indeed unlawful, and I am supported in that by an opinion given to Mr Moyane by leading senior counsel in late 2015. As far as I am aware that opinion has never been publicly disclosed. It might be that some of the activities of one or more of its six members was unlawful but that is something else. If that was indeed the case, it is nonetheless incredible that unlawful acts of one or more of six men led to millions of rands being spent, and the holding of repeated inquiries, with continuing damage to the reputation of SARS.”

33. Similarly, it is instructive to consider how emphatic the Nugent Commission was about the legality of the establishment of the so-called “rogue unit.” Not only that, it recommended the restoration of that capacity within SARS to combat tax evasion and the illicit trade. For example:

[41] We have become acutely aware as the inquiry has progressed that the Commission has been sought to be drawn into an onslaught upon those who managed SARS before Mr Moyane arrived, founded upon allegations once peddled by the Sunday Times to a beguiled public for a year and more, about a 'rogue' unit that was alleged to have existed within SARS, which is what Mr Lebelo's documents were all about. An inkling that that was in store appeared soon after the Commission was established and it became increasingly apparent as the inquiry progressed.

[42] The Sunday Times withdrew its allegations and apologised some two years later, but meanwhile, a vast amount of taxpayers' money was splurged by SARS to trawl through documents going as far back as eleven years, in search of evidence of wrongdoing; the allegations were fuelled by leakages of information; and lest the public should be minded to forget, the allegations have been opportunistically repeated, even in an official SARS media release I come to later in this report.

[43] When revenue collection is compromised the consequences are one or more of three. Government programmes must be curtailed, or taxes must be raised, or money must be borrowed, all of which prejudice the country. That is what this Commission is about, and it will not be diverted from inquiring into what is wrong at SARS, and how it can be righted, by attempts to use it for other ends. If there was wrongdoing on the part of those who managed SARS before the period with which we are concerned, then the proper course is for it to be reported to the authorities. The Sunday Times did great damage to SARS and the people of South Africa and the Commission will not now pick up where it left off.

34. Mr Moyane should not be permitted now to attack the findings of the Nugent Commission by stealth under the ruse of cross-examination of me.
35. This view of the Nugent Commission on the legality and necessity of capacity within SARS to deal with the illicit trade, and the re-establishment of another specialised unit, the SARS Large Business Centre ("LBC"), to enhance revenue collection, was emphasised by Minister of Finance, Mr

Tito Mboweni, in the 2019 Budget speech. The relevant excerpt, quoted below, is attached, marked Annexure “**PG5.**”

“A new Illicit Economy Unit launched in August 2018 will fight the trade in illicit cigarettes and tobacco. The Large Business Unit was a major source of tax collection, and its skill was renowned. This unit will be reintroduced and will be formally launched in early April 2019...”

36. This was elaborated on in the 2019 Budget Review, in explicit reliance on the findings of the Nugent Commission. The relevant excerpt from the Budget Review quoted below, is attached, marked Annexure “**PG6.**”

2019 Budget Review, CHAPTER 4: REVENUE TRENDS AND TAX PROPOSALS

“Ensuring transparency in tax administration

To raise the revenue needed to fund its social and economic policy commitments, South Africa requires its tax administration to be efficient, effective and impartial. Reports by the SARS Commission highlight maladministration and abuse of tender procedures that occurred at the entity between 2014 and 2017. The Commission’s main finding is that these failings stem from a ‘massive failure of governance and integrity’ after the appointment of the entity’s previous commissioner in 2014.

Implementing the SARS Commission recommendations

Government is considering a comprehensive response to the SARS Commission’s report. In the interim, it is implementing the Commission’s most pressing recommendations, including the following:

- The Presidency has started the recruitment process for a new SARS Commissioner, who will have to consider the Commission’s recommendations concerning management of the revenue service.*
- SARS is re-establishing a division that will focus on large businesses. This process, which includes the recruitment of specialists, is expected to be completed by April 2019.*
- In August 2018, SARS launched an Illicit Economy Unit to investigate syndicated tax evasion schemes in high-risk sectors, including the tobacco trade. This unit has also begun to investigate potential tax-related offences in relation to some of the activities highlighted by various commissions of inquiry.*

- *SARS has taken steps to strengthen the management of its information technology systems, rebuild its technical prowess, and harness opportunities arising from information-sharing agreements between national tax authorities.*
- *Through internal processes, SARS is implementing recommendations concerning inappropriate actions, fruitless and wasteful expenditure, unfair labour practices and maladministration.*
- *SARS is reviewing contracts that breached public procurement regulations and will act to recover funds spent.”*

(emphasis added)

37. In sum, the Nugent Commission considered and reported on the issues Mr Moyane contests in his application, and its recommendations are being implemented by government. Cross-examination of me regarding these topics will not assist this Commission, nor enable Mr Moyane to halt the proposals in the 2019 Budget Review, including the appointment of his successor.
38. **Second**, my evidence regarding Mr Moyane overall related to the actions I took when I was re-appointed as Minister of Finance by former President Zuma in December 2015. That is their only relevance to this Commission – the details and merits of Mr Moyane’s tenure as SARS Commissioner are not the subject of this Commission’s Terms of Reference; they are the completed work of Justice Nugent and his Commission.
39. **Third**, these issues (and the so-called themes of cross-examination claimed to cover them) also were the subject of litigation by Mr Moyane in two applications before the Constitutional Court (both of which were dismissed), and one unsuccessful application before the High Court.

- 39.1. The outcome of all of those matters against Mr Moyane raises the question as to whether this application is intended to obtain what those courts have already denied him. If that were the case, it would of course render this an improper application.
40. The remaining issues (set out in paragraphs 6.1, 6.6, 7.1, and 7.2 of his founding affidavit) identified by Mr Moyane as the anticipated subject of cross-examination are
- 40.1. irrelevant to the Commission's Terms of Reference; and
- 40.2. without a factual basis and wholly unsupported by any information provided by Mr Moyane to the Commission.
41. They also are defamatory, inflammatory and, at best, are irrelevant. They are not a proper basis to grant leave for cross-examination before this Commission.
42. He purports to identify five themes for cross-examination of me in paragraph 8 of his affidavit.
- 42.1. These only confirm that this application is to seek an airing of Mr Moyane's personal resentments against me or to float outlandish political plots, and not to assist the Commission in any useful or meaningful way.
- 42.2. I reject that the exploration of any of the themes identified in the application could be of use to the Commission in fulfilling its mandate.

- 42.3. Nor is such an exercise likely to be a prudent use of the Commission's resources and time.
- 42.4. In this regard, Mr Moyane's desire for lengthy cross-examination (paragraph 10) without time limitation confirms that he does not seek to progress the Commission's work with the provision of detailed, informed and substantiated evidence. Rather, he seeks an unconstrained microphone to air his personal antagonism and wild theories about me.
43. Mr Moyane's application also seeks to usurp the role and diligent work of the Commission's legal and investigative teams, who bear the primary responsibility to find and adduce evidence before the Commission. If Mr Moyane provided them with actual information, they could fulfil their functions. Instead, he seemingly seeks to replace and subvert their work to seek an airing of his views of the political landscape.

The NICS Contract

44. If Mr Moyane, for example, had provided a detailed account of how NICS came to be awarded a contract by SARS to collect debt, that could be of some assistance to the Commission to the extent that it may be relevant to clauses 1.4 or 1.9 of the Commission's Terms of Reference and to the extent that it did not waste resources by revisiting the findings of the Nugent Commission that Mr Moyane approved the contract.

45. This Commission is no doubt aware that the Nugent Commission investigated this issue thoroughly and concluded as follows:

The New Integrated Credit Solutions Contract

[22] I have already indicated that Mr Moyane approved the appointment of New Integrated Credit Solutions to the panel of service providers on 17 December 2015. Again on 15 February 2018 he approved its appointment for Phase 2 of the project. In each case he did so by signing the report of the National Bid Adjudication Committee. . .

[25] So far as Mr Moyane conveyed that he had no hand in the appointment of New Integrated Credit Solutions, that is not true. It is also not true that ‘the bid adjudication committee which is the NBAC ... make an announcement and the award of the tender to the preferring tender, tender presenter.’ It is apparent from the documents that, on each of the occasions that New Integrated Credit Solutions was appointed to the panel, and again appointed to Phase 2, the National Bid Adjudication Committee made a recommendation to Mr Moyane, who then approved it by appending his signature to the report. He cannot but have known that the NBAC’s decision was not the end of the process, and cannot but have known that New Integrated Credit Solutions was appointed, bearing in mind that he approved it.

[26] It is also not true that he does ‘not get involved’ in such appointments. His was the final approval for the award of the contract. Indeed, that assertion contradicts the assertion he made in the application to set aside the contract with LTC, the very foundation of which was that he was ‘involved’ in the award of the contract. In his replying affidavit he acknowledged expressly that he had been ‘involved’ in the award of the contract: ‘As a matter of fact, I was “involved with” the evaluation and adjudication of the bids. The National Bid Adjudication Committee’s process resulted in a recommendation made to me in my capacity as SARS’ accounting [officer], which recommendation I personally signed. I was also “involved with” the evaluation and adjudication, in the sense that I am responsible for ensuring that all procurement occurs in accordance with a lawful system, and in that the ultimate recommendations emanating from that system needed my approval’.

[27] The records available to the Commission reflect that Mr Monyeki was never a director of New Integrated Credit Solutions and I have no evidence of any other direct interest. The records suggest that a business relationship of some kind existed in 2015

between New Integrated Credit Solutions and Mahube Payment Solutions, of which Mr Monyeki was then a director (he resigned on 13 February 2017), in that a large payment was made by Integrated Credit Solutions to Mahube Payment Solutions.

(emphasis added)

46. These uncontested findings of the Nugent Commission may reveal matters for Parliament to investigate. They do not provide a basis to allow cross-examination of me in this Commission.
47. The relationship between Mr Moyane and Mr Patrick Monyeki has now been established by the Nugent Commission. I have no further personal knowledge to add to these findings.
48. I note that I mentioned that contract in the course my evidence to alert the Commission to it as a possible avenue for further investigation.
 - 48.1. I believe that it may be useful for the Commission to investigate it because there have been media reports in the past year recounting that the Financial Intelligence Centre had investigated and found that NICS had played a role in providing funds to senior SARS executive Mr Jonas Makwakwa, who worked closely with Mr Moyane. Mr Moyane's media statement explaining the resignation of Mr Makwakwa specifically refers to the self-same allegations regarding the improper awarding of the contract to NICS by SARS. A copy of that statement is attached, as "PG7".
 - 48.2. Mahube Payment Solutions (the Monyeki company, according to the SARS Commission) was part of the Makwakwa/NICS reports that surfaced.

- 48.3. The alleged role played by Mr Monyeki in the NICS contract, its alleged provision of funds to Mr Makwakwa, and the reported friendship and business association between Mr Monyeki and Mr Moyane were mentioned in those reports.
- 48.4. I did not claim to have personal knowledge of those events which Mr Moyane could contest in cross-examination.
- 48.5. Mr Moyane, however, has not explained those suspicious events to the Commission (nor to the Nugent Commission), let alone provided any information or facts to dispel the suspicions that remain about his role in the appointment of NICS by SARS. These issues may be for pursuit by the Commission's legal and investigative teams, given that they have been found to be suspicious by the Nugent Commission.
- 48.6. Instead, Mr Moyane hurls insult and innuendo at me and seeks the Commission's assistance to attack my integrity and track record under the guise of cross-examination on this topic. This should not be permitted by the Commission.
49. I note that this is the only issue regarding which the Commission gave Mr Moyane notice in terms of Rule 3.3 that he may be implicated in my evidence. As shown above, there is nothing further that I can add to what the Nugent Commission already found. My cross-examination on the topic will not add to the findings of the Nugent Commission, nor substitute for any work that this Commission chooses to do for itself on this score.

Criminal Complainant

50. Mr Moyane now concedes unequivocally that he was the complainant in the criminal case opened at Brooklyn SAPS with docket number 427/5/2015 (supplementary affidavit p 264 para 12.2). This docket resulted in the criminal charges announced against me by former National Director of Public Prosecutions, Shaun Abrahams, which were withdrawn weeks later.
51. So as to be of assistance to the Commission, I attach, marked Annexure “**PG8**”, the affidavit of Ms Minee Hendricks regarding the process followed by me in approving the pensionable benefits for Mr Ivan Pillay upon early retirement, which approval was the purported factual basis for the charges brought against me. This affidavit was provided to the Nugent Commission.
52. The Nugent Commission found that Mr Moyane began the process that led to criminal charges being brought against me in its Interim Report:

“[44] December 2014 was a busy month for Mr Moyane. Following on a decision to do so in October 2014, a consulting firm called KPMG was appointed by Mr Moyane to investigate the ‘rogue unit’ allegations, particularly so far as they might implicate Mr Pillay, Mr Richer and two others, at an ultimate cost to the taxpayer of about R24 million (the money has since been returned to SARS). Computers were seized and a mountain of correspondence and other documents were trawled through until a preliminary report was prepared in about June 2015 making damning allegations against Mr Pillay in particular, consequent upon which criminal proceedings were initiated against him and others by Mr Moyane. That was to be followed by criminal charges being brought against Mr Pillay, Mr Magashula and Mr

Gordhan, in circumstances still unclear to me, which were later withdrawn.”

(emphasis added)

53. Justice Nugent considered the question of Mr Moyane’s conduct relating to his appetite to investigate the Pillay pension approval and found that:

[26] *Thus within weeks of Mr Moyane’s arrival at SARS three things had happened. He had suspended EXCO for reasons not explicable on any rational grounds. He had asked for an opinion on the lawfulness of Mr Pillay’s pension arrangement. He had decided to employ KPMG to conduct investigations, which turned out to be concentrated on Mr Pillay and others. A month or so later, he refused even to read Mr Pillay’s response, but yet suspended him.*

[27] *There is no apparent reason why Mr Moyane would be asking for an opinion on the lawfulness of Mr Pillay’s pension arrangement, when no issue had arisen around it, from which I think it can be inferred that one of the first things he did was to call for Mr Pillay’s employment file. Why would he then ask for an opinion on the lawfulness of an arrangement long in the past when no issue had arisen around it? Which employer would spend what must have been R30 million or more to investigate an alleged transgression or transgressions on the part of four employees? An employer who genuinely wanted to know whether proper procedures had been followed in appointing staff seven years previously might just as well have asked the employment division. If the employer wanted to know who had bought equipment one might expect the relevant accounts department to be asked. If he or she had wanted to know what the staff had been up to one might expect the head of the division to have been asked to investigate and report. None of that called for KPMG to be the first port of call, at a cost of millions. Mr Lebelo suggested that Adv Brassey had advised on 11 November that a forensic investigation was called for, which is correct, but that was after SARS had already signed the KPMG agreement. And if an employer wanted to know what had happened in 2007, why would its investigators trawl through documents going back to 2003? And which employer acting bona fide would refuse to read the employee’s explanation for his alleged conduct before suspending him?”*

54. Therefore, as with most other topics raised by Mr Moyane in this application, the matter has been definitively addressed already by the Nugent Commission and permitting my cross-examination before this Commission would only repeat, and possibly undermine, that completed work.
55. Initially, it appeared that Mr Moyane denied that he was behind the charges against me (see e.g. founding affidavit at p 2 para 6.4).
56. Now, it appears that he only disputes what he infers is my position: that these charges were laid out of “malice” (founding affidavit p 10 para 30.4), and would like to cross-examine me before the Commission so as to show that, when he laid the charges, he acted as a reasonable person (supplementary affidavit p 263 para 9.1, p 265 para 13).
57. His motivation for laying charges against me is irrelevant to the Commission’s Terms of Reference and work.
58. The point of my evidence regarding these events was to explain my personal experience of the campaign against me and the pressure exerted on me, and other members of National Treasury, during my second term as Minister of Finance. Mr Moyane’s views on that and his justifications for his conduct cannot assist the Commission in evaluating my evidence . Cross-examination will not promote truth-seeking since the Commission need not determine these personal questions of motivation and impact.

59. As a result, Mr Moyane's efforts to explain his role in the bringing of criminal charges against a sitting Cabinet member that were later withdrawn and which are widely believed to have political relevance, may be a matter regarding which he should testify before the Commission. This is not a matter that cross-examining me will advance.

CONCLUSION

60. For all of the reasons set out above, and to be submitted at the hearing of this application, I therefore seek the dismissal of the application in its entirety.

61. I turn now to provide a paragraph-by-paragraph response to Mr Moyane's affidavits.

PARAGRAPH-BY-PARAGRAPH RESPONSE TO THE FOUNDING AFFIDAVIT BY MR MOYANE

62. Ad paragraphs 1 to 3

62.1. The allegations contained in these paragraphs are noted.

63. Ad paragraphs 4 and 5

63.1. I have now had sight of the Notice in terms of Rule 3.3 of the Commission's Rules provided by the Commission to Mr Moyane.

63.2. I dispute and deny that there was a "deteriorating relationship between the two of us" or any "attacks" by me that affected a

“relationship” with Mr Moyane. In law, Mr Moyane is accountable to the Executive Authority.

63.3. As explained in my evidence before the Commission, Mr Moyane’s defiance of and resistance to the required executive oversight by me of SARS, of Mr Moyane as its Commissioner, and his accountability to me, were contrary to the applicable law and were priorities during my second term as Minister of Finance.

63.4. Mr Moyane’s tenure as SARS Commissioner was found to be disastrous for the institution, as Justice Nugent has found:

[4] The conclusion we reach at the end of this inquiry is that there has been a massive failure of integrity and governance at SARS, and all else follows from that. What SARS was, and what it has become, is sufficient proof in itself that integrity and governance failed on a massive scale.

[5] I reported in my interim report that that was brought about by at least reckless mismanagement on the part of Mr Moyane. We have heard much evidence since then. What has become clear is that what occurred at SARS was inevitable the moment Mr Moyane set foot in SARS. He arrived without integrity and then dismantled the elements of governance one by one. This was more than mere mismanagement. It was seizing control of SARS as if it was his to have.

64. Ad paragraph 6

64.1. The allegations contained in this paragraph are disputed and denied to the extent that they contradict my evidence under oath before the Commission.

- 64.2. The allegation in paragraph 6.1 that I played a role *“to assist”* state capture is specifically denied. I admit that I opposed and still oppose any form of corruption and state capture.
- 64.3. The allegations contained in paragraphs 6.2 and 6.3 are noted and suffer from vagueness, and to the extent that they are consistent with my evidence before the Commission, I admit that I had concerns about the process followed for his appointment and, following my removal as Minister of Finance, I did express my view that it would be in the best interests of SARS for Mr Moyane to be deployed elsewhere. I note that his removal was recommended by Justice Nugent and it has now happened.
- 64.4. The allegations in paragraphs 6.4 and 6.5 are disputed and denied to the extent that they are inconsistent with my evidence regarding the operation of the High Risk Investigation Unit, since the unit's establishment and operation were lawful, as found by Justice Nugent.
- 64.5. The allegations in paragraph 6.6 are specifically denied since *“racism and disrespect”* were not the basis of my attitude towards Mr Moyane and contrary to my core values for which I sacrificed much during the liberation struggle and in more recent times.
- 64.6. The allegations contained in paragraph 6.7 are disputed and denied, specifically the allegations that I have in any way abused my power or driven a *“personal vendetta and campaign”* against Mr Moyane or that I have a *“dream”* to remove Mr Moyane as

Commissioner of SARS “*for the sake of revenge and misplaced hatred*”. When Mr Cyril Ramaphosa became President on 15 February 2018, he appointed Mr Nhlanhla Nene as Minister of Finance, while I was made Minister of Public Enterprises. I had no oversight over Mr Moyane in that role at that time.

65. Ad paragraph 7

65.1. The allegations contained in this paragraph are disputed and denied, since they do not reveal a valid basis for the Commission to grant permission to Mr Moyane to cross-examine me.

65.2. As explained above, these either fall outside of the Terms of Reference of the Commission, or would otherwise not assist it in the completion of its work.

65.3. The allegations in

65.3.1. paragraph 7.2 that I mislead Parliament;

65.3.2. paragraph 7.3 that I played any improper role in the so-called rogue unit;

65.3.3. paragraph 7.4 that I played an improper role in the disciplinary inquiry chaired by Adv Bham SC;

65.3.4. paragraph 7.5 that I played an improper role in the Nugent Commissioner held an improper meeting with Justice Nugent

65.3.5. paragraph 7.6 that I have a track record of mismanagement, lawlessness and flagrant breach of procurement rules

are all specifically disputed and denied. These allegations are purely malicious and without foundation.

65.4. I note that the allegations made in paragraph 7.7 are incomprehensible, and I dispute and deny them out of caution.

65.5. The topics listed in paragraphs 7.1 to 7.7 could be characterised as Mr Moyane's personal misperceptions or theories, unmoored from fact or any relevant admissible evidence to place before the Commission.

65.6. Several of them are already the findings of the Nugent Commission against Mr Moyane that confirm my evidence. And some of those findings also have been confirmed by the Constitutional Court and High Court in dismissing Mr Moyane's various applications against President Ramaphosa, Justice Nugent and myself.

66. Ad paragraph 8

66.1. The allegations contained in this paragraph are disputed and denied.

66.2. Specifically, the five cross-examination themes identified and set out in this paragraph confirm that this application is not one to

assist the Commission in the fulfilment of its Terms of Reference, but rather appear to be political grandstanding by Mr Moyane and/or his legal representatives.

66.3. I submit that the Commission should not allow its process to be abused, prolonged and delayed in this matter. Accordingly, the application should be dismissed in its entirety.

67. Ad paragraph 9

67.1. The allegations contained in this paragraph are noted, save to dispute that there are any valid grounds for the application for cross-examination.

68. Ad paragraphs 10 and 11

68.1. The allegations contained in these paragraphs are noted, save to state that the perceptions of Mr Moyane set out in these paragraphs will not in any way assist the Commission in the fulfilment of its Terms of Reference.

68.2. I also dispute that Mr Moyane's legal representatives should be afforded limitless or extensive time and opportunity for cross-examination.

69. Ad paragraphs 12 to 15

69.1. The allegations contained in these paragraphs are disputed and denied.

- 69.2. The specific allegation, by implication and innuendo, that my appointment as Minister of Finance by former President Zuma is in any way related to the so-called state capture project, is specifically denied and rejected.
- 69.3. To the extent that Mr Moyane appears to insinuate that he has personal knowledge of relevant events that should be placed before the Commission, he is invited to do so under oath and to subject himself to cross-examination where that factual version is disputed by others.
- 69.4. The absence of detail or a contrary credible factual version that could be tested against my evidence already provided under oath to the Commission, demonstrates that this application is baseless and no more than a political stunt.

70. Ad paragraphs 16 to 20

- 70.1. The allegations contained in these paragraphs are disputed and denied to the extent that Mr Moyane seeks to litigate his grievance regarding his removal by the President as the Commissioner of SARS, in the course of this Commission's proceedings.
- 70.2. The issues relating to my provision of the Substantiating Affidavit to the Disciplinary Inquiry against Mr Moyane, or the fact that a preliminary meeting was held between myself and Justice Nugent at his request before the public hearings of the Nugent Commission commenced, are matters already addressed by

Justice Nugent, and are wholly irrelevant to the Terms of Reference and important work of this Commission.

70.3. These issues also have been considered and rejected by the Constitutional Court twice and the High Court.

70.4. I provided my personal knowledge of events relevant to the disciplinary inquiry, nothing more.

70.5. All of the irrelevant emotive allegations contained in these paragraphs are specifically rejected and regrettable. As Justice Nugent found regarding Mr Moyane's attitude and the lack of judgment that it demonstrates:

[52] I and those appointed to assist me have no doubt that our earlier recommendation that the former Commissioner be removed from office was right. One cannot have a Commissioner of SARS who will not answer for his management, but instead hurls insults, to protect his salary to the detriment of the country and of SARS. . . .

71. Ad paragraphs 21 to 25

71.1. The allegations contained in these paragraphs are disputed and denied.

71.2. The specific allegations in paragraph 21.2 (that Mr Moyane lied to Parliament regarding his involvement in the approval of the NICS contract at SARS) is denied for the reasons set out above and in the Nugent Commission's Report cited there.

71.3. The allegations contained in these paragraphs also are disputed and denied to the extent that they seek to impute against me any

failure to comply with the procurement framework applicable to my role, either as SARS Commissioner or Minister of Finance.

71.4. Drawing the attention of the Commission to areas for possible further investigation by it is entirely in line with its mandate and its repeated calls to members of the public and of Government to assist the Commission.

71.5. I can hardly be cross-examined for providing information to the Commission, which it will be able to evaluate in fulfilling its investigative duties and obligations under its Terms of Reference.

71.6. If Mr Moyane truly possesses “*specific examples of such contracts and the relevant documents*” that support the allegation in paragraph 25 in particular regarding the so-called modernisation process at SARS that I “*secured lucrative multi-billion Rand IT contracts without following proper procurement procedures*”, he should provide that information to the Commission and to me, and I will both respond and continue to assist the Commission. There simply is no such evidence because there are no such instances.

71.7. As the Nugent Commission has found in its Final Report,

“Mr Moyane was intent on unearthing fault with the procurement of goods and services for the SARS modernisation process. Some R12.5 million and more was spent on doing so in Phase 1 and Project Lion. With little to show for the money Mr Moyane had in mind spending a further R50 million on phase II of Project Lion, which was prevented only by National Treasury’s intervention. Meanwhile, developing the core systems was on hold.”

...

“The report [into SARS modernisation process] is inconclusive and merely recommends that ‘a further investigation be considered by SARS’.”

72. Ad paragraphs 26 to 28

72.1. The allegations contained in these paragraphs are disputed and denied.

72.2. It is wholly unclear what Mr Moyane seeks to cross-examine me under this theme. Given its heading, it appears that this will be a vitriolic, personalised and probably defamatory exercise.

72.3. I submit that the important work of the Commission ought not be derailed into spectacles of blatant political grandstanding.

72.4. This would undermine the integrity and credibility of the Commission with the public, and waste its limited resources.

72.5. I specifically deny that I have been racist, hurtful or impaired Mr Moyane’s dignity, or that I have a vendetta against him. I am committed to non-racialism both as a principle and in practice.

73. Ad paragraphs 29 and 30

73.1. The allegations contained in these paragraphs are disputed and denied to the extent that they insinuate that I contravened the law with respect to the establishment and operations of the High Risk Investigation Unit in SARS.

73.2. Moreover, allegations of the so-called “rogue unit” are not within the Commission’s Terms of Reference or mandate, and are instead the subject of a Commission of Inquiry conducted and concluded by Justice Nugent.

73.3. In any event, the Final Report of the Nugent Commission(excerpted and attached, as Annexure “PG2”) found that

“[9] Why such a unit was considered to be unlawful is not clear to me. While the National Strategic Intelligence Act prohibits the covert gathering of certain intelligence, that applies to intelligence concerning threats to the safety of the state, which hardly applies to intelligence relevant to collecting tax. That members of the unit might at times have acted unlawfully, that SARS employment policies might have been breached, that members might unlawfully have acquired and used equipment, all of which came later to be alleged, I see no reason why SARS was and is not entitled to establish and operate a unit to gather intelligence on the illicit trades, even covertly, within limits.

[10] Indeed, that was the view expressed to SARS in late 2015, which seems not to have been made public by SARS. An opinion was furnished to the former Commissioner of SARS on about 1 September 2015, in response to the findings of a panel chaired by Adv Sikhakhane SC, by Adv Trengove SC and Adv Nxumalo, who advised that SARS:

- may keep people under surveillance in the public domain but not in private.*
- may follow a person or vehicle in the public domain but not in private.*
- probably may place an electronic tracking device on property to trace its movements. It may however not place an electronic tracking device on a vehicle to follow the movements of its driver because it impinges on his or her privacy.*
- may watch a person or property such as business premises, residences, containers, etcetera but only in the public domain.*
- may take photographs or videos of people or property in the public domain but not in private.*

- *may not listen to or record private conversations unless a SARS official is a party to the conversation.*
- *may not electronically record third party conversations by using listening devices.*
- *may record conversations between SARS officials and third parties.*
- *may accept information from informers on the basis that their identities will not be revealed.*
- *may accept information from a person even if it knows that the information was unlawfully obtained. It may however not accept stolen property.*

[11] It was said to be unlawful by a panel chaired by Adv Sikhakhane SC, but I find nothing in its report to persuade me why that was so. Adv Sikhakhane was asked if he could elaborate but his reply took it no further than what was said in the report. The SARS Advisory Board chaired by Judge Kroon, reported to the Minister, and issued a media statement, saying the unit was unlawful, but in evidence he told the Commission that was not a conclusion reached independently by the Board, but had been adopted from the Sikhakhane panel, and he had come to realise it was wrong. Indeed, he supported the re-establishment of capacity to investigate the illicit trades, which we recommend.”

73.4. I note that it is difficult to respond to these rantings of an aggrieved man and imagine that the Commission would prefer proof, facts and evidence before it. One can only conclude from the racist, overwrought and emotional tone of the affidavits filed that Mr Moyane has no such proof, fact or evidence to provide to the Commission. The attachments to his affidavits yield no gains in this regard. While it may be personally cathartic to insult me and other individuals such as President Ramaphosa and Justice

Nugent, that is not the purpose of cross-examination, and, furthermore, undermines the Commission's work.

74. Ad paragraphs 31 to 37

74.1. The allegations contained in these paragraphs are noted.

74.2. I abide by the outcome of the application for condonation by Mr Moyane.

74.3. I note that he may supplement this application.

74.4. I turn next to respond to his supplementary affidavit.

PARAGRAPH-BY-PARAGRAPH RESPONSE TO THE SUPPLEMENTARY AFFIDAVIT BY MR MOYANE

75. Ad paragraph 1

75.1. The allegations contained in this paragraph are noted.

76. Ad paragraph 2

76.1. The allegations contained in this paragraph are disputed to the extent that they are inconsistent with what is set out in this affidavit. Specifically, I deny that the allegations made against me are within Mr Moyane's personal knowledge or are true and correct.

77. Ad paragraphs 3 to 6

77.1. The allegations contained in these paragraphs are noted, save to dispute that I implicated Mr Moyane *"in wrongdoing in ... documentary evidence supplied to the Commission prior to [my] oral testimony."*

77.2. The Notice in terms of Rule 3.3 (which appears at page 270) states the following:

"3 The allegations set out in the evidence of Mr Gordhan implicate or may implicate you, in, inter alia, the following respects:

3.1 In your capacity as the Commissioner of the South African Revenue Services ("SARS"), you allegedly:

3.1.1 Acted improperly and/or unlawfully by participating in an award of a tender to New Integrated Credit Solutions ("NICS"), a company owned by Mr Patrick

Monyeki, your friend, to conduct debt collection for SARS; and

3.1.2 Provided a statement to Parliament, stating that you played no role in approving the appointment of NICS to provide debt collection services for SARS, whereas you knew that such statement was false.

4 These allegations fall within the investigation of the Commission as envisaged in its Terms of Reference, and in particular, paragraphs 1.4 and 1.9 thereof.

5 The evidence of Mr Gordhan which implicates or may implicate you in the above allegations is set out in paragraph 127.2, with specific reference to Annexure 28 to his statement to the Commission.

6 The specific paragraphs in Annexure 28, are set out in:

6.1 Paginated page 590, paragraphs 196 to 200; and

6.1 Paginated page 593, paragraphs 205 to 206.”

77.3. As already set out above, the fact of Mr Moyane’s approval of the appointment of NICS at SARS has already been established and criticised by the Nugent Commission final report. No purpose would therefore be served through cross-examination of me regarding this issue before this Commission. There is no basis on which Mr Moyane can attack before this Commission the findings of Justice Nugent in that Commission. The repetition of proceedings as between the two commissions of inquiry is inappropriate and undesirable. It is also not a proper purpose for cross-examination.

78. Ad paragraph 7

78.1. The allegations contained in this paragraph are noted, save to dispute that there is any useful purpose or basis established for this application to be granted.

79. Ad paragraph 8

79.1. The allegations contained in this paragraph are noted.

80. Ad paragraph 9

80.1. The allegations contained in this paragraph are disputed.

80.2. The specific allegations contained in subparagraph 9.1 are disputed since whether Mr Moyane acted “*out of malice and personal vindictiveness and the like*” when he filed charges against me on 15 May 2015 does not advance the work of this Commission and does not fall within its Terms of Reference. Mr Moyane’s fervent belief that his conduct was reasonable is likely to be irrelevant to this Commission.

80.3. Similarly, the allegations in paragraph 9.2 will not assist the Commission in its important work. Insult and the ventilation of his personal vendetta and ill-feeling towards me does not advance the search for the truth falling within the Terms of Reference of this Commission.

80.4. The allegations in paragraph 9.3 are specifically disputed since there are no facts put up by Mr Moyane for these outrageous

allegations against me. Nor does he endeavour to place any factual evidence at all before the Commission for these claims. A bald allegation lacking any factual foundation does not establish a basis for cross-examination.

81. Ad paragraph 10

81.1. The allegations contained in this paragraph are noted.

81.2. What the section that commences here in Mr Moyane's supplementary affidavit confirms is that this application is no more than a stalking horse for the political campaign against me by those opposed to unravelling state capture. They in fact defend corrupt individuals to the extent of attempting to disrupt the work of this Commission. This Commission and its proceedings should not be hijacked to provide a platform for political campaigning.

82. Ad paragraph 11

82.1. The allegations contained in this paragraph are noted. The explicit and heavy reliance by Mr Moyane on the affidavit filed by Mr Floyd Shivambu confirm that this application is an attempt to hijack the Commission with political attacks that do not advance

its important work and distract the law enforcement agencies from their focus on those likely to be found guilty of corruption.

83. Ad paragraph 12

83.1. The allegations contained in this paragraph are disputed and denied.

83.2. The specific allegations contained in paragraph 12.1 are denied since this is no more than the introduction of a racist political conspiracy theory against me by the EFF and its surrogates, like Mr Moyane.

83.3. Similarly, the allegations contained in paragraph 12.2 are disputed and denied since, as shown above, the Nugent Commission has already considered and found that the High Risk Investigation Unit was lawfully established within SARS.

83.4. Mr Moyane's feelings of hurt for which he blames me do not establish a proper basis to entitle him to cross-examine me before the Commission.

84. Ad paragraph 13

84.1. The allegations contained in this paragraph are disputed and denied, for the reasons set out above.

84.2. I note that in this paragraph Mr Moyane alleges "*I will elaborate further on this aspect when I testify.*" It is revealing that Mr Moyane is of the view that his evidence regarding his time as

the SARS Commissioner and his laying of criminal charges against me is relevant to this Commission's Terms of Reference and its work. For the reasons set out above, I believe that the Nugent Commission was the appropriate forum at which he could have testified and ventilated any evidence relevant to these issues. As explained above, he chose not to do so and cannot now come to this Commission seeking to remedy that voluntary choice.

85. Ad paragraph 14

85.1. The allegations contained in this paragraph are disputed and denied, for all of the reasons set out above.

85.2. Mr Moyane's startling and defamatory claim that I have been engaged in criminal activities should motivate him to place evidence before the Commission to support that allegation. Of course, there is no such evidence because I have not engaged in any such activity.

86. Ad paragraph 15

86.1. The allegations contained in this paragraph are noted, save to dispute that Mr Shivambu's answering affidavit is relevant and admissible in these proceedings.

87. Ad paragraph 16

87.1. The allegations contained in this paragraph are disputed and denied, for all of the reasons set out above.

87.2. In sum, the Sikhakhane panel report is wholly discredited and has been disavowed by Justice Kroon and the so-called "*rogue unit*" narrative has been thoroughly discredited once scrutinised by Justice Nugent, as set out in the final Nugent Commission report.

87.3. With regard to the allegations contained in paragraph 16.2 and specifically the Inspector-General of Intelligence ("IGI") report, I note that Mr Moyane does not explain to the Commission how he came to be in possession of a Classified document, nor how Mr Shivambu came to possess it. The legality, lawfulness and propriety of this conduct is troubling and warrants further investigation as a possible criminal transgression.

88. Ad paragraph 17

88.1. The allegations contained in this paragraph are noted, save to repeat that there is no basis for this Commission to redo the work of the SARS Commission.

89. Ad paragraph 18

89.1. The allegations contained in this paragraph are disputed and denied.

89.2. Not only is this IGI report unlawfully within Mr Moyane's possession, but it is irrelevant to the Commission's proceedings and any conclusions that he, or it, reaches, are irrelevant to the work of this Commission.

89.3. Despite the full vindication of myself and other officials of SARS in relation to the High Risk Investigation Unit, Mr Moyane's, and indeed Mr Shivambu's, persistence in trying to resuscitate and revive the so-called "*rogue unit*" narrative is a desperate political ploy. It is not a proper basis for an application to cross-examine in a judicial commission of inquiry.

90. Ad paragraph 19

90.1. The allegations contained in this paragraph are disputed and denied, for the reasons set out above.

- 90.2. The status, validity and legitimacy of this report is not a matter falling within the Commission's Terms of Reference and is irrelevant to its work.
- 90.3. The proliferation of fake intelligence reports and their use for political ends during the time in which I was the Minister of Finance is by now well-known to the Commission.
- 90.4. A specialist panel, chaired by Dr Sydney Mufamadi, has recently provided a report to the President regarding the abuse of the intelligence services for political ends. The recommendations of that report are under consideration by President Ramaphosa.
- 90.5. Regardless of whatever interest this may have for Mr Moyane, it ought to be of no interest to the Commission since it falls outside of its Terms of Reference.

91. Ad paragraph 20

- 91.1. The allegations contained in this paragraph are disputed and denied.
- 91.2. Again, this commission of inquiry should not repeat the work of the Nugent Commission. Nor should it be abused in order to resuscitate a thoroughly discredited narrative. There was no "*rogue unit*" established in SARS. As recommended by Justice Nugent and announced by the Minister of Finance in the 2019 Budget Speech, SARS is now called upon to re-establish an

investigative capability to focus on high-risk investigations in order to combat the illicit trade and tax evasion.

92. Ad paragraph 21

92.1. The allegations contained in this paragraph are disputed for the reasons set out above.

93. Ad paragraph 22

93.1. The allegations contained in this paragraph are disputed, for the reasons set out above.

93.2. I note that the final sentence of this paragraph appears incomplete and am therefore unable to respond to whatever it may have been intended to convey.

CONCLUSION

94. The application for leave to cross-examine me should be dismissed in its entirety.

95. In the event that it is granted, the Commission is advised that I will seek to exercise my reciprocal right to cross-examine Mr Moyane.

96. The Commission is further advised of my request that my legal representatives be entitled to present oral argument and submissions at the hearing of this application.

DEPONENT

The deponent has acknowledged to me that he knows and understands the contents of this affidavit which was signed and sworn to before me in my office at _____ on this the _____ day of FEBRUARU 2019 in accordance with Regulation No R1258 dated 21 July 1972 as amended by Government Notice R1648 dated 19 August 1977, as further amended by Government Notice R1428 dated 11 July 1980, and by Government Notice R774 of 23 April 1982.

BEFORE ME:

COMMISSIONER OF OATHS

FULL NAME:

DESIGNATION:

AREA OF JURISDICTION