COMMISSION OF INQUIRY INTO ALLEGATIONS OF IMPROPRIETY REGARDING THE PUBLIC INVESTMENT CORPORATION
APPOINTED IN TERMS OF PROCLAMATION 30 OF 2018
PUBLISHED IN THE GOVERNMENT GAZETTE 41979 OF 17 OCTOBER 2018
HELD AT PRETORIA

CHRIS PHOLWANE: SECOND STATEMENT

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1. **Personal Information**

I, the undersigned, Christopher Pholwane, hereby state under oath that:

1.1. I am an adult male and hereby declare and state that I am the Executive Head: Human Resources at the Public Investment Cooperation ("PIC") appointed on 1 June 2014.

1.2. On 22 January 2019, I appeared before the Commission to, among others, provide information and/or evidence in relation to certain matters that the Commission requested me to address, which included HR processes and governance structures.

1.3. Following my appearance, I was contacted by an evidence leader of the Commission on 15 May 2019 to address certain matters that emanated from, among others, the evidence led by other current and former employees of the PIC after the date of my appearance at the Commission. Specifically, the evidence leader requested me to deal with the following:

1.3.1. The details of the settlement agreement between the PIC and Ms Vuyokazi Menye ("Ms Menye"), delegation of authority and any allegations that were made before the Commission by any witness in this regard;

1.3.2. The recent organisational climate surveys conducted with employees (and in particular the 2012 Deloitte climate survey and the 2017 Mandate Molefi climate survey), focusing on whether the results and recommendations thereof were accepted and/or implemented by the PIC;

1.3.3. Allegations relating to abuse of position, power and/or internal process to victimize and/or intimidate staff on the part of senior managers, executive and/or any person with delegated authority; and

1.3.4. Allegations relating to remuneration practices and the awarding of incentives.
1.4. At the outset, I wish to point out that it is not my intention to deal with each and every allegation made by other employees of the PIC in relation to the above matters in this statement, but to confine myself to certain pertinent issues raised by the evidence leader. Should the Commission require that I address specific issues not dealt with in this statement I will prepare another statement in relation thereto.

1.5. I further wish to state upfront that I confine myself to allegations that were made against or directly impact on me in my capacity as the Executive Head: HR.

1.6. The facts contained herein are, save where otherwise stated, within my personal knowledge. The facts are to the best of my knowledge and belief both true and correct.

1.7. My statement contains a lot of confidential information of the PIC, which as per advice I am obliged to make available to the Commission. I request that all the annexures to my statement be treated as confidential.

2. The Settlement Agreement

2.1. My understanding is that this issue arises from the statement of Ms Menye dated 6 March 2019 as well as the evidence which she gave at the Commission on 6 March 2019.

2.2. I wish to point out that I dealt with this issue in my statement of 22 January 2019 and that this issue was ventilated before the Commission at great length. I refer to paragraph 5.1.3.2 of my statement as well as extracts from the transcripts of the Commission’s proceedings relating to my evidence, attached hereto marked Annexure “CP1”.

2.3. I wish to deal specifically with the following allegations that have been made by Ms Menye:

2.3.1. That the suspension letter that she received “did not have ANY particulars of alleged misconduct that could have led to my suspension”;

1 Refer to paragraphs 149 of Ms Menye’s statement
2.3.2. That she was coerced by myself and/or Dr Daniel Matjila into signing the suspension letter without being given an opportunity to make a submission as to why she should not be suspended;

2.3.3. That I signed the settlement agreement without having been authorised to do so; and

2.3.4. That she was coerced into signing the settlement agreement.

2.4. I deal with each of these allegations separately below.

2.5. Alleged lack of particulars in the suspension letter:

2.5.1. I attach hereto a copy of the suspension letter as Annexure “CP2”.

2.5.2. It is to be observed that the second and third paragraphs of the letter go into great detail about the reasons for the suspension. For the record, the paragraphs read:

“You will recall that the latter investigation was initiated at the instance of the PIC Board having regard to recent leakages and dissemination of the PIC’s internal confidential documents. The PIC appointed external forensic investigators who, during the course of their investigation interviewed you. Having regard to the seriousness and sensitivity of the investigation and the position you hold i.e. Executive Head: Information Technology. It is the PIC’s view that it is neither in your interest nor that of the investigation for you to be at work until the completion of the investigation. This is because your presence at the workplace may compromise the integrity of the investigation. In this regard concerns have been raised by the investigators that your cooperation with them has been less than desirable.

Preliminary information established thus far indicate the need to protect the integrity of the investigation and as such to place you on

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2 Refer to paragraphs 159 of Ms Menye’s statement.
3 Refer to paragraph 169 of Ms Menye’s statement.
4 Refer to paragraphs 159 – 162 of Ms Menye’s statement.
a precautionary suspension to ensure that the process is thorough and is devoid of any form of influence by any employee that is in a position that may or may not hinder effective gather [sic] and collation of information in respect of security and access to PIC systems."

2.5.3. By their very nature, precautionary suspensions would not disclose full details of the alleged misconduct and/or wrongdoing on the part of the employee as they are done during or in anticipation of an investigation that would reveal the full extent of the conduct in question.

2.5.4. Accordingly it is incorrect that the suspension letter "did not have ANY particulars of alleged misconduct that could have led to my suspension".

2.5.5. I further wish to bring to the Commission's attention that the decision to suspend Ms Menye was not recommended by myself and/or Dr Matjila but by the joint sitting of two Board sub-committees, namely, the Information Communication Technology Governance Committee ("ICTGC") and the Audit and Risk Committee ("ARC") on 17 November 2017, having been duly delegated by the Board to look at the matter. I attach hereto a copy of the minutes and resolution of the two committees marked Annexure "CP3".

2.6. Alleged coercion into the signing of the suspension letter:

2.6.1. Ms Menye alleges that she was coerced by myself and/or Dr Matjila into signing the suspension letter without being given the opportunity to make a submission as to why she should not be suspended.

2.6.2. I refer to the fifth paragraph of the suspension letter (i.e. Annexure CP2) which records the discussions that were held with her prior to her being suspended and specifically that she was given an opportunity to make oral representations in relation to the PIC's intention to put her on precautionary suspension.

2.7. Alleged lack of authority to sign the settlement agreement:
2.7.1. As I have already submitted during my previous appearance on 22 January 2019\(^5\), during the negotiations held at the chambers of the Chairperson of the disciplinary hearing in respect of Ms Menye in Sandton on 11 April 2018, I from time-to-time obtained specific instructions and authorizations from Dr Matjila to respond to settlement proposals as well as to sign the settlement agreement on terms and conditions that he agreed to.

2.7.2. In this regard, the settlement discussions were initiated by the Chairperson of the disciplinary hearing in the normal course of exploring various options for the expeditious resolution of the dispute that formed the subject matter of the disciplinary hearing. I emphasize that this is common practice in proceedings of this nature.

2.7.3. The terms and conditions of the agreement were subsequently approved and/or ratified in writing by Dr Matjila. In this regard, I refer to the submission that was made to the Board in an employee relations report on 18 April 2018, containing a summary of such terms and conditions, attached hereto marked Annexure “CP4”.

2.8. Alleged coercion into signing the settlement agreement:

2.8.1. My understanding is that the fact that the allegation relating to coercion to sign the settlement agreement is brought before the Commission for consideration, suggests that the PIC had a role, directly or indirectly, to play in such coercion and that, if that was not the case, it wouldn't have been placed before the Commission in the first place\(^6\).

2.8.2. As previously mentioned, I was the official representing the PIC as the employer at the disciplinary hearing on 11 April 2018. The PIC’s legal representatives and I did not have any direct interaction with Ms Menye outside of the discussions that took place in the presence of the legal

\(^5\) Refer to page 77 - 78 of the extracts of the transcript for 22 March 2019.
\(^6\) Refer to paragraph 162 of Ms Menye's statement.
representatives of the two parties initiated by the Chairperson of disciplinary hearing.

2.8.3. In this regard, I refer to the copy of the settlement agreement that was attached to my initial statement of 22 January 2019 as Annexure "Y", which for ease of reference I attach hereto marked Annexure "CP5". It is to be noted that the settlement agreement was signed on the same date of the disciplinary hearing.

2.8.4. It is to be further noted that, contrary to the submission of Ms Menye to the effect that she was coerced, she states the following in clause 1.3 of the agreement:

"This agreement has been entered into between the parties freely and voluntarily without either Party being under duress or under any undue influence"

2.8.5. I emphasize that the settlement agreement is the product of negotiations between the parties represented by and having taken legal advice from their respective legal representatives.

2.9. I further wish to clarify the statement I made in my previous submission to the effect that some conduct indicated behaviour that is incongruent to PIC values and code of conduct, which was flagged by the Commission as warranting further consideration and/or interrogation.7

2.10. In this regard, I attach hereto a letter that Ms Menye addressed to Mimecast (Pty) Ltd dated 16 November 2017 requesting, among other things, them to create an account with super administrator privileges on a permanent basis that would enable the Head of IT Security, among other things, to access email communications at the PIC, marked Annexure "CP6".

2.11. This letter was written without any form of authorisation from or knowledge by the CEO, any committee of the Board, the Board itself or any member thereof. This

7 Refer to paragraph 5.1.3.2(c) of my statement of 22 January 2019 and page 90 of the extracts from the transcript of 22 January 2019, respectively.
fact was confirmed by Ms Menye during her appearance before the Commission. In this regard, I attach hereto for the Commission’s ease of reference, extracts from the transcripts of the proceedings of the Commission relating to Ms Menye’s evidence marked Annexure “CP7”. I only became aware of the existence of this letter when it was revealed by Mr Simphiwe Mayisela at his disciplinary hearing.

2.12. I wish to point out that questions that related to the terms and conditions of the settlement agreement and in particular that the settlement amount was higher than the norm, have been adequately ventilated in my previous testimony before the Commission on 22 January 2019. In this regard, I refer to pages 88 to 90 of Annexure CP1.

2.13. I further wish to point out that it has come to my attention that the Board of Directors has resolved to consider rescinding the settlement agreement by mutual agreement and therefore reinstating Ms Menye. To this end, in my capacity as the Executive Head: HR I have been requested by the Acting CEO to facilitate the negotiations for the mutual rescission of the settlement agreement entered into on 11 April 2018 and for her reinstatement, by making proposals to her for consideration pursuant to the Board resolution. The engagement is underway.

3. The Recent Organisational Climate Surveys

3.1. As far as I am aware, there were two organizational climate surveys that were undertaken recently at the PIC, namely, the 2012 Deloitte climate survey (“Deloitte Survey”) and the 2017 Mandate Molefi climate survey (“Molefi Survey”).

3.2. The Deloitte Survey was undertaken and completed prior to me joining the PIC and accordingly I have no personal knowledge of what transpired in relation thereto. However, I learned from the testimony of Mr Vuyo Jack (“Mr Jack”) at the Commission that the Deloitte Survey was followed by two related governance reviews, namely, a review undertaken by KPMG and a review undertaken by Mr Jack. I further established that the Board of Directors of the PIC passed a resolution to discontinue these reviews on 5 December 2014, some 6 months after I joined.

8 Refer to page 45 of the transcripts of 6 March 2019.
the PIC as General Manager: Human Resources. I attach hereto a copy of the Board resolution marked *Annexure “CP8”*. 

3.3. The Deloitte Climate Survey report dated is October 2012 and attached hereto marked *Annexure (“CP8A”)*. 

3.4. My understanding is that all employees were invited to participate, and from the report the was 87% participation rate achieved of the total staff complement of 313. Out of the 313, 271 responded to the survey.

3.5. The survey was conducted using both on-line platform hosted by Deloitte on their website and paper based questionnaires (provided with the self-sealing envelope).

3.6. The questionnaire included two sections, namely, the demographics component and the 13 key dimensions were measured each containing open ended and closed questions.

3.7. The following dimensions were measured on a 5 point scale:

3.7.1. Operational effectiveness;

3.7.2. Engagement & Commitment;

3.7.3. Co-workers & Teamwork;

3.7.4. My Manager;

3.7.5. Communication & Consultation;

3.7.6. Growth & Career Opportunities;

3.7.7. Recruitment & Selection;

3.7.8. Strategic Alignment;

3.7.9. Diversity & Transformation;

3.7.10. Reward & Recognition;
3.7.11. Performance Management;

3.7.12. Policies and Procedures; and

3.7.13. Working Conditions.

3.8. The employees rated each dimension indicated as a statement and/or question by selecting the appropriate rating, on a 5-point rating scale, thus confirming their experience on the dimension.

3.9. The Deloitte scoring system reflects the following:

<table>
<thead>
<tr>
<th>Score</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;3.7</td>
<td>Very Position/Excellent</td>
</tr>
<tr>
<td>3.38 -3.7</td>
<td>Positive / Favourable</td>
</tr>
<tr>
<td>3.15 -3.37</td>
<td>Areas of Concern</td>
</tr>
<tr>
<td>&lt;3.15</td>
<td>Problematic</td>
</tr>
</tbody>
</table>

Table 1 scoring system

3.9.1. The overall results for the Deloitte Survey at the time indicated that the overall score achieved was 3.22 (mean score) and total score of the engagement levels indicated 64.4 % which is positive. This however means that the PIC needs to retain higher levels of engagement in order for it to remain an employer of choice and various interventions need to be undertaken on areas that were rated lowly and the retention of the areas that were rated highly.

3.9.2. In terms of the survey the following were areas of concern:

- The performance management attained a mean score of 3.07 and 61.5 % of respondents found it positive;
- Growth and Career Opportunities: attained a mean score 2.83 and 56.5 % of respondents found it positive;
• Communication & Consultation: attained a mean score of 2.80 and 55.9% of respondents indicate positive with room for improvement;

• Recruitment & Selection: attained a mean score of 2.70 and 54% of respondents were dissatisfied with the recruitment & selection process; and

• Reward & Recognition: attained the lowest mean score of 2.66 53% of respondents indication their displeasure with the reward and recognition dimension.

3.9.3. In terms of the survey the following were areas where PIC attained positive outcomes:

• Engagement & commitment - attained a mean score of 3.74 and 74.8% of the respondents rated this dimension favorable;

• My manager - attained a mean score of 3.59 and 71.8% of the respondents rated this dimension favorable

• Operational effectiveness - attained a mean score of 3.55 and 71. % of the respondents rated this dimension favorable;

• Diversity & transformation - attained a mean score of 3.46 and 69.1% of respondents rated this dimension favorable;

• Working conditions - attained a mean score of 3.44 and 68.9% of respondents rated this dimension favorable;

• Strategic alignment - attained a mean score of 3.42 and 68.3% of the respondents rated this dimension favorable;

• Co-workers & Teamwork - attained a mean score of 3.36 and 67.2% of respondents rated this dimension favorable; and

• Policies & Procedures - attained a means score of 3.23 and 64% of respondents rated this dimension favorable.
3.10. On 1 April 2015, I was appointed as the Executive Head: Human Resources and I began to be a member of the Executive Committee ("EXCO") of the PIC. At the time of my appointment, there was an organizational restructuring that was being implemented pursuant to the new operating model that was developed before I became a member of EXCO.

3.11. As part of the implementation of the new operating model, I recommended the establishment of broad-banding to job grades so that, among others, employees are able to progress within their job bands. The recommendations were implemented between the period March 2015 and October 2015.

3.12. The Climate survey was one of the initiatives identified to test the efficacy of the new operating model but more importantly to assess the climate and impact that the restructuring had on employees.

3.13. The Molefi Survey:

3.13.1. In terms of the applicable human resource best practices, assessment of employees’ engagement through climate surveys are undertaken regularly after every three years or so.

3.13.2. The surveys are undertaken to, among others, improve the PIC’s value proposition as an employer of choice.

3.13.3. The Molefi Survey was also specifically undertaken to assess the engagement levels post the implementation of the new operating model.

3.13.4. The PIC outsourced the climate survey to an independent service provider, namely, Mandate Molefi Human Resources Consultants ("Mandate Molefi").

3.13.5. The survey focused on the following dimensions:

3.13.5.1. Communication and Consultation;

3.13.5.2. Employment Equity;
3.13.5.3. Empowerment and Innovation;

3.13.5.4. Growth and Career Development;

3.13.5.5. Job Satisfaction;

3.13.5.6. Leadership (Executive Management);

3.13.5.7. Management (Direct Reports);

3.13.5.8. Performance Management;

3.13.5.9. Policies and Procedures;

3.13.5.10. Reputation and Goodwill;

3.13.5.11. Rewards and Recognition;

3.13.5.12. Values;

3.13.5.13. Vision and Direction; and


3.13.6. The survey was conducted between December 2016 and January 2017 and the report thereon was submitted during February 2017. I attach hereto a copy of the report marked Annexure “CP9”.

3.13.7. It is to be observed that 51.3% of the staff complement participated in the survey. My understanding is that an acceptable level of participation in terms of international standard is 49% to 77%.9

3.13.8. Prior to the commencement of the survey there were concerns on the part of employees regarding confidentiality and anonymity. In order to address these concerns and to ensure maximum participation of the employees in the survey, some of the measures that were put in place by the HR Department include the following:

9 Source: Report titled "GP Strategy Corporation 2017"
3.13.8.1. Provided options for employees to participate via online surveys hosted externally; and

3.13.8.2. Provided untraceable hard copy questionnaires to employees to complete and submit whereby employees had the option of maintaining their anonymity by omitting their biographical details.

3.13.9. The above measures were discussed with and generally acceptable to the employees prior to the commencement of the survey.

3.13.10. My observation is that the reason why maximum participation could not be achieved had to do with, among others, the level of mistrust and fear that were prevalent at the time within the PIC. I do not think that the employees at the time felt free to express themselves without fear of retribution and/or victimization, whether real or perceived.

3.13.11. I also observed that the PIC was not accustomed to engagement surveys as a phenomenon to measure employee value proposition. For instance, the previous survey culminated into processes that took a form of forensic investigations and/or reviews which are cathartic in nature. This defeats the very essence of climate surveys which are catalytic and transformational to a desired culture of an organization.

3.13.12. Findings

3.13.13. Below is a table comparing the results under the Deloitte Survey and the Molefi Survey, indicating levels of engagement in selected dimensions that were lowly rated and those that were highly rated.

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Reward and Recognition</td>
<td>Lowest scored</td>
<td>Lowest scored</td>
<td>Recurring</td>
</tr>
<tr>
<td>Leadership</td>
<td>Highest score</td>
<td>Lower score</td>
<td>Regression</td>
</tr>
<tr>
<td>------------</td>
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</tr>
<tr>
<td>Performance management</td>
<td>Lowest score</td>
<td>Lower score</td>
<td>Recurring</td>
</tr>
<tr>
<td>Communication and consultation</td>
<td>Lower score</td>
<td>Lowest score</td>
<td>Regression</td>
</tr>
<tr>
<td>Strategic alignment</td>
<td>Higher rated</td>
<td>Highest rated</td>
<td>Increased Progression</td>
</tr>
<tr>
<td>/Vision and Direction</td>
<td>Higher rated</td>
<td>Highest rated</td>
<td>Increased Progression</td>
</tr>
<tr>
<td>Working conditions</td>
<td>Highest rated</td>
<td>Higher rated</td>
<td>Progression</td>
</tr>
<tr>
<td>Management /my manager</td>
<td>Moderate rated</td>
<td>Moderate rated</td>
<td>No change in status</td>
</tr>
<tr>
<td>Growth and Career development</td>
<td>Moderate rated</td>
<td>Moderate rated</td>
<td>No change in status</td>
</tr>
<tr>
<td>Policies and procedures</td>
<td>Mean attained 3.22 and 52% of respondents are satisfied with the climate in PIC. 19.6% are neutral and 28.4% are unsatisfied with the climate in PIC</td>
<td>Mean attained 3.37 and 56.7% of employees satisfied with the climate in PIC. 18.1% ARE neutral and 25.3% are unsatisfied with the climate in PIC</td>
<td>Overall results indicate a slight improvement in the PIC climate.</td>
</tr>
</tbody>
</table>
3.13.14. My observations from the above comparisons are the following:

3.13.14.1. There are at least four dimensions that are recurring in both climate surveys and are at a regressive state and which require urgent interventions;

3.13.14.2. There are more than ten dimensions in both surveys that indicate a positive disposition to the PIC’s climate, reflecting higher levels of engagement by respondents;

3.13.14.3. The majority of the respondents are satisfied with the climate in the PIC, albeit that less than half of staff are either indifferent and/or are dissatisfied with the climate within the PIC. It is not uncommon in an organization to have a stratified population of employees, namely, ENGAGED EMPLOYEES (being those who work with passion and feel a profound connection to their company, they drive innovation and move the organization forward), NOT ENGAGED EMPLOYEES (those who are essentially checked out. They are sleep walking through their work day, putting time but not energy or passion into their work) and ACTIVELY DISENGAGED EMPLOYEES (those that are not just happy at work. They are busy acting out their unhappiness. Everyday these workers undermine what their engaged co-workers accomplish).

3.13.15. What would be of concern is if both the Not Engaged and Actively Disengaged Employees populations continue to grow at every survey conducted. In that event the situation would be dire and require a drastic overhaul of organizational culture and practices that are reflective of a progressive and modern organization for a multi-general workforce of knowledge workers, if the organization is to remain the employer of choice attracting the best available talent in the market.
3.13.16. Interventions currently rolled out

3.13.16.1. During March 2017 to June 2017, the PIC took a decision to establish focus groups for the purposes of engaging the employees in identifying and coming up with proposals and/or solutions for the challenges that have been identified in the surveys. In order to preserve confidentiality and anonymity the process of establishing and implementing the focus groups was outsourced to an independent consultant to further bolster maximum participation.

3.13.16.2. This process took place between February 2017 and April 2017. I attach hereto a copy of the report marked Annexure “CP10”.

3.13.16.3. The interventions that the PIC made in order to address the challenges identified in the surveys, taking into account the outcome of the focus group process, included the ones set out in paragraphs 3.13.16.4 to 3.13.17 below.

3.13.16.4. Training of employees on performance management including on the interpretation and application of the balance scorecard (BSC).

3.13.16.4.1. Training for employees below EXCO took place between September 2018 and December 2018.

3.13.16.4.2. Training for EXCO members was scheduled for December 2018. However, it was postponed to a future date still to be determined.

3.13.16.4.3. The training was conducted by an external service provider.

3.13.16.5. Coaching of Executives
3.13.16.5.1. The objective of the coaching interventions was to, among others, assist executives and heads of department to model desired leadership behaviours and PIC values.

3.13.16.5.2. This exercise took a form of engaging executive coaches from various business schools in the country to conduct coaching sessions with executives and heads of department.

3.13.16.5.3. The coaching sessions were conducted from around June 2018 and are ongoing. To date, over 70% of the executive heads and heads of department are enrolled in these sessions.

3.13.16.5.4. These coaching sessions will be extended to the rest of the management team within the PIC in the current financial year.

3.13.16.6. CEO’s engagement sessions with employees

3.13.16.6.1. The objective of the sessions was to ensure the accessibility and visibility of the CEO to employees and facilitate open and frankly engagement about issues that may affect employees.

3.13.16.6.2. These sessions initially took a form of, among others, breakfast sessions between the CEO and representative groups from various departments. They have now evolved into deep dive sessions with individual departments.

3.13.16.6.3. These sessions started during November 2018 and they are ongoing.
3.13.17. The following interventions are going to be rolled out in the current financial year 2019/2020:

3.13.17.1. Reinstatement of 360 degree management and leadership evaluations;

3.13.17.2. Implementation of talent management and succession planning; and

3.13.17.3. PIC values and the PIC brand ambassadors programme.

3.13.18. The next step will be to undertake an assessment of whether the above interventions are effective and/or achieve the desired outcomes. This is a process that will be done in due course.

4. Allegations relating to victimisation

4.1. My understanding is that I have been requested to make a statement regarding victimization of employees at the PIC because a number of employees who appeared before the Commission allege that there is a culture of victimization and/or intimidation against employees who challenge and/or expose wrongdoing, allegedly orchestrated mainly by the then CEO, Dr Matjila, the CFO, Ms Matshepo More, and myself as the Executive Head: HR.

4.2. I confine my statement to allegations and/or matters that directly/indirectly relate to or have an impact on me and am not answering any allegations that broadly relate to the PIC as an organization and/or the CEO and the CFO.

4.3. As pointed out above, it is not my intention to deal with each and every allegation made against me by various employees of the PIC. Should the Commission require that I address specific issues relating to victimisation not dealt with in this statement, I would be amenable to prepare a supplementary statement dealing with such specific issues.

4.4. In dealing with these allegations, I wish to make general remarks relating thereto and thereafter deal with specific allegations as set out in various statements of the various employees that appeared before the Commission.
4.5. General remarks:

4.5.1. Based on the statements of the various employees, the alleged victimization and/or intimidation took a form of, among others, subjecting such employees to disciplinary hearings. In this regard, there are broad allegations and/or insinuations to the effect that the HR Department was utilised by the office of the CEO to cultivate and perpetuate the culture of victimization and intimidation.

4.5.2. I wish to point out that by virtue of the fact that the Human Resource Department is the functionary within an organization that is tasked with the primary responsibility of leading disciplinary charges for and/or behalf of the organization for the administration of discipline within an organization, it is not inconceivable that fingers will always be pointed towards the head of the HR Department. I do not think that I am an exception to this reality.

4.5.3. I wish to advise and assure the Commission that the HR Department under my leadership has always acted independently and objectively in assessing allegations of misconduct on the part of employees brought to it by other units within the PIC including the office of the CEO. In this regard the fact that almost all the employees who made these allegations and who went through a disciplinary hearing were found guilty of the charges they were facing including of serious misconduct, by an independent chairperson and/or body such as the CCMA, is testimony to this fact. I further wish to point out that in all these cases the chairpersons were advocates the majority of whom are Senior Counsels. Furthermore, different counsels presided as chairpersons in almost all of the disciplinary hearings.

4.5.4. It therefore would follow that in order for these allegations of victimization to hold, all these Senior Counsels and/or the CCMA commissioners must also have been part of the machinery that was used by the CEO, the CFO and/or myself to victimize and/or intimidate employees. In this regard, I leave this to the Commission to make a call.
4.5.5. I also wish to highlight to the Commission that none of the employees who are complaining about victimization and/or intimidation alleges that the HR and/or the PIC in general is not acting on similar acts of misconduct by other employees. It is my view that in order for them to sustain their argument that disciplinary proceedings are used as a mechanism to victimize and/or silence them, they have to show that there are other employees within the PIC who have committed similar acts and in respect of whom no action is taken. As a matter of fact, the PIC has consistently been taking and continues to administer and instill discipline indiscriminately without fear, favour and prejudice.

4.5.6. Further as already pointed out above the PIC commissioned a climate survey during 2017 (i.e. the Nolefi Survey), the report of which is Annexure CP9. In terms of this survey, among other things, "the overall results indicate that 56.7% (mean of 3.37) of respondents agree that they are satisfied with the climate of PIC (56.7% favourable, 18.1% neutral and 25.3 unfavourable responses)."

4.5.7. There are also allegations and/or insinuations to the effect that the HR Department failed to act against the CEO by, for example, not initiating disciplinary proceedings against him when allegations of corruption and/or other similar misconduct were made against him. I wish to highlight that, in terms of the PIC’s delegation of authority, the HR Department does not have powers to initiate disciplinary proceedings against the CEO. This power lies with governance structures above the office of the CEO such as the Board and/or its committees. In this regard, I attach hereto an extract from the PIC’s Delegation of Authority approved during May 2015 (being the latest version) marked Annexure “CP11”.

4.5.8. I further wish to point out that the main reasons behind the PIC governance structures taking a decision to prioritize efforts to get to the bottom of the leakage of PIC confidential information was the numerous incidents of IT security breaches that compromised the commercial interests and governance matters of the PIC, which were beginning to
develop into a norm. In this regard, I request the Commission to consider asking the relevant officials within the IT Department of the PIC to provide details relating to the nature and extent of such security breaches. No organization can countenance such culture and/or environment of lawlessness irrespective of the challenges that it may be facing at the relevant time or the motives behind such leakages.

4.5.9. Finally, I would like to highlight that none of the employees that have purported to be whistleblowers has in actual fact done so under the provisions of the Protected Disclosure Act ("PDA"). Even in the disciplinary hearings, no one had formally raised this as a defence despite some employees having had alluded to it and been formally requested to utilise this defence, hence the hearings proceeded to finality. If this was indeed the case (i.e that employees sought to point out impropriety and were cooperating with authorities in this regard), the PIC would not have subjected anyone of them to an undue disciplinary process.

4.6. Specific Cases

4.6.1. Allegations of victimization and/or intimidation made against or that relate to me were made by the following employees:

4.6.1.1. Simphiwe Mayisela;

4.6.1.2. Vuyokazi Menye;

4.6.1.3. Bongani Mathebula;

4.6.1.4. Paul Magula; and

4.6.1.5. Nomzamo Petje.

4.6.2. Below I deal with each of these allegations separately.

4.7. Simphiwe Mayisela
4.7.1. Based on my reading of the statement of Mr Simphiwe Mayisela ("Mr Mayisela") dated 27 February 2019 as well as the transcripts of his testimony before the Commission on 5 March 2019, my understanding is that Mr Mayisela makes the following allegations relating to employees' victimization and/or intimidation on my part:

4.7.1.1. That he was put on precautionary suspension without having been given an opportunity to read the contents of the suspension letter and that the suspension letter did not contain any clear allegations;¹⁰

4.7.1.2. Insinuated that I lied under oath to the effect that the internal audit investigation cleared the CEO of the allegations made by "James Nogu" and that the Board took a decision to absolve the CEO of all allegations;¹¹ and

4.7.1.3. That he was unfairly discriminated against in relation to his disciplinary action as compared to the treatment given to his immediate boss with whom he was facing the same allegations;¹²

4.7.2. Alleged lack of particulars in the precautionary suspension letter.

4.7.2.1. I attach hereto a copy of Mr Mayisela's suspension letter as Annexure "CP12".

4.7.2.2. It is to be observed that the second and third paragraphs of the letter go into great detail about the reasons for the suspension. For the record, the paragraphs read:

"You will recall that the latter investigation was initiated at the instance of the PIC Board having regard to recent leakages and dissemination of the PIC's internal confidential documents. The PIC

¹⁰ Top of page 22, paragraphs 3 and 4 and page 91 of the transcript.
¹¹ Bottom of page 23 to top of page 24 of his statement and 94 of the transcript.
¹² Top of page 25 under paragraphs 1 and 2 of his statement and pages 95 – 96 of the transcripts.
appointed external forensic investigators who, during the course of their investigation interviewed you. Having regard to the seriousness and sensitivity of the investigation and the position you hold i.e. Senior Manager: Information Security, Risk and IT Governance. It is the PIC’s view that it is neither in your interest nor that of the investigation for you to be at work until the completion of the investigation. This is because your presence at the workplace may compromise the integrity of the investigation. In this regard concerns have been raised by the investigators that your cooperation with them has been less than desirable.

Preliminary information established thus far indicate the need to protect the integrity of the investigation and as such to place you on a precautionary suspension to ensure that the process is thorough and is devoid of any form of influence by any employee that is in a position that may or may not hinder effective gather [sic] and collation of information in respect of security and access to PIC systems.

4.7.2.3. By their very nature, precautionary suspensions would not disclose full details of the alleged misconduct and/or wrongdoing on the part of the employee as there are done during or in anticipation of an investigation that would reveal the full extent of the conduct in question.

4.7.2.4. Accordingly, it is incorrect that the suspension letter “did not have ANY particulars of alleged misconduct that could have led to my suspension”.

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4.7.2.5. As it was the case with Ms Menye (i.e. Mr Mayisela's boss), the decision to suspend Mr Mayisela was not taken by myself and/or Dr Matjila but recommended by the joint sitting of two Board sub-committees, namely, the Information Communication Technology Governance Committee ("ICTGC") and the Audit and Risk Committee ("ARC") on 17 November 2017, having been duly delegated by the Board to look into the matter. I refer to Annexure "CP3".

4.7.2.6. In relation to the allegation that he was not given an opportunity to read the contents of the suspension letter, it is clear from the letter that he acknowledged to having been given an opportunity to make oral representations to the proposed suspension. When pressed by Advocate Isaac Monnahhela on whether he willingly signed the suspension letter Mr Mayisela's answer was, "Yes I did", thereby confirming that he was not coerced into signing the letter. For ease of reference I attach hereto an extract of the transcripts of Mr Mayisela's testimony marked at Annexure "CP13".

4.7.3. Alleged lying under oath.

4.7.3.1. Mr Mayisela states that the "minutes of the Board were doctored or sanitized to remove any information that at a later stage have [sic] implicated the CEO"\textsuperscript{13}. Within this context, then Mr Mayisela states that I "mentioned under oath that the internal audit investigation cleared the CEO of the allegations made by "James Nogu" and that the Board took a decision to absolve the CEO from all allegations"\textsuperscript{14}.

4.7.3.2. In order to further contextualize this, this allegation was first made during the disciplinary hearing of Mr Mayisela through his attorneys. After the PIC provided the chairperson of the

\textsuperscript{13} Refer to page 13 of Mr Mayisela's statement under paragraphs 5 & 6.

\textsuperscript{14} Refer to pages 23 and 24 of Mr Mayisela's statement under paragraph 11.
hearing with a copy of the minutes of the Board that clearly indicated that the Board accepted the CEO's representations and not to take any action against the CEO, Mr Mayisela with the advice of his lawyers then alleged that the minutes were doctored.

4.7.3.3. Strictly on the basis of the official minutes of the Board, the allegation that I lied under oath is clearly incorrect. I am not in a position to express any view on whether such minutes were indeed doctored as alleged by Mr Mayisela or on the discussions that took place at the said Board meeting.

4.7.4. Allegation of unfair discrimination.

4.7.4.1. It is not correct that in relation to settlement discussions, Mr Mayisela was treated differently from Ms Menye. As pointed out in paragraph 2.7.2 above, the chairperson of the disciplinary hearing Advocate Nazeer Cassim SC initiated settlement negotiations in respect of both parties.

4.7.4.2. Initially, Mr Mayisela was willing to engage on those however, he later changed his mind and advised that he is prepared to go through the disciplinary process. In this regard I attached hereto a copy of a letter from ENS who were the attorneys representing the PIC in these proceedings, capturing, among others, what transpired at the hearing of Mr Mayisela, marked Annexure “CP14”. It is to be noted that ENS confirms that it is Mr Mayisela who decided not to further engage in further negotiations and that Ms Menye asked for time to consider the settlement discussions. To the extent that the Commission deems this necessary I may request the relevant official from ENS to confirm this by way of an affidavit.

4.7.5. I further wish to highlight that, based on Mr Mayisela’s further misconduct committed after he was dismissed, the PIC sought legal advice from
ENS on the PIC's recourse in relation to such conduct. I attach hereto a copy of the ENS legal opinion marked Annexure "CP15". It is to be noted that Mr Mayisela’s conduct of unlawfully attempting to access the confidential information of the PIC and of unlawfully attempting to procure a password in order to gain access to the confidential information of the PIC constituted a criminal offence under the Electronic Transactions and Communications Act and therefore liable for criminal prosecution.

4.7.6. It is when the HR department facilitates the administration of discipline in relation to misconduct of a serious and criminal nature like the one committed by Mr Mayisela, that I am accused of victimizing and/or intimidating staff.

4.8. Ms Vuyokazi Menye

4.8.1. I have covered Ms Menye’s allegations relating to victimization under paragraphs 2.3 to 2.11 above.

4.8.2. I also wish to mention that, in light of the fact that the separation agreement with Ms Menye was signed by myself, the PIC at the request of the Board of Directors obtained a legal opinion from Cliffe Dekker Hofmeyr ("CDH") on, among others, the legal status of the separation agreement. I attach hereto a copy of CDH’s legal opinion marked Annexure "CP16". It is to be observed that CDH’s legal opinion concludes that, among others, Ms Menye would have been found guilty of misconduct had the disciplinary proceedings against her gone ahead.

4.9. Bongani Mathebula

4.9.1. Based on my reading of the statement of Ms Bongani Mathebula ("Ms Mathebula") dated 24 April 2019 as well as the transcripts of her testimony before the Commission on 24 April 2019, my understanding is that Ms Mathebula makes the following allegations relating to employees’ victimization and/or intimidation on my part:
4.9.1.1. That there was a conflict of interest on my part in "running with all the disciplinary processes linked with the leakage of information" when I was implicated in wrongdoing from such leakages\textsuperscript{15};

4.9.1.2. That I failed to enquire whether the CEO had any substantive reasons when the CEO advised her at the meeting of 2 March 2018 that he has lost trust in her and that I was not neutral, fair and objective\textsuperscript{16};

4.9.1.3. That disciplinary action coupled with suspensions was used as a tool by the PIC against persons suspected of being whistleblowers and "was undertaken on scant evidence, without proper procedure, to either demoralize employees into taking a financial settlement to leave or else to ruin them and their prospective employment opportunities."\textsuperscript{17};

4.9.1.4. That she was victimized because she testified as a witness in support of Mr Magula during his disciplinary hearing\textsuperscript{18};

4.9.1.5. That, when I testified before the Commission, I lied and/or omitted crucial information including in the following respects:

4.9.1.5.1. I failed to indicate that the PIC only issued her with the laptop from which confidential information of the PIC (including minutes of the Board) was copied using a removable device on 24 October 2017, when such copying occurred during September 2017; and

\textsuperscript{15} Refer to page 37 para 41, page 41 para , page 46 para 160 of her statement and page 35 and 42
\textsuperscript{16} Pages 30 to 31 at paragraphs 97 to 100 of her statement and page 115 to 116 of the transcript.
\textsuperscript{17} Page 39 at paragraph 133 of her statement and page 115 to 116 and 129 to 130 of the transcript.
\textsuperscript{18} Page 33 at paragraph 108 of her statement and page 119 of the transcript.
4.9.1.5.2. I did not disclose that the forensic report (i.e. the SNG report) did not find that she did not commit any misconduct and that the report was incomplete.¹⁰

4.9.2. Allegation of Conflict of Interest:

4.9.2.1. I deny that I was implicated in any wrongdoing in the so-called “James Nogu”, “Leihlo Leihlo” and/or “PIC eye” emails. If at all, there was only a single reference to alleged questionable relationship between myself and the CFO. It is not within the scope this statement to deal with any allegations made in the emails, suffice to state that as somebody that I directly report to I would interact with her regularly in the ordinary course of my employment.

4.9.2.2. I ask the Commission to test whether there were any allegations of wrongdoing made against me in the emails if it deems necessary.

4.9.2.3. I wish to further point out that even if such allegations of wrongdoing were made against me there is no basis, in my view, for concluding that there is a conflict of interest when I am the person that is facilitating disciplinary processes relating to leakage of information before an independent person. She, in my view, conflates a process for the investigation of the allegations with disciplinary processes relating to the leakage of confidential information.

4.9.2.4. In any event if she held that belief, it is surprising that she has not raised an objection for my participation in her disciplinary proceedings and requested that I be recused therefrom.

¹⁰ Refer to pages 43 – 44 at Para 150 – 152 of her statement and page 137 of the Transcript.
4.9.3. Allegation of failure to establish substantive reasons

4.9.3.1. It is not correct that, during the meeting where I advised her and the CEO of options that are available in cases where there is an expressed loss of trust between a leader, manager and their direct reports, I did not enquire into the reasons for the CEO’s predisposition on the trust relationship between himself and the company secretary.

4.9.3.2. The CEO mentioned the reasons for losing trust in her and these included that she failed to report to him, he did not know what she was busy with and she was unresponsive to his communication. As mentioned in her statement, the meeting was a follow-up to various previous meetings that were held between them and where these issues were previously raised with her.

4.9.3.3. I pause to mention that I was only asked to provide advice and in no way was this an initiation of disciplinary proceedings.

4.9.4. Allegation of utilizing disciplinary processes to victimize employee

4.9.4.1. I refer to paragraphs 4.5.2 to 4.5.5 above, which are equally applicable to this allegation.

4.9.5. Allegation of victimization for assisting another employee.

4.9.5.1. This allegation is without basis. There are no adverse consequences for employees who elect to testify on behalf of fellow employees at such employee’s disciplinary enquiries. As a matter of policy the HR department facilitates and promotes the process of employees becoming witnesses to other employees in disciplinary hearings.

4.9.5.2. Ms. Mathebula was not the only witness to Mr. Magula during his disciplinary hearing. There was another witness and he
has not been victimized for being a witness for a fellow employee. There are other numerous cases (such as her case) where employees have appeared as witnesses and no disciplinary action was instituted against them afterward. Thus, the assertion that employees are victimized for same is simply without substance and is devoid of the truth.

4.9.6. Allegation that I lied and/or omitted material information:

4.9.6.1. It is not correct that I omitted to inform the Commission that the SNG Report did not find that she committed any act of misconduct and that I omitted to mention that she was given the laptop only on 24 October 2017. For instance, I attached to my statement of 22 January 2019 a copy of the SNG Report as Annexure O, which therefore was an integral part thereof.20 For ease of reference, I attach hereto a copy of the SNG Report marked Annexure “CP17”.

4.9.6.2. In any event, all these matters that she alleges that I lied about and/or omitted were presented and ventilated at her disciplinary hearing by her, with the assistance of her legal representatives, and an adverse finding was made by the independent chairperson of the disciplinary hearing, notwithstanding. I attach hereto a copy of the ruling in respect of her disciplinary hearing marked as Annexure “CP18”.

4.10. Paul Magula

4.10.1. Based on my reading of the statement of Mr Paul Magula ("Mr Magula") dated 11 March 2019 as well as the transcripts of his testimony before the Commission on 11 March 2019, my understanding is that Mr Magula makes the following allegations relating to employees’ victimization and/or intimidation on my part:

20 Refer to paragraph 5.1.1.1(e) on page 13 of my statement dated 22 January 2019.
4.10.1.1. That I failed to declare a conflict of interest in proceedings relating to the leaked emails when I was implicated in wrongdoing from such leakages\textsuperscript{21}; and

4.10.1.2. That I was the coordinator of the investigation into the leaked emails which was instituted "as a tool to victimize and dismiss targeted staff members" and that I was at the "forefront of intimidating and harassing staff on behalf of the CEO and the CFO\textsuperscript{22}.

4.10.2. Before I respond to these specific allegations I wish to highlight to the Commission that Mr Magula has on numerous occasions and at different fora proven to be an unreliable and dishonest witness.

4.10.3. I attach hereto extracts from the report of Advocate Terry Motau SC titled "The Great Bank Heist" ("Terry’s Report") marked Annexure "CP19". Terry’s Report is dated 30 September 2018. In terms of Terry’s Report, among other things:

"Magula, who previously held the post of Executive Head: Risk Management at the PIC, eventually confessed, after putting up strenuous denials, that he had received unlawful payments, made to two companies which acted as his nominees, in a total amount in excess of R7.6 million in order to buy his silence."

"Each of Magula, Nesane and Makhavhu admitted that there was no lawful cause whatsoever for these payments. Magula and Nesane admitted that the payments were made to them to buy their silence."

"Magula, after first giving a great deal of false evidence in this regard, eventually found himself constrained to retract

\textsuperscript{21} Refer to page 9 at paragraph 35 of his statement and page 27 of the transcript.

\textsuperscript{22} Refer to page 9 at paragraph 38, 40 and 41 of his statement and page 28 of the transcript.
his prior evidence and to seek immunity against self-incrimination. He then testified that:

Hekima Capital (Pty) Ltd and Investar Connect Holdings (Pty) Ltd were front companies which were his vehicles for receiving payments from Vele and Vele Petroport amounting to in excess of R7.6 million; and

in return for those payments, Matodzi was "buying silence from those that could speak the truth".

Magula's evidence in regard to the payments he received can be best summed up in the following exchange:

"MR HUTTON: Let me put it as simply as this. Vele could not have acquired all the assets that it purported to acquire, and in each case use VBS' money to do so, had it not been for the fact that a number of people at VBS, holding positions of authority, had facilitated that in different ways. Somebody had to create the accounting conditions through which such payments could be made. Somebody had to authorise payments. Somebody had to allow the flow of funds. And those were different people, at different times, in relation to different transactions. But there was a team of people who did the actual work in getting the money out of the bank and into the pockets of those who were selling assets to Vele. It doesn't appear to me that you were part of that operational methodology of Vele acquiring its assets. What you did was, you were silent, because you knew that what was going on was untoward. Your experience as a lender told you that none of this was legitimate.

MR MAGULA: I can say that. I can agree.

MR HUTTON: You can say that honestly.

MR MAGULA: Yes."
4.10.4. Terry’s Report came after Mr Magula had already been found guilty of misconduct by Advocate Pranisha Maharaj-Pillay at his disciplinary enquiry during March and April 2018. In delivering the judgment, the Chairperson summed up Mr Magula’s evidence as follows:

"The Employee is not involved operationally with the management of VBS Bank. He is reliant on the information given to him at board level to assess the performance of the company. He denied that his position on the Credit Committee afforded him further insight into possible liquidity issues of VBS Bank."

4.10.5. Thus, as per his confession in terms of Terry’s Report, Mr Magula lied during the disciplinary hearing that he was not aware of the wrongdoing that was happening at VBS Mutual Bank whilst he was a direct participant and beneficiary of such wrongdoing. The judgment of Mr Magula’s disciplinary hearing was attached to my initial statement of 22 January 2019 as Annexure “AB”. For ease of reference I attach hereto a copy of the judgment marked Annexure “CP20”.

4.10.6. Then, after having admitted all this wrongdoing during July 2018, he made a huge U-turn and claimed during his testimony before this Commission on 11 March 2019, not to have done anything wrong at VBS Mutual Bank. I attach hereto extracts of the transcripts of Mr Magula’s testimony on 11 March 2019 marked Annexure “CP21”. On page 90 of the extracts, he says the following:

"I have never participated in any legal [sic] and fraudulent activities during my tenure as a VBS board member. Some of the things like fictitious deposits, fraudulent withdrawals, bribes etc that are said to have happened at VBS I got to know about when I went before the Prudential authorities forensic investigators. I’m willing and ready to subject myself and cooperate with the law enforcement agencies.

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I humbly request that I be permitted beyond the foregoing to reserve my rights."

4.10.7. For instance it is a lie that he got to know about the fictitious deposits, fraudulent withdrawals and bribes when he appeared before the Prudential authorities. In terms of Prudential Authority’s Report, he admitted to having received payments from VBS Mutual Bank through a medium of front companies as "hush money". I attach hereto a copy of the Prudential Authority’s Report marked as Annexure “CP22”.

4.10.8. Allegation of conflict of interest:

4.10.8.1. It is factually incorrect that I was one of the executives to whom delegation of authority was granted by the Board to appoint independent service providers to undertake forensic investigations in relation to the breach of IT security at the PIC.

4.10.8.2. Generally, I get involved in a forensic investigation when a forensic outcome recommends corrective and/or disciplinary action to be instituted against an employee and/or where investigations are conducted against an employee following a precautionary suspension. This is so because disciplinary proceedings are primarily facilitated by the department that I head and therefore such forensic investigation formed part and parcel of the disciplinary process.

4.10.9. Allegation of victimization and/or harassment

4.10.9.1. The fact that allegations of use of disciplinary proceedings as a tool to victimize employees and that I was instrumental in allowing the CEO and CFO to use me as a means to an end are made by Mr Magula, is a clear and unequivocal indication that these allegations are without substance and are baseless. On the contrary, they are used by persons who
have no defence to charges of misconduct in an attempt to
divert attention from and cloud such misconducts.

4.11. Nomzamo Petje

4.11.1. Based on my reading of the statement of Ms Nomzamo Petje ("Ms
Petje") dated 19 March 2019 as well as the transcripts of her testimony
before the Commission on 19 March 2019, my understanding is that Ms
Petje makes the following allegations relating to employees' victimization
and/or intimidation on my part:

4.11.1.1. That the restructuring process had the effect of demoting her
and rendering her position redundant without consulting with her;

4.11.1.2. That I, as the Executive Head: HR, was supposed to advise
the PIC that what they were doing was unlawful; and

4.11.1.3. That she was the only employee that was demoted and
transferred into a different department during the
restructuring and that other employees in the same position
adjusted to a higher grade.

4.11.2. Allegation of demotion and rendering her position redundant

4.11.2.1. Restructuring processes by their very nature may have
positive and negative effects on employees.

4.11.2.2. It is common cause that a restructuring process (including
the conditions that employers need to comply with) is
governed by the Labour Relations Act. This was the case in
relation to the PIC restructuring process. Consultations on
the restructuring process were conducted with all employees
who were impacted negatively and positively alike. The
consideration to absorb employees whose roles were
redundant was also done through a consultative process and
employees were duly informed about their new roles and
new departments. I attach hereto copies of slides that were presented to employees as part the consultation process marked Annexure “CP23”.

4.11.2.3. There were employees who were absorbed into lower graded positions and their total cost to company was not affected in any way, albeit variable pay would have an impact on their incentive awards in line with the grades of their respective roles. I attach hereto a spreadsheet reflecting the number of employees who were negatively affected and impacted by the restructuring as well as the number of employees who were positively affected and impacted by the restructuring marked Annexure “CP24”.

4.11.2.4. The restructuring process entailed various heads of department identifying the vision, strategy and offering for their respective functions as well as the grading of positions. I attach hereto a copy of the report of the Human Resources and Remuneration Committee that reflects the process that was followed as well as a spreadsheet reflecting, among other, the roles and responsibilities of various heads of departments marked Annexures “CP25” and “CP26” respectively.

4.11.2.5. The restructuring exercise resulted in some roles in specific departments becoming redundant. I am not in a position to provide reasons why Ms Petje’s position became redundant as well as why the grade in which she was absorbed is lower than the grade of the position which she occupied, beyond explaining the tools and process for grading a position.

4.11.2.6. In this regard, I wish to point out that in terms of case law, when an employee’s job becomes redundant an employer has a duty to identify alternative roles for an employee, rather than to retrench that employee. To this end I refer to the
following extract from the judgment in the case of Andre Johan Oosthuizen v Telkom SA Ltd which dealt with a situation where an employee’s job became redundant as a result of a restructuring process:

"In my view an employer has an obligation not to dismiss an employee for operational requirements if that employer has work which such employee can perform either without any additional training or with minimal training. This is because that is a measure that can be employed to avoid the dismissal and the employer has an obligation to take appropriate measures to avoid an employee’s dismissal for operational requirements. Such obligation particularly applies to a situation where the employer relies on the employee’s redundcancy as the operational requirement. It is in accordance with this obligation of the employer that in the General Foods case referred to above this Court found the dismissal of the employees unfair. In that case while the employer was retrenching some employees, it was busy recruiting new employees for work which the employees being retrenched could perform. As already stated, this Court found the dismissal substantively unfair for this reason. In such a case the dismissal is a dismissal that could have been avoided. A dismissal that could have been avoided but was not avoided is a dismissal that is without a fair reason."

4.11.2.7. For ease of reference, I attach hereto a copy of this judgment marked Annexure “CP27”.
4.11.2.8. I further wish to point out that it has become trite in our law that employers are entitled to unilaterally change employees’ conditions of service to save jobs.\(^{23}\)

4.11.3. Allegation of failing to advise the PIC properly

4.11.3.1. As per paragraph 4.11.2 above, the process that the PIC followed was both procedurally and substantively fair.

4.11.4. Allegation of unfair treatment

4.11.4.1. It is to be noted from Annexure CP24 that a number of employees were negatively affected by the restructuring.

4.11.4.2. It is therefore incorrect that Ms Petje is the only one who’s job became redundant and who was moved to another unit.

5. Remuneration and Incentives

5.1. My understanding is that I have been requested to make a statement regarding remuneration and incentives because a number of employees who appeared before the Commission raised a number of complaints and/or issues regarding the implementation of PIC policies on remuneration and incentives.

5.2. I confine my statement to allegations and/or matters that directly or indirectly relate to or have an impact on me or the HR Department and am not answering any allegations that broadly relate to other Executive Heads involved in the implementation of the remuneration and incentives policies.

5.3. As pointed out above, it is not my intention to deal with each and every allegation made against me by various employees of the PIC. Should the Commission require that I address specific issues relating to the implementation of the remuneration and incentives policies not dealt with in this statement, I would be amenable to prepare a supplementary statement dealing with such specific issues.

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5.4. Further, I do not deal with individual employee’s allegations on a case-by-case basis but rather address the general themes that arise from such allegations collectively.

5.5. General Themes:

5.5.1. The manner in which the determination of annual increases and incentives was not done in accordance with PIC policies and governance structures;

5.5.2. The lack of involvement of certain EXCO members in the awarding of incentives and salary increases; and

5.5.3. The manipulation of awarding incentives by the HR Department and CFO.

5.6. In addressing these issues and/or themes I would like to start off by confirming that in my previous testimony before the Commission on 22 January 2019, I outlined the processes applicable to determining annual increases and incentives. For ease of reference I attach hereto extracts of the relevant sections from my previous statement marked Annexure “CP28”.

5.7. Just to reiterate, the bonus pool is recently being determined by the Board with the approval of the Minister of Finance. The Minister’s approval is not always in line with the PIC’s approved remuneration policy and has prescribed that the PIC comply with the Minister’s directives in allocating the bonus pool. In this regard I refer to paragraph 3.2.2.9 of the extract of my previous statement which contains a table reflecting the variances in the PIC remuneration policy and the shareholder’s directives with regard to the incentive pool.

5.8. The HR Department generally would advise the business with regard to the performance management cycle specifically at the end of the financial year where annual increases and incentives are to be determined. This exercise is preceded by communication to the rest of PIC with timelines for conducting performance evaluations. Each department conducts its own performance evaluations and submits to the HR Department the rated balanced score cards reflecting ratings of
the individual employee and his/her manager in respect of each member of the department excluding the head of department.

5.9. The balanced score card is captured in a register with all the scores reflecting the respective department's ratings. Each departmental head signs-off on the final ratings for submission to the moderation committee. The moderation committee that considers performance ratings for all the staff excluding EXCO consists of all the EXCO members (i.e. the CFO, and each Executive Head of the various departments). EXCO performance scores are moderated by the executive directors (i.e. the CEO and the CFO) who are in-turn evaluated by the Board and its sub-committees (i.e. HRRC for the CEC and ARC for the CFO).

5.10. The Executive Head: HR and human resource business partners facilitates and records the agreed principles and decisions of the moderation committee. For demonstration purposes, I attach hereto a presentation on the performance management moderation principles marked Annexure “CP29”.

5.11. Some of the key principles of the moderation committee are to ensure, among others, consistency and fairness by interrogating and comparing outliers with regards to employees whose scores are high (3.5 and above) and those whose scores are low (2.99 and below). For example refer to slide 15 of the presentation referred to in the preceding paragraph.

5.12. The moderation committee recommends final ratings, to be communicated to each employee by each Executive Head. The employees are afforded an opportunity to appeal against their scores through the grievance process if their ratings are in dispute. The grievances are collated and sent through to the CEO who makes an assessment looking at the portfolio of evidence submitted in support of the disputed ratings. The outcome of the CEO’s determination is the final internal process of adjudication.

5.13. The moderated ratings (whether as per the moderation committee or the final outcomes of the appeal process) are used as the final scores by the HR Department. The final ratings are captured in the annual increase and incentive allocation model which is formulaic driven and allocates annual increases and incentive amounts. There is no room whatsoever to tamper with and/or manipulate
the allocations which are done as per the formula. In this regard, should the Commission wish to assess how the model works and whether there is room for manipulation I would make resources available to demonstrate how the model works in order to give assurance of legitimacy.

5.14. The outcome of the allocations are subject to an internal audit which tests, among others, compliance with the remuneration policy and the accuracy of the annual increases and incentives awarded before pay-out.

5.15. Post internal audit report, HR generates letters reflecting annual increases and incentive awards to employees for sign-off and distribution by the respective executive heads / heads of departments.

5.16. Allegation relating to non-compliance with remuneration policy:

5.16.1. It is correct that the final annual increases and incentive awards are not always in accordance with the PIC remuneration policy. This is due to the shareholder’s directive in respect of determining the bonus pool applicable in a particular year.

5.16.2. The PIC has obtained legal advice to the effect that the PIC is bound by the shareholder directives in terms of the PIC Act and the PFMA.

5.16.3. Specific allegations were made to the effect that the directive of the shareholder in relation to the 2015/2016 salary increase and incentive award, were only directed at the executives, and therefore the rest of the staff were shortchanged. In this regard, I attach hereto a copy of the 2015/2016 shareholder’s directive as well as an extract of the HRRC resolution adopting the shareholder’s directive, marked Annexure “CP 30A and 30B”, respectively. In this regard, it is to be noted that the HRRC’s resolution is to the effect that:

"The Committee RESOLVED to:

Support the Minister’s directive to cap the bonus pool at 34% of the PIC’s salary bill, which translates to R85 million"
5.17. Allegation regarding lack of involvement of certain EXCO members in the awarding of incentives and salary increases:

5.17.1. It is not correct that EXCO members are not involved in the awarding of incentives and salary increases. As pointed out above, all EXCO members, with the exception of the CEO, participate in the work of the moderation committee. I attach hereto for demonstration purposes a copy of the final scores signed off by the then Acting Executive Head: Risk and Compliance, Ms Candace Abrahams, marked as Annexure “CP31”. Ms Abrahams is one of the executives who alleges that she:

"I am not privy to, nor am I consulted or given an opportunity into the actual calculation and determination of the remuneration of staff that report into the Executive Head for Risk and Compliance function."

5.17.2. The only stage where they are not involved is when the performance scores of the moderation committee are captured in the model which is purely an administrative function.

5.18. Allegation that awarding of incentives are manipulated by the HR Department and CFO.

5.18.1. As pointed out above, there is no room whatsoever for manipulation of the model once the moderated final scores are captured.

5.18.2. Further the allocations from the model are audited. I attach hereto for demonstration purposes a copy of the internal audit consulting report on increases and bonus calculations in respect of the 2015/2016 allocations, marked Annexure “CP32”.

Chris Pholwane
27 May 2019