



Malema dossier

Request to the international community to take punitive action
against Julius Malema for human rights violations and corruption,
and for supporting terrorist organisations



AfriForum

saai

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Julius Malema, leader of the Economic Freedom Fighters (EFF), is an influential South African politician. Through his ethnically motivated calls for the murder of Afrikaners and farmers (among other things), he consistently commits gross human rights violations. These calls are regularly made in front of large crowds with the chanting of the slogan “Kill the Boer, kill the farmer” (Afrikaners are historically referred to as “Boers”).

Malema is also facing *prima facie* corruption cases in addition to his evident human rights violations. These cases involve the looting of the state treasury as well as a bank for poor people.

In addition, Malema made numerous public calls for support for terrorist organisations such as Hamas and does not hesitate to make radical anti-Western statements in public. He even suggested that he would supply munitions to Hamas if he were to assume the presidency of South Africa.

The situation has further been exacerbated by the failure of the South African government, the National Prosecuting Authority (NPA) and the courts to hold Malema accountable for his human rights violations and alleged corruption. Malema has become more openly radical as a consequence of the reluctance to prosecute him – he believes that he has become untouchable.

AfriForum, a South African civil rights organisation with over 300 000 members, has in recent years already pursued all available local remedies in South Africa to hold Malema accountable. For instance, AfriForum waged a protracted legal battle for years to have Malema’s chanting of “Kill the Boer, kill the farmer” declared as hate speech, with the aim of putting an end to his gross violation of human rights through this chant.

Regrettably, the South African Constitutional Court authorised this call for ethnic violence in March of this year. Meanwhile, the South African government has yet to condemn Malema’s human rights violations as a result of this chant. AfriForum’s complaints regarding Malema’s statements from November 2016 have been dismissed by the South African Human Rights Commission (HRC). Malema said: “We are not calling for the slaughtering of white people – at least for now.” The HRC ruled that this statement does not constitute hate speech.

The NPA initially instituted charges against Malema as a result of AfriForum’s official efforts to have him prosecuted for corruption. However, the NPA declined to continue the case or provide an explanation for its suspension after the case was temporarily halted due to the illness of one of Malema’s co-accused.

Given the aforementioned, it is evident that Malema has been protected from prosecution in South Africa. An intervention by the international community remains the only means by which people who are threatened by Malema’s human rights violations and the impoverished victims of his purported corruption can receive protection.

Of course, each country and international institution has its own mechanisms and approaches for addressing issues of this nature. This may involve the institution of personal sanctions against Malema (which is made possible in the US by the Magnitsky Act), the public condemnation of Malema’s actions or the application of diplomatic pressure on the South African government to act against Malema.

AfriForum and the Southern Africa Agri Initiative (Saai), a family-farming organisation, hereby officially request that the international community, including countries and international institutions, take action to hold Malema accountable for his gross human rights violations.

In light of Malema’s calls for the murder of farmers and his encouragement for the unlawful occupation of agricultural land, Saai is intervening as an agricultural organisation, while AfriForum, as a civil rights organisation that safeguards the human rights of South Africans, is making the request.

In support of AfriForum and Saai’s urgent request, the following supporting information is also included in this document:

- **Section 1:** Violent rhetoric, hate speech and racist remarks by Julius Malema (pages 2 & 3)
- **Section 2:** Malema’s anti-Western statements and support for terrorist organisations (pages 3–6)
- **Section 3:** Corruption: Discussion document to motivate the invoking of the Magnitsky Act on certain individuals by the American authorities (pages 6–10)



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SECTION 1

Violent rhetoric, hate speech and racist remarks by Julius Malema

Julius Malema frequently invokes the EFF's radical and militant stance. He blends these concepts with selective historical interpretations, the EFF's ideological framework and distorted statistics to produce statements that are often laced with violent rhetoric, hate speech and racially charged remarks. This approach is especially evident in statements on land reform, land invasions and South Africa's broader socio-economic challenges.

While his rhetoric often broadly targets the white South African minority, it frequently focuses on Afrikaners or "Boers" as a specific cultural and ethnic group.

Malema has openly described himself as "very radical and militant". During the 2022 Equality Court case that AfriForum brought against Malema, the EFF and Mbuyiseni Ndlozi (an EFF member of parliament), for continuing to chant "Kill the Boer", Malema was asked if he would endorse violence to achieve his "revolutionary" aims. He testified: "[W]hen the time comes and the conditions on the ground permit that arms must be taken, we will do so without hesitation."¹

The following is a concise list of statements by Malema that can be viewed as violent and racist, or that were classified as hate speech:

1. **"Kill the Boer! Kill the Farmer!"**

The most well-known of Malema's statements that can be seen as incitement to violence, racism and hate speech is his singing of the struggle song "Dubul' ibhunu" (translated as "Kill the Boer") and chanting of the slogan "Kill the Boer, kill the farmer". Malema first started singing this song publicly in March 2010,² when he was still the leader of the ANC Youth League (ANCYL). Thereafter, he has led the crowd in singing the song and crying the chant at various EFF rallies – including during a Human Rights Day gathering that was held in Sharpeville on 21 March 2025.

A hate speech complaint by AfriForum was dismissed by the High Court and subsequently also by the Supreme Court of Appeal. The final ruling was made in the Constitutional Court, South Africa's highest court, on 27 March 2025, just a few days after the defiant persistence of Malema with the singing of the chants in a way that drew international attention. The Constitutional Court finally legalised the song in a very controversial manner, with a one-page ruling and without hearing any oral arguments.

2. **"We are not calling for the slaughter of white people – at least for now."**

At a political rally in November 2016 Malema stated: "We [the EFF] are not calling for the slaughter of white people, at least for now [...] The rightful owners of the land are black people. No white person is a rightful owner of the land here in SA and the whole of the African continent."³

In a 2018 television interview with TRT World, Malema reiterated: "We have not called for the killing of white people, at least for now. I can't guarantee the future."⁴

Malema was asked to clarify his 2016 statement regarding the slaughter of white people during his cross-examination in the case of AfriForum vs the EFF in the Equality Court in February 2022. He stated: "It may not be me [who calls for the slaughter of white people], but [that] it could be me." When asked to make a pledge that he will never call for the slaughter of white people, he said: "I will not do it."⁵

3. **"A revolutionary must become a cold killing machine motivated by pure hate" and "Honeymoon is over for white people in South Africa"**

During the launch of the EFF as a political party in 2013 in Marikana in North West, EFF supporters displayed various racist posters and banners. One conveyed the famous words by Che Guevara: "A revolutionary must become a cold killing machine motivated by pure hate."⁶ Another read: "Honeymoon is over for white people in South Africa."⁷ This was also distributed on social media.

In October 2022 at the EFF's Provincial People's Assembly in the Western Cape, posters with the same content were again displayed by EFF members.

4. **"A revolution demands that at some point there must be killing because the killing is part of a revolutionary act."**

At the same event in 2022 (mentioned in point 3 above), Malema criticised EFF members for failing to retaliate against a white person who was involved in altercations between EFF members and parents outside Brackenfell High School in 2020.

In his address, Malema asked members: "Why have you not, as a revolutionary organisation, followed up on that [white] guy [...] to take that guy in an isolated space and attend to the guy properly?" Malema continued by saying: "You must never be scared to kill. A revolution demands that at some point there must be killing because the killing is part of a revolutionary act."⁸

5. **"We are cutting the throat of whiteness."**

In February 2018, the EFF was rallying to remove Nelson Mandela Bay's Mayor Athol Trollip from his position because he is white. Malema told a crowd of supporters: "[W]e are starting with this whiteness. We are cutting the throat of whiteness."⁹

6. “The only white man you can trust is a dead white man.”

In September 2019, Malema paid tribute to the late Zimbabwean President Robert Mugabe on social media. In the post he wrote: “Rest in power #GUSHUNGO”. It also included a video with quotes by Mugabe, including “the only white man you can trust is a dead white man” and “our party must continue to strike fear in the heart of the white man, our real enemy.”¹⁰

7. “We will remove this government through the barrel of a gun.”

During a televised news interview in April 2016, Malema stated: “Part of the revolutionary duty is to fight, and we are not ashamed. And if the need arises for us to take up arms and fight, we will fight.” He furthermore said: “We will run out of patience very soon and we will remove this government through the barrel of a gun.”¹¹ This statement resembles the comment made by Mao Zedong in 1927: “Political power grows out of the barrel of a gun.” In 1936 Zedong repeated the statement, saying: “Every communist must grasp the truth, ‘Political power grows from the barrel of a gun’.”¹²

8. “When [...] you see a beautiful piece of land, you like it, occupy it, it belongs to you.”¹³

Malema has called on his supporters to occupy land on many occasions. One of the first recorded instances was in 2014 at the First National People’s Assembly, which was held at the University of the Free State in Bloemfontein. At this event he stated that the EFF will “occupy the unoccupied land, because we need the land” and called upon the attendees of the conference to occupy land where they live and where the EFF has branches.¹⁴ On 26 June 2016, he repeated this sentiment at an EFF rally and told supporters to occupy land, as it belongs to black people. He furthermore stated that white people should not claim ownership of South Africa.¹⁵ On 7 November of that year, Malema appeared in court regarding the June 2016 statements that he made about the occupation of land. After appearing in court, he urged his supporters outside to “occupy the land, because they [the State] have failed to give you the land. If it means going to prison for telling you to take the land, so be it. I am not scared of prison because of the land question. We will take our land; it does not matter how. It’s becoming unavoidable, it’s becoming inevitable – the land will be taken by whatever means necessary.”¹⁶

9. “Maybe. Maybe not.”

In June 2018 Malema was tagged in a X post in which the X user (@Doom_Pie) stated: “They say you organize farm murders.” In reaction to this post, Malema simply replied: “Maybe. Maybe not.”¹⁷

10. “I’ll kill you!”

In an explosive situation that unfolded in a session of the Pan-African Parliament (PAP) in May 2021, Malema threatened a fellow member of the PAP. According to media reports, there was a disagreement over whether the presidency of PAP should be rotated between various African regions, and insults started flying between members. Malema could be heard threatening Ali Koné from Mali: “I’ll kill you outside. Outside this meeting, I will kill you.”¹⁸

SECTION 2

Malema’s anti-West statements and support for terror organisations

Malema’s anti-Western worldview is most clearly reflected in his party’s policies, speeches and official documents, all of which are endorsed by Malema.

The EFF’s policy is largely driven by its ideological foundation and therefore – important in understanding its anti-Western worldview – the party sees itself as a vehicle for dismantling colonialism.¹⁹

In its 2019 Manifesto, the EFF expresses a clear commitment to confronting what it describes as the “global imperialist dominance of the West.”²⁰ Malema and the EFF frequently characterise Western nations as perpetuating imperialism through economic exploitation and military intervention. In this context, the party has been highly critical of the US and Europe. The party has also condemned institutions such as the International Monetary Fund and the World Bank, which it characterises as instruments of Western imperialism that have historically exploited African economies.²¹

In the following section, we provide examples of Malema’s criticism of the West. It also includes statements that were made while Malema was still President of the ANC Youth League.

Malema’s criticism of the West

1. The North Atlantic Treaty Organisation (NATO)

- i. The EFF strongly condemns foreign military presence in Africa, portraying it as efforts to maintain Western dominance on the continent. It has labelled NATO a “war alliance.”²²
- ii. While still President of the ANCYL, in 2011, Malema labelled the US and NATO as “bloodthirsty imperialists” for their intervention in Libya. It described NATO as a military tool that the US uses to suppress other nations.²³

- iii. In July 2023, Malema stated: "The EFF maintains that the conflict between the two nations [Russia and Ukraine], is a renewed attempt by forces of imperialism who belong to NATO, to establish political and military influence in Eastern Europe and all over the world."²⁴

2. US

- i. After the outcome of the latest US election was released, the EFF labelled the current US administration as the "worst form of politics"; stating: "From the moment of their establishment as an independent country in 1776 to this day, the US has played a rather destructive role in world politics."²⁵
- ii. In a March 2025 parliamentary debate, Malema reinforced this view: "The world must move forward without the USA if true progress is to be achieved."²⁶
- iii. During the same debate in March 2025, Malema stated: "Foreign aid has always been a tool for Western imperialism and control [...] The USA is on a fool's mission to extort the world into submission."²⁶
- iv. In 2020 Malema called on the EFF to "particularly campaign for the discontinuation of the US military bases in various parts of the African continent."²⁷
- v. In March 2025, Malema blamed the US for the current socio-economic conditions in countries such as Cuba, Libya, Venezuela and Chile, and labelled them as "nations that have suffered from US interventions because of their socialist policies, justified by false intelligence to advance imperialism."²⁶
- vi. In response to President Donald Trump's post on social media in reaction to South Africa's decision to expropriate land without compensation in 2018, Malema reacted: "We must put it on record, unequivocally, [to] Donald 'the pathological liar' Trump. We are not scared of you and your US or Western imperialist forces."²⁸
- vii. On 27 April 2025, during a Freedom Day address, Malema stated the following: "We must defend China for defying the USA and tell the USA to go to hell because they don't understand how the tariffs work. Donald Trump is an enemy of himself and of all of us. And he must know: the EFF is not scared of him; the EFF is not scared of Israel; the EFF is not scared of Morocco; the EFF is not scared of the imperialist forces. The EFF will stand on the side of the people of DRC, the people of Sudan."²⁹ He went on: "Let us stand up and confront the imperialism of America. Let us challenge America. Let us challenge the stupidity of America. Let us not be intimidated by America. America is the enemy of progress in the world."²⁹

3. Europe

- i. In 2022 during a session in the Pan-African Parliament, Malema responded defiantly to potential critics of the election of ZANU PF Senator, Chief Fortune Charumbira as President of the Pan-African Parliament. When asked about the possible withdrawal of funding from sources like the European Union (EU) due to Charumbira's election, Malema stated that they were not going to let funders dictate their actions or politics, emphasising that African politics should not be swayed by external influence, and maintaining that the EU and other funders could "go to hell with their money".³⁰
- ii. The EFF is also critical towards the Commonwealth and advocates for the withdrawal of South Africa from this association.³¹ In 2018 Malema openly declared that it is the policy of the EFF to withdraw the country from the Commonwealth. He stated: "The Commonwealth is presided over by the coloniser, and we reject that. That type of respect that we give to the coloniser is the one that perpetuates white supremacy."³²
- iii. Malema has also been especially critical of France. In 2021, Malema criticised Francophone countries for their continued cultural and political ties to France, stating that these countries are "still admiring their colonisers, they worship the symbols of France. Actually, they see themselves as French and we have to do away with that."³³
- iv. In November 2022, the EFF fuelled anti-French sentiment by leading a protest in front of the French Embassy in South Africa, demanding the withdrawal of France from the African continent. Malema explicitly stated that his message was directed at "French white supremacists". Malema claimed that former colonial powers like Britain, Portugal, Belgium, Spain, and France should "all follow each other with their tail in between their legs, leaving our continent of Africa, because Africa belongs to Africans".³⁴

4. Australia

- i. In 2018 the EFF lashed out at Australia, when the then Minister of Home Affairs, Peter Dutton, considered fast tracking visas for white South African farmers. In response, Malema stated that if "[a] racist country like Australia says: 'The white farmers are being killed in South Africa.' We are not killing them. Now Australia says: 'Malema, EFF want to kill white farmers; they must come to Australia.'"³⁵

Malema and the EFF's potential strategic partners

Malema has frequently expressed support for various socialist-leaning states such as Cuba and Venezuela but has placed particular strategic emphasis on fostering closer relations with China and Russia. Below is a list of statements that were made by Malema with regard to certain countries and that emphasise his anti-West sentiments.

5. China

- i. In 2021, on the eighth anniversary of the EFF, Malema stated that “China must resolutely lead a new socialist world order, devoid of imperialism, imperialist wars and the dispossession of the weakest.”³⁶
- ii. At the EFF’s manifesto launch in February 2024, Malema expressed support for authoritarian leaders and regimes: “We salute the Marxist-Leninist, Socialist [and] Communist parties in all parts of the world, in particular the Communist Party of China, Cuba and Vietnam.”³⁷

6. Russia

- i. In 2023, when speaking about the Russian war in Ukraine, Malema extended his support to Russia: “I will go beyond the friendship with Russia and in the war, I would align with Russia, and I will even supply the weapons to Russia because Russia is at war with imperialism. Any agenda that seeks to push back imperialist agendas, is well within the policies of EFF”³⁸

7. Libya

- i. In 2016, Malema claimed that the late Muammar Gaddafi, *de facto* leader of Libya, never killed innocent victims: “They want us to celebrate Thatcher, Obama, Bush and not Gaddafi and Castro. Gaddafi never killed innocent souls!”³⁹
- ii. On Africa Day in 2018, Malema was quoted on social media: “We celebrate Muamar [sic] Gaddafi [who] was killed by the ANC. A man who united Africa and wanted to create one currency. A man who gave the people of Libya land and livestock, houses, free education and free electricity. A man who created a state bank.”⁴⁰

8. Zimbabwe

- i. After President Robert Mugabe died in September 2019, Malema posted a slide show of Mugabe’s quotes on social media. The slide show also included the quote: “The only white man you can trust is a dead white man.”⁴¹
- ii. After Mugabe’s death, Malema told News24: “For us in the EFF and for many in South Africa he remains an inspiration, particularly for those of us who were involved in a revolution.” He also indicated that there are many valuable lessons that South Africa could learn from Zimbabwe.⁴²

9. Cuba

- i. On 1 December 2016, the EFF held a memorial service for the Cuban leader Fidel Castro. At the event, Malema said: “We must take the land in order to resolve the problem of inequality in South Africa [...] That’s the only way you can honour Fidel.”⁴³
- ii. At the same event he said: “Let us not apologise for celebrating Fidel [...] When they say to you Fidel is a dictator, tell them Margaret Thatcher was a murderer. Tell them Bush was a murderer. Tell them all their presidents in America were murderers, because there is no single president in America who has never gone to war and killed innocent souls. [...] Anyone that pursues a socialist agenda is our friend.”⁴⁴
- iii. At the same event Malema also stated: “Comrades and fellow Fighters, all of us here today must say when we grow up we want to be like Fidel Castro. When we walk, we must walk like Fidel Castro. When we speak, we must speak like Fidel Castro. When we commit, we must commit like Fidel Castro.”⁴⁵
- iv. At a virtual rally held for the EFF’s seventh anniversary in 2020 Malema stated: “The 26 July Movement of Cuba inspires us to remain loyal to the ideas of equal distribution of land, nationalisation, mass education and free quality healthcare for all in a socialist society.”⁴⁶
- v. The following statements by Malema on the platform X also indicate his support for Cuba and Castro:
 - » “We draw inspiration that revolution and militant struggle often requires the youth in its forefront as it manifested in Cuba itself.” (26 November 2016)⁴⁷
 - » “#Malema: Castro was not violent! They made him violent by responding to legitimate struggles with violence!” (1 December 2016)⁴⁸
 - » “#Malema: we form part of the Internationalists that reject imperialists and capitalism. We follow the footsteps of Castro.” (1 December 2016)⁴⁹
 - » “Never allow the enemies of our revolution to tell you who your hero’s are. We are the only ones who celebrated Fidel Castro when everyone was calling him a dictator.” (10 September 2019)⁵⁰

10. Venezuela

- i. In 2010, Malema led an ANCYL delegation to Venezuela to examine the country’s policies of land redistribution and nationalisation firsthand. During this trip, Malema also met with the then President Hugo Chávez. Malema expressed his admiration for Chávez on numerous occasions, describing him as a “true symbol of anti-imperialist struggles.”⁵¹

- ii. In a media statement issued on 6 March 2013 on the passing of Chávez, Malema said: “As anti-imperialist Fighters and Youth in South Africa, Africa and the Global South, we wish to assure the living and fighting spirit of President Hugo Chavez [sic] that we will pick up the spear and continue the fight against imperialist control of the natural resources, in particular oil, mineral resources, land and many other valuable resources. The fighting spirit of Hugo Chavez [sic] will continue to inspire all the youth of the world in South Africa [...] to continue the total onslaught against imperialism and imperialist Masters, their corporations and puppets. We in South Africa would once again want to assure the fighting spirit of President Hugo Chavez [sic] that we will continue the fight against imperialist control of our natural resources, and we will realize victory.”⁵¹

11. Hamas and Iran

- i. Following a bilateral meeting between the EFF and Hamas, a media statement was issued on 6 December 2023, which stated: “The Commander in Chief and President Julius Malema emphasized our [the EFF’s] support for the resistance against the genocidal Israeli State and commended the resistance movement for pursuing their land, freedom, and self-determination.”⁵²
- ii. It was reiterated in the same media statement: “The EFF was given a first-hand account of the gruesome conditions confronting the Palestinian people at the hands of the racist, Zionist, and Apartheid-Israel and its allies, namely the United States of America (USA).”⁵²
- iii. At an event held in Pretoria in 2023, where the EFF called for the closure of the Israeli embassy, Malema stated: “There is nothing wrong [with] what Hamas did. [...] When you are oppressed, the only option you have is to fight and that is what Hamas is doing. [...] When you are oppressed, you only have one option, confront the enemy and shoot to kill.”⁵³
- iv. In October 2023 Malema stated: “The EFF, when it takes over next year, is going to arm Hamas and make sure Hamas has the necessary equipment to fight for its freedom.”⁵⁴
- v. Malema has also indicated on various instances that South Africa must close its embassy in Israel and cut all diplomatic ties with Israel. In a parliamentary session in 2024 he also stated (referring to Israel): “[W]e cannot share a territory with murderers, with rapists and people who kidnap women and kill children and want to erode the Palestinian nation.”⁵⁵
- vi. In 2024, the EFF supported a motion to rename Sandton Drive to Leila Khaled Drive. This is the road in which the United States Consulate is stationed.⁵⁶ Khaled was a member of the Popular Front of the Liberation of Palestine, known for one successful (1969) and one unsuccessful (1970) plane hijack.⁵⁷

SECTION 3

Corruption: Discussion document to motivate the invoking of the Magnitsky Act on certain individuals by the American authorities, with annexures

Compiled by Gerrie Nel, Head of AfriForum’s Private Prosecutions Unit

1. The content of this document aims to motivate reasons that we submit would state a case calling for the Magnitsky Act to be invoked on Mr Julius Sello Malema.
2. We do reiterate the Private Prosecution Unit’s unwavering belief in the rule of law and recognise that the scourge of crime, particularly corruption and gross human rights violations such as gender-based violence, will never be eradicated unless everyone is treated equally by the criminal justice system.
3. A properly functioning National Prosecuting Authority (NPA) that prosecutes competently and without fear, favour or prejudice is essential; however, reality has set in and the tendency to selectively prosecute is stronger than ever.
4. This report proposes an alternative approach to the government’s – and specifically the NPA’s – failure to effectively prosecute corruption when it comes to certain political individuals and, in this case, Mr Malema.
5. We emphasise that we seek to foster accountability and integrity in governance through this proposal.

PURPOSE OF THIS PROPOSAL

6. The purpose of this document serves as a motivational introduction that seeks to support a call for the American authorities to consider sanctioning Mr Julius Sello Malema (born 3 March 1981) in terms of the provisions of the Global Magnitsky Act, for his alleged corrupt activities, which the South African Police Service (SAPS) and NPA appear inept of addressing serious allegations of corruption in terms of their constitutional obligations to the law-abiding citizenry of the Republic of South Africa.

WHO IS JULIUS SELLO MALEMA?

7. This individual is a South African politician. He is the founder and leader of the Economic Freedom Fighters (EFF).⁵⁸
8. We reiterate that we do not propose having a full grasp of the law pertaining to the Magnitsky Act. Nevertheless, we remain overly impressed with the success of the application thereof to deter human rights abuses and significant acts of corruption by focusing on individuals and not the pro-Western elements of government and society.
9. We submit that this document will again highlight an intentionally crafted strategy of selective prosecution, or rather, in this instance, the sheltering of Mr Malema from prosecution because he is a South African politician and has proven to be untouchable.
10. Again, we will focus on the failure of the criminal justice system in South Africa as a motivation to address Mr Malema's alleged corrupt activities.

WHAT WE DO

11. We reiterate that our mission is to empower victims of crime when state authorities fail to carry out their prosecutorial responsibilities. We hope to bridge the justice gap by providing essential legal support and advocacy, and work to establish a viable pathway for private prosecution as a means of holding offenders accountable.
12. In pursuance of our focus on corruption for 2025, we have identified the allegations of corruption levelled against Mr Malema as concerning and respectfully submit meritorious for consideration of the purposes of the Magnitsky Act.

MOTIVATION

13. In our law, the right to institute a private prosecution can only follow once the state has refused to institute a criminal prosecution and then if the victim of the alleged crime can show a substantial and peculiar interest in the offence that was committed.
14. Corruption currently is not recognised as an offence wherein an individual holds such a substantial and peculiar interest. We believe the *status quo* needs to be developed in law as a crime in which every citizen is recognised as having such an interest in seeking prosecution, as corruption, we submit, does affect every citizen. The matters to be discussed *infra* present an opportunity to develop the law, allowing society to prosecute matters of corruption where the prosecution service fails to do so in an irrational manner.
15. We do not have a political focus and readily admit to our lack of experience and interest in political issues. We, however, support the rule of law and are alive to political play to deter detection or prosecution for criminal conduct.
16. We reiterate our understanding that the administration and enforcement of sanctions in terms of the Magnitsky Act are delegated to the Office of Foreign Assets Control (OFAC) and that individuals are included in the Specially Designated Nationals and Blocked Persons (SDN) List maintained by OFAC. Our understanding is that the inclusion onto the list occurs following an administrative investigatory process where an implicated individual would have very limited opportunity to intervene in order to avoid sanction.
17. We reiterate our acceptance that the OFAC process is not a criminal investigation or prosecution where the onus of proof is that of beyond reasonable doubt.
18. Mr Malema's party, the EFF, was launched in 2013. Notably, the party was registered when the prescribed fees were paid with a donation⁵⁸ of R650 000,00 by an alleged underworld cigarette smuggler, Adriano Mazzotti.
19. In pursuit of justice, our office was approached to establish why formal reports of criminal conduct, including allegations of corruption, were absent from any meaningful interventions by the state authorities and, if possible, to advise and consider a private prosecution.
20. We highlight two noticeable allegations of organised crime activities involving alleged corruption and money laundering, in which we hold a brief to consider private prosecution, namely:
 - i. the "On-Point" corruption matter, and
 - ii. the Venda Building Society corruption matter, more commonly referred to as "VBS".

ON-POINT

21. The criminal complaint was registered in 2011 at the SAPS in Polokwane, South Africa, under SAPS case reference CAS 1393/07/2011 against Julius Sello Malema, Kagisho Dichaba and Cuthberth Lesiba Gwangwa for fraud and corruption.
22. Police investigations were completed and enrolled by the NPA for prosecution. The prosecutor assigned to the matter drafted an indictment consisting of:
 - i. two counts of racketeering,

- ii. five counts of corruption,
 - iii. four counts of fraud, and
 - iv. forty counts of contravention of section 6(a) and (c) of the Prevention of Organised Crime Act 29 of 2004.
23. The scope and extent of the exposed facts in this investigation are no better encapsulated than that of the contents of the affidavit of the Forensic Investigator Mr Trevor Sean White (which is attached as **Annexure A**) and the Public Protector of the Republic of South Africa's Report no 10 of 2012/13, *On the point of tenders*.⁶⁰
24. For ease of reference, the following notable paragraphs from the Public Protector's report are quoted:
- i. Paragraph 8.4.4:
Due to the fact that the awarding of the contract to On-Point was based on deliberate misrepresentation and non-compliance with procurement prescripts, its shareholders, including the Ratanang Family Trust and the Gwangwa Family Trust that eventually became the shareholders of Guilder Investments (the sole shareholder of On-Point), benefitted improperly by means of the payments of "dividends" and other payments made to it by On-Point. As a Trustee of the Ratanang Family Trust, Mr J Malema was therefore also put in an advantageous position as his family was supposed to benefitted from it.
 - ii. Paragraph 10.2.5:
10.2.5. Mr J Malema's interest in On-Point
 - 10.2.5.1. Mr Gwangwa indicated in his response that he decided to offer 50% of his interests in Guilder Investments to Mr Malema, after the tender for the PMU was awarded by the Department to On-Point. Mr Malema accepted his offer and requested that the shares be registered in the name of the Ratanang Family Trust
 - 10.2.5.2 He explained the reasons why he offered the said shares to Mr Malema, inter alia as follows: 'Mr Malema and I grew up together. He is a childhood friend of mine. Mr Malema is an intelligent and resourceful person with many friends and acquaintances both here and internationally. His personal friendly relationships with business leaders across the globe have made him into an invaluable asset for any business.'
 - 10.2.5.3 He further stated in this regard that from the time that Mr Malema obtained an interest in Guilder Investments, through the Ratanang Family Trust, he became entitled to share in its proceeds by means of dividends and loans.
 - iii. The Public Protector's report concludes with remedial action, and the following is especially noteworthy:
 - 13.6 The Acting National Director of Public Prosecutions and the Head of the Asset Forfeiture Unit of the National Prosecuting Authority to:
 - 13.6.1 Take note, in terms of section 6(4)(c)(i) of the Public Protector Act, that the evidence and information obtained during the investigation, as referred to in Findings 1 and 2 of paragraph 12 above, disclosed the commission of the criminal offences fraud and a contravention of section 12 of the Prevention and Combatting of Corrupt Activities Act, 2004;
 - 13.6.2 Take urgent steps to deal with the evidence of the commission of the criminal offences in the appropriate manner, as envisaged under section 6(4) (c) (i) of the Public Protector Act; and
 - 13.6.3 Ensure that the investigation of the criminal offences referred to in paragraph (aa) above by the Directorate: Priority Crime Investigation of the South African Police Service includes a thorough scrutiny of the relationships between the representatives of the shareholders of On-Point, the top management of the Department, members of the relevant BEC's and the BAC of the Department and all the recipients of contracts awarded with On-Point's participation."
25. On 4 August 2015, the criminal matter was struck off the Polokwane High Court roll because one of the accused persons, Mr Dichaba, was sick. The matter has not since been reinstated. The understanding was that the NPA would monitor the matter and ensure it was reinstated.
26. Despite numerous unsuccessful attempts over the past seven years to have the NPA reinstate the case, we can unequivocally proclaim that neither the SAPS nor the NPA has done anything meaningful other than to shift the blame between themselves. We infer that there exists either no will to deal with this matter, for reasons the truth of which we can only speculate on, or no competence to prosecute this matter. We intend to approach the High Court to compel the NPA to either prosecute or finally issue a notice that they will not prosecute. The reasons proffered so far are, in our view, irrational.
27. The end result is a veiled ten-year protection plan of meaningless excuses that have enabled protection from prosecution not only for Mr Malema but numerous business entities and government officials from judicial scrutiny about their corrupt and organised crime-alleged activities.
28. We do pause to add that an order by the Pretoria High Court did forfeit to the state proceeds as identified in the

order itself, to the state.

See copy of the order attached as **Annexure B**.

29. In essence, this evidenced that the undue flow of payments towards the purchase of the farm proves, as the only reasonable inference, that the farm was bought with the proceeds of crime by Mr Malema. This is strengthened by the failure of the "owners" to oppose an asset forfeiture order, which alleged that the farm Schuilkraal was bought with the proceeds of crime. The Asset Forfeiture Unit of the NPA obtained a preservation order on 5 December 2012 and an unopposed final confiscation order on 17 April 2012, whereafter the farm was sold by the state.
30. It behoves little argument that legal owners who legitimately bought property will not allow the forfeiture of their property. The inference is apt that the failure to oppose may have been motivated by a reluctance to provide details about the process and means to purchase the property.
31. We believe as the only reasonable inference from the available facts that Mr Malema's consideration may have been that any attempt to defend the property from being the proceeds of crime outweighs the scope and extent of the broader criminal activities it may expose. We are of the opinion that, occasionally, even those who are subjected to scrutiny are reminded of the FBI's adoption of Healy's adage: "When in a hole, stop digging."
32. One might also consider the luxury of not bothering to defend the loss of something of value when it is not your rightful property, but that of the proceeds of crime belonging to someone else.
33. Without delving into the arena of politics, it is apt to mention that the self-same Mr Malema publicly supported and expanded on the intention by the Government to expropriate property without compensation. On Land Proclamation Day, Mr Malema is quoted as having said to hundreds of his followers:

... Pick up the spear and continue the fight to reclaim that which belongs to us...

And ironically:

... anyone who steals is a thief ... anyone who is in possession of a stolen land is a criminal ... Return the stolen goods to the rightful owner...

34. During a private prosecution, we will certainly consider, in as far as the facts are available, the widely publicised failure to pay his 2005 to 2011 taxes to the South African Revenue Services (SARS).
35. SARS intervened and took Mr Malema to court, seeking enforcement of payment for outstanding taxes owed to the amount of R16 million. An argument could be made out, in the absence of any reasonable explanation, that this intervention further evidences the allegations of corrupt activities.⁶¹

A timeline of this failure to declare income coincidentally coincides with that of the On-Point allegations activities.

VENDA BUILDING SOCIETY

36. The Venda Building Society (VBS) was a South African mutual bank. In 2018 it was declared insolvent and placed under curatorship, with South African citizens and taxpayers defrauded out of roughly R2 billion.
37. The South African Reserve Bank appointed Adv. Terry Motau SC as an investigator in terms of section 134 of the Financial Sector Regulation Act 9 of 2017 to investigate the bank's dire affairs. On 5 October 2018 the report was submitted, wherein it found evidence of wide-scale looting, fraud and corruption.⁶²
38. It is recommended that bank leadership, public officials and auditors be criminally charged and held liable in civil proceedings.

RACKETEERING ACTIVITIES

39. In 2024 Mr Kriel, the CEO of AfriForum, submitted a formal criminal complaint against Mr Julius Malema, his erstwhile deputy Floyd Shivambu as the main perpetrators, calling for their alleged criminal conduct to be investigated broader than that of a "silo mentality methodology" and rather escalating their investigations to include a broader and more complex application into the realm of the EFF being used as an enterprise for the private looting of funds by the Commander in Chief, Julius Malema, and his deputy.
40. Regrettably, yet not surprisingly, the elite component of the SAPS, the Directorate for Priority Investigations, otherwise known as the Hawks, which was specifically established to tackle crimes comprising of the elements of racketeering, corruption and money laundering refuse to investigate Mr Kriel's evidence that was contained in his affidavit and which, we argue, at least establishes *prima facie* evidence that Mr Malema uses the EFF as a criminal enterprise to launder money. The reason why they proffered for the reluctance to investigate is that they are currently investigating similar charges and this would merely be a duplication of those charges. This suggests corroboration and acknowledgment of the facts that are set out in Mr Kriel's statement.

In this regard, we submit herewith a copy of the affidavit by AfriForum's CEO, Mr Kriel, as **Annexure C**. The scope and ambit of this affidavit is self-evident of a timeline of alleged criminal enrichment, which is indubitably wider than the VBS investigation.

41. More pertinently, we submit herewith a witness statement that was provided to the authorities by the now disgraced former VBS Chairperson, Mr Mathodzi. He entered into a plea deal, accepting a 495-year sentence, effectively reduced to 15 years of imprisonment in exchange for testifying for the state.
42. His 70-page statement lays bare the corruption that rotted the bank from within. He specifically refers to Mr Malema and other members of the EFF regarding aspects of them arranging with him undue "donations," which are better described in par. 27 of Mr Mathodzi's affidavit.

SUGGESTED LINKS TO THE MAGNITSKY ACT

43. We argue that this document sufficiently exposes facts and findings that justifiably fall within the following criteria as just cause for the invoking of the Magnitsky Act:
 - 43.1 Illicit enrichment of individuals
 - 43.2. Misuse of public funds for private gain
 - 43.3. Bribery and kickbacks
 - 43.4. Money laundering

CONCLUSION

44. Our approach has been informed by the sentiments expressed in the 2024 Global Magnitsky Human Rights Accountability Act Annual Report, where it is stated that the US administration
 - ... will take aim at countering corruption, which corrodes democracy from the inside, erodes government stability, impedes economic development and is increasingly weaponized by authoritarian states to undermine democratic institutions...

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**DISCUSSION DOCUMENT TO MOTIVATE FOR THE INVOKING OF MAGNITSKY
ACT ON CERTAIN INDIVIDUALS BY THE AMERICAN AUTHORITIES**

Annexure A

WAH 2

IN THE HIGH COURT OF SOUTH AFRICA, PRETORIA

REPUBLIC OF SOUTH AFRICA

CASE NO:

In the *ex parte* application of:

THE NATIONAL DIRECTOR OF

PUBLIC PROSECUTIONS

APPLICANT

In re:

The Remaining Extent of the farm Schuilkraal 623, Registration Division LS,
Polokwane, Limpopo

AN APPLICATION IN TERMS OF SECTION 38 OF THE PREVENTION OF
ORGANISED CRIME ACT, NO 21 OF 1998

SUPPORTING AFFIDAVIT

I, the undersigned

TREVOR SEAN WHITE

do hereby make oath and say that:

INTRODUCTION

1 I am a major male with identity number 6611245014087.

- 2 I am a director in the Forensic Services Department of PricewaterhouseCoopers Advisory Services (Pty) Ltd (**PWC**), specialising in the Public Sector.
- 3 I have conducted a forensic investigation as referred to below and in the process I have obtained documents and I have interviewed many people as identified in the report referred to below. The facts deposed to herein derive from my investigation, the documentation obtained, the police docket, and from my personal knowledge. These facts referred to herein fall within my personal knowledge and are to the best of my knowledge and belief, both true and correct.
- 4 I am duly authorised to depose to this affidavit.
- 5 I am trained in auditing techniques and hold a Bachelor of Commerce degree and Post Graduate Diploma in Accountancy from the former University of Natal Durban. I joined Price Waterhouse in 1989, and was admitted as a director of PricewaterhouseCoopers on 1 July 1998, following the merger of Price Waterhouse and Coopers and Lybrand.
- 5.1 I was admitted as a member of the South African Institute of Chartered Accountants in 1992.
- 5.2 I am also a Certified Fraud Examiner, being admitted as a full member of the Association of the Certified Fraud Examiners, a Texas based organisation, in 1998.
- 6 I have been involved in a number of business valuations and performance audits. My specialist field is Forensic Auditing and as such I have extensive

experience in analysing, reviewing and verifying financial information and accounting records.

6.1 In that capacity I have conducted numerous fraud investigations for both public and private sector clients and have given evidence in the South African High Court and the Regional Court, as well as in the Lesotho High Court.

6.2 I have also presented evidence to a Commission of Enquiry, the Commission for Conciliation, Mediation and Arbitration and at various disciplinary hearings.

6.3 Furthermore I have chaired three investigative Commissions of Enquiry into Fraud and Corruption in the Kingdom of Swaziland.

STRUCTURE OF THIS AFFIDAVIT

7 Since this is a lengthy affidavit I have been advised to provide the structure of the affidavit for purposes of easier reference. The affidavit is divided into the following topics:

7.1 Appointment and mandate of PWC: page 6

7.2 Purpose of the affidavit: page 9

7.3 Summary of the salient facts: page 12

7.4 Background: page 18

7.5 Examination of Payment Information and procurement documentation relating to On Point Engineers Pty Ltd (**On-Point**): page 20

- 7.6 Memorandum dated 3 September 2009: Request for Proposal: Program Management Support for roads and transport infrastructure delivery: page 21
- 7.7 Undated Request for Proposal; Programme Management Support for roads and transport infrastructure delivery: page 22
- 7.8 Request to advertise bids and advertisements in respect of PUDP394: page 27
- 7.9 Request for the appointment of panel members to serve on the Bid Evaluation Committee; PUDP394 pg 28
- 7.10 On-Point Technical Bid Proposal: pg 30
- 7.11 On-Point Financial Bid Proposal pg 43
- 7.12 Minutes of the BEC meeting held on 03 October 2009: pg 46
- 7.13 Summary Sheet on Functionality: pg 49
- 7.14 Memorandum dated 04 October 2009 from the chairperson of BEC to the chairperson of the BAC: pg 51
- 7.15 Minutes of the BAC meeting held on 05 and 06 October 2009: pg 58
- 7.16 Memo from the BAC to the HOD dated 05 October 2009: pg 59
- 7.17 Documentation relating to the tax clearance certificate of On-Point : pg 60
- 7.18 Letter of award sent to On-Point: pg 62

- 7.19 Agreement entered into between the Department and On-Point: pg 63
- 7.20 Publication in the provincial tender bulletin: pg 67
- 7.21 Examination of other bid documents received: pg 68
- 7.22 Payments made to On-Point: pg 72
- 7.23 Alleged 'secret agreements' between On-Point and other entities that received orders and payments from the Department: pg 78
 - 7.23.1 Mpotseng: pg 80
 - 7.23.2 Baitseanape Consulting Engineers: pg 96
 - 7.23.3 HL Matlala & Associates CC: pg 104
- 7.24 Oceanside Trading 777 CC: pg 113
 - 7.24.1 Oceansite Bid PUDP435: pg 117
 - 7.24.2 Minutes of the BEC dated 17 Feb 2010: pg 118
 - 7.24.3 Report from the BEC to the BAC: pg 120
 - 7.24.4 Bid evaluation functionality score – sheets: pg 122
 - 7.24.5 Application for approval to award PUDP435 from the BAC to the HOD dated 10 May 2010: pg 124
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APPOINTMENT AND MANDATE

- 8 PWC was requested by the National Treasury (**the National Treasury**) to provide forensic investigation services at the Limpopo Provincial Government, Department of Roads and Transport (**the Department**).
- 9 It was agreed in our Project Implementation Plan that this assignment would comprise a preliminary phase and reporting phase only, estimated to be completed within 3 weeks; where after a detailed phase of the investigation would be planned and agreed upon, based on our preliminary findings.

- 10 Our mandate for the preliminary stage of the investigation is contained in the Project Implementation Plan approved by National Treasury on 23 January 2012. The investigation was focused on procurement and relates to payments made to various suppliers identified by National Treasury, the South African Police Services (**the SAPS**) and whistleblowers; that were unknown to PWC at the commencement stage of this assignment.
- 11 PWC was required to investigate the procurement procedures followed within the Department, to identify potential role players within the Department and suppliers/third parties who may have been involved in irregular and/or unlawful transactions.
- 12 Following the said appointment, we issued a report dated 14 February 2012 detailing our preliminary findings to National Treasury.
- 13 Following the issuing of the said report PWC's mandate was further extended to provide detailed forensic investigation services at the Department, as contained in the Project Implementation Plan approved by National Treasury on 17 February 2012.
- 14 Our mandate included the investigation into the awarding of a tender to On-Point and payments made to On-Point by the Department.
- 15 The investigation further included investigating unsigned Memorandums of Understanding (**MOU**) between On-Point and other entities that received orders and payments from the Department.
- 16 On 28 May 2012 PWC issued a Status Report detailing our findings to date, which included the investigation conducted into On-Point.

- 17 Following the issuing of the said report PWC's mandate was further extended to provide additional detailed forensic investigation services at the Department and support to the SAPS, as contained in the Project Implementation Plans approved by National Treasury on 1 June 2012 and 1 October 2012. Our mandate included further investigation into the awarding of a tender to On Point Engineers and related entities.
- 18 Pursuant to the above I have prepared a report, a copy of which is attached hereto as **TSW1**.
- 18.1 The abovementioned report was prepared in support of criminal charges being proffered against Kagiso Dichabe (**Dichabe**), Lesiba Johannes Gwangwa (**Gwangwa**), On-Point, Segwalo Consulting Engineering CC (**Segwalo**), Gwama Properties (Pty) Ltd (**Gwama**), Makgetso Manthata (**Makgetso**), Selbie Manthata (**Selbie**), Helen Moreroa (**Moreroa**), Oceanside Trading 777 CC (**Oceanside**) and Julius Sello Malema (**Malema**) by the National Prosecuting Authority.
- 18.2 The report contains facts and information far more wide-ranging than is strictly necessary for the purposes of the current application, under Chapter 6 of the Prevention of Organised Crime Act 121 of 1998 (**the POCA**).
- 18.3 Nevertheless such facts provide important background information necessary to place the current application in proper context.

- 19 My report refers to annexures that are identified in the final column on pages where such annexures are referred to. Save for annexures physically annexed to the report, the annexures are contained in about 23 (twenty three) lever arch files. It is inconvenient to physically annex these annexures to my report or to these papers, since the papers will become too bulky.
- 20 These annexures are identified in separate files which will be made available to the court at the hearing, and they will be made available to all parties who become parties to these proceedings in terms of s39(3) and s39(5) of POCA.
- 21 I expressly state that these annexures form an integral part of the PWC report, and the report and such annexures are expressly incorporated into this affidavit.
- 22 These annexures together with the report will also be made available to the accused in the criminal proceedings.
- 23 I was not required to and did not undertake an audit in terms of the International Standards on Auditing.
- 24 The scope of my work was limited to a review of the documentary evidence made available to me and enquiries undertaken to address issues identified in the execution of the investigation undertaken.
- 25 I have not verified the authenticity or validity of the records and documents provided to me, unless otherwise stated.

PURPOSE OF THE AFFIDAVIT

- 26 I depose to this affidavit in support of a preservation application under chapter 6 of POCA in respect of the remaining extent of the farm Schuilkraal 623, Registration Division LS Polokwane, Limpopo (**the property**).
- 27 On the facts contained in my report, the National Director of Public Prosecutions (**the NDPP**) contends that the property was acquired with the proceeds of fraud and/or corruption, and/or theft and/ or money laundering in terms of POCA, perpetrated against the Department.
- 28 Alternatively, the property is contended to be an instrumentality of money laundering in that it represents the proceeds of fraud and/or corruption and/or theft and/or money laundering, and was acquired in such a manner as to conceal or disguise the origin of the proceeds by which it was acquired.
- 29 The property is currently registered in the name of Gwama. Gwama is a private company registered in terms of the company laws of the Republic of South Africa, registration number 2010/009087/07 and registered offices at 314 Marshall Street, Flora Park, Polokwane.
- 30 The sole director of Gwama is Gwangwa. Gwama's business is recorded as that of financial intermediate, except insurance and pension funding.
- 31 Gwangwa is also the sole director of On-Point, a private company registered in terms of the company laws of the Republic of South Africa, registration number 2009/007402/07 and registered offices at 4-6 Quinn Street, Hampton Court, Polokwane. The business of On-Point is recorded as that of other business activities.

32 Share certificates of On-Point indicate that, as at 23 September 2009, the shares of On-Point were equally owned by:

32.1 Guilder Investments 59 (Pty) Ltd (**Guilder**), a company registered in accordance with the company laws of the Republic of South Africa, registration number 2009/011250/07 and registered offices at 314 Marshall Street, Flora Park, Polokwane. Guilder was registered on 10 June 2009 and its business is recorded as investment in movable and immovable property. The sole director of Guilder is Gwangwa.

32.2 Tsiamo Dichabe (**Tsiamo**), and

32.3 The Maketele Family Trust (**the Maketele Trust**). The trustee of the Maketele Trust is AT Rasethaba. At the time of the drafting of this affidavit, I do not have any further information pertaining to the Maketele Trust.

33 Each of the aforementioned shareholders held a 33.3% shareholding in On-Point. The reason why the shareholders do not total 100% is currently unknown to me.

34 On 30 August 2010, there was a change in the shareholding of On-Point and Guilder became the sole shareholder.

35 There is also an incomplete (not signed) share certificate, also dated 30 August 2010, recording the registered shareholder of On-Point as the Ratanang Family Trust (**Ratanang**). It appears that there may have been an intention to transfer the shares in Guilder to Ratanang, but the transfer never took place.

- 36 Ratanang, with registration number IT 109/08 and the Gwangwa Family Trust (**the Gwangwa Trust**) each own 50% of Guilder.
- 37 The trustees of Ratanang are Malema and Mathebu Sarah Malema (**Mathebu**). The beneficiaries of Ratanang are recorded as Ratanang Ramohlale and "any other beneficiary nominated by the trustees from time to time". In this regard the honourable Court is respectfully referred to **Annexure R1 and R4** attached to my report, being a copy of trust documents of Ratanang.
- 38 In order to assist the honourable Court, the structure of the companies that are linked to On-Point is set out on page 148 of my report.

SUMMARY OF THE SALIENT FACTS

- 39 On 13 October 2009, On-Point was awarded a contract to the value of R 51 974 057.00 to become a Programme Management Unit (**PMU**) within the Department to assist in infrastructure programme management as it was alleged that the Department did not have enough capacity to manage this function.
- 40 On-Point subsequently received payments amounting to R43 868 900.33 from the Department as a result of the tender.
- 41 On-Point would not have been awarded the said contract had they provided the correct information regarding the qualifying requirements in terms of the request for proposal.

- 42 The bid documents submitted by On-Point and/or Gwangwa and/or Dichabe for the purposes of adjudication, contained several misrepresentations, including, amongst others, that On-Point:
- 42.1 Had the necessary profile, was an established and experienced firm with functionality to make it eligible to be considered a competent bidder;
 - 42.2 Was a multi-disciplinary firm when the objective facts points to the contrary;
 - 42.3 Provided names of persons as part of the executive and senior and key management teams when in fact some of the said persons were never employed by or associated with On-Point;
 - 42.4 Had extensive and relevant experience and knowledge in various fields including in implementing and managing PMU's, when in fact there was no evidence to support this statement; and
 - 42.5 Falsely stated that it has 9 years of experience in business when in fact the name 'On-Point' existed for approximately one month at the time of the submission of the bid, and the shelf company was only incorporated on 09 April 2009.
- 43 On 16 October 2009, and after being awarded the contract to become the PMU in the Department, On-Point and/or Gwangwa and/or Dichabe, entered into an agreement with the Department, a copy of which is attached as **Annexure A28** to my report. The agreement *inter alia* provided that, On-Point will provide working drawings, concept diagrams and

detailed designs to the Department for certain projects which On-Point, as the PMU, will manage.

- 44 The Department subsequently paid an amount of R 8 432 114.93 to On-Point for drawings and designs specific to eight projects for access roads and sidewalks.
- 45 I am advised that, upon the payment of the R 8 432 114.93 by the Department to On-Point, in terms of s5(2) of the Copyright Act 98 of 1978, read together with s21(2) of the same act, the designs became the property of the Department.
- 46 The agreement entered into between the department and On-Point did not alter the ownership of the drawings and designs.
- 47 On-Point and/or Gwangwa and/or Dichabe, being the PMU in the Department were involved in the evaluation of service providers prior to their appointment and the management of service providers on behalf of the Department.
- 48 By virtue of its status as the appointed PMU for the Department, On-Point and/or Gwangwa and/or Dichabe were involved in the evaluation of Mpotseng Infrastructure CC (**Mpotseng**), HL Matlala and Associates (**HL Matlala**), and Baitseanape Consulting Engineers CC (**Baitseanape**) as service providers to render engineering services for several road construction projects.
- 49 The Department entered into Service Level Agreements (**SLA's**) with the service providers which required that the service providers must provide the drawings and designs for their respective projects.

- 50 On-Point and/or Gwangwa and/or Dichabe then falsely stated to the service providers that the Department did not pay them for the drawings and designs.
- 51 The service providers then used the designs and drawings and after making minor alterations submitted them to the Department as required in terms of the SLA's.
- 52 As mentioned *supra*, On-Point and/or Gwangwa and/or Dichabe had already made the same drawings and designs for which they were paid R 8 432 114.93 by the Department.
- 53 On-Point and/or Gwangwa and/or Dichabe provided the same designs, which were already owned by the Department, to the service providers in return for a fee.
- 54 As a result of this:
- 54.1 The Mpotseng bank statement for ABSA account 4075903075 (the **Mpotseng account**) records that R 955 437.35 was received from the Department on 27 April 2011 and that, on the same day, R 1 000 000.00 was paid to "On-Point Engineers".
- 54.2 The On Point bank statement for FNB account number 62254918067 (the **On-Point account**) reflects that R 1 000 000.00 was received from "Mpotseng Infrastruct" on 29 April 2011. On 4 May 2011, R 1 000 000.00 was paid out of this account with the description for the payment being "Ratanang Farm".

- 54.3 After the Department had paid R 1 641 553.00 to HL Matlala on 21 June 2011, the latter paid R1 200 000.00 on 12 July 2011 to Segwalo for the said drawings and designs. Segwalo had paid R1 000 000.00 on 20 June 2011 to On Point.
- 54.4 The Gwangwa Trust has a 100% interest in Segwalo. The Honourable Court is respectfully referred to the organogram on page 148 of my report.
- 55 The claims by the service providers for payment for the said drawings and designs were recommended by On-Point and/or Gwangwa and/or Dichabe as the PMU for the Department.
- 56 This was despite the fact that On-Point and/or Gwangwa and/or Dichabe had already being paid for the same drawings and designs.
- 57 On-Point then entered into secret agreements with the service providers, in terms of which in return for the agreements entered into, the said service providers were to pay On-Point or other persons, certain sums of money.
- 58 Most of the payments received as a result of the said secret agreements were channeled through other entities to pay for the property.
- 59 The Department also advertised a tender for maintenance of Road D1656 from Mica to the Oaks in the Mopani District of Limpopo. A total of 18 bids were received, amongst others, a bid of Oceanside. Oceanside is 100% owned by Moreroa.

- 60 The employees of On-Point, who were sitting on the Bid Evaluation Committee (**the BEC**), awarded identical high/maximum scores for Oceanside in respect of Bid Evaluation Functionality.
- 61 Even though Oceanside did not meet the qualifying requirement of a National Qualifications Framework certificate (**NQF**), it was not disqualified by the BEC. Oceanside was given an opportunity to submit the outstanding NQF certificate whilst other bidders were not given the same opportunity to submit NQF certificates. As a result of this, Oceanside was awarded the bid on the recommendations of the BEC.
- 62 The Department, on the recommendation of On-Point, paid Oceanside R 6 185 035.14 for the services provided.
- 63 After receipt of the aforesaid payment to Oceanside, the latter, in turn, made a payment of R 1 000 000.00 to Kampherbeek Twine and Pogrund Attorneys (**KTP Attorneys**) for the benefit of Ratanang.
- 64 The R 1 000 000.00 was part payment for the purchase of the property.
- 65 From 15 October 2010 to 3 November 2011, On-Point made payments totaling R 1 200 000 into the account of Ratanang, which account is held at the Polokwane branch of ABSA Bank, account 4073028712 (**the Ratanang account**). A further R 100 000.00 was also received by Ratanang from On-Point as a cash deposit.
- 66 In addition to the aforementioned, On-Point also made two direct deposits in the amount of R 1 000 000.00 each into the account of KTP Attorneys on 4 May 2011 and 20 June 2011, respectively. This money was used to purchase the property.

- 67 On 12 July 2011, Qualis Health and Safety Consultants (Pty) Ltd (**Qualis**), paid an amount of R 986 418.00 into the Ratanang account.
- 68 Guilder holds a 100% shareholding of Qualis. The honourable Court is respectfully referred to the organogram on page 148 of my report.
- 69 The flow of funds received from the Department is demonstrated in the chart annexed to my report as the final document. Based on the flow of funds, after receiving payments from the Department, it is clear that Mpotseng, HL Matlala and Oceansite made payments for the ultimate benefit of Ratanang. Those payments together with payments from On-Point and Qualis were used to pay for the property.
- 70 I will set out below the facts that have emerged from investigations to support the aforesaid.. In doing so, I will give a brief exposition of institutions that are involved and their role as well as the role played by persons involved in the institutions.

BACKGROUND

- 71 As mentioned *supra*, PWC was requested by the National Treasury to provide forensic investigation services at the Department. The investigation was focused on procurement and relates to payments made to various suppliers identified by National Treasury, the SAPS and whistleblowers that were unknown to PWC at the commencement stage of the assignment.
- 72 PWC was required to investigate the procurement procedures followed within the Department, to identify potential role players within the Department and suppliers/third parties who may be involved in irregular and/or unlawful transactions.

- 73 During the preliminary phase of the investigation, members of the Forum of Limpopo Entrepreneurs (**the FOLE**) provided PWC with information relating to allegations of irregularities within the Department.
- 74 The FOLE was formed in February 2010 by a number of disgruntled businessmen who alleged that they had been sidelined when it came to doing business with, or winning tenders from, the new provincial government.
- 75 The FOLE alleged the following:
- 75.1 On-Point was employed by the Department to control the PMU in terms of their letter of appointment;
 - 75.2 The reality is that On-Point was employed to control and award tenders at the Department;
 - 75.3 The director of On-Point is Gwangwa; and
 - 75.4 Ratanang is a shareholder in On-Point and it is suspected that Gwangwa and Malema are close friends;
- 76 Based on the above, the FOLE started investigating why their members were allegedly not getting tenders from the Department. The FOLE believed that there was allegedly a "*secret database*" within the Department which On-Point was using when they were awarding tenders.
- 77 The FOLE further alleged that immediately after On-Point had awarded a tender to a specific company, the parties would enter into a secret agreement with the very same company for them to pay back a certain percentage to On-Point.

- 78 According to the FOLE, On-Point was given a budget amounting to more than R 50 million to run the PMU, but in return "they will force the companies awarded tenders by them to payback a certain percentage".
- 79 On-Point was allegedly also given offices inside the Department without paying rent, whilst they have offices in Marshall Street in Polokwane.
- 80 The FOLE also attached and referred to a letter from the Head of Department, Ntau Letebele (the HOD) dated 30 October 2010 addressed to Gwangwa. In terms thereof, the HOD was alerting Gwangwa about alleged corrupt practices committed by an On-Point employee, B Mhakha (Mhakha).
- 81 The FOLE's complaint was that the HOD should not have alerted On-Point, but should have dealt with this himself.

EXAMINATION OF PAYMENT INFORMATION AND PROCUREMENT DOCUMENTATION RELATING TO ON-POINT

- 82 I focused on the procurement procedures followed in the awarding of the contract for the provision of a PMU at the Department.
- 83 I determined that in terms of the Department's Basic Accounting System, 25 payments amounting to R 43 868 900.33 was paid to On-Point during the period 17 November 2009 to 22 November 2011.
- 84 I was provided with a file by the Department as well as additional documentation containing copies of documentation relevant to the awarding of a tender to On-Point that preceded the payments referred to above.

85 I was subsequently also provided by the Department with the original and copy of the original Bid Document of On-Point for examination purposes.

86 I conducted a review and analysis of these documents and investigated the contents of the documents and interviewed, with the assistance of my staff and the SAPS, officials and third parties referred to therein, and obtained affidavits from the aforementioned persons where necessary.

**MEMORANDUM DATED 3 SEPTEMBER 2009: REQUEST FOR PROPOSAL:
PROGRAM MANAGEMENT SUPPORT FOR ROADS AND TRANSPORT
INFRASTRUCTURE DELIVERY**

87 The Honourable Court is respectfully referred to **Annexure A12** to my report, being a Terms of Reference (TOR) which was sent under a covering memorandum dated 3 September 2009 from Saracen Mojapelo (**Mojapelo**), the Acting General Manager: Roads Maintenance to the HOD (**Annexure A11 to my report**).

88 Mojapelo appears to have signed the Memorandum on 7 September 2009.

89 In the Memorandum, Mojapelo sought the approval of the HOD for the TOR and request for proposal on the establishment of the PMU to assist the Department in Infrastructure Programme Management.

90 Further, it was stated under Background: *"The Department of Roads and Transport is a multi- sectored entity responsible for managing provincial roads, public transport as well as traffic safety. It therefore has to ensure that roads, intermodal facilities, traffic stations and cost centres are constructed and adequately maintained. The terms of reference were*

developed with the assistance of the Infrastructure development unit at Treasury".

91 Mojapelo provided the following Motivation: *"the Department is currently not having enough capacity to manage this function on its own and therefore need a Project Management Unit which will assist in capacitating the internal departmental staff. The Department is also training about ten civil engineering students at the university to be roped into the maintenance unit when they qualify. It is on the basis of these facts that an approval is sought from the Head of Department for the engagement of a suitably qualified Project Management Unit to assist in managing the maintenance for a period not exceeding three years with an option to renew the contract if necessary".*

92 Mojapelo further requested that the process be shortened to at least fourteen days or which period is the shortest due to the amount of work, which is still to be done in the financial year. This was recommended by Ms Thindisa Dikeledi, the Chief Financial Officer (**the CFO**) of the Department on the same day as Mojapelo signed the Memorandum, being 7 September 2009. The CFO made the following handwritten endorsement *"the bid to be advertised by Friday 11th September 2009"*: The HOD approved the Memorandum on 8 September 2009.

AN UNDATED "REQUEST FOR PROPOSAL: PROGRAMME MANAGEMENT SUPPORT FOR ROADS AND TRANSPORT INFRASTRUCTURE DELIVERY"

93 An undated "Request for Proposal: Programme Management Support for Roads and Transport Infrastructure Delivery" (**RFP**) was compiled and reflects the person who can be contacted about enquiries relating to the

tender as Mojapelo. The RFP was attached to the Memorandum referred to *supra*.

94 Mojapelo has since retired from the Department, but he was interviewed and he provided an affidavit detailing his involvement in the matter. Mojapelo's affidavit is attached hereto as **TSW2**.

95 In the RFP it states that, the Department was in need of the services of a multi-disciplinary team to assist in Infrastructure Programme Management.

96 The team should have been headed by a competent Programme Manager who will report directly to the General Manager: Infrastructure of the Department.

97 As a minimum requirement the following professionals should be part of the team:

97.1 Architects;

97.2 Quantity Surveyors;

97.3 Civil Engineers;

97.4 Structural Engineers;

97.5 Electrical Engineers;

97.6 Mechanical Engineers;

97.7 Project Managers;

97.8 Transport and Traffic Engineers;

97.9 Economists; and

97.10 Social Facilitators.

98 "Respondents" were also required to have relevant experience and knowledge in the design and construction of roads, traffic stations, overload control, inter-modal facilities, cost centres and airport infrastructure.

99 The document further provides for the services the contractor is required to provide including:

99.1 Programme Management and Administration. This comprises a number of services including *"support in planning, design, management and administration of projects"*;

99.2 Management support in administration and contractual relation with Implementing Agents;

99.3 Consolidated reporting of all projects financed by the Department and her entities in terms of physical and financial progress, challenges including recommendations to improve challenges; and

99.4 Support in implementation, monitoring and management of all planned and unplanned maintenance activities, its funding and full budgetary cycle.

100 The Deliverables required of the consultant consisted of eight individual items that appear to be measurable. Some of the deliverables tended to conflict with the services where the word *"support"* was used, rather than the word *"development"*:

- 100.1 Development of Concept Designs;
 - 100.2 Development of Detailed Designs and Technical Bids Documentation;
 - 100.3 Development of an Environmental Management Plan and its implementation prior and during construction;
 - 100.4 Development of Working Drawings;
 - 100.5 Site Supervision during construction;
 - 100.6 Overall Co-ordination and Project Management;
 - 100.7 Commissioning of the projects and decommissioning; and
 - 100.8 Development of Infrastructure Plan for the Department.
- 101 A compulsory briefing session would be held on 16 September 2009.
- 102 The closing date for submission of the completed proposals was 1 October 2009.
- 103 Attached to the said document are various other Standardized Bidding Documents (**SBD**), being official documents that are required to be completed by the bidders.
- 104 The RFP provided for the following evaluation criteria:
- 104.1 Two (2) envelope system (one for proposal and other for price-details of financial implications);

- 104.2 Evaluation to be based on the Preferential Procurement Policy Framework;
- 104.3 Covering letter, duly signed by the authorised person that also includes accepting the conditions of the RFP;
- 104.4 Submission of a Valid Original Tax Clearance Certificate from SARS;
- 104.5 Failure to supply any supplementary information required in the RFP will result in submission being non-responsive;
- 104.6 Evaluation will be based on functionality (70%) and price (30%);
and
- 104.7 The 90/10 preference point system will apply.

105 The RFP further included that the Department reserves the right to:

- 105.1 Accept any bid in whole or in part and does not bind itself to accept the lowest or any bid;
- 105.2 Negotiate the price with the preferred bidder;
- 105.3 Structure the contract in such manner that it is awarded to more than one bidder".

106 The RFP also provided for the following:

- 106.1 Envelope 1: Original (Technical) Proposal and two (2) copies of the original; and
- 106.2 Envelope 2: Price Proposal and two (2) copies of the original.

**REQUEST TO ADVERTISE BID AND THE ADVERTISEMENTS IN RESPECT
OF PUDP 394**

- 107 PUDP 394 pertains to the appointment of a PMU on behalf of the Department.
- 108 The HOD approved and signed a request to advertise the Bid PUDP 394 on 8 September 2009 (the same day he approved the Memorandum and TOR).
- 109 The Senior Manager Supply Chain Management (**SCM**) issued a letter to RCP Media, City Press to advertise the Bid on Sunday 13 September 2009, following which an official order would be issued on 14 September 2009.
- 110 This would indicate the matter was urgent; however, there is no information in the documentation discussed thus far that justifies the "urgency" of the matter.
- 111 The Bid was further included in Tender Bulletin number 20 of 2009/2010 dated 11 September 2009.
- 112 Under the heading "*Bidding Information*" in the Tender Bulletin referred to above, paragraph 2.2 provides for the documents to be used and information to be furnished by the bidders:
- 112.1 The prescribed bid documents (standard bidding documents) obtainable from the nearest SCM office; Insert prices and other required information in the appropriate spaces on the prescribed forms. Furnish further particulars if required, for example, samples and pamphlets;

- 112.2 Failure to submit bids in black ink; submission of bid documents without the attachment of an original and valid tax clearance certificate shall invalidate the bid;
 - 112.3 Complete preference points claim forms; and
 - 112.4 CK and any other Business Statutory Registration document.
- 113 The above indicates that there was *uniformity* in what was required by all bidders for the tenders reflected in the Tender Bulletin, which is consistent with policies and practice.

REQUEST FOR THE APPOINTMENT OF PANEL MEMBERS TO SERVE ON THE BID EVALUATION COMMITTEE: PUDP 394

- 114 On 22 September 2009 William Hlungwani (**Hlungwani**), Senior Manager SCM made a request to the HOD for the appointment of members to serve on the BEC.
- 115 It was further revealed in the document that the HOD had nominated panel members for appointment. The following panel members from within and outside the department were recommended to evaluate and make recommendations to the Bid Adjudication Committee (**BAC**):
- 115.1 Mokgadi Betty Malope (**Malope**): Limpopo Provincial Treasury;
 - 115.2 Khalatse Colbert Marobela (**Marobela**): Denel Aviation;
 - 115.3 Mojapelo: Roads Infrastructure;
 - 115.4 Lesiba Kekana (**Kekana**): Finance; and

115.5 Thomas Mashila (**Mashila**): SCM (Secretariat).

- 116 The request appears to have been signed by Hlungwani on 23 September 2009, recommended by the CFO and approved by the HOD on the same day.
- 117 The CFO made the following handwritten note: *"Recommended for approval and the HOD to note that Mr Mojapelo will not form part of the Adjudication Committee as this will be contravention of Supply Chain Management policy and procedures"*.
- 118 The HOD made the following handwritten note: *"noted comments of CFO"*.
- 119 Despite the above entry by the CFO, the BEC did not contain any SCM Practitioners (apart from the Secretariat) and the Committee was not chaired by the SCM Practitioner, as required in terms of the Limpopo Provincial Government: Provincial Treasury: SCM Office: Provincial Policy on Bid Committees.
- 120 Neither the CFO nor the HOD deemed the absence of SCM Practitioners on the BEC to be irregular or in contravention of the said policy.
- 121 Furthermore, the Department of Roads and Transport Procurement Policy Version 2 also provides for the presence of SCM Practitioners on the BEC and states the following: *"The BEC should be cross-functional and should be composed of SCM Practitioners and officials from other business units requiring the goods and/or services"*.

122 The HOD subsequently informed the abovementioned persons of their appointment to the BEC in letters addressed to them and signed by the HOD on 23 September 2009.

123 The members of the BAC are appointed annually and so there is no need to appoint a specific BAC to adjudicate on PUDP 394.

ON POINT TECHNICAL BID PROPOSAL

124 Contained in the file initially provided to me by the Department was a copy of the On-Point Technical Bid Proposal (**the Technical Bid**). Upon examination thereof, I determined that a number of the prescribed SBD official documents were included.

125 I then requested the original and a copy of the original (the requirement was 1 original and 2 copies of the original in one envelope).

126 Upon examination of the original and the copy of the Technical Bid I noticed that they contained additional documents to that initially provided in the file by the Department.

127 I further noticed when comparing the original to the copy that they were not identical:

127.1 The font size and spacing differed; Each page of the original is stamped with an official "Department of Transport Limpopo Province" date stamp, whilst the copy does not contain a date stamp on any of the pages;

127.2 The original does not contain a footer or page number, whilst the copy does; and

- 127.3 The copy does not have a covering letter.
- 128 It is submitted that the original and the copies should be identical; however, this is not the case.
- 129 On-Point's Technical Bid comprised the following:
- 129.1 A covering letter dated 29 September 2009 signed by the CEO, Gwangwa;
 - 129.2 The bid document itself that commenced with an Executive Summary and ended with Appendix D Continuous evaluation and knowledge management;
 - 129.3 Annexure A: Bid Documents being SBD forms;
 - 129.4 Annexure B: Company Registration documents;
 - 129.5 Annexure C: Original tax clearance certificate;
 - 129.6 Annexure D: Company Profile;
 - 129.7 Annexure E: CV's of Core Team;
 - 129.8 Annexure F: Professional Certificates;
 - 129.9 Annexure G: Indemnity Insurance;
 - 129.10 Annexure H: Partnership Letters; and
 - 129.11 Annexure I: CV's of Supporting Staff.
- 130 I determined the following upon examination of the original Technical Bid:

- 130.1 The registration number recorded in their covering letter is 2009/007402/07. This would indicate that On-Point was registered in 2009;
- 130.2 On-Point's covering letter refers to On-Point as a "*multi-disciplinary firm*", however there is no evidence in their proposal that supports this statement or reference to any client where they utilised their "*multi-disciplinary firm*". Ordinarily when an entity submits a bid or proposal, they would provide details of their clients and of previous similar services offered, as to that which the bid or proposal relates;
- 130.3 The document reflects it was drafted by Dichabe on 16 September 2009 and updated by Kagisho and Gwangwa on 18 September 2009;
- 130.4 In the paragraph marked "*About us*" it reflects that "*On-Point is a 100% Youth black-owned multi-disciplinary engineering firm, serving public and private sector clients*". There is no evidence in the document of engineering services that have been provided by On-Point or any clients in the public or private sector, prior to submission of the bid.

131 The Executive Team comprises the following:

- 131.1 Gwangwa- CEO: B Tech (Construction Management);
- 131.2 Dichabe- COO: B. Eng (Mechanical);

131.3 Malose Leolo (**Leolo**)- CFO: B. Com Accounting and B.Com Accounting Honours (CTA);

131.4 Mkatoko Holeni- Programme Director: Candidate Quantity Surveyor; and

131.5 Slindile Mthiyane- Legal Advisor.

132 The Senior Management Team comprises the following:

132.1 Johan Jansen van Vuuren (**Van Vuuren**)- Pr. Tech Engineer and Civil Engineer;

132.2 Tsakane Letsholo- Technical Director: Pr. Eng Structural Engineering and B. Eng (Civil), B. Eng (Hons) (Structural Engineering) and M. Eng (Engineering Management);

132.3 Lloyd Moti- Senior Technical Manager: Qualified Civil Engineer, with qualifications in Civil Engineering, Transportation Engineering and Project Management;

132.4 Kabelo Sekete- Strategic Programme Manager: B. Eng (Mechanical) degree; and

132.5 Dimakatso Matshoga- Electronic Engineering degree.

133 The Management Team comprises the following:

133.1 Thomas Mulaudzi (**Mulaudzi**): Bachelor of Technology Civil Engineering; and

133.2 Charles Kawanga: Bachelor of Engineering and Pr Eng
Specialising in Structural Engineering.

134 Annexure E further contains CV's of Core Team members.

135 Annexure I to the bid contains a spreadsheet marked "*Summary of Project Team and Support Staff Qualifications*" that includes the names of 29 people and their position in the company. Also attached are CV's of a number of people.

136 From an analysis of the above, it was immediately apparent that none of the abovementioned 12 Executive, Senior and Management team members were employed by On-Point at the date on which the Technical Bid was prepared.

137 In addition I examined all of the other remaining CV's and none of them reflect their current employer as On-Point.

138 The RFP states that "*Respondents are also required to have relevant experience and knowledge in the design and construction of roads, traffic stations, overload control, inter-modal facilities, cost centres and airport infrastructure*". I submit that there is no evidence in the Technical bid of On-Point, being the "*respondent*" (as a company/entity) complying with and meeting this criteria.

139 Annexure A contains the "*Bid documents*" including Form SBD6.1 that contains the registration number 2009/007402/07, which is the same as that recorded in the covering letter. However, in paragraph 9.7 thereof, it is recorded that On-Point has been in business for 9 years, which is not possible as it was only registered in 2009.

140 Annexure C to the Technical Bid contains a copy of a Tax Clearance Certificate.

140.1 It reflects the Legal and Trading name of the entity as "*Achir Shelf 8 (Pty) Ltd*", with registration number 2009/007402/07 and income tax reference number 9400631165;

140.2 The certificate number is 0091/1/2009/0001993799. It was approved on 18 August 2009 and is valid for one (1) year; and

140.3 The registration number is the same as that provided by On-Point in their covering letter.

141 In an attempt to emphasise the extent of the manipulation of the bid process, interviews were conducted with and/or correspondence were sent to the people whose CV's were attached to the On-Point Technical Bid.

142 Van Vuuren whose affidavit is attached hereto as **TSW3** stated that:

142.1 He was contacted by Dichabe and was requested to meet him as they (On-Point) intended submitting a proposal for the PMU bid;

142.2 He did not know Dichabe prior to this and assumed he had acquired his name from Gwangwa who was known to him;

142.3 He discussed the PMU bid with Dichabe, as they both were going to be involved in the PMU. The intention was for him to act as a freelance consultant;

- 142.4 He agreed that his CV could be included in the bid, however he did not know what was included as he was not part of the team that prepared and submitted the bid;
- 142.5 He was thereafter contacted by Dichabe and was informed On-Point had been awarded the bid. He was told that he was required to start immediately and was called to a planning meeting at an office situated at no.314 Marshall Street, Polokwane;
- 142.6 There was no signage indicating the name On-Point, but upon entering, he noticed On-Point files. He met Dichabe, Mr Mahaka, Alex Mloyiswa, Mulaudzi and Gwangwa;
- 142.7 They then discussed how they planned to implement the project, at which stage he informed them that he could not be part of the PMU on a full time basis, as he had other commitments. They were disappointed and angry at his decision;
- 142.8 At no stage was he provided with any formal letter of appointment or offer of employment; and
- 142.9 He did not commence with any work at the PMU on behalf of On-Point from the date of their appointment until February 2010, at which date he was requested to design the access roads for 3 projects.

143 Lucky Msimanga (**Msimanga**) provided an affidavit through his attorney which was vague, despite PWC staff meeting with his legal representative. Msimanga indicated the following:

143.1 He was requested to submit his CV for the tender, which he understood, at the time, had been advertised and no contractor or service provider appointed; and

143.2 He never benefited nor in anyway got paid either personally or through his company, NS Sukumani, in any work relating to this tender whatsoever, nor was he or his company involved in the eventual beneficial execution of the tender.

144 Mulaudzi, whose affidavit is attached hereto as **TSW4**, stated the following:

144.1 He commenced work, via his entity Engcor Engineering Consultants (**Engcor**), at SGL Consulting Engineers (**SGL**) situated at 314 Marshall Street, Polokwane in October 2008 as a Project Manager;

144.2 He was involved in the PMU for On-Point at the Department in a temporary position from September 2009 as they were short staffed;

144.3 He provided his services for On-Point from 314 Marshall Street, Polokwane. This is the same address from where SGL operates its business. There was no clear distinction between On-Point and SGL when he was contracted by SGL;

144.4 He confirmed compiling certain design reports and drawings whilst contracted to SGL for On-Point; and

144.5 Engcor, represented by Mulaudzi terminated the contract with SGL in October 2011.

145 Leolo , whose affidavit attached hereto as **TSW5**, stated the following:

145.1 He was approached by Dichabe who was known to him previously. Dichabe asked him to submit his CV for it to be attached to the On-Point bid documents.

145.2 He submitted his CV and was thereafter notified On-Point had been awarded the bid; and

145.3 He was appointed CFO of On-Point and commenced duty at the end of October 2009.

146 The On-Point team consisted of the following people as far as Leolo could remember:

146.1 Gwangwa - Chief Executive Officer;

146.2 Dichabe - Chief Operational Officer;

146.3 Lloyd Moti (**Moti**) - Senior Technical Manager;

146.4 Esther Dladla Machii - Company Secretary;

146.5 Mulaudzi who worked for SGL and On-Point;

146.6 Bertus an engineer in Limpopo; and

146.7 Eveline Tsauke who left after a month.

147 Leolo examined the list of names of the support staff team that was attached to the Technical Bid and he recognised the following people only:

147.1 Machii Esther Dladla;

- 147.2 Moti; and
- 147.3 Reabetswe Tumelo Rasebitse (**Rasebitse**) (He had seen him but he did not work for On-Point).
- 148 Leolo did not know any of the other persons whose names are on this list.
- 149 Rasebitse's CV was submitted under Annexure E, CV's of Core Team Members.
- 149.1 Rasebitse's CV reflects that he was at the time of the submission of the bid the Managing Member of Tshwaranganang Community Development Organisation.
- 149.2 Rasebitse's CV also contains an On-Point logo.
- 149.3 Rasebitse stated that he had no knowledge of the submission of his CV by On-Point and that he was not aware that they had been awarded the bid.
- 150 Other individuals who were listed and represented as being members of On-Point support staff, but who in fact were neither members of On-Point support staff, nor had any idea that their CV's had been attached to the Bid documents were:
- 150.1 Rethabile Joyce Mphonyo (currently employed by South African Reserve Bank);
- 150.2 Phelelani Abraham Zulu (currently self employed at Zandi Power Services CC);

150.3 Takazviona Sande (currently employed at Bigen Africa Services (Pty) Ltd;

150.4 Kabelo Thaba Sekete (currently employed at BHP Manganese);

150.5 Dimakasto Catherine Matshoga (currently self employed Atafala Enterprises); and

150.6 Thulani Maseko (currently employed at Mestama Engineering).

151 The above is dealt with in more detail in my report at paragraph 8.046 (vi – xi) at pg 33 – 37).

152 The On-Point bid in paragraph 7.2 refers to International Partners. The following is stated: *"Through the years, we have strategically forged a working relationship with some of the key international partners. Our partnerships encourage all parties to tap into each other's resources and intellectual capital and expertise. This will enable our clients to receive international standards, deliverables and best practice services. Imtech, Peek Traffic and Suir Engineering are some of our international practices".* I was unable to determine the basis upon which On-Point could have formed any international relationships *"through the years"* for the following reasons:

152.1 On-Point was only registered on 9 April 2009 and the bid document was signed and dated 29 September 2009;

152.2 There is no evidence based on the content of the bid document that On-Point had provided any prior services in either the Public or Private Sectors;

152.3 There is no evidence that On-Point had the required experience as provided for in the RFP and that they had used any of the "International Partners" and had working relationships with them; and

152.4 On- Point Engineers had only undergone a name change from Achir Shelf 8 (Pty) Ltd on 31 August 2009.

153 The bid document further provides additional information about the 3 International Partners, without providing any detail at all of the projects they were jointly involved in with On-Point:

153.1 "Imtech NV is a European technical services provider in the multidisciplinary engineering fields";

153.2 "Peek Traffic is a subsidiary of Imtech, and has a dedicated team of development engineers- including hardware, software, and mechanical designers- who are charged with ensuring that Peek's range of traffic products remains at the leading edge of the industry. Peek's engineers use the latest development tools, and project management techniques to deliver efficient and cost effective products, designed to deliver best value to our wide customer base";

153.3 "Suir Engineering is another Imtech subsidiary. Since its formation, Suir has gone onto establish itself as a leading engineering company".

154 In order to gain clarity on the relationship between On-Point and the 'international partners' Mr. Marc Robert of Peek Traffic (Peek) was

contacted to inquire about the nature of their relationship with On-Point. A summary of his reply is found on page 45 – 46 (paragraph 8.051) of my report, and are set out below: Bart de Lange (**De Lange**) of Imtech Amersfoort had allegedly informed him that he done some work with On-Point over the previous two years and had a good working relationship. I wish to state that I have not received any reply from De Lange, after I was referred to their legal advisor Stephanie Joy.

155 There was never a working relationship between Peek and On-Point; Peek had offered support for a "number of traffic technology opportunities" in Limpopo. Following the exchange of information about Peek it became apparent that there was no specific opportunity.

156 Peek sent three CV's and an adobe version of a company presentation. When he asked about the opportunities he was referred to the "Limpopo Growth and Development Strategy" which On-Point could not send. Peek then challenged what opportunities really existed with the result that Peek did not travel to South Africa because On- Point could not and did not give Peek any information.

157 Peek has had no prior or subsequent working relationship with On-Point as an international partner.

158 Peek was not asked to give permission to include its logo other than on the open letter of support and CV's.

159 The CV's of Dave Kelly (**Kelly**), Dave Hall (**Hall**) and Richard Pearce (**Pearce**) had been sent to On-Point and were used in support of On-Points approach for the PMU. The CV's were to demonstrate Peek's capacity in

supporting the survey work and configuration of traffic management systems. Peek does not know why some of the CV's contain the On-Point logo. There was no request received from On-Point to place their logo on CV's or to transfer the content into a different format.

160 No Peek employee has ever been deployed to On-Point or provided services on behalf of On-Point, after the final e-mails requesting details of what opportunities may exist in South Africa Peek, has had no correspondence with On-Point.

161 There was no discussion with On-Point with regards to the involvement of Pearce, Kelly or Hall on any bid. The CV's was to demonstrate Peek's capability.

162 The above is dealt with in more detail in my report at paragraph 8.047 – 8.051 at pg 38 – 45).

ON-POINT FINANCIAL BID PROPOSAL

163 Also contained in the file initially provided to me by the Department was a copy of the Financial Bid Proposal (**the Financial Bid**). I requested the original of this document but have not been provided with it.

164 Upon examination of the documents, I noticed the following:

164.1 The Financial Bid does not contain the official date stamp, as is the case with the original Technical Bid;

164.2 The Financial Bid contains a footer and page numbers, that the original Technical Bid did not; and

- 164.3 In the Executive Summary refers amongst others to "*Due to our extensive experience in implementing and managing PMU's, we have developed an effective and efficient operating model that will ensure LDRT immediate benefits*". As previously stated the Technical bid does not contain any evidence or reference to On-Point previous experience or the implementation and managing of PMU's.
- 165 The "*financial model*" contained in a table provides a breakdown of the Department's PMU Programme and Disbursements.
- 166 The Department's PMU Programme breakdown also contains eight (8) descriptions of the services to be provided over a three (3) year period, sub-descriptions/tasks to be performed and the number of hours and rate (and charge out rate per hour). The document does not contain the level/professional qualification of the staff member of On-Point that would be responsible for each of the individual tasks.
- 167 The eight (8) descriptions of the services are listed below:
- 167.1 Program Planning;
- 167.2 Transportation Planning;
- 167.3 Procurement of Consultants and Contractors. Item 3.3 which provides for the "*Procurement of Design and Construct Consultants*";

167.4 Monitoring of Departmental Infrastructure Projects. Item 4.1, which provides for "*Project Design Review*". The amount allocated per year is R 660 000;

167.5 Financial Planning and Control;

167.6 Liaison and Coordination;

167.7 Reporting and meetings; and

167.8 Other.

168 There is no provision in the said Financial Model for the Development of Concept Designs, Detailed Designs and Working Drawings, which were included as "*Deliverables*" in the RFP.

169 The financial implications over the 3-year period is summarised in the table below, excluding VAT.

169.1 The disbursements provide for printing, copying, binding, travel and accommodation and amounts to approximately one third of the total price.

169.2 I was unable to determine how this was determined and calculated based on the information provided in the RFP.

Services (time)

Year 1 (R)	Year 2(R)	Year 3 (R)
9 892 600.00	9 196 600.00	9 196 600.00

Disbursements

Year 1 (R)	Year 2(R)	Year 3 (R)
5 931 500.00	5 416 180.00	5 957 798.00
Total (R)		
Year 1 (R)	Year 2(R)	Year 3 (R)
15 824 100.00	14 612 780.00	15 154 398.00

MINUTES OF THE BEC MEETING HELD ON 03/10/2009

170 **Annexure A21** to my report contains a copy of the minutes of the BEC meeting held on 3 to 4 October 2009 to evaluate PUDP 394 reflects that Mojapelo was the convenor.

171 An apology was noted for Malope (from Provincial Treasury), however I was unable to determine the reason for her absence from the minutes.

172 The other members in addition to Mojapelo are recorded as:

172.1 Marobela ;

172.2 Kekana; and

172.3 Mashila.

173 Members were prior to the meeting commencing requested to declare interests by signing the declaration of interests and the oath of secrecy forms. These documents have been referred to and attached to the

affidavits of the BEC members. I was provided with copies of the said forms duly signed by the 4 persons referred to above on 3 October 2009.

174 Malope was interviewed and an affidavit, attached hereto as **TSW6** was provided by her, detailing the reasons for her absence from the BEC. Her absence was a direct result of procedures not being followed and the extreme haste in which the BEC was convened to evaluate the tenders. Her explanation is summarised hereunder:

174.1 She was not involved in the tender at all;

174.2 She received a telephone call on the day that the BEC was going to convene that was on a weekend, from either the Chairperson or the Secretariat;

174.3 She was informed that the other members of the BEC were waiting for her;

174.4 She replied by advising that she did not know anything about her appointment to the BEC and that the procedure was for the Department to request her participation in writing from the Head of Provincial Treasury;

174.5 She was told by the caller that he would look for the letter that confirmed her appointment, but that the BEC had to start the evaluation process;

174.6 She was not in a position to participate in the BEC without the authority from the Head of Provincial Treasury and she heard

nothing further from the Chairperson or the Secretariat with regards to her participation on the BEC in question;

174.7 She also did not know what the nature of the tender was;

174.8 She also received a telephone call from the HOD, on the same day (on a weekend), and she also explained the situation to him as to what was required in order for her to participate on the BEC; and

174.9 She added further that Provincial Treasury prefers not to act as player and referee within other provincial government departments, but to appear only in an advisory capacity.

175 In respect of the BEC minutes and under sub-heading 4 Evaluation Process the following deliberations were taken:

175.1 Two envelope system;

175.2 Technical proposal;

175.3 Financial Proposal;

175.4 Covering letter;

175.5 Valid tax clearance certificate; and

175.6 Preferential Procurement Point System.

176 In respect of the BEC minutes and under sub-heading 4 Evaluation Process the following resolutions were taken in respect of disqualifying criteria;

- 176.1 Submission of both technical and financial proposal in one envelope;
- 176.2 Non-submission of one (1) original and two (2) copies of technical and non-financial proposals;
- 176.3 Scoring of less than 30 points on technical functionality; and
- 176.4 Non-submission of covering letter.
- 177 It is evident that none of the bidders would be disqualified for the criteria "*valid tax clearance certificate*" even though this was a requirement in terms of the RFP. However, they would be disqualified for non-submission of a covering letter.
- 178 The RFP did not specifically state that the non-submission of a covering letter duly signed or a valid tax clearance certificate would result in the bid being disqualified.
- 179 In terms of the minutes the meeting adjourned at 19:30 on 3 October 2009 and the 2nd day, being 4 October 2009, was confined to the calculation of points and compilation of the report. The meeting closed at 16:00 on 4 October 2009 and the minutes appear to have been signed by the secretariat and convenor on the same day, 4 October 2009.

SUMMARY SHEET ON FUNCTIONALITY

- 180 A copy of the Summary Sheet on functionality for PUDP 394 for the On-Point bid provided to me reflects that Mojapelo, Marobela and Kekana did the evaluation and scoring. The final scoring was as follows:

180.1 Mojapelo- 34 points;

180.2 Marobela- 53 points;

180.3 Kekana- 50 points

181 Upon examination of the Score Sheet for Functionality completed by the said members of the BEC, I determined the following:

181.1 Both Marobela and Kekana awarded On-Point 4 points (very good) for Experience, whilst Mojapelo awarded 2 points (average) for the Experience criteria;

181.2 As previously stated there is no evidence of any Experience provided by On-Point in their Technical Bid Proposal that would justify Marobela and Kekana awarding 4 points for this criteria;

181.3 Similarly, both Marobela and Kekana awarded On-Point 4 points (very good) for Qualifications, whilst Mojapelo awarded 3 points (average) for the Qualifications criteria;

181.4 As previously stated the CV's attached to the On-Point Technical bid reflect that these persons were employed elsewhere at the time and not at On-Point. There is no evidence based on the said CV's and the bid document itself that would justify Marobela and Kekana awarding 4 points for this criteria;

182 Mojapelo's final score for On-Point was 34, as opposed to Marobela who scored 53 and Kekana who scored 50 (out of 70).

183 The average score was therefore calculated at 45.67.

184 The above findings indicates to me that Marobela and Kekana may have colluded in awarding On-Point points they were not entitled to, thus ensuring On-Point scored the highest points for functionality, alternatively they did not understand the criteria and/or did not properly read and examine the On-Point Technical Bid.

185 Interviews were conducted with Mojapelo, Marobela and Kekana and affidavits were provided by them detailing their appointment to the BEC, procedures followed and their individual evaluation and scoring.

186 In **TSW2**, Mojapelo states that:

186.1 He was the Acting General Manager: Roads Infrastructure at the time and was responsible for compilation of the RFP and Memorandum to the HOD;

186.2 He was appointed to the BEC as the Chairman/Convenor by the HOD;

186.3 Kekana was from the finance division within the Department, whilst he did not know Marobela but understood he was a legal person;

186.4 The sole member of the BEC from SCM was the secretariat;

186.5 He could not explain why Kekana and Marobela scored On-Point significantly higher than him;

186.6 The valid tax clearance certificate requirement was not picked up by the BEC and also was not referred back to the BEC;

187 Shortly after the appointment of On-Point, Mojapelo had an issue with On-Point that resulted in his suspension from duty on 13 November 2009.

188 He then initiated a grievance against the HOD, as detailed in his letter to the then MEC Ms P Kekana signed by him on 17 November 2009.

189 He never received a reply to his letter from the MEC. He thereafter decided to take early retirement from the Department after reviewing his options.

190 Kekana whose affidavit attached hereto as **TSW7**, stated that:

190.1 He was a Senior Manager in Financial Accounting and reported to the CFO;

190.2 He did not recall if he had prior experience serving on a BEC before the bid in question;

190.3 He alleged that he did not know Marobela prior to the BEC meeting and that he understood Marobela was employed by a company that deals with high tech aeroplanes;

190.4 He has not served on other BEC Committee's where non-Government persons were also appointed to the BEC, apart from those where On-Point were involved, subsequent to their appointment. He understood this was permitted;

191 In response as to how he scored 4 points (being very good) for On-Point "Experience" as it has been put to him that On-Point as a business entity did not provide any evidence of previous projects completed by them, Kekana stated that he did not look at On-Points "Experience" in their

company profile document, but looked at the CV's attached to On-Points bid.

192 He further did not pick-up from the CV's that these persons were not employed by On-Point at the time he performed the evaluation.

193 In response to him and Marobela awarding 50 and 53 points respectively to On-Point whilst Mojapelo awarded 34 points to On-Point and that it appeared he colluded with Marobela, Kekana denied any collusion;

194 Marobela whose affidavit attached hereto as **TSW8**, stated that::

194.1 He has been employed by Denel Aviation since July 2008,, and was an admitted but not practicing attorney;

194.2 The HOD, who he knows from childhood, asked him whether he would be available and prepared to assist the Department by serving on the BEC; he agreed provided he was given notice and that he had time available;

194.3 He had agreed beforehand to provide the HOD with advise relating to legal matters. He was also previously employed at Polokwane International Airport under the then HOD of the Department, where he had experience sitting on BEC's;

194.4 He was introduced to other members of the BEC on the day of the BEC meeting; but he only knew Kekana of the Department from the time he worked at Polokwane International Airport and Kekana was working at the Department.

195 I would submit that Marobela does not comply with the requirements of a "Technical Expert" as defined in Limpopo Provincial Treasury SCM Policy on Bid Committees, being: *"Individuals who possess relevant knowledge and skills in a specific field either from within the department or outside"*.

196 The bid relates to the appointment of a PMU to the Department of Roads and Transport, Roads Infrastructure Programme Management. There is no evidence that Marobela was an expert in this field and by his own admission he is a legal person with experience in SCM.

197 It is submitted that persons with legal backgrounds and/or SCM experience are not unique and could have been sourced from within Government and within the Department itself.

MEMORANDUM DATED 4 OCTOBER 2009 FROM THE CHAIRPERSON OF THE BEC TO THE CHAIRPERSON OF THE BAC

198 The purpose of this memorandum, which is attached to my report as **Annexure A23**, was to submit to the BAC the findings and the recommendations of the BEC.

199 The meeting of the BEC was held on 3 to 4 October 2009 to evaluate all the bids that were received.

200 The Particulars of the Bid are:

200.1 Bid number: PUDP 394;

200.2 Closing date: 1 October 2009;

200.3 Validity expires: 31 December 2009;

200.4 Bids received: 16

201 The following 16 entities submitted bids in respect of PUDP 394. These entities were:

201.1 Wepener Dikgale Consortium;

201.2 Zwamavu Trading;

201.3 Cubic Professional Consultants/Bigen Africa Services;

201.4 Dombo & Du Plessis Consulting Engineers;

201.5 SNA;

201.6 Tank Projects Solution/Nais Management Services;

201.7 Tau Pride Projects JV;

201.8 Iponeng Consortium;

201.9 Dabnosys Management Consulting Services;

201.10 Aurecon;

201.11 On-Point;

201.12 Naidoo Consulting/SSI & Phakama;

201.13 Nyeleti Consulting JV

201.14 Phathaka Trading Enterprise;

201.15 PD Consortium; and

201.16 Vela VKE/MME.

202 The following six bidders were disqualified as they did not comply with the two envelope requirements:

202.1 SNA;

202.2 Tau Pride Projects JV;

202.3 Nyeleti Consulting JV;

202.4 Phathaka Trading Enterprise;

202.5 PD Consortium; and

202.6 Vela VKE/MME.

203 Proposals for the remaining 10 bidders were evaluated in terms of the following:

203.1 Relevant Qualification: 30;

203.2 Experience: 25; and

203.3 Skills transfer: 15.

204 The following are the scores for functionality:

204.1 Wepener Dikgale Consortium = 29.33;

204.2 Zwamavu Trading = 25.00;

204.3 Cubic Professional Consultants/Bigen Africa Services = 34.33;

204.4 Dombo & Du Plessis Consulting Engineers = 36.00;

- 204.5 Tank Projects Solution/Nais Management Services = 31.00;
 - 204.6 Iponeng Consortium = 34.67;
 - 204.7 Diagnosys Management Consulting Services = 29.00;
 - 204.8 Aurecon= 33.33; and
 - 204.9 On-Point = 45.67; and
 - 204.10 Naidoo Consulting/SSI & Phakama = 31.67
- 205 It is evident that On-Point scored significantly higher in functionality than any of the other bidders and almost 10 points higher out of 70 points than the 2nd highest score of 36.
- 206 The following bidders were disqualified on the basis of not meeting the minimum of 30 points:
- 206.1 Wepener Dikgale Consortium = 29.33;
 - 206.2 Zwamavu Trading = 25.00; and
 - 206.3 Diagnosys Management Consulting Services = 29.00
- 207 As the remaining seven bidders met the minimum points of 30 for functionality, their financial proposals were opened.
- 208 The following three bidders were disqualified for not providing price/breakdowns as required:
- 208.1 Cubic Professional Consultants/Bigen Africa Services;
 - 208.2 Dombo & Du Plessis Consulting Engineers;

208.3 Tank Projects Solution/Nais Management Services;

209 The remaining four bidders then had to comply with the requirement for a covering letter, duly signed and accepting the terms and conditions. The following three bidders were disqualified for non-compliance:

209.1 Iponeng Consortium;

209.2 Aurecon; and

209.3 Naidoo Consulting/SSI & Phakama.

210 The only bidder remaining was On-Point and the only requirement that had to be complied with was that of a Valid Tax Clearance certificate.

211 On-Point was found to be compliant.

212 Points for price were calculated for On-Point only as the other fifteen (15) bidders had been disqualified for the reasons already discussed above. On-Point scored 30 points on price and this was added to their Technical Score of 45.67, totaling 75.67. This was converted to 90 points to the 90/10 Conversion.

213 On-Point's bid price was R 51 974 057.00.

214 The BEC recommended that BID No PUDP 394 be awarded to On-Point in the amount of R 51 974 057.00 and that they had complied with all the evaluation criteria.

215 The Memorandum was signed by Mojapelo the Chairperson of the BEC.

MINUTES OF THE BAC MEETING HELD ON 5 TO 6 OCTOBER 2009

216 The said minutes (**Anneure A24** to my report) reflect the following members were present at the meeting that was held at the HOD's office:

- 216.1 Matsila (Member);
- 216.2 Mojapelo (Member);
- 216.3 Thindisa MMM (Chairperson);
- 216.4 Ms Malebana KR (Secretariat);
- 216.5 Mashila (Secretariat); and
- 216.6 Mkhabela ZGG (Member).

217 Under the item PUDP 394 the following deliberation and resolution was taken:

- 217.1 Mojapelo was excused from the meeting and the committee members went through the report. Mojapelo was later called to present the report and clarify some raised issues.
- 217.2 The minutes do not reflect what issues were raised;
- 217.3 It was resolved that the bid be recommended for the HOD's approval and that The HOD negotiates the price on certain items with the help of the chairperson.
- 217.4 The minutes have been signed by the secretariat and the chairperson, who is the CFO.

**A MEMORANDUM FROM THE BAC TO THE HOD DATED 5 OCTOBER 2009
TITLED "APPLICATION FOR APPROVAL TO AWARD BID PUDP 394:**

**PROCURE THE SERVICES OF INFRASTRUCTURE PROJECT
MANAGEMENT UNIT FOR THE DEPARTMENT"**

218 The purpose of the Memorandum, attached to my report as **Annexure A25**, was to obtain approval from the Accounting Officer to award bid PUDP 394 to On-Point at a total bid price of R 51 974 057.00 for a period of 3 years.

219 The memorandum is dated 5 October 2009, however the BAC convened from 5 to 6 October 2009 and hence it is unclear when the BAC came to its resolution referred to in the minutes.

220 This memorandum was recommended by the CFO, Chairperson of the BAC on 9 October 2009 and approved by the HOD, on the same day.

**DOCUMENTATION RELATING TO THE TAX CLEARANCE CERTIFICATE OF
ON-POINT**

221 The following summarises the sequence of events:

221.1 The tax clearance certificate that accompanied On-Point's bid documents is stamped with an official "Department of Transport Procurement, Limpopo, Province" date stamp and is dated 1 October 2009, which was the closing date of submission of the tenders;

221.2 The tax clearance certificate reflects the Legal and Trading name of the entity as Achir Shelf 8 (Pty) Ltd with registration number 2009/007402/07 and income tax reference number 9400631165;
and

221.3 The certificate number is 0091/1/2009/0001993799. The certificate was approved on 18 August 2009 and is valid for one year.

222 On 7 October 2009, after the BAC memorandum to the HOD dated 5 October 2009 and prior to the HOD approving the recommendation to appoint On-Point on 9 October 2009, the HOD sent a letter to Gwangwa titled "Submission of Tax Clearance Certificate". This letter is attached to my report as **Annexure A26/2**, and the body thereof reads as follows:

"Please take note that you have submitted the tax clearance certificate of Achir Shelf 8 (Pty) Ltd.

You have to submit the tax clearance certificate of On-Point Engineers (Pty) Ltd.

Failure to submit the required document within two days after receipt of this notice will be regarded as non-submission of the correct tax clearance certificate, which will disqualify you from further participation in this process.

Please treat this matter as urgent".

223 Gwangwa replied the following day (8 October 2009) in a letter to the Department. It was explained in the said letter that is incomplete and is missing the name On-Point that Achir Shelf 8 (Pty) Ltd was bought and the name was changed to that of On-Point. Gwangwa concluded by stating the confirmation of the name change documents which verifies same, were submitted with their proposal. In this regard the Honourable Court is referred to **Annexure A26/3** to my report, being a copy of the letter.

- 224 Gwangwa sent a further letter (see: **Annexure A26/4** to my report) to the Department for the attention of Mashila on 9 October 2009 and referred to their attached tax clearance certificate as requested.
- 225 The attached Tax Clearance Certificate (see: **Annexure A26/5** to my report) reflects the Legal and Trading name of the entity as On-Point with registration number 2009/007402/07 and income tax reference number 9400631165, being the same as that of Achir Shelf 8 (Pty) Ltd.
- 226 The certificate number is 0064/1/2009/000203329. It was approved on 9 October 2009 and is valid for 1 year.
- 227 I was unable to determine if or why the matter was not referred back to the BEC.
- 228 The Limpopo Provincial Government Preferential Procurement Policy document dated 9 May 2006, makes provision for the BEC, before disqualifying a recommended bidder for non-submission of the original Tax Clearance Certificate, to contact the bidder and request the original valid Tax Clearance Certificate be submitted within 2 working days.
- 229 The BEC, did not identify this, nor did the BEC perform the said function.
- 230 In addition, On-Point submitted a tax clearance certificate in the name of an entity that was not the bidder and this fact was not identified by the BEC.

LETTER OF AWARD SENT TO ON-POINT

- 231 The Department subsequently informed On-Point in writing on 13 October 2009 that the HOD had approved that the bid be awarded to them in the

amount of R 51 974 057.00. This letter was signed by the HOD on 13 October 2009 and is attached to my report **Annexure A27** to my report.

AGREEMENT ENTERED INTO BETWEEN THE DEPARTMENT AND ON-POINT

232 An agreement (**Annexure A28** to my report) was subsequently entered into by and between the Department and On-Point on 16 October 2009.

233 The agreement was signed by the HOD and Gwangwa. The witnesses to the agreement were Dichabe and Mrs MM Thindisa.

234 The agreement commenced on 19 October 2009.

235 In the agreement, two clauses appear to be in conflict with one another

236 The PMU's obligations included:

236.1 Clause 6.1.4.5 "Support in planning, design, management and administration of projects undertaken by the Department"; and

236.2 Clause 6.1.4.6 "Support in Regular progress review on planning and design and documentation process of the projects undertaken by the Department".

237 However, the PMU's deliverables included:

237.1 Clause 8.1 "Development of Concept Designs";

237.2 Clause 8.2 "Development of Detailed Designs and Technical Bids Documentation";

237.3 Clause 8.3 "Development of an Environmental Management Plan"; and

237.4 Development of Working Drawings.

238 The CFO was interviewed and an affidavit drafted for her based on the interview she had with PWC.

239 The need for the PMU arose as the performance of the Department was an issue and the end-user being Roads Maintenance did not have the capacity to implement projects.

240 The end-user required a consultant to assist in this regard. She signed and recommended the request on 7 September 2009.

241 She further confirmed that she made the following entry "*The bid to be advertised by Friday 11 September 2009*".

242 She made the said entry because they were in the second quarter of 2009 and they needed to spend money otherwise they would lose it.

243 Further, the department needed the PMU to commence with implementation and planning of projects and hence this was also urgent.

244 The CFO further indicated that the PMU was according to her understanding to provide a supporting role to the end-user. Hence, the PMU is a support mechanism to the Department.

244.1 The CFO added that Roads Agency Limpopo (RAL) is an implementing agency who have their own projects and are legally entitled to do so.

- 244.2 The Department has always been responsible for the routine maintenance function whilst the preventative maintenance function was prior to the appointment of the PMU the responsibility of RAL;
- 245 The CFO provided me with a letter (**Annexure A28A/1** to my report) on a RAL letterhead from EM Makwela, the chairperson of the RAL board at the time, which is dated and signed 18 August 2009.
- 246 The letter is addressed to Ms Kekana and the subject is "*The taking over of preventative maintenance function from RAL to the Department*". The letter reflects that the decision by the shareholder (being the MEC) that the preventative maintenance component will be taken back to the Department. The writer also refers to the need for the takeover to be formalised by a Service Level Agreement (**SLA**) between RAL and the Department.
- 247 The CFO also provided a copy of the signed SLA, which was signed by the acting CEO of RAL at the time (Ms Kgottlana) and the HOD on 27 November 2009;
- 248 In respect of the composition of the BEC, the CFO indicated that she did not know Marobela prior to the BEC process. She subsequently met him at the HOD's 40th birthday party in 2010 where she was introduced to Marobela, at the HOD's home.
- 249 The CFO stated that she understood that a non-government official was authorised to sit on the BEC and in this regard she referred to the Limpopo Provincial Government Policy on Bid Committees dated April 2007;

- 250 The CFO further stated that she understood Marobela was also going to do the evaluation of bids as a full member of the BEC and she recalled discussing Marobela's appointment to the BEC with the HOD and he informed her that Marobela is a lawyer by profession;
- 251 The CFO provided me with a list of other bids awarded by the Department where non-government persons served on the BEC or BAC excluding On-Point employees who sat on the BEC subsequent to their appointment.
- 252 The said list reflects Marobela sat as a member on the BEC in respect of PUDP 404, PUDP 405, PDUP 408, PUDP 409, PUDP 410 and PUDP 492 and that he was the only non- government person; the others being officials of other government departments.
- 253 The only exception is PUDP 593 which was awarded in August 2011.
- 254 The cumulative effect of the above would indicate to me that the appointment of Marobela as a member of the BEC was an exception rather than the norm.
- 255 In respect of the appointment of the PMU, the CFO confirmed that the On-Point bid was part of the report of the BEC to the BAC and the BAC did not look at any other bids that had been disqualified.
- 256 The CFO confirmed that in terms of the BEC report 15 of the 16 bidders were disqualified. The BAC accepted the BEC report and had no reason to doubt the accuracy thereof.

- 257 The minutes reflect that the bid be recommended for the HOD's approval and that the HOD negotiate the price on certain items with the help of the chairperson (of the BAC).
- 258 The CFO indicated that she did not recall if such negotiation took place but it is evident the bid price remained the same and that no prices on certain items were negotiated.
- 259 In so far as the qualifying criteria of the bidders was concerned, the CFO confirmed that RFP referred to "*Respondents*" who are required to have relevant experience and knowledge in the design and construction of roads, traffic stations, overload control, inter-modal facilities, cost centres and airport infrastructure.
- 260 A SLA was subsequently drawn up and signed by the HOD and Gwangwa on 16 October 2009 to which the CFO was a witness. The second witness was Dichabe from On-Point.
- 261 The CFO indicated that this was the first time she had met Dichabe.
- 262 The CFO further stated that she understood the SLA was prepared by the Department's legal section although she personally did not contribute thereto.

PUBLICATION IN THE PROVINCIAL TENDER BULLETIN

- 263 The awarding of the bid to On-Point was advertised in the Provincial Treasury Tender Bulletin number 02 of 2010/2011 on 9 April 2010. In this regard the Honourable Court is referred to **Annexure A29** of my report, being a copy of the bulletin.

264 The tender was awarded on 9 October 2009 (**Annexure A29/7** of my report), but the advertisement was only published 6 months after it was provided and commenced providing services in terms of the agreement on 19 October 2009.

265 There is no evidence that the other fifteen bidders were notified in writing that their bids were unsuccessful. This was a requirement in terms of clause 8.8.3 of the Department of Roads and Transport Procurement Policy Version 2 (**Annexure A2/20** to my report).

EXAMINATION OF OTHER BID DOCUMENTS RECEIVED

266 I received ten (10) files from the Department containing copies of documents for ten (10) of the bids, including the bid of On-Point.

267 I was informed that the remainder of the files was handed to the Office of the Public Protector.

268 On receiving copies of the files in the possession of the Office of the Public Protector, I noticed that the following six (6) bids, were not among them, namely

268.1 SNA;

268.2 Tau Pride Projects JV

268.3 Nyeleti Consulting JV;

268.4 Phathaka Trading Enterprise;

268.5 PD Consortium; and

268.6 Vela VKE/MME.

269 I am unable to establish the whereabouts of these bids.

270 I performed an analysis of the files of the bidders in my possession, in order to determine whether the content of the bids/files supported and justified the decisions taken by the BEC to disqualify the bidders, and have duly detailed my findings below in respect of bids I believe were not duly or properly considered:

Cubic Professional Consultants and Bigen Africa Services Bid Documents (Cubic Bigen)

271 Cubic Bigen scored 34.33 on the functional assessment of their Technical Proposal. Their experience is superior to that of On-Point, who provided no evidence of experience, yet Cubic Bigen scored lower than On-point in the experience criteria.

272 Cubic Bigen was disqualified for *"Price provided exclude minimum professional personnel required and no provision for disbursements"*. This was not a requirement in terms of the RFP or advertisement nor is it specifically referred to in the policy documents.

273 Cubic Bigen's proposal does include a cost of draw down services for professional staff referred to in the RFP in the amount of R 1 500 000.00 per year and disbursements is also included. Hence, the reason for the disqualification is not justified.

274 Furthermore, On-Point's bid did not provide for minimum professional personnel. On-Points price included hours and rate per hour only.

275 Cubic Bigen's price amounted to R 4 504 957.38 per year including disbursements and VAT (but excluding escalation per year) plus R 1 500 000.00 for draw down costs of professional services outside of the core management.

275.1 This equates to R 6 054 957.38 per year or R 18 164 872.14 for 3 years.

275.2 On-Point's price was R 51 974 057.00 for 3 years for the same 3 year period.

276 Julius Katzke, the Associated Principal of Bigen Africa Services (Pty) Ltd in Polokwane, whose affidavit attached is hereto as **TSW9**, was interviewed and stated that they did provide a price that included professional personnel required and that they had made provision for disbursements.

Aurecon bid documents (Aurecon)

277 Aurecon scored 33.33 points on the functional assessment of their Technical Proposal, but were disqualified for *"non compliance with the requirement of a covering letter, duly signed and accepting all the terms of conditions"*.

278 Their bid does however include a covering letter which has been signed and includes the following words *"this document was prepared according to the invitation to tender document and is valid for a period of 90 days from the date of submission"*. The reason for the disqualification is also unjustified.

279 In addition, all Aurecon's Standardised Bidding Documents have been completed and signed accepting the terms and conditions.

280 Johannes Claasens (**Claasens**) a director of Aurecon was interviewed and he provided an affidavit attached hereto as **TSW8**. Claasens confirmed that Aurecon had submitted a covering letter with their bid, (see Annexure A34 of my report) and that it was signed prior to it being submitted. He provided a covering letter which is the same as that contained in the Department's records.

281 According to Claasens, he was not aware that Aurecon had been disqualified for alleged failure to submit a covering letter.

Naidu Consulting/SSI and Phakama bid documents (Naidu Phakama)

282 Naidu Phakama scored 31.67 points on the functional assessment of their Technical Proposal, but were disqualified for *"non compliance with the requirement of a covering letter, duly signed and accepting all the terms and conditions"*.

283 Naidu Phakama's financial bid does include a document setting out their financial proposal and includes in paragraph 4 Conditions of Proposal: *"The Financial Proposal is based on an acceptance of the Terms of Reference (TOR) and the time frames for execution contemplated therein"*. It has not been signed, but other Standardised Bidding Documents have been completed and signed accepting the terms and conditions.

284 The signed documents include the SBD 1 that is titled *"Request for Proposals: Programme Support for Roads and Transport Infrastructure Delivery"*. It further includes reference to the bid being subject to the

General Conditions of Contract and if applicable, any other Special Conditions of Contract.

285 It is questionable whether Naidu Phakama's disqualification for non-compliance is justified as it appears that Naidu Phakama has accepted all terms and conditions.

286 Hanyane Msimeki (**Msimeki**), a director at Phakama Knight Piesold Consulting was interviewed and he provided an affidavit attached hereto as **TSW11**. Msimeki confirmed what he deemed to be a covering letter was submitted together with their bid, (see Annexure A38 of my report) and he provided a copy thereof which is dated 23 September 2009. The letter has been signed by all three parties to the joint venture.

287 Naidu Phakama's price is R 51 401 874.96 which is extremely close to On-Point's price.

288 Significantly, Naidu Phakama has no tax clearance certificate on file nor has a SBD 2 attachment been completed, but no reference thereto is made in the BEC submission to the BAC nor was this a reason for their disqualification.

PAYMENTS MADE TO ON POINT

289 Payments made to On-Point by the Department amounted to R 43 868 900.33.

As per Bid Document

Year 1 (R)

Year 2 (R)

Year (3)

15 824 100.00	14 612 780.00	14 154 398.00
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As per Amount paid

Year 1 (R)	Year 2 (R)	Year (3)
28 604 746.69	14 615 741.08	648 412.65

290 In terms of the agreement On-Point had entered into with the Department, the agreement was effective as from 19 October 2009.

291 On-Point submitted their first invoice for payment for services rendered in October 2009. For the services rendered from 19 October 2009 to 31 October 2009, their invoice amounted to R 1 572 500.00.

292 I compared the amount to be paid to On Point for each of the 3 (three) years in terms of their financial bid, with the amounts actually paid to On – Point, as per the Departments Basic Accounting system (hereafter, **BAS**) records.

293 In year one, payment certificate number 7 amounted to R 8 432 114.93 and the Department paid this amount to On-Point, being more than 50% of the bid price for year 1.

294 The On-Point invoice is dated 7 May 2010 and the description column refers only to "Access Roads". Attached is a "Summary of Access Roads Fee Claim No 1". On-Point has listed 8 items and Department PUDP (being the reference number of the tender) numbers as detailed below:

Item	Department	Amount (R)
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Moshate to Dikgale	PUDP387B1	876 933.11
Makonde to Luvhimbi	PUDP388D1	711 210.27
Maiavuwe Health Centre	PUDP388D2	1 047 441.67
Praktiseer to Bogwasa	PUDP389E1	1 355 005.98
D4344 to Good Hope	PUDP389E2	786 970.92
R35 to Septupulane	PUDP390A1	914 405.10
D7267 to Bambeni 3km	PUDP391C1	763 249.29
Dan Village Clinic Phase 1	PUDP391C2	941 386.73

Sub – total (excl VAT) R 7 396 592.05

295 The payment/order advice was compiled by R.R. Moloto, checked and verified by M Rapetsoa (**Rapetsoa**), GM, Roads and approved by the CFO

296 In respect of each of the abovementioned PUDP's On-Point has attached a "Claim sheet: Total Fees and Disbursements".

297 I refer to "PUDP387B1" Access Road D4021 Moshate to Dikgale as an example, which is recorded as "PUDP 387" on the Claim sheet. On - Point further provide a table being a breakdown of fees and disbursements, the fees R 806 766.81 makes up the majority of the claim R 876 922.11. Reference to the fees is attached to my report as **Annexure A42/6**.

298 The supporting documents to the payment were handed to me in a separate file and not with the payment vouchers from the payment section

of the Department. On Annexure 1 reference to the PUDP number is also recorded as "PUDP387" only. The R 806 766.81 is further broken down as reflected below:

Description	Amount claimed (R)
Preliminary design	322 706.72
Detail design	322 706.72
Working drawings	161 353.36
Total	806 766.82

299 There are no supporting documents as to how the abovementioned amounts were calculated or determined. This is the case for each of the 8 PUDP's.

300 I examined Annexure 1 for each of these payments and the payments are in each instance made against the same description namely: Preliminary design; Detail design; and Working drawings. The 8 Annexure 1's refer to the following PUDP numbers and Project names:

PUDP#	Project name	Amount (R)
PUDP387	Access Road – D4021 Moshate to Dikgale	806 766.81
PUDP388	Access Road – D3709 Makonde to Luvhimbi	653 184.68

PUDP388	Access Road – D3709 Malavuwe Health Centre	1 1014 408.47
PUDP389	Access Road – D4150 Praktiseer to Bogwasa	1 198 735.73
PUDP389	Access Road and sidewalks – D4344 to Good Hope	647 108.90
PUDP390	Access road – R 35 to Setupplane	855 542.64
PUDP391	Access Road – D7267 to Bambeni	612 820.55
PUDP391	Access road- Dan Village Clinic Phase 1	832 166.25
	Total	6 620 734.03

301 I received the Project Design Reports and Drawings from Floyd Brink (Brink), General Manager Roads Infrastructure who requested same from the PMU and from the PMU at my request, relating to the 8 Projects mentioned above.

302 The drawings are A1 size paper and are too bulky to attach to this affidavit. The Project Design Reports are size A4 bound documents and are attached to my report as **Annexure A43A – H**.

303 I previously referred to an interview conducted with the CFO. With regards to her approval of the payment in the amount of R 8 432 114.93, the CFO provided the following explanation to me:

304 The CFO was required in terms of delegations to sign off for payments above R5 million and hence she approved the said payment.

305 At the time the General Manager for Roads Infrastructure was Rapetsoa and she informed her that the payment was in respect of detailed designs prepared by On-Point. The CFO was aware that the SLA included the PMU providing support in planning, design, management and administration of projects by the Department as contained in clause 6.1.4.5. of the SLA.

306 The SLA also included the development of concept designs and the development of detailed designs and working drawings as contained in clause 8.1., 8.2. and 8.4 of the SLA.

307 Hence, the CFO believed at the time that the PMU was permitted to provide the services as it was included in the SLA;

308 It subsequently transpired that On-Point wanted the R 8 432 114.93 to be paid as an additional amount that did not form part of the SLA, however the Department rejected this.

309 The CFO indicated that she did not personally determine that the Department had received value for money, and in this regard she referred to the Department's document titled: "Consultant Payment Certificate" that contains the following signatures:

309.1 Leolo – the PMU consultant who declared that the information in the certificate is a true reflection of the work performed

309.2 Ephraim Lefawane – Senior Manager of the Department who certified that the service/work had been satisfactory and

according to specification and in accordance with the conditions of the contract

309.3 Rapetsoa – General Manager Roads Infrastructure who recommended the payment.

310 The CFO indicated that she approved the payment based on the above certifications.

ALLEGED 'SECRET AGREEMENTS' BETWEEN ON – POINT AND OTHER ENTITIES THAT RECEIVED ORDERS AND PAYMENTS FROM THE DEPARTMENT

311 I previously referred to information received from FOLE and that the following companies allegedly entered into "secret agreements" with On-Point:

311.1 Mpotseng ;

311.2 HL Matlala ; and

311.3 Baitseanape.

312 The "secret agreements" are also known as "Memorandums of Understandings" (MOU) or "back to back" agreements, as they are referred to as such by various persons interviewed that will be discussed hereinafter.

313 The SAPS provided me with a copy of an affidavit of Nicolette Honeycomb (Honeycomb), attached hereto as TSW12. In terms of her affidavit Ms

Honeycomb was employed as the Human Resources and Financial Manager with the Guider Group of Companies with effect from January 2011 and resigned on 27 May 2012.

314 Honeycomb provided the following information relating to the MOU's:

314.1 On odd occasions, Gwangwa had requested her to issue invoices on behalf of the Guider Group. When these invoices were issued in the name of On- Point, such invoices were not issued to the Department of Roads and Transport, but to other private entities, such as, Mpotseng and Vharanani Consulting;

314.2 Some of these invoices referred to the so-called "back to back" agreements and the MOU's entered into between these entities and On-Point;

314.3 Honeycomb had been unable to obtain copies of the MOU's, but can confirm that these agreements were saved on the server under the link Users/Legal/SGL & Onpoint and she has personally seen some of these agreements;

314.4 Honeycomb is aware of invoices issued to Baitseanape, HL Matlala (that she also referred to as "Gorogang Plant Hire"), Generic Core IT Solutions and Mpotseng. The invoices were not generated by her, except for the invoices for Mpotseng, but they related to the back to back agreements;

314.5 Gwangwa requested her to compile a schedule setting out the percentage profit sharing between the entities with whom MOU's were entered into and On-Point in respect of tenders awarded to

them by the Department of Roads and Transport, Limpopo. In the end Reggie Manyakaran compiled the schedules as she did not have all the information;

315 Honeycomb provided a document containing handwritten notes, alleged to be that of Gwangwa, relating to the percentage profit sharing with various entities with whom back to back agreements were entered into. The said document (marked "NH50" to her affidavit) contains amongst others the following notes:

Mpotseng- 2- 60%

- - sidewalks- ✓

Baitseanape- ✓

HL Matlala- ✓

316 The inference sought to be drawn from the above is that, by virtue of its status as the appointed PMU for the Department, On-Point was able to manipulate the awarding of tenders to various other entities and in turn received significant payments from these entities, as well as receiving payments from the Department.

317 I evaluated the abovementioned, and my summary and conclusions are set out below.

Mpotseng

318 Based on the examination of documentation submitted by On-Point and Mpotseng to the Department and for which they both received payment from the Department, it appears that the Department has paid On-Point and Mpotseng for substantially the same work for 6 sidewalk projects.

319 I obtained a copy of form CK1 founding statement from the Registrar of Close Corporations for Mpotseng which is attached to my report as Annexure A44. Mpotseng was registered on 10 October 2007 and the sole member is Arthur Mpotseng Phetla (**Phetla**). From the report it was clear that Phetla had resigned as a director of On-Point on 9 December 2010.

320 I further determined that Mpotseng made an application for registration on the Professional Service Providers (**the PSP**) database at the Department on 29 April 2010. Phetla signed the application.

321 The said PSP application was in response to a call by the Department to prospective service providers to apply for registration on the PSP database.

322 The application was evaluated on 18 October 2010 by the following persons:

322.1 L. Maluleke (**Maluleke**);

322.2 K.M Sibande (**Sibande**); and

322.3 R. Manyakana (**Manyakana**).

323 My investigations revealed that Maluleke and Sibande are officials employed by the Department, whilst Manyakana was employed by On-Point.

324 I further determined through Masete, Senior Manager, SCM – who provided me with documentation detailing performance evaluations to that effect – that the Department advertised PUDP 485 for the registration of PSP's on the Departmental database, in the Provincial Tender Bulletin no 01 of 2010/2011 dated 1 April 2010. This arose, as the Department did not have

such a database when they took Roads from the Department of Public Works.

325 Mpotseng is included in the list of approved PSP's signed by the HOD on 26 October 2010, under the category "Engineering Services".

326 Masete stated that the end user through the PMU submits a request through the General Manager (Roads in this case). The request contains a description of the PSP required. SCM manually selects the PSP's from the database; in this case, the consulting engineer and that this is as far as possible done on a rotational basis.

327 I have not been provided with any documentation or information confirming exactly how this is managed and monitored, but it appears that the database does not automatically select the PSP. Rather it contains details of various approved categories of PSP's.

328 I reviewed the BAS payments for the Department for the period April 2008 to January 2012 and determined that the Department made three payments to Mpotseng during this period. These payments were as follows:

DATE	AMOUNT (R)
15 March 2011	1 326 539.42
22 March 2011	247 506.86
27 April 2011	955 437.35
	2 529 483.63

329 I examined the payment vouchers for the said payments and determined that the PMU (On-Point) Project Manager and PMU Programme Manager were part of the process that certified the payments to Mpotseng.

330 Upon further examination of the payment vouchers for the said payments, I determined that Mpotseng was appointed by the HOD on 29 November 2010 to provide civil engineering consulting services for the following specific projects in the Sekhukhune, Mopani and Vhembe districts:

330.1 Construction of pedestrian sidewalks in Blood River;

330.2 Construction of pedestrian sidewalks at Malamulele Hospital;

330.3 Construction of pedestrian sidewalks at Elim Hospital;

330.4 Construction of pedestrian sidewalks from D4190 to D4200
(Nchabeleng);

330.5 Construction of pedestrian sidewalks at Lulekani Township; and

330.6 Construction of pedestrian sidewalks at Nkhensani Hospital

331 The appointment included the following stages:

331.1 Design and Design Reviews;

331.2 Construction Supervision; and

331.3 Contract Administration.

332 Under the column "Enquiries" on the said appointment letter, attached to my report as Annexure A50/32, the word "PMU" appears. This would indicate that the PMU was involved in the appointment of Mpotseng to

provide the consulting engineering services as detailed in the appointment letter.

333 I further determined upon examination of the payment vouchers for the said payments, that the following submission prepared by Mloyiswa (who was the On-Point PMU Manager), is addressed to the HOD and is also attached. The purpose of the submission is to obtain:

333.1 Approval to undertake road condition assessment for disaster management and appointment of PSP;

333.2 Approval of appointment of PSP for design and supervision for upgrading of access roads under EPWP and

333.3 Approval of the expenditure of these projects.

334 In paragraph 3 of the submission titled "Discussion" the following is stated:
"The access roads were designed by the PMU in January 2010 and were put on hold due to shortages of funds.

335 In the last paragraph on page 3 of the submission (attached to my report as **Annexure A50/38**) the writer states the following: *"When the EPWP rollover was confirmed in December 2010, it was decided that these access roads be implemented as part of the plan to utilise the rollover. The long span of time since the designs were done in January 2010 necessitates design review. Also the Contract Administration and Inspection stage, in particular the construction supervision of these upgrading projects requires the presence of resident engineers. Hence, it is of paramount importance that a PSP be appointed to conduct design reviews and design, and*

Contract Administration and Inspection (including construction supervision)".

336 The Submission appears to have been signed by the following officials:

NAME	POST	ACTION	DATE
F Brink	SM: Routine Maintenance	Preparer	19/01/2011
NJ Masete	SM: SCM (Acting)	Recommended	19/01/2011
M Thindisa	CFO	Recommended	19/01/2011
Ntau Letebele	HOD	Approved	19/01/2011

337 The above submission was approved by the HOD on 19 January 2011.

338 This is somewhat strange given that Mpotseng had already been provided with a letter of appointment that was signed by the HOD on 29 November 2010. In this regard the honourable Court is respectfully referred to **Annexures A50/32 - 35** attached to my report.

339 According to Brink's explanation the submission for the appointment of Mpotseng for sidewalks as opposed to roads, differed to the submission attached to the payment vouchers. To that end Masete of SCM was requested to locate and provide PWC with the correct submission, however this has not to date been provided.

340 The Department entered into six (6) Agreements for Consulting Engineering Services with Mpotseng, copies of which are attached to my

report as **Annexures A60 – A65**. The value of these Agreements and the amounts that have been included in respect of fees for planning and design and re-reimbursable expenses for planning and design (Incl VAT) is detailed below:

PUDP#	Description	Total amount for planning & design (R)	Total amount of agreement (R)
387 B2	Construction of sidewalks on Road D3390 in Moletji	287 999.19	808 049.87
388 D3	Construction of 4km sidewalk at Malamulele in Vhembe district	294 526.83	913 567.13
388 D4	Construction of sidewalks on Road P99/1 at Elim Hospital in Makhodo local municipality of Vhembe district	292 425.23	909 384.61
389 E3	Construction of sidewalks in Sekhukhune D4190 to D2400 Nchabeleng Hospital 4km of Sekhukhune district	243 246.37	821 748.66
391 C3	Construction of sidewalks in Lulekani Township in Phalaborwa	261 226.76	913 985.53

391 C4	Construction of sidewalks from Giyani Hospital to Giyani Town in Mopani district municipality	261 088.46	862 469.71
	Total	1 640 512.84	5 229 205.51

341 The 3 payments made to Mpotseng comprised 10 invoices submitted by Mpotseng amounting to R 2 529 483.63.

342 The 1st payment in the amount of R 1 326 539.42 was made against the submission of 5 invoices, and the 2nd payment in the amount of R 247 506.86 was made against the submission of 1 invoice. These payments were for "fees for planning and design".

343 Brink was requested to provide PWC with the documentation relevant to the Project Design Reports and Drawings prepared by On-Point as previously discussed. He was also requested to provide PWC with the Project Design Reports and Drawings prepared by Mpotseng, HL Matlala, Baitseanape and Generic Core.

344 In response to the above request Brink provided two (2) A4 paper boxes containing various design reports and other documentation. Included were documents prepared by On-Point and Mpotseng for the projects discussed as summarised in the table above, for sidewalks.

345 On-Point prepared some of the drawings that were subsequently used by Mpotseng who made some changes and inserted their name on the documents. These documents are set out below

346 There is a "Procurement Document" that reflects it was prepared by the PMU for "Contract No. 387B/2 for the Construction of Sidewalks on Road D3990 in Moletji".

346.1 The document is a bound blank tender document. At the back of the document are two drawings described as "Sidewalks and Kerb Typical Details" and "Road Sign Details".

346.2 Both contain the name Project Management Unit at the footer of the documents. The first drawing also contains the project number PUDP 391/C4 in the bottom right hand footer, whilst the second drawing in the top left hand corner reflects the Consulting Engineer as Project Management Unit.

347 There is a "Construction Completion Report" that reflects that it was prepared by Mpotseng for "Contract Number PUDP 387/B2 for the Construction of Sidewalks on Road D3990 in Moletji".

347.1 The document is a bound blank tender document and includes two drawings.

347.2 The second drawing is similar but not identical, containing minimal changes to the On-Point drawing referred to above and described as "Sidewalks and Kerb Typical Detail". The footer of the document contains the Mpotseng name and logo.

348 There is also a "Procurement Document" that reflects it was prepared by the PMU for "Contract No. 388D/4 for the Construction of Side Walks on Road P99/1 at Elim Hospital in the Makhado Local Municipality of Vhembe District".

- 348.1 The document is a bound blank tender document. At the back of the document are two drawings described as "Sidewalks and Kerb Typical Details" and "Road Sign Details". Both contain the name Project Management Unit at the footer of the documents.
- 348.2 The first drawing contains the project number "PUDP 391/C4" in the bottom right hand footer, whilst the second drawing in the top left hand corner reflects the Consulting Engineer as Project Management Unit.
- 349 There is a "Design Report" that reflects that it was prepared by Mpotseng for "Contract Number PUDP 388/D4 for the Construction of Sidewalks on Road P99/1 at Elim Hospital in the Makhado Local Municipality of Vhembe District Roads Project".
- 349.1 The document is a bound blank tender document and includes three drawings.
- 349.2 The first drawing is similar but not identical, containing minimal changes to the On-Point drawing referred to above and described as "Sidewalks and Kerb Typical Detail". The footer of the document contains the Mpotseng name and logo.
- 349.3 The third drawing appears to be identical to the second On-Point referred to above and described as "Road Sign Details". In the top left hand corner the name of the Consulting Engineer has been changed to "Mpotseng Infrastructure" and the name of the contractor has been inserted.

350 There is a "Procurement Document" that reflects it was prepared by the PMU for "Contract No. PUDP 391C/4 for the Construction of 4km Side Walks from Giyani Hospital to Giyani Town in Mopani District Municipality".

350.1 The document is a bound blank tender document. At the back of the document are two drawings described as "Sidewalks and Kerb Typical Details" and "Road Sign Details". Both contain the name Project Management Unit at the footer of the documents.

350.2 The first drawing contains the project number "PUDP 391/C4" in the bottom right hand footer, whilst the second drawing in the top left hand corner reflects the Consulting Engineer as Project Management Unit

351 There is a further "Design Report (Revision 1)" that reflects that it was prepared by Mpotseng for "Contract Number PUDP 391C/4 for the Construction of Sidewalks from Giyani Hospital to Giyani Town in Mopani District".

351.1 The document is a bound blank tender document and includes three drawings.

351.2 The third drawing is similar but not identical, containing minimal changes to the On-Point drawing referred to above and described as "Sidewalks and Kerb Typical Detail". The footer of the document contains the Mpotseng name and logo.

351.3 The first drawing appears to be identical to the second On-Point referred to above and described as "Road Sign Details". In the top left hand corner the name of the Consulting Engineer has

been changed to "Mpotseng Infrastructure" and the name of the contractor has been inserted.

352 There is also a "Procurement Document" that reflects it was prepared by the PMU for "Contract No. PUDP 389/E3 for the construction of sidewalks in sidewalks- Sekhukhune (D4190 to D4200 Nchabeleng)".

352.1 The document is a bound blank tender document. At the back of the document are two drawings described as "Sidewalks and Kerb Typical Details" and "Road Sign Details". Both contain the name Project Management Unit at the footer of the documents.

352.2 The 1st drawing contains the project number PUDP 389 E/3 in the bottom right hand footer, whilst the 2nd drawing in the top left hand corner reflects the Consulting Engineer as Project Management Unit.

353 There is a "Construction Completion Report" which reflects that it was prepared by Mpotseng for "Contract Number PUDP 389/E3 construction of sidewalks in Sekhukhune (D4190 to D2400 Nchabeleng Hospital) of Sekhukhune District".

353.1 The document is a bound blank tender document and includes two drawings. The second drawing is similar but not identical, containing minimal changes to the On-Point drawing referred to above and described as "Sidewalks and Kerb Typical Detail". The footer of the document contains the Mpotseng name and logo.

354 There is one (1) other Procurement Document prepared by On-Point for the sidewalk projects, undertaken by Mpotseng: PUDP 388/D3 Malalulele in Vhembe District Municipality.

354.1 The document is a bound blank tender document. At the back of the document are two drawings described as "Sidewalks and Kerb Typical Details" and "Road Sign Details". Both contain the name Project Management Unit at the footer of the documents.

354.2 The 1st drawing contains the project number PUDP 388 D/3 in the bottom right hand footer, whilst the 2nd drawing in the top left hand corner reflects the Consulting Engineer as Project Management Unit.

355 There is one other Construction Completion Report prepared by Mpotseng that reflects the PUDP number as PUDP 383/D3. The description of the project is however, recorded as "Construction of Sidewalk at Malalulele in the Vhembe District Municipality", which matches the description of the project PUDP 388/D3. Hence, this appears to be a typing error.

355.1 The document is a bound blank tender document and includes two drawings. The second drawing is similar but not identical, containing minimal changes to the On-Point drawing referred to above and described as "Sidewalks and Kerb Typical Detail". The footer of the document contains the Mpotseng name and logo.

356 There are two (2) other Design Reports prepared by Mpotseng in respect of the remaining 2 of the 6 side walk projects undertaken by Mpotseng: PUDP 391/C4 (marked PUDP 391/1) and PUDP 391/C3. I have not been provided

with any "Procurement Document" prepared by On-Point for these two projects.

356.1 The Mpotseng documents are bound blank tender documents and include two drawings each. The 1st drawing in each document is similar but not identical, containing minimal changes to the On-Point drawing referred to above (and attached to the On-Point Procurement Document) and described as "Sidewalks and Kerb Typical Detail". The footer of the documents contains the Mpotseng name and logo.

357 Based on the above examination of documentation submitted by On-Point and Mpotseng to the Department and for which they both received payment from the Department, it appears that the Department has paid On-Point and Mpotseng for substantially the same work for the 6 sidewalk projects.

358 In the interview with Mulaudzi *supra*, Mulaudzi confirmed that he had interaction with Phetla the sole director of Mpotseng. Mulaudzi added that Phetla had contacted him as he required the detailed designs and drawings for the sidewalk projects. He then allegedly gave Phetla the standard drawings that were concluded for this type of work.

359 The Department's last payment (or third payment) to Mpotseng in the amount of R 955 437.35 was processed on BAS on 21 April 2011. The Mpotseng bank statement for ABSA account 4075903075 (the **Mpotseng account**) records that R 955 437.35 was received from the Department on 29 April 2011 and that, on the same day, R 1 000 000.00 was paid to "On-Point Engineers".

366.1 The client is Mpotseng ;

366.2 Invoice No. 1;

366.3 Reference: qualis001/mpotseng;

366.4 Period: Mar-11;

366.5 Project name: Consulting fees;

366.6 Total invoice amount (no description of the actual services provided has been furnished) R1,668,000.00;

366.7 Bank account details: On-Point, FNB Sandton, branch code 200607, account number 622 549 180 67.

367 Mr Phetla has provided the following explanation regarding this invoice, the reason why payment was made to On-Point and not Qualis and the amount subsequently paid:

"Mpotseng received an invoice of R1,668,000.00 from Qualis for the designs. As there was never an agreement from the beginning (he previously referred to a verbal agreement) regarding the fees for the designs, consensus could not be reached and a dispute arose between Qualis and Mpotseng as Mpotseng was of the firm professional view that the design work done by Qualis was of poor quality and did not justify the amount invoiced of R1,668,000.00"

"Gwangwa made several intimidating calls to the staff of Mpotseng making enquiries regarding payment which was of great concern to me; in an attempt to settle the dispute, Mpotseng paid Qualis an amount of

R1,000,000 after we were told that Qualis was in financial crisis and needed to pay its suppliers and salaries amongst other things".

"I had merely understood from discussions with Mulaudzi that Qualis and On-Point were part of the same group of companies, but did not know what form of relationship existed between the two companies. This was further confirmed when Mpotseng received the above mentioned invoice from Qualis which had On- Point's account details as the bank account number. When enquiring whether the bank account details were accurate, we were informed that they were, as they are companies within the same group. It was on that basis that the part payment of Qualis' invoice was paid into the bank account as provided by them on their invoice".

Baitseanape

368 Based on the examination of documentation and in particular the design reports submitted by On-Point and Baitseanape to the Department and for which they both received payment from the Department, it appears that the Department has paid On-Point and Baitseanape for substantially the same work for 3 access roads projects.

369 I received a copy of an affidavit of Mr Ephraim Ramotho Thipe (**Thipe**) the sole director of Baitseanape, from the investigating officer, a copy of which is attached hereto as **TSW14**.

370 Attached to the affidavit is a copy of a signed MOU between On-Point and Baitseanape signed on 2 June 2011. It contains the information detailed below.

370.1 The Parties are companies involved in Civil Engineering Consulting and Project Management;

- 370.2 The Parties acknowledge that they operate within the context of the South African economy and social processes and therefore will give increasing focus towards their role as socially responsible citizens;
- 370.3 The parties wish to enter into this MOU in terms of which the Parties will work together to meet their common objective, whatsoever it may be, from time to time.
- 371 In section three of the MOU under the heading "Consideration" it states that "The parties hereby agree that they will be working on the following access road projects for the Limpopo Department of Roads and Transport":
- 371.1 D4021 – Mamabolo Moshate to Kgole;
- 371.2 Makonde to Luvhimbi; and
- 371.3 Access road to Malavuwe Health Centre.
- 372 The Parties further agreed that proceeds from the above projects would be shared between the parties in accordance with annexure A of the MOU
- 373 On-Point would receive all fees for planning, design including reimbursable expenditure for planning stages; and
- 374 In the event that Baitseanape had been involved in the review of designs produced by On-Point, they would be entitled to 5% of the design fees for their services.
- 375 Baitseanape made an application for registration on the PSP database at the Department on 12 January 2011.

376 The said application was in response to a call by the Department to prospective service providers to apply for registration on the PSP database. The application was evaluated on 13 January 2011 by the following persons:

376.1 L.W Kekae (**Kekae**);

376.2 K.M Sibande (**Sibande**); and

376.3 R. Manyakana (**Manyakana**).

377 According to Brink, Kekae and Sibande are officials employed by the Department, whilst Manyakana was employed by On-Point.

378 I reviewed the BAS payments for the Department for the period April 2008 to 31 March 2012 and determined that the Department made six payments to Baitseanape, against the submission of seven invoices (no's 1 and 2 below were paid as one payment) during this period as follows:

	Date	Amount (R)
1	05/07/2011	656,035.48
2	05/07/2011	643,873.07
3	30/09/2011	433,902.05
4	18/10/2011	450,996.97
5	21/10/2011	378,672.99
6	22/02/2012	81,251.84
7	26/03/2012	75,038.19
	Total (R)	2,719,770.59

379 I examined the payment vouchers and determined that the PMU (On-Point) Project Manager and PMU Programme Manager were part of the process that Certified the payments to Baitseanape.

380 Upon further examination of the payment vouchers for the said payments, I determined that Baitseanape was appointed based on a letter of appointment which was signed by the HOD on 22 February 2011 in respect of the provision of civil engineering consulting services for the following projects:

380.1 Vhembe and Capricorn access roads upgrade from gravel to seal: 3.5 km;

380.2 Makonde to Luvhimbi, 3.5 km from D3709 to Malavuwe Health Centre; and

380.3 4 km from D4021 to Moshate Mamabolo to Kgole.

381 The appointment included the following stages:

381.1 Planning, review and design; and

381.2 Construction supervision of the project.

381.3 The following (PUDP) numbers have been handwritten on the letter of appointment: 387 B1, 388 D2 and 388 D1.

382 I further determined that Baitseanape was appointed based on the same submission attached to Mpotseng discussed above. The said submission was approved by the HOD on 19 January 2011.

383 The Department entered into an Agreement for Consulting Engineering Services with Baitseanape on 20 June 2011 following their appointment on 22 February 2011, a copy of which is attached to my report as **Annexure A84**.

383.1 The Agreement makes reference to PUDP 387 B1, 388 D1 and 388 D2; these are the same PUDP numbers that are handwritten on their letter of appointment referred to in the aforementioned paragraph.

383.2 The amount of R 1 607 242.41 (incl VAT) has been included in respect of fees for planning and design and re-reimbursable expenditure for planning and design.

384 The 6 payments made to Baitseanape comprised 7 invoices amounting to R 2 719 770.59. I have examined these invoices and attachments; there is no reference to fees for planning and design as provided for in the Agreement entered into with the Department.

385 I further determined that Baitseanape's 1st tax invoice to the Department is dated 3 June 2011, whilst the 2nd tax invoice contains a date in June 2011 which has been scratched out and the date 28 June 2011 handwritten at the bottom of the invoice.

386 The 2nd covering letter is dated 8 June 2011. The covering letters both refer to "*professional services rendered during the period of 2 March 2011 to 29 April 2011*". Both payments were made on 5 July 2011.

387 I also determined that the certificates authorising payment included a PMU (On-Point) Programme Manager and Project Manager. This would indicate the involvement of the PMU in the approval of payments made to Baitseanape.

388 What is of particular interest is that the Agreement with Baitseanape was only signed by the HOD on 20 June 2011 and hence they apparently commenced work prior to an official Agreement being entered into.

389 I was provided with Design Reports, Design Review Report and Drawings prepared by Baitseanape for the following 3 Projects: PUDP 387 B1, PUDP 388 D1 and PUDP 388 D2, received from Brink.

390 I examined these reports and designs and determined that the reports are similar in many respects, particularly the Design Report for PUDP 388 D1, to those prepared by On-Point and for which they received payment, as previously discussed

PUDP 387/B1: Access Road from D4021 Moshate Mamabolo to Kgole 4km

391 Attached to this report is a Geotechnical Investigation Report. It consists of numerous pages and the 1st of the pages contains the following: "*To: SGL Engineering Projects, from: Letaba Lab D4021*";

392 It further contains numerous pages of a "*Letaba Lab Foundation Investigation- DCP*" report. The contract is "*D4021*"; Client: "*SGL Engineering Projects*" and the date "*03-Feb-10*";

393 Gwangwa is an active member of SGL.(see: organogram on pg 147 of my report) Mulaudzi, to whom reference was made earlier in this affidavit was employed by SGL.

394 Payment to On-Point was authorised in May 2010 for the designs and drawings for PUDP 387 B/1. Baitseanape were only appointed on 22 February 2011.

395 The work performed by Letaba Lab was on behalf of SGL and not Baitseanape, however, it has been presented to the Department by Baitseanape.

396 I also examined the 3 payments made to Baitseanape by the Department and there is no record of any documentation or payments made by Baitseanape to Letaba Lab or to SGL.

PUDP 388 D/1: Access Road Makonde to Luvhimbi 3.5km

397 Attached to this report is a Geotechnical Report. It consists of numerous pages and the 1st of the pages contains the following: *"To: Baitseanape Consulting Engineers, from: Letaba Lab, Stabilized gravel, soil and sound analysis on borrow area, Makonde to Luvhimbi"*;

398 It further contains numerous pages containing the name *"Letaba Lab"*. The contract client is *"Baitseanape Consulting Engineers, job no 5010"* and the date *"04-Feb-11"*.

399 Baitseanape was only appointed on 22 February 2011, and it is highly unlikely they would undertake work on behalf of the Department prior to an official appointment.

400 From the report itself, the name of the client and the date appears to have been inserted after the document was created on many of the pages, as the font and print is not aligned;

401 Amongst the said report is a page marked "Soil Profiles for Baitseanape Consulting Engineers", that reflects the name of the client as "SGL Engineering Services" and the date as "03-Feb-2010". The description is

"CH: 3+100". The pages immediately before and after this page are also for soil profiles and the description is "CH2+000" and "CH2+500". It appears these documents have been manipulated and changed.

402 On-Point was paid in May 2010 for the designs and drawings for PUDP 388 D/1.

PUDP 388 D/2: Access Road from D3709 to Malavume Health Centre 2.7km

403 Attached to this report is a Geotechnical Investigation Report. It consists of numerous pages and the 5th page contains the following: "Test results done for SGL Consulting Engineering for the following contract:"

404 The following pages and numerous pages thereafter contain the following details "Letaba Lab", contract "Road D3709 Malavuwe Health Centre"; Client: "SGL Consulting Engineers" and the date "04-Feb-10";

405 It is thus apparent that the above mentioned report was prepared by Letaba Lab for SGL, but was included in the report prepared by Baitseanape and submitted to the Department;

406 On-Point was paid in May 2010 for the designs and drawings for PUDP 388 D/2.

407 I further examined the drawings submitted by Baitseanape for the 3 projects in question: PUDP 387 B/1; PUDP 388 D/1; and PUDP 388 D/2. The drawings are on A1 size paper and are too bulky to attach to this affidavit, but are available for inspection. Drawings were also submitted by On-Point for these projects; for which they received payment as previously discussed. The drawings for PUDP 388 D1 have been scanned into the

Baitseanape report, attached hereto and are barely readable; however it is evident that they contain the name Baitseanape.

408 Based on the above examination of documentation and in particular the design reports submitted by On-Point and Baitseanape to the Department and for which they both received payment from the Department, it appears that the Department has paid On-Point and Baitseanape for substantially the same work for the 3 access roads projects.

409 Van Vuuren, whom I referred to *supra*, stated that he prepared the designs and design reports for On-Point for 3 projects including PUDP 388 D/1. He further stated that he reviewed the design and design reports, and signed off on them for 5 other projects including PUDP 387 B/1. He added that the design and design reports prepared by him included Geotechnical Road Indicators and a topographical survey, which is part of the design.

410 I examined the bank documentation subpoenaed by the SAPS for Baitseanape Standard Bank account number 201480336. The account was opened on 28 August 2008 and the sole signatory is Mr Ephraim Ramotho Thipe.

411 I have examined the Baitseanape bank statements and I have not identified any payments made to On-Point or related entities or to Ratanang , subsequent to receipt of the above 6 payments from the Department.

HL Matlala

412 Based on an examination of documentation and in particular the design reports submitted by On-Point and HL Matlala to the Department and for which they both received payment from the Department, it appears that the

Department has paid On-Point and HL Matlala for substantially the same work for 3 access roads projects

413 HL Matlala made an application for registration on the PSP database at the Department on 15 September 2010. Hosea Layton Matlala (**Hosea**), the sole member, signed the application. I obtained a copy of certificate issued by the Registrar of Close Corporations for HL Matlala, which is attached to my report as **Annexure A88**.

414 The said application was in response to a call by the Department to prospective service providers to apply for registration on the PSP database. The application was evaluated on 18 October 2010 by the following persons:

414.1 Maluleke;

414.2 Sibande; and

414.3 Manyakana

415 As previously noted *supra* Maluleke and Sibande are officials employed by the Department, whilst Manyakana was employed by On-Point.

416 HL Matlala is included in the list of approved PSP's signed by the HOD on 26 October 2010. HL Matlala was approved under the category "Engineering Services".

417 BAS payments for the Department for the period April 2008 to January 2012, indicates that the Department made four payments to HL Matlala during this period. The payments are as follows:

Date	Amount (R)
21 June 2011	1 641 553.62
1 July 2011	707 625.04
5 August 2011	1 338 466.87
16 September 2011	350 371.09
Total	4 038 016.62

418 All the above payments by the Department are reflected in the HL Matlala ABSA bank account number 4061563968 (**the Matlala account**).

419 I examined the payment vouchers for the said payments and determined that HL Matlala was appointed based on a letter of appointment which was signed by the HOD on 23 February 2011 in respect of the provision of civil engineering consulting services for the following projects:

- 419.1 Praktiseer to Bogwasa 3.5 km;
- 419.2 D4344 to Good Hope 3.5 km; and
- 419.3 R35 to Setululane 3km.

420 The appointment included the following stages:

- 420.1 Planning, review and design; and
- 420.2 Construction, supervision of the project.

421 I further determined that HL Matlala was appointed based on the same submission attached to the Mpotseng and Baitseanape payment vouchers discussed earlier in this affidavit. The said submission was approved by the HOD on 19 January 2011.

422 The Department entered into an Agreement for Consulting Engineering Services with HL Matlala following their appointment on 23 February 2011. The agreement, attached to my report as **Annexure A98**, was signed by the HOD on 2 June 2011. The Agreement makes reference to PUDP 389 E1, 389 E2 and 390 A1.

423 The 4 payments made to HL Matlala comprised 7 invoices amounting to R 4 083 016.62.

424 I determined that the first three (3) invoices were paid on 21 June 2011 and amounted to R 1 641 553.62 for each of the 3 projects, namely, PUDP 389 E1, 389 E2 and 390 A1. The HOD only signed the Agreement on 2 June 2011.

425 I further determined that the following identical amounts were paid on each of the said three (3) invoices for "Concept and Viability" and "Design and Development" respectively:

Invoice date	Description	Amount (R)
8 June 2011	Concept and Viability	173 581.84
8 June 2011	Design and Development	173 581.84

9 June 2011	Concept and Viability	109 462.70
9 June 2011	Design Development and	109 462.70
8 June 2011	Concept and Viability	208 969.71
8 June 2011	Design Development and	208 969.71
	Sub Total	984 028.50
	VAT	137 763.99
	Total	1 121 792.49

426 In addition to the above, the following amounts were paid for documentation and procurement:

Invoice date	Description	Amount (R)
8 June 2011	Documentation and Procurement	104 149.11
9 June 2011	Documentation and Procurement	65 677.62
8 June 2011	Documentation and Procurement	125 381.83
	Sub Total	295 208.56
	VAT	41 329.20
	Total	336 657.76

- 427 It is submitted that it is highly unlikely HL Matlala provided the said services within 1 week of the HOD signing the Agreement.
- 428 Furthermore, there appears to be no logical reason why the invoices had to be split as they all 3 are either dated 8 or 9 June 2011. In addition to that, the invoice numbers are also all the same.
- 429 The PMU (On-Point) Project Manager and PMU Programme Manager were part of the process that certified the payments to HL Matlala.
- 430 I was provided with two (2) Design reports in respect of PUDP 389E/1 and PUDP 389E/2 only.
- 431 I did not receive any Design Report for PUDP 390A/1 or any drawings submitted by HL Matlala.
- 432 I examined the 2 Design Reports for PUDP 389E/1 and PUDP 389E/2 and found that they are almost identical to those prepared by On-Point and for which the latter received payment.
- 433 I noted that attached to the Design Report for PUDP 389E/2 "Access Road D4343 to Good Hope Village (3.5km)", is a Geotechnical Report prepared by "Letaba Lab".
- 434 It consists of numerous pages that contain the following: Client: "*.. Consulting Engineers*"; job no "1205"; date: "09-Feb-10"; "Goodhope Road D4343 in the Sekhukhune area". It is apparent that the name of the "consulting engineer" has been deleted and based on a similar report appearing in the Baitseanape Design Report.
- 435 I suspect that the deleted name to be SGL.

441.1 Planning, review and design, and

441.2 Construction and supervision of the Sekhukhwe and Waterberg access roads upgrade from ground to seal: 3.5 km from Praktiseer to Bogwasa, 3.5 km from D4344 to Goodhope and 3.5 km from R35 to Setupulane.

442 Upon receipt of the appointment letter, the contractors were already on site and he was told that the PMU did the drawings and designs which must be obtained from them. HL Matlala was to review these designs.

443 Hosea a indicated that he was told that On-Point had not been paid for the designs by the Department and that HL Matlala must pay them for these services.

444 While he knew of the existence of the MOU, Hosea indicated that he did not recall signing it. He never the less confirmed there was an agreement to pay for the designs and that is why Segwalo issued an invoice for R 1 558 420.31 to HL Matlala.

445 The SLA with the Department had an allowance for planning and design and as a result HL Matlala provided their invoice to the Department to include this and then paid Segwalo R 1 200 000.00 on 12 July 2011. There is still R 358 420.31 outstanding and this has not been paid because of cash flow problems.

446 Hosea saying that he did not recall signing the MOU he provided a copy of the Segwalo covering letter which accompanied the abovementioned invoice, a copy of which is attached to my report as **Annexure D1/1**. This letter which appears to be signed by Gwangwa states as follows:

"CONTRACT NO.: PUDP 389E1/389E2/390/A1: UPGRADING OF
ACCESS ROADS – 3.5 KM FROM PRAKTISEER TO BOGWASA, 3.5 KM
TO GOOD HOPE, AND 3.5 KM FROM R35 TO SETUPULANE

*Enclosed herewith please find our invoice for the work completed on the
above-mentioned projects.*

*The fees have been calculated as per the signed Memorandum of
Understanding (MOU), based on the construction of cost and design
disbursements thereof as indicated in the approved Service Level
Agreement.*

*Trust you find the invoice in order, please contact the undersigned for any
queries".*

447 Hosea provided a copy of the above mentioned invoice from Segwalo
dated 3 July 2011 for R1,558,420.31, a copy of which is attached to my
report as **Annexure D1/2**. This invoice is for the following:

Project Name: Limpopo Department of Roads and Transport – Access
Roads

Project Number: PUDP 389E1/389E2/390A1

Invoice Number: 1

Paid: June 11

	Description	Amount
1	Standard rates exclusive of VAT	
1.1	Professional fees for design stage	1,388,965.59
1.2	Secondary services (Summary/E1A/Geotech)	25,161.40
1.3	Head office transport	12,857.60
1.4	Documentation	12,000.00
2	Subtotal	1,438,984.59

Less: 5% Design Review Process	71,949.23
Subtotal A	1,367,035.36
14% Value Added Tax	191,384.95
Total	1,558,420.31

448 Before HL Matlala received the first payment of R1,641,553 from the Department on 27 June 2011 they only had a balance of R8,216.81 in their ABSA account number 4061563968. (**Annexures G1/212a and G1/212b** of my report)

449 The R1 200 ,000.00 was paid from this account on 12 July 2011 to the FNB account number 62045616218, being the account number on the Segwalo invoice. (see: **Annexures G1/216 and H1/300** of my report)

450 The following transaction descriptions appear on the relevant bank statements: HL Matlala bank statement: "*bank payment to Absa Bank Access Roads*"; and Segwalo bank statement: "*ABSA Bank Access Roads*".

451 The signatories on the Segwalo FNB account 62045616218 are Gwangwa and Azwimmbauhi Jonathan Khedzi. (see: **Annexure H1a** of my report)

452 As can be seen from the organogram found on page 148 of my report, Segwalo is a company wholly owned by the Gwangwa Family Trust.

OCEANSITE TRADING 777 CC

453 Three payments amounting to R 6 185 035.14 were made to Oceanside during the period covered by this investigation. I conducted a detailed investigation into the appointment of Oceanside. The payments made to Oceanside are summarised in the table below

Date	Amount (R)
28 September 2010	1 435 273.44
2 November 2010	1 992 667.44
22 December 2010	2 757 094.26
Total	6 185 035.14

454 I determined as will be detailed hereunder that Oceanside was awarded a tender PUDP 435: Maintenance of Road D1656 from Mica to Oaks Road in the Mopani District of Limpopo Province in the amount of R 6 185 035.14. Hence, they have been paid the full amount of the said contract within 3 months as detailed in the table above.

455 A CIPRO search, attached as **Annexure C4** to my report, indicates that Oceanside Trading with registration number 2006/032149/23 was registered on 3 March 2006. The sole director is Moreroa with ID number 8004290551088. Oceanside's physical address is furnished as 2 Alan Burman Street, Aquapark, Tzaneen. Moreroa's postal address is furnished as PO Box 2554 Tzaneen 0850.

456 In terms of the Oceanside bid, to be referred to later in this affidavit, the abovementioned postal and street addresses are both different. Further a CK2 document has been attached to the bid and the registration number is the same as that referred to above in the CIPRO search and their addresses are the same as in the CIPRO Search.

457 I requested copies of all procurement documentation relevant to the
awarding of the contract in question to Oceanside and copies of all
payments and supporting documents relative thereto.

Tender Technical Evaluation Report dated 26 February 2010

458 Technical Evaluation Report (TER) was prepared by Stanley Makondo
(**Makondo**) of Khuvutlu Water, Consulting, Roads and Services CC
(**KWCRS**). This report was prepared but was later rejected by the BEC for
reasons to be discussed later in this affidavit. Detailed below is a summary
of relevant information (**Annexure C6** of my report):

459 On 30 October 2008 KWCRS was appointed by RAL as the consulting
engineers for the maintenance of road D1656 from Mica to the Oaks in the
Mopani district of Limpopo province;

460 The tender was advertised in the Tender Bulletin (date not provided);

461 The site inspection was held on 4 December 2009;

462 The tender closing date was 20 January 2010;

463 The tender expiry date was 19 April 2010;

464 2 Addendums were added to the contract document; the first with regard to
extension of the closing date; and the second relating to a schedule of bill
of quantities and specific items;

465 The estimated cost of the construction was R 7 535 285.20 (excluding
consultant's fees);

466 The CIDB grading applicable to the project was 6 CE, 5 CEPE or higher;

468.17 Quality Plant Hire/Expectra 388cc JV; and

468.18 Bakgalaka Building Construction JV.

469 The abovementioned TER then detailed the evaluation performed by the consultant, and the following 3 entities were shortlisted:

469.1 Bakgalaka Building Construction JV – 97.5 points;

469.2 Quality Plant Hire/Expectra 388 CC JV – 85.5 points;

469.3 Phetlakgo Construction – 82.7 points.

470 The BEC did not rely on this report and performed their own evaluation and functionality assessment, resulting in completely different outcomes.

Oceanside Bid PUDP 435

471 The Oceanside bid, attached to my report as **Annexure C5/1**, reflects that it was received on 20 January 2010 and that the bid price was R 6 185 035.14, beneath the price appears an amount that has been erased that is barely visible.

472 The bid was signed by the director who is confirmed to be Moreroa, as the names and ID number match CIPRO records.

473 The attached tax clearance certificate reflects the trading name as "Oceansite Trading 777" and the legal name as "Oceanside Trading 777".

474 Two CV's are attached, namely, Lucky Sekwenza Tsolo (**Tsolo**) and Mmokele Jacky Malepe (**Malepe**).

- 475 The CV of Tsolo reflects under "work experience" that he is employed at Selby Construction, his commencement date was January 2005 to date (19 January 2010). Tsolo has also provided under "references" the name S Manthata of Selby Construction Company.
- 476 The CV of Malepe contains no details of work experience or current or previous employers, but reflects under "professional qualification" that he completed a "basic ambulance assistance (BAA) course in 2007.
- 477 An organogram of the company reflects Moreroa as the Managing Director and Financial Manager, whilst Tsolo is reflected as the Project Manager and Malepe as the Safety Representative.
- 478 3 (three) other persons names appear on the organogram; Site agent – Lee Rens, Contract manager – Lawrence Malebati and Supervisor – Kgare Lesole, however these persons CV's are not attached.
- 479 Based on this organogram it is apparent that Oceanside either did not have the necessary experience and capacity to carry out this project alternatively the organogram is incomplete.

Minutes of the BEC meeting dated 17 February 2010

- 480 In terms thereof the following members were in attendance:

480.1 ME Lefawane (**Lefawane**) – convenor;

480.2 Gwangwa - member. He was later replaced by Leolo ;

480.3 F Mamabolo - member. He was later replaced by Dichabe;

480.4 RW Mphahlele (**Mphahlele**) – secretariat;

480.5 P Shitlhangu (**Shitlhangu**) – member

481 Gwangwa, Leolo, Mamabolo and Dichabe were employed by On-Point during the period in question.

482 The minutes reflect that 18 bid documents were received and that the committee evaluated the bids based on the specification requirements detailed below:

482.1 Valid original tax clearance certificate;

482.2 CIDB 6CE/5CEPE or higher;

482.3 ID of shareholders/Directors;

482.4 Invitation to Bid (SBD 1);

482.5 Firmness of prices and delivery periods (SBD 3.1);

482.6 Declaration of interest (SBD 4);

482.7 Declaration of bidders past SCM practices (SBD 8);

482.8 Attendance of compulsory briefing session;

482.9 Compliance with the specification and bid conditions;

482.10 Cancellation without initialling or usage of tippex;

482.11 Functionality (20%);

482.12 Price (Spreadsheet);

482.13 Experience of similar project;

- 482.14 Experience of key staff;
- 482.15 Technical qualification of key staff (Proposed);
- 482.16 Compliant with terms of reference;
- 482.17 Quality assurance plan;
- 482.18 Presentations by the Consultant (25/02/2010-08/04/2010);
- 482.19 Sensitivity Analysis of Rates; and
- 482.20 Form of offer (C 3).

483 In terms of the "Invitation to Tender" it was a requirement that the bidder should have a CIDB class grading 6 CE, 5 CEPE or higher and have completed the skills programme towards the NQF level 2, NQF level 4 and NQF level 5 skills programme. The said requirements are not mentioned in the minutes.

484 The minutes were concluded that the BEC used the recommendations of the consultant up to the level of administrative stage and that the BEC will do the functionality and spreadsheet stage. The minutes appear to be signed by the secretariat and the convenor on 9 April 2010.

Report from the BEC to the BAC

485 The Bid Evaluation Report from the BEC to the BAC reflects that the meeting was held on 17 February 2010 (the report was subsequently signed on 7 May 2010)

486 It further provides the background into the bid invitation and that 18 bids were received on the closing date, it also lists the 18 bids, their respective tender amounts and the corrected tender amounts.

487 The report also lists the Bid Evaluation criteria consisting of "Administrative" and "Functionality" requirements. It then refers to the first stage of the evaluation and lists 14 bids that were disqualified due to reasons furnished therein. At this stage I will only refer to those bids that were disqualified because they did not submit their NQF certificates after they were given 2 days to submit the relevant certificates but failed to do so, as detailed below:

- 487.1 Limpopo Construction;
- 487.2 Phetlakgo Construction;
- 487.3 Roadmac Surfacing (Pty) Ltd;
- 487.4 Paxair Projects; and
- 487.5 Advance Projects.

488 Thereafter the 3 remaining bids were evaluated based on the 20% functionality score as provided in the bid document as detailed below:

- 488.1 Oceanside – 20.16 points
- 488.2 Quality Plant Hire/Expectra 388CC JV – 20.83 points
- 488.3 Bakgalaka Building Construction JV – 20.49 points.

489 It is also recorded that the above bidders submitted NQF certificates within the required 2 days.

490 The above 3 bidders were then evaluated based on price and the final scoring based on functionality and price was as follows:

490.1 Oceanside – 99 points;

490.2 Quality Plant Hire/Expectra 388CC JV – 78.48 points; and

490.3 Bakgalaka Building Construction JV – 68.53 points

491 The recommendation was to award the bid to Oceanside in the amount of R 6 185 035.14 provided they submit their NQF level 4 certificates within 2 days of appointment. The report appears to be signed by the chairperson (convenor) on 7 May 2010. No reference is made to the requirement of NQF certificates in the minutes of the BEC.

Bid Evaluation Functionality score sheets

492 I examined the Bid Evaluation Functionality score sheets for 8 of the bidders and determined upon examination of the Oceanside score sheets that Leolo and Dichabe awarded identical scores for the 5 evaluation criteria.

493 It is highly unlikely and improbable that these two persons could have allocated identical scores for the same criteria in all instances. Furthermore, they have allocated the maximum score of 3 in the criteria "Experience of key support staff" where there is no evidence of this in the Oceanside bid.

494 The third member of the BEC, Shitlhangu, awarded Oceanside 15.5 points as opposed to 22.5 points awarded by the 2 On-Point employees – a huge difference in the overall evaluation of the Oceanside bid.

495 The minutes of the BAC held on 21 April 2010 reflects the following persons were in attendance:

495.1 MM Thindisa (**the CFO**) – chairperson;

495.2 W Sathekge (**Sathekge**) – member;

495.3 PK Ndlala (**Ndlala**) – member;

495.4 JJN Mangena (**Mangena**) – member;

495.5 Rapetsoa – member;

495.6 Mashila – secretary; and

495.7 MM Bopape (**Bopape**) – secretary

496 In respect of PUDP 435 it is recorded that the BEC report was presented to the BAC with a recommendation to award the bid. The report presented showed that there were bidders who were disqualified for not submitting the NQF level 2 and 4. The bidders should have been afforded the opportunity to submit outstanding documents within 48 hours. It was resolved that the BAC did not agree with the recommendation of the BEC and the BAC referred the bid back to the BEC for reconsideration. The minutes were signed by the chairperson.

497 The minutes of the BAC held on 7 May 2010 reflects the following persons were in attendance:

- 497.1 Thindisa – chairperson;
- 497.2 Sathekge – member;
- 497.3 Mangena – member;
- 497.4 Mashila – secretary; and
- 497.5 Bopape – secretary

498 In respect of PUDP 435 the BEC report was presented to the BAC with the recommendation that the bid be awarded to Oceanside at an amount of R 6 185 035.14.. It was resolved that the BAC agreed with the recommendation of the BEC and the BAC recommended to the HOD that the bid be awarded to Oceanside in the amount of R 6 185 035.14.

499 There is no evidence based on the minutes of the BAC that they had access to or that they considered the TER prepared by KWCRS.

Application for approval to award bid PUDP 435 from the BAC to the HOD dated 10 May 2010

500 The BAC submitted the above application, which was signed by the chairperson of the BAC on 10 May 2010 and approved by the HOD on 11 May 2010. Attached, as **Annexure C11/4**, is a memorandum signed by 3 members of the BAC confirming that they applied their minds in terms of the bid that was adjudicated and to their knowledge, all processes were verified and are correct. 2 Members of the BAC are reflected as "Apology". The BAC further attached the Bid Evaluation Report and the minutes of the BEC.

NQF certificates attached to Oceanside's bid

501 I could find no evidence that the bidders who were disqualified because they failed to submit their NQF certificates within 2 days, were informed or requested to submit the said documents or any correspondence in this regard.

502 Equally troubling was my analysis of the 2 copies of certificates which was amongst the Oceanside bid pack documents but not in their official Bid, namely

502.1 NQF level 2 issued to Sephiri Phillip Rector Masedi (**Masedi**) on 11 April 2007 (see discussions on interviews, below); and

502.2 Certificate National Diploma Management of Civil Engineering Construction Processes issued to Baloyi Olivia on 11 December 2009. It cannot be determined if this is a valid NQF certificate as required.

Interview with Tsolo

503 An interview was conducted with Tsolo (who's CV was attached to the Oceanside bid) and based on the interview a draft affidavit was compiled for him. My staff has subsequently attempted to contact him in order that he may sign his affidavit but have been unable to do so. A summary of his explanation is detailed below:

503.1 Tsolo has his own company, Sekwenza Trading Enterprise but he has not received work from the Department directly;

- 503.2 Tsolo alleged that he had done work for Oceanside in the past and he specifically mentioned the project under investigation;
- 503.3 Tsolo confirmed that he completed his NQF in 2011, his certificate was not attached to the tender because the tender was submitted prior to him obtaining his certificate;
- 503.4 Tsolo indicated that he was appointed by Moreroa of Oceanside to do supervision and advisory work on this project;
- 503.5 Tsolo had a verbal agreement with Moreroa and he received R40,000 in cash from Oceanside in September 2010;
- 503.6 Tsolo stated that the duration of this project was from June 2010 until 15 October 2010;
- 503.7 Tsolo's CV attached to the Oceanside bid states that he works full-time for Selby Construction (**Selby**), however he informed PWC that he is unemployed and only performs freelance work for other companies.

Interview with Masedi

- 504 An interview was conducted with Masedi (whose NQF certificate was amongst the Oceanside bid documents) and an affidavit was provided by him, attached hereto as **TSW16**. A summary of his explanation is detailed:
- 504.1 Masedi has his own company called Melrose Civil and Building Construction, but he has never received work from the Department directly; this has been confirmed with the Department's BAS records;

- 504.2 Masedi supplied the original NQF certificate, a copy of which was amongst the documents that were included in the Oceanside bid;
- 504.3 Masedi confirmed that he did work on this specific project on behalf of Moreroa and Oceanside;
- 504.4 Masedi alleged that he received R40,000 in cash from Oceanside for the work on this project (the same amount Tsolo allegedly received);
- 504.5 Masedi stated that the construction period was from June 2010 until September 2010.

Interviews conducted

- 505 Interviews were conducted, as appears on pages 135 – 139 of the report, with the following persons, all of whom were members of the BEC:

- 505.1 Shitlhlangu
- 505.2 Lefawane
- 505.3 Leolo
- 505.4 Mphahlele

- 506 None of the members interviewed could provide a proper explanation for why the TER was disregarded by the BEC.
- 507 Furthermore none of the members, despite not being engineers could explain why the functionality scoring in the BEC differed so materially from the functionality scoring in the TER.

508 Interviews were conducted, as appears on pages 139 – 142 of the report,
with the following persons, all of whom are members of the BAC.

489.1 the CFO

489.2 Mangena

489.3 Ndlala

509 None of them could explain why the BAC had not considered the TER in
conjunction with the BEC report.

Interview with Stanley Makondo

510 An interview was conducted with Makondo and his affidavit is still
outstanding. Mr. Makondo is an employee of KWCRS, and compiled the
TER referred to *supra*. Detailed below is the summary of the information
provided by him:

511 KWCRS was initially appointed by RAL as the Consulting Engineers on the
project in question.

512 The maintenance function moved to the Department in 2010 and on 25
February 2010 KWCRS received an appointment letter from the
Department to the effect that RAL had ceded their appointment to the
Department.

513 KWCRS and the Department subsequently entered into an agreement
which was signed by KWCRS on 17 May 2010.

514 Prior to this KWCRS was required by RAL to compile a bid document from
a sample tender document provided by RAL. This was completed, the

tender was advertised, site inspection held and the bids were received by RAL.

515 Following this KWCRS was requested by the Department and specifically by Isac Nkosi (**Nkosi**) from On-Point (PMU) to prepare a Tender Technical Evaluation Report. KWCRS was provided with eighteen tender documents by Nkosi.

516 KWCRS performed an evaluation of the bids and compiled a report to the Department. The evaluation process took approximately one week to complete and the first report was dated 25 January 2010. It was subsequently revised and dated 26 February 2010.

517 The report was presented to two officials from the Department and one person from On-Point on 17 February 2010; following which they were requested to make changes.

518 The final report was submitted and dated 26 February 2010 to Nkosi.

519 Mkhondo referred to his report, and confirmed that a number of bidders did not comply with the requirement being the "NQF certificates that were included in the "Notice to the Tenderer". He believed that non-compliance with the NQF requirement should result in the disqualification of the bid.

520 According to his understanding the submission of a TER from the Consulting Engineer is a standard engineering practice and the only logical conclusion one can draw from it is that it should have been considered. He did not know to what extent his report was considered by the Department.

521 Subsequent thereto Mkhondo received a letter from the Department dated 17 May 2010 informing KWCRS that Oceanside was awarded the tender. He initially contacted Moreroa, the director of Oceanside. He further dealt with Lucky Tsolo and Godknows Gomba from Oceanside.

522 He confirmed that the NQF certificates of Masedi and Mr Baloyi did not form part of the Oceanside bid document that was evaluated by KWCRS. He also did not know these persons and further did not recall meeting them on site.

Interviews with entities that were disqualified based on their failure to submit their NQF certificates within 2 days

523 Interviews were conducted with and affidavits were provided by the following persons representing their respective entities in order to determine whether they were requested to submit their NQF certificates within 2 days, failing which they would be disqualified.

524 These persons confirmed that they were not requested and have no record of such a request from the Department, namely:

524.1 Aurelia Pelotshewu Ntlokwe (TSW17 attached hereto) – Paxair Projects;

524.2 Mlalení Nghondzweni Shingange (TSW18 attached hereto) – Limpopo Construction;

524.3 Tlangelani Phasha (TSW19 attached hereto) – Phetlakgo Construction.

525 An interview was also conducted with Jacques Pelser of Advance Projects and an affidavit was provided by him, attached hereto as **TSW20**. He stated that he has no record of being requested to submit his NQF's, however he provided a draft letter addressed to the Department dated 23 April 2010, where he undertook to forward the NQF certificates as soon as he had obtained them. He could not confirm that he had sent this letter and/or whether it was in response to a request from the Department.

526 An interview was also conducted with Elsie Elizabeth Negre from Roadmac Surfacing and she provided an affidavit, attached hereto as **TSW21**. She stated that she has no record of being requested to submit his NQF's and would have done so had she received such a request. In addition, she provided a copy of a reply form whereby she consented to extend the tender validity period. She received and returned the document on 20 April 2010, however she had already been disqualified on 9 April 2010 in terms of the minutes of the BEC.

527 I have not been provided with any documentation confirming that the abovementioned 5 bidders were requested to submit their NQF certificates within two days.

ON-POINT AND RELATED ENTITIES

528 Based on various documents provided by Seraj Ravat (**Ravat**), former accounting officer and bookkeeper to various entities linked to Gwangwa, and Honeycomb, the structure of the companies that are linked to On-Point

are as set out in the organogram on pg147 of my report. A copy of his (Ravat's) affidavit is attached hereto as TSW 22.

529 Ravat provided copies of On-Point share certificates which show that while the shares were originally on 23 September 2009 owned equally between the Maketele Trust, Guilder and Tsiamo there was a change on 30 August 2010 and Guilder became the sole shareholder.

530 As detailed *supra*, there is also an incomplete (not signed) share certificate, also dated 30 August 2010, recording the registered holder as Ratanang. It appears that there may have been an intention to transfer the shares in Guilder to this entity but the transfer never took place.

531 Ravat informed me that he was requested by Gwangwa to prepare a valuation report for On-Point as he wanted to pay out the other two shareholders. The report was presented at a meeting on 7 October 2010 at which Malema was present. The valuation calculated by Ravat was that the following settlements should be paid to the other two shareholders:

531.1 Tsiamo R1,050,060.11;

531.2 Maketele Trust R420,101.91

532 According to Ravat, apparently Malema said that they should collectively be paid R 3 000 000.00. The account was to be paid by settling R 516 692.20 owing on a 2007 Range Rover and the balance to be paid over eight months although only R 946 209.07 was paid.

533 Ravat provided various documents in electronic and/or hardcopy form to the SAPS. Included in the electronic data was unsigned financial

statements and accounting records for On-Point for the years ended 29 February 2010 and 28 February 2011.

534 There are however more than one version of the financial statements for the two years. Ravat informed me that different versions were prepared depending on what they were to be used for, namely, for management/shareholders, the bank, for negotiation with other shareholders and for SARS and as a result the operating profit in the different versions fluctuates significantly.

535 Ravat further informed me that he prepared these different versions on the instruction of Gwangwa. Summarised below are some of the pertinent aspects of these financial statements that are relevant to this investigation.

536 The financial statements and accounting records saved under the name of "On-Point 2010 Lesiba" were prepared for management/shareholder purposes according to Ravat. These financial statements record an operating profit before taxation of R 1 615 064 for the 5 months ended 28 February 2010.

537 The gross income of On-Point for the 5 months ended 28 February 2010 is R 5 443 170.00. The general ledger for this same period records that the R 5 443 170 is made up of three receipts which were for the first three invoices to the Department for the services as the PMU.

538 The financial statements and accounting records saved under the name "On-Point 2010" were prepared for submission to SARS. While the Gross Revenue is the same as the financial statements for management purposes the Cost of Sales has increased from R 1 668 309.00 to R 4 313 218.00,

with the result being that the Operating Profit is now only R 91 083.00. Some items that were previously on the Balance Sheet as Assets have now been expensed and Operating Costs have been moved to Cost of Sales. Some of the more unusual items that have been expensed are so called "purchases" with the following descriptions that all relate to Gwangwa personally or entities linked to the directors/shareholders:

538.1 Gwangwa Family Trust;

538.2 Gwangwa;

538.3 Guilder;

538.4 Maketele Trust.

539 The On-Point FNB account number 62254918067 records that 20 payments were received from the Department into the account. Summarised, these payments are as follows:

Date	Amount
1 April 2010	3 104 409.59
30 April 2010	2 290 777.91
17 May 201	1 149 683.79
11 June 2010	8 432 114.93
30 July 2010	1 848 960.82
27 August 2010	1 760 585.37

30 September 2010	1 425 803.47
5 October 2010	1 524 902.90
21 October 2010	1 624 337.91
19 November 2010	1 564 392.68
28 December 2010	2 681 866.31
4 March 2011	1 638 615.88
4 March 2011	830 791.08
6 April 2011	1 198 988.32
29 April 2011	2 916 490.31
15 July 2011	1 190 946.26
20 September 2011	1 296 825.12
30 September 2011	648 412.56
1 November 2011	648 412.56
22 November 2011	648 412.56

540 Previously in this affidavit, I referred to shareholders of On-Point Engineers in terms of the bid document. In this regard the honourable Court is respectfully referred th organogram found on page 148 of my report.

541 Upon examination of On-Points FNB account number 62554918607, I determined that thirteen (13) payments in the amount of R 100 000.00 each, were made by On-Point to Ratanang ABSA account number 4073028712. Eleven (11) payments have been recorded in the bank statements as "dividends" as detailed hereunder:

Date	Amount (R)
15 October 2010	100 000.00
1 November 2010	100 000.00
30 November 2010	100 000.00
18 January 2011	100 000.00
4 February 2011	100 000.00
28 February 2011	100 000.00
28 March 2011	100 000.00
29 April 2011	100 000.00
27 May 2011	100 000.00
1 August 2011	100 000.00
31 August 2011	100 000.00
1 October 2011	100 000.00
3 November 2011	100 000.00

Total	1 300 000.00
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542 On the bank statements, the payments made on 28 March 2011 and 1 October 2011, were not reflected as dividends.

543 In addition to the above R 1 300 000.00 that Ratanang received from On Point, a further R 6 353 368.33 was deposited into the Ratanang ABSA Bank account number 4073028712 in the 46 months from 29 January 2009 to 3 November 2012. R 3 335 150 of the R 6 353 368.33, being 52%, was cash deposits and R 100 000.00 of the On Point R 1 300 000.00 was also a cash deposit.

544 R 5 725 817.10 of the money deposited into Ratanang bank account was paid out by way of 166 cheques. I have been provided with copies of 160 of these paid cheques which all appear to have been signed by the sole signatory on the account, being Malema.

545 159 of the 160 cheques totaling R 5 612 599.00 were made out to cash mostly for round amounts like R 5 000, R 25 000, R50 000, R 100 000 and R 200 000 and were not crossed. This is a very unusual practise especially when one takes into account the fact that this is the bank account of a Trust and not Malema's personal account.

546 The balance of the 166 cheques that were paid, being 6 cheques, have to date not been made available to me for review.

RATANANG

547 Ratanang was created on 25 October 2007 with a donation of R100 by the Donor, Malema. The sole beneficiary was Ratanang Ramohlale and the only Trustee was Malema. (discussion 9.033 – 9.051; pg 159 – 165 of my report)

548 In terms of clause 11 of the Deed of Trust the capital and income should be employed for the benefit of the beneficiary and:

“11.4 refund themselves from the trust property for expenditure they incurred personally in the execution of their duties as trustees;

11.6 a trustee, who qualifies as an income beneficiary, must withdraw from meetings where income is allocated and when he may personally benefit from it”.

549 The duties of the Trustees are set out in clause 12 and include the following:

“12.5 to keep proper account of the trust business or to see that this is done;

12.6 continually to keep or to register trust property separately so that these may always be identified as trust property;

12.7 to refrain from managing trust property to their own advantage or that of their estates and to act continually with care and diligence as may be fairly expected from someone who takes care of another’s affairs”.

550 In terms of clause 14 which is headed Professional Services:

“14.1 The trustees are under obligation to keep proper account of the trust business, which accounts will be audited annually at the end of the trust financial year and an audited balance sheet will be compiled. Each beneficiary of the trust may request a copy of the annual balance sheet of the trust.

14.2 The trustees are authorised to employ professional persons in so far as such services are considered necessary or desirable for the purpose of the trust".

551 Clause 15 sets out the basis on which a Trustee could be personally responsible for the losses of the Trust. This clause reads as follows:

"A trustee is not personally responsible for any losses the trust may suffer irrespective of the reason, except when such losses have resulted from the fraudulent actions of a trustee. A trustee is not responsible for the fraudulent actions of a co-trustee unless the trustees co-operated with each other".

552 Clause 17 set out the basis on which Trustees can be paid for their services and reads as follows:

"17.1 The trustees are entitled to remuneration for their services according to a fee they deem fair, provided that such remuneration does not exceed 5% (five per cent) of the gross income of the trust in a financial year."

553 The Trust Deed of Ratanang was amended on 17 May 2010 and inter alia the amended trust deed has the following changes:

553.1 Beneficiaries have been expanded to now also include *"Any other beneficiary nominated by the trustee from time to time"*.

553.2 The trustees have been expanded to now also include *"Sarah Mathebu Malema"*.

554 I have only been provided with a copy of one set of Annual Financial Statements for Ratanang, that being for the year ended 28 February 2010.

554.1 R 3,892,151 was allocated to the trust beneficiary according to the Statement of Changes in Equity and the Statement of Cash Flows.

554.2 The Statement of Financial Performance records that there were donations received of R 3,933,849. This is almost the same as the amounts recorded as deposits on the bank statements of the trust, which total R3,934,000, an insignificant difference of R151.

554.3 The bank statements record that R3,142,552.10 was paid out by way of cheques, which where these are available, with the exception of cheque 58, they are made out to cash for round amounts. The balance of the money that was spent by the trustee was according to these bank statements spent using Point of Sale Purchases, cash withdrawals or Interbank Transfers. Some of the Point of Sale Purchases were according to the bank statements from the following enterprises:

Date	Enterprise	Amount
21 April 2009	Guess	11,623.00
5 May 2009	Picardi Rebe	3,072.90
8 May 2009	Louis Vuitto	8,500.00
1 June 2009	Darmani Bout	13,000.00
4 June 2009	Twelve Apost	11,500.00
22 June 2009	Louis Vuitto	6,800.00
22 July 2009	Armani Jeans	14,870.00

29 July 2009	Dunhill Sand	10,000.00
16 November 2009	Louis Vuitto	8,750.00
8 December 2009	Edg Sandton	5,600.00
28 January 2010	Louis Vuitto	7,700.00
9 February 2010	Harle	15,132.00
	Total	116,547.90

555 Some of the descriptions of the above Enterprises as set out on the Ratanang bank statements were Googled and these searches revealed the following:

555.1 Louis Vuitto, is assumed to be Louis Vuitton which is a well-known international fashion brand with a shop in Sandton Gauteng.

555.2 Darmani Bout, is assumed to be Darmani Boutique which is a multi brand boutique that keeps the latest Italian brands to offer clients the opportunity to dress exclusively for functions.

555.3 Twelve Apost, is assumed to be Twelve Apostles which is an exclusive hotel in Cape Town.

555.4 Armani Jeans, is assumed to be Armani Jeans in Sandton Gauteng, which is a men's designer clothing store with jeans from AX and a selection of modern and stylish fashions.

555.5 Dunhill Sand, is assumed to be Dunhill Sandton. Dunhill is one of the most recognised luxury brands in the world, respected for its quality, consistency and heritage. The company today is focused on providing superior luxury accessories, designed in an English style, for sophisticated, affluent men all over the world.

556 In addition to the above Point of Sale Purchases I determined from the documentation provided by the bank that for seven of the cheques that were cashed, as detailed below, the cash was then deposited into the bank account of Vigano CC. Vigano, according to their website, is an *"elegant high class male boutique having garments from all over Europe with brands such as Toras, Aldo Brue, Corneliani and Baldessarni. This shop caters for the ever so stylish man for those with an exquisite taste for style, quality and elegance"*.

Date	Cheque Number	Amount
3 November 2009	65	40,000
3 May 2010	114	11,500
12 June 2010	116	40,000
21 October 2010	130	50,000
5 November 2010	132	50,000
30 November 2010	139	50,000
17 March 2011	170	50,000
	Total	291,500

557 The first two payments referred to in the table above were made at a time when according to the Trust Deed, Malema was not a beneficiary of Ratanang.

558 It is my opinion that Ratanang was setup by Malema to be used as a conduit through which he could channel money, received in many instances from persons/enterprises which are doing work from government entities in Limpopo, with the hope of disguising or concealing the source of these funds and ultimately using the money for his personal benefit.

559 It is clear in my view that Malema used money from Ratanang for his personal benefit at a stage when he was not a beneficiary of the trust and had various responsibilities/duties as a trustee which he has not complied with. Malema has for his own benefit abused his position of trust in which he was placed.

560 I examined the personal bank account of Malema, ABSA Bank account number 4072809601 subpoenaed by the SAPS and handed to me. I identified the following interbank transfers from Ratanang bank account to the personal bank account of Malema:

	Date	Amount (R)
1	28/05/2009	10,000
2	02/06/2009	10,000
3	30/06/2009	10,000
4	16/07/2009	50,000

5	08/10/2009	50,000
6	03/11/2009	20,000
7	09/02/2010	20,000
8	05/04/2010	20,000
9	26/04/2010	10,000
10	02/05/2010	5,000
11	03/08/2010	20,000
12	07/11/2011	1,000
	Total (R)	226,000

561 Transaction numbers 5 – 11 above occurred after On-Point was appointed by the Department of Roads and Transport.

PURCHASE OF THE PROPERTY

562 I turn now to the property and the transactions surrounding its purchase.

563 The 139.3319 hectare farm described as Remaining Extent of the farm Schuilkraal 623 was purchased by Ratanang for R 3 990 000.00.

564 While the Deed of Sale is signed by both the Seller, represented by AA Kotze and JL Kotze, and the Purchaser, represented by Malema, it is undated. In this regard the honourable Court is respectfully referred **Annexure D6** to my report being a copy of the Deed of Sale.

565 The transfer however never took place and a cancellation agreement, dated 26 July 2011, which was signed by Malema representing Ratanang merely states that the "Parties have agreed to cancel the said sale". In this

regard the honourable Court is respectfully referred **Annexure D7** to my report being a copy of the cancellation agreement.

566 This was despite the fact that the full purchase price had already been paid into the trust account of KTP attorneys, the conveyancer.

567 According to the cancellation agreement the original Deed of Sale was dated 22 March 2011. A further Deed of Sale has also been provided for this property, which now records that it is purchased on 28 July 2011 by Gwama who was represented by Gwangwa.

568 The R 3 990 000.00 purchase price for the property was paid to the conveyances KTP attorneys, according to receipts they issued, in four payments as follows:

Amount (R)	Date	Method of payment
1 000 000	31 March 2011	EFT Transfer
1 000 000	5 May 2011	EFT Transfer
1 000 000	22 June 2011	EFT Transfer
916 418	8 July 2011	Cheque

The first payment

569 The first payment of R 1 000 000 was according to a Nedbank Bank cheque dated 20 March 2011 paid by Oceanside from their account number 1468136631. The bank statements for this account records that a

payment of R 1 000 000 was made on 30 March 2011 with description "Kampherbeek Tw". In this regard the honourable Court is respectfully referred to **Annexure J1/15** to my report, being a copy of the bank statement.

570 The three signatories on the Oceanside account are:

570.1 Makgetso Manthatha (signatory)

570.2 Selbie Manthatha (signatory)

570.3 Moreroa (member).

571 Moreroa is linked by Nedbank to the abovementioned account from which the payment was made to KTP Attorneys for the "Ratanang Farm" and according to FNB is a signatory on the account into which the R 6 185 035.14 was paid by the Department. (**Annexure C14/d** to my report)

572 I examined the Oceanside Trading cc Nedbank account number 1468136631 and determined that just prior to the payment of R1,000,000 to "Kampherbeek TW" on 30 March 2011, an amount of R1,100,000 was received from "Tlo Re Yeng" on 29 March 2011. The balance on the account prior to this receipt was R62,693.36. (paragraph 10.005 pg 167 of my report)

573 Prior to this an amount of R220,900 was received from "Base Major" on 8 March 2011, at which date the balance on the account was R29,769.40.

574 Nedbank provided the SAPS with a copy of Nedbank cheque number 000020 dated 1 March 2011, drawn on the account of "Tlong Re Yeng Trading and Base Major Construction Joint Venture", account number

1002314879, held at Nedbank Mpumalanga. The cheque is made payable to Oceansite Trading in the amount of R220,900. I was not provided with a copy of the cheque or other documents relating to receipt of the R1,000,000 from "Tlo Re Yeng" on 29 March 2011.

575 Further, a copy of Nedbank cheque number 000177 dated 30 March 2011, drawn on the account of "Oceansite Trading CC", account number 1468136631, held at Nedbank Mpumalanga, is made payable to "Khampherbeek Twine and Pogrud" in the amount of R1,000,000. This cheque appears to have been signed by Selbie Manthatha.

576 A Certificate of Registration issued by the CIPC reflects that Tlong Re Yeng Trading and Projects CC was registered on 13 August 2010 with registration number 2010/117895/23. The sole active members is Motlatjo Constance Malebate with id 621219 0462 080. (I have not been provided with the registration documents for Base Major Construction).

577 An ABSA bank deposit slip, attached to my report as **Annexure D11/2**, records that this cheque was deposited on 30 March 2011 into account number 4048146206 in the name of Kampherbeek Twine and Pogrud. The bank statement for this account confirms the deposit. In this regard the honourable Court is referred to **Annexure D12/1** to my report.

578 As mentioned *supra*, Oceanside is an entity that has been awarded work, under highly questionable circumstances where two of the members of the BEC were On-Point employees and have been paid by the Department.

579 Furthermore, I reviewed the BAS payments for the Department for the period April 2008 to January 2012 and determined that the Department

made three payments to Oceanside during this period. Summarised, these payments are as follows:

Date	Amount (R)
28 September 2010	1 435 273.44
2 November 2010	1 992 667.44
22 December 2010	2 757 094.26
Total	6 185 035.14

The second payment

580 The On Point bank statement for FNB account number 62254918067 reflects that R 1 000,000 was received from "Mpotseng Infrastruct" on 29 April 2011, some 8 days after the last payment by the Department to Mpotseng processed on BAS.

581 On 4 May 2011 R 1 000 000.00, the second payment, was paid out of this account with the description for the payment being "Ratanang Farm". Gwangwa is the sole signatory on the On-Point account number 62254918067.

582 KTP Attorneys record that an EFT deposit of R 1 000 000.00 with the description "Acb Krediet Ratanang" was received into their ABSA bank account number 4048146206 on 4 May 2011 and thereafter R 1 000 000.00 was transferred to a Nedbank Corporate Saver account in the name of Ratanang on 5 May 2011.

The third payment

583 The third payment of R 1 000 000.00 on 20 June 2011 was also made by On-Point.

584 This payment was made from the On-Point FNB account number 62254918067, on 20 June 2011 and the description on the bank statement for this transaction is "Ratanang Farm".

585 This payment of R 1 000 000.00 was made after an equal amount had been transferred into the On-Point FNB account on the same day with the reference "Trf Farm Purchase".

586 Prior to the transfer being received this account only had a balance of R 518 040.68 and therefore the payment to KTP Attorneys could not have been much without this receipt.

587 KTP Attorneys record that an EFT deposit of R 1 000 000.00 with description "Acb Krediet Ratanang" was received into their ABSA account number 4048146206 on 21 June 2011 and thereafter it appears that the R 1 000 000.00 was transferred to a Nedbank Corporate Saver account in the name of Ratanang on 23 June 2011.

588 The Segwalo FNB account number 62045616218 record that a payment of R 1 000 000.00 with description "Trf Farm Purchase" took place on 20 June 2011 being the same day the On-Point bank statement records a receipt of the same amount with the same description. This is the same entity that HL Matlala has confirmed paying R 1 200 000.00 to on 12 July 2011 for designs that the Department had allegedly not paid for, but which I have shown in this affidavit had already been paid for by the Department.

The fourth payment

589 The fourth payment of R 986 418.00 was, according to a Standard Bank cheque dated 8 July 2011, paid by "Flamingo Moon Trading 228 (Pty) Ltd t/a Qualis Health and Safety". In this regard the Honourable Court is respectfully referred to **Annexure D11/3** of my report.

590 An ABSA bank deposit slip (**annexure D11/4**) records that this cheque was deposited on 12 July 2011 into account number 4048146206 in the name of KTP Attorneys. The bank statement for this account confirms the deposit. In this regard the Honourable Court is respectfully referred to **Annexure D12/4** of my report.

591 It appears that R 950 000.00 of the R 986 418.00 was transferred to the Corporate Saver Account in the name of Ratanang on 26 July 2011.

592 Honeycomb also confirms that the attorneys attending to transfer of the property, via email requested payment of a further amount of R 986 418.00 which amount were subsequently paid by cheque from the Qualis account. In this regard the honourable Court is referred to the e-mail attached to my report as **Annexure D13/1**.

593 The email referred to by Honeycomb is dated 28 June 2011 and the significant aspects of the email are as follows:

From: kbn@vodamail.co.za
To: jmalema@anc.org.za
Subject: BALANCE PAYABLE
To: RATANANG TRUST
For attention: Alie Boshielo

RE: TRANSFER – REMAINING EXT. FARM SCHUILKRAAL
623

We confirm that the outstanding amount payable to effect transfer of the property to Ratanang is as follows:

Balance outstanding – purchase price (VAT included) R950,000.00

Transfer Cost – per statement attached herewith R 36,418.00

TOTAL PAYABLE R986,418.00

- 594 An instruction to KTP Attorneys from Malema on behalf of Ratanang in his capacity as the sole trustee states as follows:

"I the undersigned Hereby authorise and instruct attorneys Kampherbeek Twine and Pogrud to transfer the funds in their trust account being held on behalf of the abovementioned trust to the account of Gwama Properties (Pty) Ltd No 2010/009087/07 with immediate effect." A copy of the instruction by Malema is attached to my report as **Annexure D14/1**.

- 595 Qualis's , Standard bank account number 420340505 was opened on 7 December 2009 by Moyahabo Salphy Mphahele id 780327 0532 088. On 4 August 2010 Gwangwa was added as a signatory.

- 596 I examined the Flamingo Moon bank statements and determined that a number of deposits were made into this account from On-Point FNB account number 62254918067. The description of the transaction in the On-Point bank account and Flamingo Moon bank account is "Consultancy Service". Detailed below is a summary of these payments:

	Date	Amount (R)
--	------	--------------

1	06/04/2010	45,000
2	30/04/2010	45,000
3	28/05/2010	45,000
4	06/07/2010	45,000
5	30/07/2010	45,000
6	02/09/2010	45,000
7	06/10/2010	45,000
8	15/12/2010	20,000
9	29/12/2010	100,000
	Total (R)	435,000

597 I further determined that the following deposits were made into the Flamingo Moon bank account recorded as "Vharanani Properties CC" or "Vharanani Consulting". The SAPS provided me with copies of the bank statements for Vharanani Properties CC, Nedbank account number 1411413083. The sole signatory is David Luvhuno Mabilo. I have not investigated this entity, but upon examination of the bank statements I determined they received regular payments from Limpopo Provincial Government. For purposes of my report I attached only the relevant bank statements; in this case the payments made to Flamingo Moon as detailed below. The description of the transactions is recorded as "Qualis Consulting".

	Date	Amount (R)
1	18/03/2011	684,000
2	10/05/2011	456,000
3	06/07/2011	1,300,000
	Total (R)	2,440,000

598 I further determined that Vharanani Properties made the following payments to the Ratanang bank account. These payments were made prior to the appointment of On-Point and I refer to same in order to show how these entities are linked:

	Date	Amount (R)
1	14/07/2009	100,000
2	28/08/2009	200,000
		300,000

IMPLICATIONS OF THE ABOVE

599 I would submit that it is clear based on the flow of funds that after receiving payments from the Department, Mpotseng, HL Matlala and Oceanside made payments for the ultimate benefit of Ratanang.

600 In the case of Mpotseng the payment was routed via On Point. In the case of HL Matlala an amount of R 1 200 000 was paid to Segwalo on 12 July

2011, some 22 days after R 1 000 000 had been paid to On-Point for onward routing to KTP Attorneys for the benefit of Ratanang.

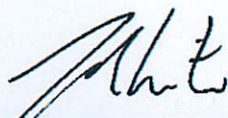
CONCLUSION

- 601 On-Point received the tender to act as PMU on behalf of the Department under dubious circumstances.
- 602 On-Point, by virtue of its status as the appointed PMU for the Department, was involved in the appointment of Mpotseng, HL Matlala, and Baitseanape as service providers to render engineering services for several road construction projects.
- 603 On-Point then entered into secret agreements with the abovementioned service providers, in terms of which in return for the agreements entered into, the said service providers were to pay On-Point or other persons, certain sums of money.
- 604 Most of the payments received as a result of the said secret agreements were channelled through On Point and other related entities to pay for the property.
- 605 This is detailed by the inexplicable payments made by On-Point and its related entities into the Ratanang account.
- 606 Furthermore, On Point as the appointed PMU for the Department, interfered with the tender process PUDP 435, such that Oceanside was awarded the tender under highly questionable circumstances.
- 607 After receipt of payment for the tender, Oceanside in turn, made a payment of R 1 000 000.00 to KTP Attorneys for the benefit of Ratanang.

608 On 12 July 2011, Qualis paid an amount of R 986 418.00 to KTP Attorneys
for the benefit of Ratanang. Guilder holds a 100% shareholding of Qualis.

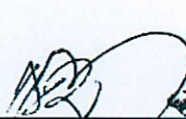
609 The property purchase was financed with funds standing to the credit of
Ratanang in the trust account of KTP Attorneys.

Signed at Pretoria on this 28th day of November 2012.



TREVOR SEAN WHITE

Thus signed and sworn at Pretoria _____ on this 28 day of
NOVEMBER 2012, the Deponent having acknowledged that he knows and
understands the contents of this affidavit, that it is both true and correct to the
best of his knowledge and belief, that he has no objection to taking the
prescribed oath and that the prescribed oath will be binding on his conscience.



CAPT - SAPS
N.R. MALETSWA
1489940.1

COMMISSIONER OF OATHS

FULL NAMES:

NYESANG MALETSWA

RANK:

CAPTAIN - SAPS

ADDRESS:

123 WESTLAKE AVENUE
WILLOW PARK
SILVERTON

AFRIKAANSE POLISIEDIENS
INVESTIGATION SECTION
DETECTIVE SERVICE GAUTENG
2012-11-28
ASSISTANT INVESTIGATION SECTION
DETECTIVE SERVICE GAUTENG
SOUTH AFRICAN POLICE SERVICE

AREA:

RSA

**DISCUSSION DOCUMENT TO MOTIVATE FOR THE INVOKING OF MAGNITSKY
ACT ON CERTAIN INDIVIDUALS BY THE AMERICAN AUTHORITIES**

Annexure B

IN THE HIGH COURT OF SOUTH AFRICA, PRETORIA
REPUBLIC OF SOUTH AFRICA

CASE NO: 67903/12

Before the Honourable Justice Raulinga on 18 March 2013

In the matter of:

THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS

REGISTRAR OF THE NORTH GAUTENG HIGH COURT, PRETORIA
PRIVATE BAG/PRIVAATSAK X07
2013 -04- 17
M B O CHAI PRETORIA 0001
GRIFFIER VAN DIE NOORD GAUTENG HOË HOF, PRETORIA

In re:

The Remaining Extent of the farm Schuilkraal 623, Registration Division LS,
Polokwane, Limpopo

AN APPLICATION IN TERMS OF SECTION 48 OF THE PREVENTION OF
ORGANISED CRIME ACT, NO 121 OF 1998

DRAFT ORDER

Having read the documents filed of record and having considered the matter, it is
hereby ordered:

- 1 An order is granted in terms of the provisions of section 53 of the
Prevention of Organised Crime Act 121 of 1998 (the POCA) declaring
forfeit to the state the Remaining Extent of the farm Schuilkraal 623;

Registration Division LS, Polokwane, Limpopo (the property), which is presently subject to a preservation of property order granted by this honourable court under the above case number on 5 December 2012.

- 2 The *curator bonis* appointed by this court in terms of the order granted on 5 December 2012, is directed to continue to act as such with authority to perform all the functions specified in the POCA subject to the provisions of the Administration of Estates Act 66 of 1965, and to the supervision of the Master of the High Court.
- 3 The *curator bonis* shall have all such powers, duties and authority as provided for in the POCA and in this order, including such powers, duties and authority reasonably incidental thereto and shall, in addition, be subject to the applicable provisions of the Administration of Estates Act 66 of 1965. The fees and expenditure of the *curator bonis* reasonably incurred in the execution of his duties, shall be paid from the proceeds of the forfeited property.
- 4 In terms of section 56(2) of the POCA, the property shall vest in the *curator bonis* on behalf of the state upon the granting of the order.
- 5 The *curator bonis* is authorised to:
 - 5.1 assume control of the property and take it into his custody;
 - 5.2 dispose of the property by private sale or other means;
 - 5.3 subject to any order of this court for the exclusion of any interest in the property under section 52(2) of the POCA, to deduct his fees

and expenditure which were approved by the Master of the High Court;

5.4 deposit the balance of the proceeds into the Criminal Assets Recovery Account established under section 63 of the POCA, number 80303056 held at the South African Reserve Bank, Vermeulen Street, Pretoria.

5.5 Perform any ancillary acts which, in the opinion of the *curator bonis*, but subject to any directions of the Criminal Assets Recovery Committee established under section 64 of the POCA, are necessary.

6 The *curator bonis* shall, as soon as possible but not later than within a period of 90 days of this order coming into effect, file a report with the applicant and the Master of the High Court, indicating the manner in which he:

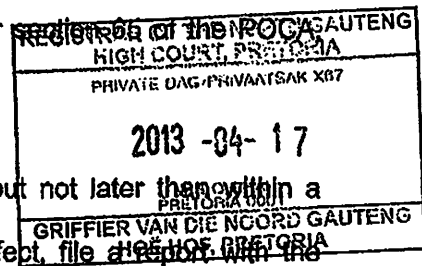
6.1 completed the administration of the property mentioned above, and

6.2 complied with the terms of this order.

7 Any person whose interest in the property concerned is affected by the forfeiture order, may within 20 days after he or she has acquired knowledge of such order, set the matter down for variation or rescission by the court.

BY ORDER OF THE COURT

REGISTRAR OF THE ABOVE HIGH COURT
DATE



**DISCUSSION DOCUMENT TO MOTIVATE FOR THE INVOKING OF MAGNITSKY
ACT ON CERTAIN INDIVIDUALS BY THE AMERICAN AUTHORITIES**

Annexure C

I Carl Martin Kriel,

state under oath as follows

1.

I am an adult male employed at AfriForum a registered NPO where I hold the position of Chief Executive Officer with telephone number 0861020030.

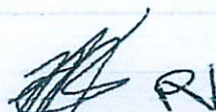
2.

The purpose of this affidavit is to report to the South African Police Service (SAPS), the information I submit exposes the scope and extent of the organised criminal conduct of such a serious nature that it calls for the SAPS to investigate.

3.

The SAPS has a duty as the principal law-enforcement body, in terms of its policing objectives and in accordance with Section 205 of the Constitution, to prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of South Africa and their property.

This is over and above the clear allegations and evidence of fraud, corruption and money laundering hereunder provided against Messrs Julius Malema (Malema), Floyd Shivambu (Floyd), Marshall Dlamini (Dlamini) and Brian Shivambu (Brian)

Handwritten signature and initials, possibly "AK" or "AK R", in the bottom right corner of the page.

4.

AfriForum represents more than three hundred thousand inhabitants of the Republic of South Africa.

5.

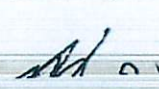
Historical crime investigations, largely undertaken by the Directorate of Priority Crime Investigations (The Hawks) appear to have been conducted in isolation or silos. Without belabouring the point, an inference is apt that certain individuals have been sheltered from proper investigation or prosecution because of their status or political affiliations. I submit, that this approach is the proverbial "horse with blinkers" method.

6.

This complaint calls for an investigation into allegations that the political party Economic Freedom Fighters (EFF) is the enterprise in racketeering allegations against Julius Sello Malema and Floyd Shivambu which would be in contravention of the Prevention of Organised Crime Act, (POCA), 121 of 1988.

7.

The witness statement of Mr. Tshifhiwa Matodzi (Matodzi), former chair of VBS Mutual Bank commissioned on 10 July 2024, exposed amongst other, serious criminal allegations and the *modus operandi* of the above-mentioned individuals. This alleged criminal conduct should no longer be considered in isolation from the so-called "VBS scandal" suspects, but should also include the suspicious, and in my opinion unexplored, accusations that point to the EFF political party as an enterprise, as defined in POCA.



8.

POCA defines a "pattern of racketeering activity" as the "planned, ongoing, repeated or continuous participation" in any of the over 30 crimes listed in the law's first schedule. These include corruption, fraud, extortion, and murder. To establish such a pattern, one needs to show that at least two offences were committed within a 10-year period and that they were related.

9.

Meanwhile, an "enterprise" is defined as including any individual, partnership, corporation, association, or other juristic person or legal entity, as well as any union or group of individuals associated in fact.

10.

I submit that the publicly available documented information constitutes enough reasonable suspicion of the establishment of an EFF enterprise as determined by POCA and a history of planned, ongoing and repeated participation or involvement in criminal conduct by these individuals. This requires diligent and steadfast intervention by the authorities in a manner where they live up to the expectation that they will conduct their constitutional obligations without fear favour or prejudice.

11.

I hereby submit the following information to be investigated and the veracity thereof to be established with the purpose of having the National Prosecuting Authority decide whether to prosecute or not: namely;

A handwritten signature in dark ink, appearing to be 'M. Q.', is located in the bottom right corner of the page.

VBS BANK HEIST

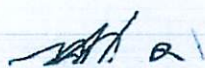
11.1. The allegations are that Matodzi paid Malema and Shivambu not to use the EFF's political muscle against VBS Mutual Bank. The revelations by the convicted Matodzi are captioned by the Daily Maverick publication as follows

"In early 2017 'at the EFF's penthouse in Sandton', the VBS-looter-in-chief Tshifhiwa Matodzi met Julius Malema, Floyd Shivambu and Marshall Dlamini — the result of that meeting culminated in R16.1m in stolen VBS funds as a 'donation' to the EFF. The 'donation' bought Malema and Shivambu a restaurant in Soweto, upgrades to Malema's Sandton home, a house for Shivambu's parents and payments towards their luxury lifestyle."

11.2. In his witness statement, Matodzi states as follows:

"PAYMENTS TO SGAMEKA:

27.1 To my knowledge Sgameka is a company owned by Brian Shivambu, a brother to Floyd Shivambu ("Floyd") who is the deputy president of EFF. The company was provided to me by Floyd to make payments that I promised to the EFF. I made this promise following the news which had broken in the media that VBS had granted former President Zuma a home loan for his Nkandla residence, negative publicity arose in the



country. Particularly from those that were opposed to Zuma at the time. Amongst those was the EFF.

27.2 EFF had started a campaign of mentioning VBS in its political rallies through its president Julius Malema. As Chairman of VBS I then decided that Malema and EFF should be approached for VBS to explain its position and how the loan was granted. Gogoro, which was VBS PR consultants, arranged a meeting for me to meet with Julius at the EFF's penthouse in Sandton around April/May 2017. I went there alone. Present there at was Julius Malema, Floyd Shivambu and Marshall Dlamini. Marshall Dlamini did not participate in the meeting, and he was seated far from where the engagement took place.

27.3 I explained VBS' position and the fact that the EFF's negative commentary about VBS/Zuma transaction was damaging VBS reputation. Furthermore, I explained that as black brothers, the EFF's constituencies were VBS target market also. I further informed them that VBS was willing to offer a donation to the EFF. I then proposed that VBS can donate R5 million immediately once a bank account has been opened at VBS and R1 million per month to the EFF. I also made it clear that the amount could only be deposited into a VBS account, and that EFF should therefore open a bank account with VBS.

Handwritten signature

27.4 After I left this meeting, Floyd and I remained in contact. At some stage Floyd indicated that they have opened an account at VBS in the name of a company called Sgameka. A transfer of R5 million as promised was made on my instructions from Malibongwe to Sgameka on 8 June 2017. Subsequent payments were made to Sgameka VBS account every month and were paid from Vele or any of Vele's subsidiaries. Myself, Julius and Floyd understood that concept of donation to mean gratification hence Floyd and Julius did not provide me with EFF's own banking details for these "donations".

27.5 Further subsequent meetings were held between Julius, Floyd and Myself. The notable one was where Julius and Floyd informed me that they needed funding to renovate an EFF restaurant called Grand Azania in Soweto. I informed them of a VBS facility for such loans and referred them to David Nthlokwe, the then General Manager of Credit at VBS, to attend to this request. This loan application was made through Sgameka and was approved although I do not know the amount.

27.6 After VBS was placed under curatorship, I met Floyd and his younger brother Brian several times at Floyd's residence in Bryanston. This was the first time I met Brian. At one of the meetings Myself, Floyd and Brian agreed to regularise the R5 million plus R1 million monthly donations. It was agreed amongst us that we draft a contract between Vele and

Sgameka for consulting work in petroleum and storage facilities. The said contract which we backdated by agreement was drafted by the Shivambu brothers. The signatories to that contract were myself representing Vele and Brian who was representing Sgameka; see copy thereof attached herewith, marked and annexed as TM-18.

12.

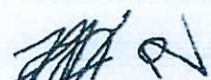
The receipt and laundering of the money from VBS/Matodzi cannot escape the proper application of the definition of corruption as framed in **Selebi v State** (240/2011) [2011] ZASCA 249 (2 December 2011) and recently followed in **DPP of Western Cape v Bongani Bongo** (990/2022) [2024] ZASCA 70 (6 May 2024).

13.

Not only should Adv Terry Motau SC's Investigator's Report to the Prudential Authority, titled The Great Bank Heist, be used in the investigation of the proposed racketeering case, but specifically in the narrower investigation of fraud, corruption and money laundering against Malema, Floyd, Dlamini and Brian.

14.

I've discovered that, in addition to money laundering, numerous investigative reports have revealed that Floyd Shivambu and Malema used the majority of the earnings received under the guise of a donation for their own personal gain.



15.

The subsequent "regularisation" of the "donations" through the use of a sham contract is conclusive evidence of the parties' intentions when the "donations" were offered and accepted. Should this be investigated, it will be proven to be a knee-jerk reaction to correct a wrong. I have in the past realised that in most cases where corruption is uncovered the perpetrators would disguise it as a loan.

16.

ESTABLISHMENT OF THE EFF

16.1. The establishment of the EFF relied on it meeting the obligation to pay registration fees. Allegations in the public domain are that Adriano Mazzoti an alleged smuggler of contraband (cigarettes) provided the necessary funds to meet the obligations for registration.

16.2. On 28 July 2023, the Times Live quoted Malema at the 10-year gala dinner as follows;

"When the IEC asked us to pay the money, [deputy leader] Floyd [Shivambu] and I had nothing. We looked at each other and said: 'What is going to happen?' They asked for R650 000 and we had no means.



"Later, Mazzotti called and said, 'brother, the money is paid', and we knew we are good to go. That is how the EFF was allowed to contest the first election in 2014,"

"We are very proud of Adriano Mazzotti and are not ashamed to associate with him. We don't know his business because he's not our business partner,"

"We do not run an underworld, we are running an above-world. Do not be scared that we are part of anything Mazzotti does. Mazzotti has never been arrested, neither has he been charged."

16.3. Malema's remarks are nothing more than an expression of wilful blindness.

Law enforcement must investigate the suspicions of alleged criminal conduct by Mazzotti, and if found to be correct, heed the inevitable outcome that the blind eye approach by Malema and or the EFF of gratifications by Mazzotti from alleged underworld activities is not an excuse for exemption from POCA.

IMPROPER PAYMENT FROM GOVERNMENT SUPPLIERS

16.4. Publicised reports of an amaBhungane investigation show that before controversially winning a mega-deal from the City of Joburg, a fleet firm made



payments to a company whose account was used for the benefit of Malema and his party the EFF.

These allegations and the investigative report, although internally investigated by Group Forensic Investigation Services, must be interrogated for purposes of a POCA investigation. amaBhungane later reported that Treasury found irregularities in the awarding of the contract. This too should form part of the investigation.

17.

I implore the South African Police Service to investigate these allegations exposing the scope and extent of the EFF as an enterprise regarding the alleged criminal conduct by Malema and Shivambu, in the furtherance of POCA-defined criminal activities which also include

- 17.1. Corruption
- 17.2. Money laundering
- 17.3. Fraud

18.

Notably, I further implore the South African Police to heed the recommendations by Adv Motau at paragraph 244.3 of his report



"seek the intervention of the Asset Forfeiture Unit to preserve and confiscate the proceeds of the crimes that have been committed;"

Although the recommendations were generally made, there is sufficient indication of the use of the proceeds of crime received into the Sgameka Projects account transferred to the Mahuna Investments – and Grand Azania accounts which benefitted Malema and Shivambo.

The Daily Maverick reported that Mahuna Investments paid more than R2 million to Mekete Lodge, a Polokwane-based hotel and events venue, for what is reported to be upgrades and additions to the property and to the benefit of the business.

19.

It is no secret, and I submit begs the question of why law enforcement authorities are ignorant of the open source information that has been readily available over years wherein the underlying suspicions have been repeated *ad nauseum* that Malema and Shivambu have allegedly involved themselves in blatant enrichment activities which their income cannot justify. In this regard as an example, I refer to the court documents which contain damning corroboration by Mr Mr Rawula who served in the national leadership of the EFF as the Central Command Team Member responsible for Labour and Trade Union Relations that I infer is a disclosure of him witnessing a pattern of illicit activity. In this regard, I refer to Malema v Rawula (139/2020) [2021] ZASCA 88 (23 June 2021).



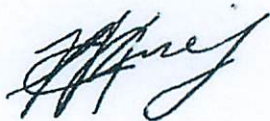
I must indicate that after the publication of the witness statement of Mr Tshifhiwa Matodzi, other individuals of the EFF have rallied to publicly defend implicated people and organisations against these allegations. This may very well suggest their intimate knowledge of what could very well later be proven to be proceeds of crime and their witness statements may be essential.

I know and understand the contents of this declaration

I have no objection to taking the oath

I consider the oath to be binding on my conscience.

SIGNED ON THIS 19th DAY ON JULY 2024 AT PRETORIA



.....
DEPONENT

I certify that the Deponent has acknowledged that he knows and understands the contents of this declaration.

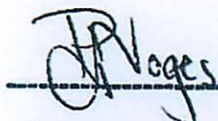
I certify that the Deponent has no objection in taking the prescribed oath.

I certify that the Deponent considers the prescribed oath as binding on his conscious.

Place: Pretoria

Date: 19/07/2024

Time: 08:45



COMMISSIONER OF OATHS

JOHANNA PETRONELLA VOGES
COMMISSIONER OF OATHS - KOMMISSARIS VAN EDE
ATTORNEY OF THE HIGH COURT OF SOUTH AFRICA
54 UNIONLAAN
KLOOFSIG
CENTURION

