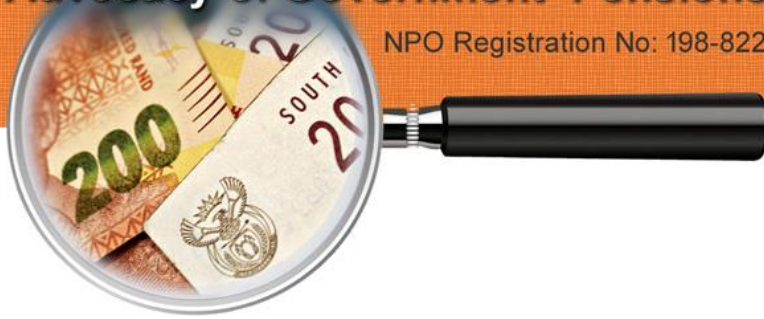


# Association for Monitoring and Advocacy of Government Pensions

# (AMAGP)

NPO Registration No: 198-822



The Association for Monitoring and Advocacy of Government Pensions: An independent group of pensioners and civil servants concerned about the long term viability of the GEPF and sustainability of its return on investments.

[www.AMAGP.co.za](http://www.AMAGP.co.za)

 [GEPF Watchdog - Wag hond](#)



## NEWSLETTER NO 13 of 2020

AMAGP – Association for Monitoring and Advocacy of Government Pensions

BOT – Board of Trustees [of the GEPF]

DFI – Development finance institution

FSCA – Financial Sector Conduct Authority [previously the FSB]

GEPF - Government Employees' Pension Fund

PIC – Public Investment Corporation

PSA – Public Servants' Association

ROI – return on investment

SCOF – Standing Committee on Finance

SCOPA - Standing Committee on Public Accounts

SOE – state owned entities

*The Government Employees Pension Fund (GEPF) is Africa's largest pension fund. We have more than 1,2 million active members, in excess of 450 000 pensioners and beneficiaries, and assets worth more than R1,8 trillion. <https://www.GEPF.gov.za/>*



## JOIN THE MOVEMENT

**STEP 1** JOIN THE FACEBOOK GROUP

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**1:** Scroll to the top of the AMAGP page;

**2:** Click on "Announcements";

**3:** Click on "amagp membership";

**4:** Complete the form :)



## PROTECT OUR FUND

# AMAGP

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**Fundraising**

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ondersteuning.  
Hieronder die twee  
maniere om u donasies  
te maak.**

**Thank you for your  
continued support.  
Hereunder the two  
methods to make your  
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**BANKBESONDERHEDE / BANKING DETAILS**

***First National Bank***

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<b>Tak -</b>	<b>Brooklyn 585</b>	<b>- Branch</b>
<b>Tak Kode -</b>	<b>251345</b>	<b>- Branch Code</b>
<b>Rek Nr -</b>	<b>62743347454</b>	<b>- Acc No</b>
<b>SWIFT Kode -</b>	<b>FIRNZAJJ</b>	<b>- SWIFT Code</b>



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<https://www.backabuddy.co.za/champion/project/government-pensions>

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Advocacy of Government Pensions

**(AMAGP)**

NPO Registration No: 198-822



**backabuddy**  
where cause meets crowd

***Voluntary donations***  
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## The Editor's Word

Paraphrased from a common WhatsApp a couple of weeks ago: "One thing we learnt from the lockdown: Everybody knows somebody who can get something illegal for you". Civil disobedience is a way of life in South Africa, a culture, a habit, stemming from non-accountability and corruption. Correcting this comes from the top, not the bottom. Meaning our Fund too.

Some quotes by Edmund Burke:

*Nobody made a greater mistake than he who did nothing because he could do only a little.*

*The greater the power, the more dangerous the abuse.*

*Liberty does not exist in the absence of morality.*

*Among a people generally corrupt, liberty cannot long exist.*

*The only thing necessary for the triumph of evil is for good men to do nothing*

Edmund Burke? [google is your friend]

Why these quotes? They explain why we need many pensioners and Fund members in every province willing to come together under the guidance of the AMAGP to counter the threat to our Fund. See details on how to become part [www.amagp.co.za](http://www.amagp.co.za) and Fb.

Christo van Dyk wrote to the Financial and Fiscal Commission about the previously unknown inclusion of the GEPF in the state assets [the previous newsletter – no 12]. A reply was received, an-oh-so-absolutely-astounding-delightfully-vague-non-committal-and-irrelevant reply:

"Dear Mr Van Dyk

Thank you for your enquiry and apologies for the late response, as the FFC is currently busy with the Division of Revenue; and the COVID pandemic has also added to the pressures.

Please find the link to the IMF report: <https://www.imf.org/en/Publications/FM/Issues/2018/10/04/fiscal-monitor-october-2018>, that will assist you further."

Referring to the IMF nogal in an internal South African matter!

From a meme in my WhatsApp: Interesting how SARS can track every single Rand in any and every account, to calculate how much tax you owe, but can't help the government trace R 500bn! Looted funds ...

The SASOL share price hasn't recovered, as has most of our shareholding in many other companies. Thus the value of our Fund is decidedly lower than what the 2019 GEPF Annual Report, detailing statistics from 2018, will have you believe. Any informed guesses? I would hazard at least 25% of the book value.

Palmietfontein/Isago [Klerksdorp]. You remember the murky matter brought to light by one of our concerned members in a letter in the January 2020 Landbou Weekblad? Land the PIC purchased for the GEPF for twenty [20!] times its realistic value? The AMAGP emailed a detailed letter on 7 July to the GEPF BOT [Dr Frans le Roux] and various interested parties about the "Procurement of Barren Land at Klerksdorp[Matlosana] at Exorbitantly High Cost for Dubious Purposes". No doubt we will, in due course, be quietly informed by the BOT [Dr Le Roux] the matter is "receiving attention" ... I trust the political parties will stir furiously.

Now for the news

A titbit from WhatsApp to brighten your lockdown moments.

Our prolific AMAGP spokesman raised GEPF matters to the Public Protector before AMAGP was formed, in his private capacity. Read his irritation of the way the Public Protector [failed to] handled the matter.

The Government Pension Administration Agency [GPAA] isn't. Its administration has degenerated to late initial administration and payment of new pensioners: a 29% backlog in 2018 and 20% in 2019. Some pensioners waiting up to 12 months for their pension – you know what that means, from a regular monthly income to no income for a year means penury. It also cost the Fund [us] R6,8bn in interest in late payments. How many people can you employ to make in-time pensions a reality with that kind of money? And no, we don't have COVID-19 in 2018 or 2019 to blame.

The DA is taking the government to court for ruling by decree – note not governing by decree. If this is allowed to continue, we eventually will have a cabinet decree to appropriate our Fund.

Steinhoff. The loss is still a loss, although the share price has improved from nothing to something. We are still facing a huge loss, however, if the Trustees agree to a settlement we will lose just about everything. See the article below.

The Transnet pensioners class action.

The very clear evidence of the results of looting a pension fund; the resulting suffering; the time and expense to [partially] rectify the misdeed. Those pensioners who passed away never had the satisfaction of a carefree pension life.

I keep wondering why aren't those responsible being held accountable for the looting? And those who gained financially from it also; there will be quite a few who still live a life of luxury with the 'agent fees' from the transaction.

Then who do you think paid the litigation fees of the Transnet Fund in this class action? Their own pension funds of course!

Note the funds didn't accept liability, but the facts of the settlement argue so clearly for unacknowledged liability.

The new PEO of the PIC, coming from the GEPF, should understand the functioning of the PIC quickly. However, investing funds isn't the same as managing funds, especially if you don't answer questions from your constituents, as he did at the GEPF. Let's wait and see.

A highly illuminating article by Frans Cronje of the IRR, about the next waves of state capture to come, and the complicity of the current political government in state capture for the past 20 years. Please read this thoroughly, then reread. Ignore the threat to our Fund at your peril!

Outa is promoting other SOE to follow Eskom's example of court action to recover looted funds and jail time for perpetrators, and not Schabir Shaik sentences either please!

Eskom has initiated court action to recover looted funds and bring culprits to accounting

in court. Let's see what the court actions reveal. As well as how many appeals are going to follow and convictions.

The new PIC CIO has been appointed internally. Matjila previously was both the PEO and CIO, leading to continued speculation about the investment decisions. Read what Ray Mahlaka has to say about this.

Theo Stehle, one of our stalwart hard-working members, sent a message to the GEPF about the GEPF Fund News First Edition, expressing his dissatisfaction. We need more such insistent messages to the GEPF.

Lastly, an AMAGP media release on the GEPF inactivity and lack of response about the Mpati Commissions findings. Continued silence exacerbates and expands suspicion and concern.

## **NEWS NOUS NEWS**

From the Fb GEPF Watchdog-Wagbond:

"[Carol Brand As Kleynhans](#) did you know this? SA can't afford to be in conflict with BAT as the state pension fund (GEPF) holds about 43 million shares of BAT at a value of R27 billion. GEPF holds 23 million shares in Reinet, whose biggest investment is in BAT. If BAT closes down SA pensioners will lose over R30 billion."

*Comment*

*BAT – British American Tobacco*

*Reinet Investments SCA*

*How much money did our Fund [us] lose in this investment during the lockdown?*

*What could the Trustees and BOD have done to prevent this loss, with its vaunted Rtrillions?*

*As well as all our real estate standing empty?*

*Synopsis*

### **STATEMENT**

Statement by Adamus P Stemmet, Spokesman, AMAGP in his personal capacity.

### **THE PUBLIC PROTECTOR: SIMPLY A LACK OF GOOD MANNERS OR PLAIN ARROGANCE?**

The Public Protector's office is supposed to offer hope to citizens in the fight against

maladministration. Instead of facilitating redress, the PP's office seems to be very successful in adding insult to injury.

On 5 February and again on 16 February 2016 I asked the Public Protector (PP) to investigate certain matters and investments made on behalf of the Government Employees Pension Fund (GEPF).

The lack of interest displayed by her office became clear when, seven months later at the end of September 2016, I was asked telephonically to prove that I indeed have raised the matter with them. This I could do easily because on both dates my representations were handed in at the PP's office and I could produce the receipts.

I was shocked today to learn that the PP issued a report on the matter on 21 May 2020 already without even having the decency to inform me of the existence of the report. I believed that it is common courtesy to provide a final report to the complainant first. I also believed that it is not only common courtesy but also standard operating procedure in the PP's office.

So, imagine if ordinary citizens have to wait for 4 years for the PP's office to finalise an investigation that should have been completed in a year, and then you find out a final report has been issued to the entity being investigated, but not to you, the complainant!

### **Believe it or not, this is what happened to me in this matter .**

A final report was issued to the PEO of the GEPF on 21 May 2020. To date, I have not been informed of the final outcome and have not received a report from the PP's office.

It truly is a big disappointment to, at first hand, experience the poor service, arrogance, and outright lack of professionalism displayed by the PP's office during the handling of this complaint.

Based on this, there is no way I can recommend to any citizen to use the capacity of the PP's office. However, if they expect service of the highest standard, they should rather consider alternative service providers or avenues OR wait for a change in

leadership at the PP's office.

I have referred the report to the chairman of the AMAGP to consider and at this stage prefer not to comment on the contents thereof, except to say that measured at the treatment I have received, I have my doubts about its quality.

Adamus P Stemmet (AP)

### *Comment*

*We will have to wait for AMAGP to receive, read, and comment on the report. From the lack of feedback to the complainant it is highly likely the report will not answer the matters raised in the original requests.*

### *Samevatting*

## **PENSIOENARISSE LY HONGER**

Ek sien dr. Quarta du Toit kla omdat sy nie haar IRP5 uit die Staatsdienspensioenfonds (GEPF) kan kry nie. Dit volg op 'n berig wat 'n skokkende situasie openbaar. Jammer, Dokter, u, ek en amper twee miljoen ander het geen rede tot klagte nie.

Ons moet dink aan die arme pensioenarisse wat in sommige gevalle al meer as 'n jaar wag om hul eerste pensioenbetalings van dieselfde GEPF af te kry. Waarvan lewe hierdie mense?

Een van AMAGP se lede, Susan Voges, werk voltyds daaraan om mense te help, maar sy voer 'n opdraende stryd. Soos ons almal by AMAGP, offer sy daaglik gratis haar tyd op om honderde gevalle te probeer oplos en om brood op die tafel van hierdie ongelukkige slagoffers van die vrotbestuurde GEPF te kry. Hulle is van alle kleure wat meestal klein salarisse verdien het.

Die swaarkry is groot. Die klagtes stroom in en ek het tans 'n lys van 84 mense wat krepeer. Ons dame het nog baie meer.

Dit is so dat Covid-19 deesdae 'n rol speel, maar die probleem is jare oud. Reeds in 2016 het die trustees beloof dat die administrasie opgeknop en gemoderniseer word. Daar sou ook 'n ombudsafdeling geskep word om klagtes te hanteer. Daarvan het dadels gekom.

AMAGP kla al jare maar die GEPE se raad van trustees trek rustig hul vet besoldigings en steur hulle nie aan mense wat bitter swaarkry nie.

Dit is tragies dat ons 'n tragedie soos Covid-19 nodig gehad het om hierdie bom te laat bars! Dit het veroorsaak dat radiostasies en koerante bewus word van hoe benard die situasie is. Hulle verdien ons dank, want ons klagtes hieroor is al jare onder die mat ingevee. Die trustees kyk ander pad.

Adamus P. Stemmet, Durbanville

#### *Kommentaar*

*Ons Fonds se administrasie van nuwe pensioenarisse wek inderdaad ernstige kommer. Ek wonder wanneer diegene wat so benadeel word in massa by die GPAA se kantore gaan vergader? Dit is mos SA kultuur!*

*Die klag teen die Trustees raak al ernstiger, dat hulle toelaat dat sulke swak administrasie voortduur.*

#### *Synopsis*

### **DA launches action against rule by diktat**

The DA wants the Gauteng High Court (Pretoria) to order that the President's announcement of the closure of public schools has no legal effect in the absence of gazetted regulations. If the court does not agree with this, the party wants the decision reviewed, set aside and declared unlawful, says a **Business Day** report.

Public schools were closed for four weeks on Monday, but there are still no regulations gazetted on the closures or how the academic year will proceed. The DA originally said it was waiting for the regulations to be gazetted, but yesterday it lodged its application, which now includes a request for clarity on whether the announcement by Ramaphosa, to the extent that it purports to contain or communicate a binding law, is a nullity.

DA MP Belinda Bozzoli, in an affidavit, said she was advised that a law can only have legal effect once it has been published in the *Government Gazette*. 'The presidential

announcement, and the Cabinet "decision" it communicates, has not been published in the *gazette*. As such, it has no legal effect, and the applicant is entitled to a declarator to this effect,' she said.

**Bozzoli said the presidential announcement is merely the most recent of what is becoming a 'disturbing pattern' under the executive's response to the Covid-19 pandemic – that of 'public officials handing down diktats before they are gazetted or without gazetting them at all, and expecting citizens, organisations and other spheres of government to obey them'.**

She said it appears that various members of the executive, including Ramaphosa and the Basic Education Minister, are under the impression that the Covid-19 pandemic permits them to legislate by decree, without properly exercising statutory powers through publication in the *gazette*. 'I respectfully submit that it is necessary for this court to disabuse them of this notion,' Bozzoli said.

*As to the actual decision to close schools,* Bozzoli said it is 'deeply irrational', especially given that buses and taxis are allowed to run at full capacity for trips of up to 200km; and that people may gather at places of worship, funerals, work, cinemas and visit supermarkets. 'Indeed, children may do all of these things. And yet they are not permitted to go to school. There is no rational basis for this differential treatment,' she said, according to the **Business Day** report.

'In addition, the presidential announcement only purports to close public schools. Private schools are free to open. **If government genuinely is of the view that schools pose a greater risk for the spread of Covid-19 than, say, crowded taxis or casinos ... it would have closed all schools and not just public ones.**'

For now, said Bozzoli, the DA's complaint is limited to two grounds: the decision-makers having no power to take the decision; and any powers that existed not being properly exercised because no decision was gazetted. The DA reserved its rights to raise additional review grounds in the future.

#### *Comment*

### **Definition of Diktat**

**1:** a harsh settlement unilaterally imposed (as on a defeated nation)

**2:** Decree, order

[merriam-webster.com/dictionary/diktat](http://merriam-webster.com/dictionary/diktat)

*Let's start with the so-called "Command Council". Why does the government need such an animal for this disaster? Why not a co-ordinating council?*

*Then the President announcing and the next day the 'other president', ministers and anybody else countermanding. In between these irrational and 'spur-of-the-moment' announcements managing our daily activities to the detriment of the economy and our continued survival.*

*All such announcements must be approved by parliament, in contrast eg to the draconian announcements of the Ministers of Transport and the Police.*

*If rule by parliament as we all understand is bypassed by diktat, the next on the agenda is waking up to find the government/political party has confiscated our Fund.*

### *Synopsis*

**BUSINESS MAVERICK**

## **R16,5bn to make the R135bn Steinhoff headache go away**

By Sasha Planting 28 July 2020

Sometimes it's better to cut your losses and run. This is what Steinhoff's board is hoping aggrieved shareholders will do. One shareholder is not taking the bait.

One group of aggrieved shareholders who will not be accepting Steinhoff's cash and shares offer to settle R135-billion in legal claims and litigation against it, are the former owners of Tekkie Town, a retail and apparel store that was acquired by Steinhoff and later unbundled into Pepkor.

Tekkie Town founder Braam van Huyssteen, private equity group Actis and other shareholders agreed to sell Tekkie Town to the acquisitive Steinhoff in 2016 for R3,2-billion. While Actis was paid in cash, Tekkie Town's entrepreneurial team accepted payment in shares, roughly 25 million of them, valued at about R1,8-billion. Now, Steinhoff has offered Van Huyssteen and Co. a full and

final settlement of €6million, R116million at today's exchange rate.

Obviously, by accepting the offer, the Tekkie Town founders lose their rights to pursue outstanding litigation or claims against the company. As do all other claimants.

Steinhoff has proposed that it pay about R16,5billion to settle 90 separate claims against it. This is a fraction of the combined claims Steinhoff is facing in SA and Europe.

Other claimants include Christo Wiese, whose claim of R59billion is the largest, the GEPF with a claim of R643million and Pepkor's management team with a R2,9billion claim. Should they accept the offer, the GEPF will receive an estimated R38,8million, BVI R643million and Wiese about R9billion.

Said Louis du Preez, Steinhoff CEO and member of the management board. "Compensating shareholders who suffered losses in December 2017 has been one of our key objectives together with protecting the livelihoods of our employees and recovering value for creditors. The proposed settlement terms being announced today are the culmination of 12 months of intensive effort."

However, the Tekkie Town team will not be a party to any of these settlement negotiations. While a trial date has not been set, the Cape High Court interdicted Steinhoff from selling Tekkie Town or dealing with the shares in Pepkor in any way that would prevent the possible return of the Tekkie Town business to Van Huyssteen & Co.

Mostert, for his part, is not optimistic about the chance of the offer succeeding. "All the claimants have different agendas and the claims differ materially from one to the next. Some of these differentiating factors are timelines, the nature of the claims, whether you were on the inside or like ourselves on the outside before you contracted with Steinhoff," he says.

Time, as they say, will tell.

BM/DM

### *Comment*

*I suspect the big winners at this stage are the lawyers. However, I trust the Trustees won't settle as our original shareholding was about*

*R28bn, loss judged at about R20bn, excluding Lancaster at about R8bn. R643mn and a settlement of R38mn? Ridiculous!*

## Synopsis

### **Transnet pensioners obtain some redress. Court approves settlement agreement.**

Barbara Curson 28 Jul 2020  
Moneyweb

The Transnet pensioners who were wronged as far back as 2004 have at last achieved some redress. At least, those who are still alive have. Short-paying those who are in their sunset years, many of them tired and ailing, is simply unforgivable.

The macabre aspect to this long drawn-out matter is that the 100 959 beneficiaries of the Transnet Second Defined Benefit Fund (TSDBF) at March 2001 had dropped to 49 908 at March 31, 2018.

The full background to this matter was set out in a Moneyweb article on 11 May 2018. Read: [Vultures waiting for Transnet pensioners](#) (May 2018)  
[Transnet pension funds' R100bn dagger pointed at the heart of SA](#) (Nov 2018)

### **Protracted class action litigation**

The pensioners' class was certified on 31 July 2014. It consists of 52 000 members. The class issued summons against the Transnet Pension Fund (TPF), the TSDBF and Transnet in 2015. The intervening six years have been taken up by protracted expensive litigation.

The Supreme Court of Appeal turned down the pensioners' leave to appeal, but in 2018 the Constitutional Court (Pretorius and Another v Transnet Pension Fund and Another) gave the pensioners the go-ahead.

Without the funds accepting liability, the parties agreed to settlement negotiations and a settlement agreement was concluded in December 2019.

### **Settlement offer made order of court**

The court was approached to make the settlement offer an order of court. The court on 18 February granted an *ex parte* order with a *rule nisi* inviting any objections. These were communicated to members and published in the press and on Transnet's website.

The court had to consider various objections that were raised, including that the benefits to be paid to the pensioners were not sufficient, deceased estates were excluded, no payments were to be made in respect of the alleged historical underpayments, and, if the funds had not been looted, the increases could have been paid.

### **Developing the common law**

The court observed that it had a duty to develop the common law taking into account the interest of justice, be fair and reasonable, and that "the interests of the class members are paramount and not that of the class representatives and their legal teams".

Professor Theo Broodryk, associate professor and head of the Stellenbosch University Law Clinic, commented that: "Although class actions were first recognised in South Africa more than 25 years ago in the interim constitution of 1993, it is an area of law that remains largely unregulated by statute or court rules. Legislative inaction has compelled the judiciary to step in and, through case law, to develop a structure for the adjudication of class actions.

"The role that our courts have played in this regard is important, especially in view of the recent increase in the incidence of class actions. In the Transnet judgment, Potterill J continued to develop the law regarding class actions and the judgment will likely constitute an important source of authority on the issue of class action settlement going forward."

### **Settlement agreement**

The settlement agreement was made an order of court on 22 June.

### *Special awards*

In December 2019 an amount of R10 000 less tax was made to each member. Two further payments of R10 000 less tax will be made to each pensioner in December 2020



and 2021. South African Airways (SAA) still has to approve payments from the SAA sub-fund.

The boards of the TPF and TSDBF “may grant additional or greater lump sum awards if their rules are amended to allow them to do so”.

### *Pension increases*

The minimum annual 2% increase will continue, and the TPF, TSDBF and PRASA sub-funds will increase the amounts of the pensions payable by 11% on or by the end of the second month following the month on which the effective date of the settlement falls, and by 7% and 4% respectively in each of the succeeding anniversaries of the enhancement.

The SAA sub-fund pensioners will be paid a once-off increase to bring the pensions to where they would have been had they been awarded the 70% year-on-year inflation adjustment.

In subsequent years, the TPF and TSDBF will pay an annual increase (inclusive of the 2% minimum increase) of 70% of inflation.

### **The End of the Saga**

The pensioners had no option but to pursue the class action route, despite the risk of litigation.

The class action was only certified in 2014. Judge Potterill, Acting Deputy Judge-President of the High Court, pointed out that: “This renders witnesses herein vulnerable to memory issues ... [or] passing away before testimony commences or is finalised.”

Potterill further opined that the settlement won’t restore the pensioners to a comfortable retirement, but that it “provides sufficient value to the class members in surrendering their right to litigation”.

### *Comment*

*The ever increasing importance of funds for litigation, to fight for the future of our Fund, when required. See page 2 of the newsletter. Such litigation is expensive, with the relevant pension fund having almost unlimited funds to fight any action, such as our Fund.*

*It must now be clear to you, dear reader, the ever increasing importance of holding the Trustees individually and collectively accountable for any decision he or she or they make/s or agree/s to, either being present, or absent, when the decisions were taken.*

### *Synopsis*



## **PIC CEO Abel Sithole gets to work on ‘restoring integrity’ at graft-tainted money manager**

1 August 2020 by Editor

### **PIC media statement:**

The PIC is pleased to announce that the newly appointed Chief Executive Officer, Mr Abel Sithole, will officially assumed his duties from 1 August 2020. Mr Sithole joins the PIC from the GEFP where he was the Principal Executive Officer for the past five years. He has extensive industry experience, having previously held senior positions in notable companies and having served on board of several institutions.

He has an MA in International Relations and Master of Philosophy in Futures Studies from the University of Stellenbosch, a MBA from the University of the Witwatersrand and a BA from Lawrence University in the United States. Mr Sithole is a Fellow at the Institute of Life and Pension Advisors, a Chartered Financial Planner and a Member of the Institute of Directors Southern Africa.

Chairman of the PIC Board, Dr Reuel Khoza, said, “We are pleased that Mr Sithole is assuming his responsibility as the CEO of the PIC. We believe that he will assist the Board in ensuring that the PIC’s integrity and credibility are restored, and that sharp focus is placed on delivering on clients’ investment objectives. Moreover, we trust that Mr Sithole will play an important role and work with the

Board to fill vacant executive positions to ensure stability in the organisation.”

The Board remains unequivocally committed to restore integrity and credibility to the PIC, to ensure that professionalism is upheld, and ethical behaviour entrenched within the institution. The appointment of Mr Sithole is an important step towards this commitment as he will play a pivotal role in the implementation of the recommendations of the Mpati Commission of Inquiry.

Meanwhile, the Minister of Finance has extended the term of office of the Board members by 15 months. The Board members were appointed in July 2019 for a period of 12 months.

#### *Comment*

*Where did he get the time for three masters' degrees? Keep in mind he is the person who didn't respond to questions from AMAGP.*

#### *Synopsis*

### **The second (and third) waves of state capture are coming**

Daily Friend

By Frans Cronje 9 February 2020

**The first wave of state capture had its origins in the cadre deployment and transformation policies of the ANC, which degenerated into the looting of state institutions. These policies allowed the party, through the government, extraordinary regulatory and administrative powers and deployed cadres just could not withstand dipping into the public purse.**

A senior ANC leader once told me that what the party desired was a model of 'sustainable wealth extraction' in which the party, through the state, could draw wealth out of the country without driving investment out of the country – but bemoaned that greed and infighting among cadres was so great that they could not help but destroy the institutions they were deployed to lead.

The consequences can be seen in Eskom, in creaking infrastructure, failing municipalities, toxic rivers, dangerous hospitals, and corrupt

policing. They can be read in the testimony to the Zondo commission, the Gupta leaks, and the reports of the Auditor General.

But I am afraid that if the first wave of state capture related to the destruction of public institutions and infrastructure, the second (and later) waves may relate to the attempts at their rebuilding.

The formulae for those subsequent waves will have three components. The first will be large amounts of corporate, pension, and development financing being made available for rebuilding. The second will be the nominal 'privatisation' or private contracting of firms to rebuild that which has been broken. The third will be to apply the above via the same regulatory and administrative mechanisms that led to the first wave of state capture.

Here are some practical examples:

The energy parastatal/municipal water works/public hospital/mining industry is failing. South Africa suffers an electricity/water/healthcare/mining crisis. Something must be done. New generating capacity/refurbished infrastructure/better healthcare administration/new mining investment must be brought on line to save the country.

Large amounts of development financing must be raised, with business, government, labour, and the international community (especially under wave three) working closely together.

Collectively they will agree that the 'private sector', or at least private-public partnerships, must do the delivery as the capacity of the state is so eroded.

Calls will go out for applications from suitably qualified firms to do the work or lead these partnerships. But these firms and the contracts they win will be surveyed by the same political leadership and through the same prisms of cadre deployment and transformation that led to the first wave of state capture.

We at the Institute of Race Relations (IRR) think transformation is very important in the sense of introducing effective empowerment and affirmative action policies that identify people on the grounds of socio-economic disadvantage and help them into the middle classes. But what passes as transformation in

the government and the ANC is not that, but rather a racial nationalist policy that acts as a fig leaf to conceal corruption, malfeasance, and the looting of public funds by painting any critic of the policy as racist.

Put it quite bluntly; you can grow rich off looting Eskom into the ground, and then win the financing and tenders to supply the renewable energy that South Africa needs to keep the lights on. When anyone questions what is going on you can again throw the racism accusation at them, and in the case of renewable energy the climate-change denialist accusation.

What ends up happening is that, having exhausted the resources available from public institutions, the ANC's political elite pivot under the guise of privatisation and reconstruction to keep the cash taps flowing.

State capture is ongoing – it is only the business and financial model that has changed. If you have any doubt think about what has happened at SAA, where banks and a development financing institution have stumped up several billion rand to keep the cash flowing, without which that fragile cadre-deployment house of cards would already have come tumbling down. When asked why they did it, the development bank said that if they had not then SAA would have folded – not the basis of sound banking or investment policy.

An implication of our 'waves of state capture' thesis is that it is too early now to speak of public-private partnerships, raising development finance, and rebuilding, and will remain so as long as the current political elite that looted the country is still in charge.

The first cycle of state capture lasted almost twenty years before running out of cash in the aftermath of the 2009 financial crisis and the frenzied looting that followed. If the looting had been done in moderation it might have lasted longer. The second may not last as long but given the quantum of private funds held within the country, including pension funds, it could last for many years. The third wave will come after those private funds are exhausted and international funding agencies are forced to step in.

The IRR first warned about the implications of cadre deployment and what is today called state capture almost twenty years ago. For much of the time that followed, the warnings were ignored or loudly countered. It is important to say that, because this is not our first rodeo and the methods and tools we used to make that call 20 years ago are the same as those that allow us to flag the lining up of state capture ducks all over again.

If you ask how these next waves can be avoided, the most compelling answer now is the complete defeat of the ANC so that it is out of government. Short of such an outcome, and short of a sincere effort to jail the corrupt in its ranks, our assessment is ever more that the ANC in government will repeat the cycle of state capture time and again, simply changing the source of finance ahead of each new wave.

Twenty years ago very few influential people were willing to admit, let alone speak out or act against, the dangers inherent in the nexus between cadre deployment, what passes as transformation policy, and the enormous administrative power of the state. Today, equally few seem able to admit that the ANC must be driven out of government to stop the cycle.

#### *Comment*

*Very true words. State capture can only be arrested by a new government not based on the same principles as the ANC. Our Fund will remain under threat until this happens.*

#### *Synopsis*

### **OUTA: ALL SOE MUST EMULATE ESKOM AND TRY TO RECOVER LOOTED MONEY**

EyewitnessNews

Bonga Dlulane 4 August 2020

The Organisation Undoing Tax Abuse (Outa) said all other state-owned entities must emulate Eskom and try to recover money looted through state capture. Eskom and the Special Investigating Unit announced on Monday that summonses were being issued to 11 individuals who illegally diverted about R3,8 billion.

Outa said the action taken by Eskom and the Special Investigating Unit is long overdue as parliament and the state capture inquiry have heard how Eskom was used to facilitate state capture. Outa has also laid criminal complaints against nine of the 12 people Eskom has issued summons against.

Outa's Stefanie Fick said: "We call on other organisations, SOE and other departments to follow in Eskom's footsteps and recover looted public funds. There are plenty of examples. Outa has reiterated its commitment to fighting against corruption and tax abuse and we will, therefore, offer our help in fighting COVID-19 corruption and holding implicated individuals to account."

The organisation has called on the public to report any corruption at state-owned entities so that those responsible are prosecuted.

#### *Comment*

*The only measure of success will be many lengthy jail terms AND recovery of the looted money. And increasing successful court cases.*

#### *Synopsis*

### **Government moving to hold onto South African's retirement funds- legal expert**

BusinessTech

Staff Writer 8 August 2020

The Draft Tax Law Amendment Bill (TLAB) contained a hidden announcement, which may prove to be the final straw for many ex-South Africans who still have retirement investments left in South Africa, notes Jonty Leon, legal manager at Financial Emigration.

The TLAB seeks to legislate to prevent a South African, who has exited South Africa's tax base, from withdrawing their retirement funds from the country, until an unbroken period of 3 years has passed where that person can prove non-tax residency, he said.

This new test has never been raised in any Budget Speech or policy document, he said. "Also, this is a far cry from the current legislation which allows South Africans who have financially emigrated, and specifically concluded the exchange control portion of

financial emigration to remove their retirement funds from South Africa upon such emigration, being recognised by the South African Reserve Bank.

"Simply put, you have 7 months to execute a well-planned withdrawal strategy or you will be legislatively prohibited from withdrawing your retirement for at least a very uncertain 3 years."

#### **The change was foreseen**

Over recent years, there has been a substantial increase of South Africans formalising their status as "non-resident" from both a tax and exchange control perspective, by using the financial emigration process, said Leon. With this, many had decided to withdraw their retirement funds from South Africa and invest in a more stable economy.

"One of the biggest reasons for the formalisation of non-resident status with SARS and SARB was due to the punitive tax regime implemented by government on 1 March 2020, which reduced the foreign employment exemption to R1,25 million."

"Unsurprisingly, with so many people having exited and continuing to exit the tax base, government took the decision to crush the outflow by proposing to change the way in which people exit, instead of dealing with the core issue – a punitive tax regime for South African tax residents abroad."

This change was proposed in the February 2020 Budget Speech, where it was announced that the exchange control portion of financial emigration would be phased out by 1 March 2021 and replaced with a new system.

We also know government has been eyeing retirement funds, as there have been various indirect statements made to that effect. This proposed law change now seems to pull all these strings together.

#### **28 February 2021 deadline**

The proposed changes will likely come into effect on 1 March 2021, according to the TLAB, and will allow a person to withdraw their retirement funds from SA, "who is not a

resident for an uninterrupted period of three years or longer”.

The Explanatory Memorandum to the TLAB goes on to say that “a new test should be inserted which will make provision for payment of lump sum benefits when a member ceases to be a South African tax resident”.

“This is indicative that previously and currently one would be able to withdraw their retirement funding when ceasing tax residency, albeit also ceasing exchange control residency,” said Leon.

“A word of caution is that the financial emigration process takes months; so ex-South Africans cannot wait until the last moment to start the process.”

“Whilst the TLAB process must still run its course, one must question the wisdom of an approach to ‘wait and see’ whether this one will be legislated. If you are wrong, you may just jeopardise your future retirement,” said Leon.

#### *Comment*

*Note this is still a bill, not a law yet, and will contain many amendments before becoming law. It is unlikely this aspect will change. Worth noting and talking to your financial advisor about.*

#### *Synopsis*

### **BUSINESS MAVERICK**

## **PIC takes major step to restore governance by separating the role of CEO and CIO**

By Ray Mahlaka 10 August 2020



*New PIC chief investment officer Sholto Dolamo. (Photo: Sphere Holdings)*

The PIC has reinstated the position of chief investment officer (CIO) after five years, a move that brings the governance practices in line with those of the private sector.

The PIC announced on 7 August 2020 that it had appointed Sholto Dolamo, the asset manager’s current executive head for research and project development, as its acting CIO. The search for a permanent candidate is ongoing.

“The PIC board took a decision to reinstate several executive positions, including that of the CIO, to strengthen its decision-making and implementation capability,” it said in a statement.

The reinstatement of the CIO role by the PIC board also seeks to reduce the enormous power that was enjoyed by the previous CEO. Matjila was not only the PIC CEO, but also the CIO, which made him a powerful force. As both CEO and CIO for five years, Matjila wasn’t required to seek approval from the PIC board and investment committee on deals with a value of less than R10-billion – depending on the type of investment.

This had paved the way for the PIC to be involved in questionable deals.

### **How Matjila become the CEO and CIO**

In the private sector, the CEO and CIO roles at asset managers, including Coronation Fund Managers and Allan Gray, are normally held by two people. The CIO is responsible for managing an organisation’s investment decisions and the CEO oversees the entire operation.

How Matjila came to occupy the roles of both CIO and CEO is a mystery. But Khoza has repeatedly told *Business Maverick* that Matjila “arrogated to himself the main job of CEO and CIO”.

In 2005, Matjila was appointed as the PIC’s first CIO after the asset manager was corporatised. When Brian Molefe’s contract at the PIC expired in April 2010, Matjila stepped in as acting CEO until Elias Masilela was appointed to the top job in February 2011.

Masilela resigned with immediate effect as CEO in June 2014, which was said to be

linked to a clash with Matjila over investments. From then, Matjila held the CEO post in tandem with that of CIO, until he resigned.

Reinstating the CIO role and separating it from the CEO role was one of the wide-ranging recommendations of the Commission of Inquiry into the PIC's governance affairs. The Commission suggested that the PIC board take it a step further by not allowing a CEO to get involved in investment decisions, leaving this function to the CIO. The PIC board is still working to implement most of the commission's recommendations. **DM/BM**

*Comment*

*Interesting that the PIC Board allowed Matjila to occupy both positions. Makes one wonder ...*

*Synopsis*

**From:** Stehle Theo

**Sent:** Thursday, 13 August 2020, 10:12

**To:** [enquiries@gepf.co.za](mailto:enquiries@gepf.co.za)

**Subject:** Newsletter: FundNews First Edition 2020/21

Good morning

I have received the GEPF Fund News First Edition. I am shocked by the way the newsletter misrepresents the true financial situation of the Fund. You (the GEPF) are deceiving your readers/the members, but fortunately due to our watchdog organisation's repeated efforts to give the members a correct picture of the Fund, not all people are fooled all the time.

The fact that you found it necessary to prominently feature the article on the safety of pensions, is evidence of the fact that you are trying to hide the truth from the members.

The GEPF as well as the Public Protector are hiding behind the premise that pension payments are guaranteed by government. Why don't you inform the members (those that don't yet know) that the government is close to bankruptcy due to years of looting of state assets and mismanagement, and that an assurance of this nature is meaningless? The government didn't even have money to bail out the SAA recently. Why don't you inform the members that the government has lagged behind in increasing the state's contributions

to the Fund to make up for deficits in pension payments that now have to come from contributions instead of these being invested to ensure the growth of the Fund and keep it solvent?

The Fund News is nothing but a propaganda medium which seeks to paint a bright picture of how well things are until the day of reckoning is coming where pensioners are facing the reality, just like the Transnet pensioners had to contend with.

I would request you to please forward this e-mail to the PEO of the GEPF, from whom I would kindly request an appropriate response.

Yours

**Theo Stehle**

Knysna

*Comment*

*Immediate response? Let's see if any response results.*

*Synopsis*

**STATEMENT**

**ISSUED ON BEHALF OF THE ASSOCIATION FOR THE MONITORING AND ADVOCACY OF GOVERNMENT PENSIONS (AMAGP)**

**CAPE TOWN**

**16 August 2020**

**THE MPATI REPORT: WHY IS THE GEPF DRAGGING ITS FEET?**

It became necessary for the government to appoint the Mpati Commission of Enquiry (Col), *inter alia* because of the lack of control by the Government Employees Pension Fund (GEPF) of investments made on its behalf by its asset manager the Public Investment Corporation (PIC). It is indeed a pity that the GEPF was not included in the terms of reference of the Commission and was, therefore, not investigated. The commission, nevertheless, made certain findings and recommendations regarding the GEPF. Five months after the report of the commission was released we are still waiting for any visible movement by the GEPF.

The President released the Report of the Judicial Commission of Inquiry into Public Investment Corporation, (the Mpati Commission) in March 2020. The release of the Mpati report was accompanied by a 6 page statement from the Presidency dated 12 March 2020:

<https://www.justice.gov.za/commissions/pic/docs/PIC-ms-20200312-ReportRelease.pdf>

Under the heading “Conduct of the PIC with regards to FAIS and other legislation” the presidency indicated the following:

“The PIC is, amongst others, regulated under the Financial Advisory and Intermediary Services Act, which mainly governs the relationship between the PIC and its customers, such as the GEPF. A key requirement of the Act is for investment professionals at the PIC to be “fit and proper” by acting with honesty and integrity at all times.

The investment mandate agreement between the PIC and its main client, the GEPF, emphasises that the PIC must make “prudent” investment decisions. In the light of the above-mentioned improprieties and questionable investments decisions taken, the PIC has, in some instances, not acted in compliance with FAIS Act and legal agreements with the GEPF.

The Commission found that the relationship between the GEPF and the PIC is strained and that efforts should be made by both parties to restore trust and a good working relationship. There should be a review by the PIC and its customer on the various investment strategies adopted by the PIC in meeting the clients’ requirements, including the non-domestic and unlisted investments strategies, which are areas that have sustained massive losses.

The PIC and GEPF, and its other clients, should support maximum transparency on transactions and disclose as much as possible. This will lessen potential impropriety. Following the release of the report, the GEPF made the following statement:

<https://www.gepf.gov.za/wp-content/uploads/2020/03/GEPF->

[Response-to-PIC-Judicial-Commissions-Report-2.pdf](#)

The statement emphasised the following:

“Although the Commission’s terms of reference did not include the GEPF, the GEPF will pay careful attention to and follow up on the Commission’s recommendations specific to it and the PIC. It will co-operate with the National Treasury, which has been tasked with oversight in addressing the Commission’s findings and recommendations.”

One of the recommendations made by the Commission WAS ACTUALLY DIRECTED AT THE GEPF. It pertains to the rather “loose” Investment Management Agreement (IMA) that was in existence (pages 142-143 of the Executive Summary of the Mpati report):

“14. The review of the IMA by an independent consulting firm, expected to be completed in two years, reflects a lack of urgency on the part of the GEPF to ensure the PIC/GEPF agreement takes account of the changing economic and asset management environment or the challenges of governance that the GEPF and the PIC are facing. Such a review should produce an interim report by no later than end June 2020, following which the next steps should be determined.”

There has been no update on the GEPF’s website as to progress of its own actions with the implementation of the Mpati Commission’s recommendations.

The GEPF media release on 30 March 2020 only stated the following:

“The Executive Committees of the GEPF and PIC, led by the Principal Executive Officer and Acting Chief Executive respectively, overseen by the respective Boards, are already engaged in the reviewing the agreements, policies, mandates, procedures, processes, benchmarks and fee structures that govern the relationship between them as well as addressing areas where the relationship has been eroded.”

As we are already mid August 2020, GEPF members and pensioners should be

empowered with updated information and progress on this critical matter.

Confirmation that the recommendations, highlighted above, have in fact been attended to with an increased sense of urgency by the GEPF itself will be appreciated ie...

- Has the review of the IMA been CONCLUDED by the GEPF, as recommended?
- Has an interim report been produced by the GEPF, as recommended?
- Did the GEPF Trustees consider this interim report and have they decided on the next steps?

If so, in pursuit of the Transparency call by the Presidency as indicated above, can AMAGP, as an interested and affected party monitoring the Fund, get a copy of the interim report and the Trustees' decision on the next steps.

In the unlikely event that the review, the interim report and the next steps has not been concluded, it will be appreciated if GEPF members can be informed - WHY NOT?

Furthermore, BY WHEN will these overdue tasks be completed?

#### FURTHERMORE

The Mpati Commission described the existing IMA as a "loose mandate" but unfortunately made no recommendations as to what compensating controls the GEPF should have in place to tighten up on the "loose mandate" that will unfortunately remain in force until a credible IMA can eventually be put in place.

According to the Mpati report there were too many examples of investments that were imprudent.

Our question on this is then:

What exactly is the GEPF itself doing different (ie. additional and compensating controls) to properly address the unmitigated risks represented by this "loose mandate" during the period it remains in place?

The Fund cannot afford anymore non-prudent investments, especially when we

consider the substantial strain the below expected investment income has already placed on the Fund (Actuary Report 2018) AND the continued and rapid decline of the contingency reserves since 2014.

In view of the continuing threats against the pension fund it has now become imperative for the GEPF to make some movement and ensure its members that their pension is still safe. The usual assurance by the GEPF that their pension is safe because it is guaranteed by the Government is simply no longer satisfactory to us.

Adamus P Stemmet

**IMPORTANT NOTICE. PLEASE READ**

**OR READ AGAIN IF YOU HAVE ALREADY**

**SEE THE BOX ON THE NEXT PAGE TOO**

**Please take a while again to really consider what the all-volunteer AMAGP is all about and is actually and continuously achieving. Our Facebook page has more than 35 200 members and continually growing, but not enough. This confirms the ever growing concern pension fund members and pensioners have about the future of their pensions. We need you to inform and motivate all the civil servants, policemen, soldiers, correctional services members, medical services, teachers, etc, you know to join the AMAGP to strengthen our voice when promoting the sustainability of your pension. We need many more AMAGP members, not just the Fb page. Keep in mind we have just less than 2 million members, of which about 450 000 are pensioners and the other about 1 380 000 are still working but contributing members of our Fund.**

**ROLE OF THE FACEBOOK PAGE**

**GEPF WATCHDOG/WAGHOND**



This Facebook page is the social media platform of the non-profit organisation “The Association for the Monitoring and Advocacy of Government Pensions” (AMAGP). The AMAGP has only one agenda point – safeguarding the GEPF against looting and mismanagement.

Most of our GEPF members are content with the fact that pensioners still get their monthly pension (and some increases annually), and they are convinced by GEPF newsletters and ambitious briefings by the GEPF Board of Trustees that our Pension Fund is in a superb condition. There is, however, another side to the coin!

As a member of the GEPF (working or retired), this Facebook page will keep you updated about any developments affecting the health of YOUR Pension Fund. It also provides you with the opportunity to participate in the debate and raise issues of concern. Although it is not part of the core business of this page, you may also raise matters regarding the day to day management of your pension administration, which we will gladly refer to the Government Pensions Administration Agency (GPAA). Please read the articles that are posted on the wall, BUT also read items saved under “Announcements” and “Files”. You can get further information on our website – there is no reason to be in the dark regarding our Pension Fund, and what you must do as a member.

This page will only have any value for you if you join the AMAGP. Kindly take note that you do not have to pay membership fees, or do any work for the AMAGP if you do not wish to do so – BUT your membership will add one more brick to the wall that the AMAGP is building to protect our/your money. You can complete the online registration form under “Announcements” (English and Afrikaans) at the top of the Facebook page, or you can visit our website at [www.AMAGP.co.za](http://www.AMAGP.co.za), and complete the online application form that you will find under “Membership”. There are also registration forms in English and Afrikaans that you can print, complete and return to us under “Files” on the Facebook page.

The AMAGP does not want any GEPF member to leave the Fund, because it still is

the best pension fund in the RSA – BUT, we as members and owners of the Fund have to protect it against abuse.

Welcome to our page – please help us to get thousands more GEPF members to join this page and the AMAGP, so that we will have the required bargaining power. **We are the owners of the GEPF**, and we have the right and the power to force the GEPF Board of Trustees, and the PIC, to manage and invest OUR money in a responsible and profitable way.

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