

Status: Strictly confidential
Not for release or distribution
Embargoed for publication

**COMMISSION OF ENQUIRY
REPORT**

TO

**THE COSATU CENTRAL
EXECUTIVE COMMITTEE**

COSATU CEC COMMISSION OF ENQUIRY

COMMISSION REPORT

1. APPOINTMENT

By letter dated 26 October 2007, the following persons were appointed to serve on the COSATU CEC Commission of Enquiry:

Mr. Charles Nupen Chairperson

Ms. Sophia De Bruyn

Ms. Nomazotsho Memani

Mr. Peter Harris

2. TERMS OF REFERENCE

The terms of reference of the Commission direct Commissioners to investigate allegations involving the COSATU President Willy Madisha and their impact, and to recommend appropriate action, if any, that COSATU should take. The full terms of reference are attached marked A

3. COMMISSION PROCEEDINGS

The Commission was authorized to adopt any procedures and methods that the Commission might consider expedient for the proper conduct of the enquiry.

On 15 November 2007, the Commission met separately with the National Office Bearers (NOBs) on the one hand, and Mr. Willy Madisha the COSATU President (the President) on the other, to explain the procedure that it would adopt at the Commission hearings.

COSATU and the President would each make founding statements to the Commission, setting out, in broad terms, their view on the issues at hand. The COSATU statement was to be filed by 30 November and the Presidents statement 14 days later. Each statement would contain a list of witnesses which the parties proposed to call. In the event, neither party met the deadline but they eventually filed statements and the delay did not affect the conduct of proceedings.

The enquiry was set down for hearing over several days in January and February 2008.

The Commission adopted an inquisitorial approach to proceedings. Each witness was called upon to affirm that he or she would tell the truth. Each then made a submission to the Commission whereafter the Commissioners had the opportunity of putting questions to the witness.

The COSATU CEC was entitled to have an observer present to witness proceedings. Mr. Bheki Ntshalintshali (the COSATU Deputy General Secretary) attended proceedings in this capacity. The President was entitled to be present throughout the proceedings and was afforded the opportunity of putting questions through the chair to witnesses called by COSATU.

Parties were entitled to have lawyers present during proceedings, though none chose to exercise this right, and to seek legal advice, but legal representation on behalf of parties at the proceedings was disallowed.

At the conclusion of the evidence, COSATU and the President were afforded the opportunity of making closing statements.

Proceedings ran from 16 to 18, 23, 24 and 31 January and 1 and 4 February.

4. THE WITNESSES

The following witnesses testified before the Commission:

Mr. Bheki Ntshalintshali	Deputy General Secretary of COSATU and NOB
Mr. Zwelinzima Vavi	General Secretary of COSATU and NOB
Mr. Sidumo Dlamini	First Deputy President of COSATU and NOB
Ms. Violet Seboni	Second Deputy President of COSATU and NOB
Ms Alinah Rantsolase	National Treasurer of COSATU and NOB
Mr. Willy Madisha	President of COSATU and NOB
Mr. Oupa Molokomme	Driver of President of COSATU
Ms. Hloni Modise	Spouse of Charles Modise
Mr. Phutas Tseki	Chairperson of COSATU Gauteng Province

5. THE ALLEGATIONS

Paragraph 1 of the document headed Commission of Enquiry containing the terms of reference directs the Commission to investigate certain allegations against the President. These allegations are specified in paragraph 3 of the document.

As will become apparent from the Commission report, the evidence placed before the Commission confirmed the accuracy of the allegations set out in paragraph 3.

The President, on the Presidents version, received a donation from Mr. Modise in the amount of R500, 000 on behalf of the SACP.

The President confirmed receipt of such monies and contended that he handed over the amount of R500, 000 in cash to Mr. Blade Nzimande the General Secretary of the SACP.

Mr. Nzimande denies receipt of such monies from the President.

The SACP has issued a report on the outcome of its investigations into the allegations.

There is a police investigation into the matter.

The allegations, as set out in paragraph 3, were in fact uncontested in evidence before the Commission.

6. SPECIAL CEC MEETINGS

The Commission has taken note of the contents of the resolutions of the two CEC meeting held on 13 September and 4 October 2007 pertaining to the conduct of the President. It has also taken note of the fact that the resolution of 13 September 2007 was adopted by the Fourth Central Committee of COSATU at its meeting 17 to 20 September 2007, and that the Central Committee authorised the CEC to handle the matter going forward.

7. ISSUES FOR CONSIDERATION UNDER THE TERMS OF REFERENCE

The Commission will deal with the issues raised in the terms of reference, in the order set out hereunder.

8. DID THE PRESIDENT MAKE THE PUBLIC STATEMENTS AND THE NATURE OF THESE STATEMENTS

The President made several public statements to the audio and print media in relation to the R500, 000 donation (the donation). These are attached in full in a schedule marked B and are listed below with a brief explanation of their contents

- a. A report in the **City Press** of 4 August 2007 in which details of the donation are outlined and the President is mentioned but not quoted.
- b. A report in **the Times** of 5 August 2007 in which details of Charles Modise's affidavit handed to the SAPS are revealed and wherein Modise states that he handed R500,000 to Madisha who gave the money to Nzimande. Modise accuses Nzimande of theft. Madisha is quoted as saying "I refuse to talk about this thing.....I don't want to get involved"
- c. Transcript of an **SAFM Radio Broadcast** on the morning of 7 August 2007 in which Madisha is introduced as the COSATU President and is questioned about his role in the donation. He explains his role confirms the donation but refuses to disclose to whom and other details citing the sub judice rule. He describes the experience as very painful.
- d. A report in **Business Day** of 8 August 2007 in which Madisha is described as COSATU President and in which he is quoted as saying "Yes I received the money and I delivered it". Asked if he had given the R500, 000 to Nzimande, Madisha said he would rather not comment.
- e. A **press statement issued by the President** dated 22 August wherein he defends his role in the events surrounding the disappearance of the R500, 000 donation, and takes issue with the SACP in regard to its handling of the matter by describing him as an instigator of a smear campaign with laughable and dubious merit and refusing him access to the rules of natural justice. He reconfirms that he received the R500, 000 and reveals that he handed it to Nzimande but emphasizes that the details will be the subject of police investigation.
- f. A report in **the Citizen** of 23 August 2007 in which Madisha confirms he handed the donation to Nzimande. Nzimande is quoted as denying having received the money. Gwede Mantashe, the Party chairman is quoted as saying that Madisha sat on the information for more than 5 years and did not disclose to the party that it had not received the intended funds. Mantashe is further quoted as saying: "He didn't come to the structures in his own party but went public—I think that is bordering on hypocrisy"

Madisha commented: "I handed the money to the general secretary. That he had not handed it over to the party purse, I did not know." Madisha further commented that the matter was an issue within the SACP where it had to be dealt with and had nothing to do with COSATU, the ANC or succession. Madisha described himself as a taxi that had collected and delivered the funds and repeated that he was willing to prove this. When asked if Nzimande was lying about the donation Madisha replied that he would not use that word. He hadn't said the General Secretary was lying.

- g. A report in **the Star** of 23 August 2007 which covered the same media briefing given by the President covered in the Citizen on 23 August 2007. Madisha is described in the article as COSATU President. He is quoted as saying "I am willing to stand in front of a Court and the Communist Party and prove what happened". The report states that he decried that while he had seemingly been fed to the wolves, Nzimande appeared to have been protected by the party. He argued that "sides were taken" even before he had been approached for his version of the story. He wanted the SACP to urgently get to the bottom of the matter because otherwise it could "negatively affect the party".
- h. A report in **the Weekender** dated 25 August wherein Madisha is quoted as saying "I am not going back as the leader of COSATU or SADTU, other people must come in. I am not Mugabe or Mobutu, and I am not bitter". Madisha is quoted as saying he had been "sacrificed to the media" by the SACP following reports over the R500, 000 donation.
- i. An interview with the President in the **Mail and Guardian** online dated 28 August 2007 wherein he deals with various aspects of the donation. Questioned on why the money was not banked he said that this was part of the information contained in the affidavit given to the police. Questioned on why he did not acknowledge the R500, 000 during the SACP's Central Committee meeting in August 2002 he said he had explained that to the police and the matter was sub judice. He further stated that he, Nzimande, Modise and others had met at the Birchwood Hotel on the East Rand and

that Nzimande had thanked Modise for having donated the R500, 000 to the SACP. He maintained that he had been targeted wrongly.

- j. A report in the **Mail and Guardian** online of 30 August 2007 in which he is described as COSATU President, Madisha is reported as having made public affidavits telling his side of the story relating to the missing R500, 000 donation. Madisha is reported as saying he has two witnesses who saw him deliver the donation to Nzimande. The report says that in a police statement Madisha and a witness corroborate delivering the money in two refuse bags to Nzimande in a room at the Sunnyside Park Hotel. Madisha added that he left Nzimande in the hotel room and has no more knowledge of what happened thereafter. Madisha and Nzimande were reported as having counted the cash together. Madisha and the witness both say that Madisha and Nzimande met Modise at the Birchwood hotel in Boksburg to thank him.

These reports were admitted as exhibits at the Commission hearings. The President did not take issue with whether he had made the statements contained in the reports. His concern was the capacity in which he had made them, and this issue is dealt with in paragraph 9 below.

9. WHAT HAS BEEN THE IMPACT (POSITIVE OR NEGATIVE) OF THESE STATEMENTS ON COSATU AND THE PRESIDENT AND, IN PARTICULAR, HAS THE PRESIDENT BROUGHT COSATU INTO DISREPUTE.

In his submission to the Commission, and indeed as is apparent from his public statements the President has repeatedly asserted that the issue of the donation was a SACP matter and not a COSATU matter.

In his opening statement to the Commission, the President stated that the issue of R500, 000 was a non COSATU matter. It was, in his view one of the matters transported to

COSATU both to settle unresolved scores of individual leaders and to attempt to prove as destructive, the federation's President.

In his testimony before the Commission, the President suggested that the Commission must ask whether he made the statements as a senior member of the SACP or as the President of COSATU. The President asserted that he was speaking in his capacity as a senior member of the SACP. As to whether the statements had impacted negatively on COSATU the President's response was no, it cannot impact negatively because it is not a COSATU matter.

The essence of the President's argument is fourfold:

The issue is not a COSATU matter but a SACP matter.

When he made the statements he did so in his capacity as a senior member of the SACP and not as President of COSATU

As such the statements could not impact negatively on COSATU nor upon himself in his capacity as COSATU President, nor could it bring COSATU into disrepute

The matter has been transported into COSATU to settle unresolved scores of individual leaders and to cast the President as destructive.

There is, at one level, consensus between the President and the COSATU NOB's that the issue is not a COSATU matter but a SACP matter. In their press statement on Monday 6 August, in response to the weekend revelations linking the President to the donation, the NOBs took the view that this was purely a matter for the SACP. The question around the alleged donation and its handover were matters for the Party to deal with. This had absolutely nothing to do with COSATU as no individual acted on behalf of the Federation. The statement went on to say that if it is true that the COSATU President was somehow involved, he would have been acting in his capacity as a member of the SACP Central Committee and not on behalf of COSATU. The statement concluded with the

NOBs confirming their complete confidence in the SACP's and the Federation's leadership.

In the Commission's view this statement was an exercise in damage limitation and control, where the NOBs sought to distance the Federation from the issue and thus protect it from any association with what loomed as an unseemly financial scandal. The success of this strategy was predicated upon the NOBs, including the President, limiting publicity on the issue.

It was the manner in which the President dealt with the matter following upon the weekend revelations, his management of the allegations, the nature of his utterances to the media, and his failure to take the NOBs into his confidence prior to the matter being the subject of public discussions, that gave cause for concern. This is apparent from the criticism leveled at the President by the COSATU CEC in its resolution of 13 September, and from the testimony of the COSATU General Secretary (the GS). The GS, in response to a question at the Commission that the President refers to the R500, 000 as a non COSATU matter, replied "we did recognize the R500, 000 as a SACP one, even the special CEC meeting held in October 2007 referred to it as a SACP matter, but it is the Presidents handling of the matter, in particular the public statements that he made, that concerns COSATU."

At their weekly meeting held on Monday 6 August, the NOBs were faced with a request from the President, who was unable to attend the meeting, that they do not discuss the donation. The President had written a letter to the GS in which he himself suggested that as this was a SACP matter the Federation should be quiet and not go into public debates about it. The President said he had refused to respond to all media questions because he believed the SACP must address the matter internally, and that this had now become a criminal matter and thus any statement that gets done affects all legal processes. Despite this request the NOBs regarded the matter of sufficient importance as warranting consideration by them. In an SMS to the President, dated 6 August 2007 sent at 12h40, the GS said: "President, the NOBs decided that they will discuss the matter since all received many enquiries on the matter. You can help the meeting by indicating whether

you did receive the money and handed it over to the SACP's GS as alleged by C Modise or not. To say there is no comment is complicating matters. Your apology was however accepted.”

The President testified that he interpreted this as approval to deal with the matter publicly.

In contrast, the minute of the meeting states: “The meeting acknowledged the sensitivity of the matter and it was agreed that it required further discussion within the federation. It was further cautioned that in the meantime the matter should not be handled publicly. The GS would communicate the decision of the NOBs to the COSATU President and the structures on how the matter was to be handled”.

The GS, in his testimony, said that he had communicated the content of this decision to the President telephonically on 6 August 2007. The President testified that he could not remember that.

On a balanced consideration of these different communications, the Commission finds that the President was in all probability aware of the decision of the NOBs to curb comments to the media on the issue. This indeed accorded with his own position set out in the letter to the GS on 6 August. For reasons best known to him, he chose to ignore his own advice and speak the media on the following morning.

It should be noted that following the interview with the President on the morning of 7th August, the General Secretary was interviewed on the radio that afternoon on the issue.

By 8 August 2007, the third day after the story broke; the NOBs and the President had yet to meet on the issue. An SMS from the Deputy GS to the President was sent on 8 August 2007 in the following terms:

“Few unions have registered their concerns about the matter on the media pertaining to the SACP General Secretary in so far as the involvement of COSATU President and the negative impact on the Federation and are asking that the NOBs discuss the matter

urgently. This call is made fully aware of the NOBs statement made on Monday. Please advise what we should do? Do we wait for Monday meeting or what? These union leaders want to know what we are going to do.”

On 9 August, the President replied:

“I propose we discuss the matter at the normal NOB meeting on Monday 13th. The urgency alleged by “some affiliates” is baseless as this in reality the SACP matter”

The President asserted, and indeed may well have intended, that his statements to the media on the donation be given in his capacity as a member of the SACP. He testified that ordinary members of COSATU would be able to draw a distinction between his conduct in his capacity as a member of the SACP and his position as President of COSATU. This is a submission that the Commission finds itself, on the evidence before it, unable to accept. The Commission finds that the overwhelming impression created through the President’s exposure to the media on the issue is that he was at all material times identified with COSATU as President of COSATU despite his evident concern that this should not be the case. This impression created in the mind of the public and within COSATU an inescapable connection between the Federation and the donation which no amount of assertions to the contrary by the President can frankly countervail.

The President’s failure to see any degree of urgency in consulting with the collective leadership in COSATU on a controversial issue which implicated very senior leaders in COSATU and the SACP, organizations in formal alliance, is highly surprising. It would, in the Commission’s view, have been appropriate for him to seek out his co-leaders in COSATU at the first available opportunity, share with them the circumstances surrounding the donation, discuss how to manage the issue from the Federation’s perspective and secure the benefit of their views on the matter. The state of the relationship between the President and the NOBs, which will be the subject of consideration later in this report, may, in the Commission’s view, explain his reluctance to do so, but it cannot detract from the fact that it would have been the right thing to do in the circumstances.

Once it has been established, as the Commission finds, that COSATU was, through its President, identified with the donation and a potential financial scandal, the next enquiry is to determine whether the statements impacted positively or negatively on COSATU and in particular whether the President has brought COSATU into disrepute.

The statements, in sequence, reveal an unfolding version of events by the President which commence on, 5 August 2007, with a refusal to comment and conclude on 30 August with specific details about how the money was conveyed, to whom it was given, the fact that there were witnesses, about how Nzimande thanked Modise at the Birchwood hotel for the donation. Each successive media statement reveals more detail about the issue. The sub judice rule is at times invoked by the President in relation to certain questions only for it to be discarded in later reports on the same questions. In later statements the President's frustration with what he perceives as unfair treatment at the hands of the SACP becomes increasingly apparent, and the SACP is accused of "sacrificing him" to the media.

From the President's perspective it is clear that he felt let down by the SACP and was driven to reveal more and more information in an attempt to defend himself. From COSATU's perspective it witnessed its President being drawn ever deeper into a public drama the ultimate proportions of which it was, and arguably still is, unable to gauge.

During this period there was little if any contact on the issue between the NOBs and the President. The COSATU GS describes in his testimony that after the radio interview given by the President on 7 August 2007, he did not challenge the President on a breach of the agreement. When questioned why not, he said: "I threw my hands in the air". Questioned further on how on the basis of that interview he proposed to deal with the matter he replied: "Honestly we did not know what to do any more: we sat on a powder keg that was ticking towards the Central Committee. Then we received a letter from the NUM questioning what was happening, and then a letter from the KZN provincial secretary, then a letter from SAMWU's general secretary, all of them with innuendos about what was happening and whether the President was capable of doing this in the

first place” And later, “we only realized after we received the letters that sitting on the problem was not going to help.

The 1st Deputy President testified that the NOBs did have a discussion with the President at the NOBs meeting on 13 August. At that meeting he again was advised not to make statements but the President stated he felt he had to respond especially to comments made by the Chair of the party Gwede Mantashe. He felt on the advice of his lawyer he needed to respond to legal matters that were being raised.

On 22 August 2007, the President sent the following SMS to all NOBs” “Comrades national office bearers, I am forced to respond to allegations made against me through the media by SACP. This is what the lawyers insisted I do as a necessary response to these allegations. I must emphasize that it is not against your advice, but a legal instruction.”

So further statements were issued by the President. They certainly enabled the President to put his version of events in the public domain. They also had the impact of keeping the issue very much in the public eye.

And as the statements contained ever more detail, they raised as many questions as they provided answers. These questions included the following:

- Why a donation of the magnitude described, was paid in cash?
- Why the money was transported in black plastic bags and not simply paid into the party’s bank account?
- Why was the money handed to the SACP General Secretary and not the Treasurer?
- Why was it necessary to hand the money over in a hotel room on a weekend?
- Why was a receipt not issued when the money was received from the businessman Modise when the President took possession of the funds?
- Why was a receipt not requested from, or offered, by Nzimande when he took receipt of the funds?

- Why was there no follow up when the money was not accounted for in SACP financial statements?

The President addressed a number of these questions in his testimony to the Commission.

He indicated that he was requested to fundraise on behalf of the SACP.

In response to a question whether he thought it was normal for R500, 000 in cash to be carried in plastic bags and delivered to a hotel on a Saturday afternoon he answered:

“Well it just happened, it has happened on many occasions, this was not the first time and R500, 000 was a much smaller figure compared to other instances. When we requested the money, Mr. Modise gave us two reasons, one was that he has business partners and they will not be happy to have a cheque given to the communist party, some of them did not agree with the communist party, even today there are some who see the communist party as a bunch of terrorists. Secondly, I indicated to him that if he deposited the money into the account it will be swallowed by the overdraft. We had to pay workers at that time they were getting 25% of their salaries. It is not a miracle it has happened before”

The Commission was referred to the SACP report on its investigation into the matter. In that report Thaba Mufamadi who was at the time the National Treasurer of the SACP, denied that the SACP was experiencing financial difficulty leading to it being unable to pay its salaries. This assertion was strongly contested by the President.

In response to further questioning the President said he was unaware of whether Mr. Modise would be duty bound to reflect the donation in its books. Legally it would have been correct if the money had been paid by cheque with the donation remaining anonymous in the hands of the SACP. But one was acting in a state of desperation. He expected the general secretary of the SACP to pay the money over to the Treasurer and for the funds to be paid into a bank account of the SACP, thus reducing the overdraft. There were in effect no financial controls in the SACP to track what happened to the money. In his position as a member of the SACP finance committee he had not seen the

donation reflected in the SACP's financial statements. He had not raised the matter with Nzimande. He trusted that the comrade (Nzimande) would do the right thing.

Acknowledging that the incidence of handing over the money and the circumstances he described and what had happened thereafter had caused him and his family a great deal of distress, had caused a great deal of distress to members of COSATU and the SACP, he would, with the benefit of hindsight, if he had had the opportunity to do it differently, to hand the money directly to the treasurer, he would have done so.

It must be emphasized that the Commission is not enjoined to investigate whether in fact the money was handed over in the manner described by the President. Such an investigation does not form part of its terms of reference and it accordingly makes no finding in that regard. So the truthfulness of the President's version on the handing over of the donation is not at issue here. But the focus of the investigation, as set out in our terms of reference, is quite different and is not based upon resolving the dispute of fact that exists between him and the General Secretary of the SACP.

On the President's version, as it emerged in the public statements and in testimony before the commission, the whole approach to the donation raises serious questions of propriety. It stands in sharp contrast to the strict procedures and financial controls which exist within COSATU in regard to eliciting and receiving donations, which were outlined to the Commission in the testimony of the COSATU national treasurer. These are standards which officials in COSATU, including the NOBs, are expected to adhere to. They do not of course apply to the President in his capacity as a member of the SACP, but the Commission is of the view that the President should know, or should have foreseen, that members within the organization he heads would be drawn to judge his actions against the standards of financial propriety in their own organization, and for which he, as the President, is the principal custodian.

The consequences of the way in which the donation issue has been handled, were numerous:

Testimony from the NOBs indicated that the President, and COSATU, became the object of ridicule once information about the donation was revealed. The National Treasurer testified: “It has become a joke, because people had started saying that COSATU doesn’t have banks anymore we use black plastic bags. This has created a negative impact on COSATU”

The Second Deputy President testified that people were referring to the President as “cash in transit”

The First Deputy President, a more recent appointee, testified: “There is an impression created that the SACP and COSATU are at loggerheads. So called heads are in conflict politically what does that mean?”

The General Secretary addressed the issue of the extent to which, in his view, the recent events have damaged the reputation of the President and COSATU: “I think they have been damaged grossly. When you are leader and you can’t discuss or address other forums in the organization that you lead (a reference to a reluctance by some unions to have the President address them) then it talks to the question about reputation being damaged. This whole thing of the R500, 000 has basically become a national joke. Everybody that wants a laugh talks about the R500, 000 in plastic bags in the boot of a car in a manner that seeks to ridicule the person who makes the claim. It was done everywhere, email, internet.”

The circumstances surrounding the donation attracted satirical comment in the media. which was demeaning of the President. The Commission refers to an article in the Financial Mail dated 16 November entitled “Sunnyside Upwards” and which is attached in the schedule of press statements.

The President’s approach in his testimony was one that did not engage the detail of these perspectives. He maintained consistently that this was not a COSATU matter but a SACP matter and as such could not have a bearing on him in his capacity as President nor upon the Federation. He conceded that it may have affected the party negatively but not COSATU. He strongly believed that there was no damage to his reputation.

Mr. Phutas Tseki took the view that in these challenging times the office of the President must be defended at all times. The person who is bestowed to this position in whatever he does, it must be seen as being protected in particular to the outside world. He felt the timing of the SACP report was such as to try and influence an outcome or discussion of the predicament facing the President at the COSATU Central Committee.

The COSATU CEC in a position endorsed by the COSATU Central Committee noted that COSATU's good name and image keeps on being associated with the controversy and that the whole saga had caused anxiety in COSATU's ranks and in the public discourse. It regarded the whole matter as divisive and a threat to COSATU's internal unity and cohesion. It commended the way the COSATU NOBs had handled the matter. It criticized how the whole saga had been handled and condemned in particular the public mud slinging and insults traded between those who went public on a matter that should have been handled internally a long time ago. It singled out for criticism the President's handling of the matter which was specified in the resolution. It was critical of his behaviour and regarded his handling of the matter as being in breach of previous CEC resolutions, which, whilst placing the responsibility on all members of the CEC and the NOBs collective, placed even more responsibility on the shoulders of the President and the General Secretary to lead the Federation and heal the rifts in the run up to the Congress and foster maximum unity in the federation.

That is the COSATU position on the issue. The Commission could find no evidence to support the President's contention that the matter was transported into COSATU to settle unresolved scores by individual leaders and to cast the President as destructive.

The President is the figurehead of COSATU. COSATU's members are entitled to expect his conduct to be beyond reproach, not only in relation to COSATU matters but generally. In the Commission's view his conduct in relation to the donation as revealed in the statements falls well short of that expectation.

It has caused divisions within the Federation. It has implicated the President and by association COSATU in what has all the trappings of an unseemly financial scandal. It

has reduced his level of acceptability to important constituencies in COSATU and its alliance partner the SACP. It has exposed the President and COSATU to ridicule.

The Commission accordingly finds that the statements have had a negative impact on COSATU and the President and have brought COSATU into disrepute.

10. DEPENDING ON THE OUTCOME OF THE INVESTIGATIONS IN RESPECT OF THE MATTERS REFERRED TO IN PARAGRAPH 8.1 AND 8.2 OF THE TERMS OF REFERENCE, TO INVESTIGATE AND DETERMINE THE IMPACT OF SUCH EVENTS ON COSATU, ITS NATIONAL OFFICE BEARERS AND THE RELATIONSHIP BETWEEN THE PRESIDENT AND THE NOBS. WITHOUT LIMITING THE GENERALITY OF THIS INVESTIGATION, THE COMMISSION IS REQUIRED TO DETERMINE, IN PARTICULAR, THE ISSUES SET OUT IN PARAGRAPHS 8.3.1, 8.3.2, AND 8.3.3 OF THE TERMS OF REFERENCE.

The Commission will address each of the issues set out in the paragraphs 8.3.1, 8.3.2 and 8.3.3 in turn. To the extent that the Commission regards it as important to go beyond the specificity of each issue to determine impact as set out in Paragraph 10 above, it will do so.

11. HAVE THE RECENT EVENTS LED TO A DESTRUCTION OF THE TRUST BETWEEN THE NOBS AND THE PRESIDENT, ALTERNATIVELY, IS THERE ANY LEVEL OF TRUST BETWEEN THE NOBS AND THE PRESIDENT?

A significant proportion of the evidence led before the Commission focused on tensions within the leadership collective of COSATU which preceded the issue of the donation to the SACP. In order to adequately address the question posed it is, in the view of the Commission, necessary to have regard to this history

Tensions were rising between the GS and the President, according to the testimony of the GS, from 2005.

By the third quarter of 2006 the situation had become sufficiently serious for COSATU to appoint a fact finding Commission comprising the Presidents of several of its affiliates to probe the circumstances giving rise to what was described as a collapse of trust between the NOBs (The COSATU Commission). These circumstances included media leaks, an allegation of unauthorized credit card expenditure by the GS, which was leaked to the media, and an allegation that a NOB was spying on the General secretary of the SACP. It is not necessary to go into the detail of the investigation. A final report was issued in September 2006 that found, inter alia, that there was a collapse of trust between the COSATU NOBs. The COSATU Commission drew:

“the inescapable conclusion that the trust relationship among the NOBs has broken down irrevocably at least between the office of the President and the General Secretary and between the office of the President and the rest of the NOBs.”

It was decided not to place the report before the forthcoming 9th Congress of COSATU as a result of a concern that it would negatively impact the Congress.

In his opening speech to the Congress the President pledged his unwavering support to the GS and pledged to work together.

Both the GS and the President were re elected to their positions.

After the Congress the NOBS went away for a two day bosberaad to see if they could iron out their differences. There were frank exchanges and the net result was that some progress was made toward resolving issues, developing a modus operandi to tackle difficult issues, a commitment to fashioning a working relationship going forward.

The Minute of the November 2006 COSATU CEC records that at the end of the day the responsibility to lead the federation lies with the President and the GS. The CEC urged the two leaders to rise above factions and their personal pride or even feelings they may

hold and take the first steps to unite the movement. The CEC would monitor this and would not hesitate to act against any leader undermining this spirit.

The Minute of the February 2007 COSATU CEC was able to welcome the report on the progress made regarding the important task of building unity amongst the NOBs and in the Federation. The NOBs were instructed to ensure more qualitative progress was registered by May 2007. A Code of Conduct for the NOBs was to be developed and presented at the May NEC.

The Minute also records that the CEC endorsed the NOBs conclusion that all the NOBs and in particular the President and the GS must be extra careful about what they say in public:

“In a poisoned environment of divisions and deep perceptions about the role and camps all NOBs are supposed to belong to, anything they say gets analysed. In the process of this analysis they may deepen perceptions and suspicions that exist. Process to build unity may easily be undermined in the process.”

The evidence before the Commission suggests that whatever progress had been made toward building trust in the period subsequent to the 9th Congress has been undermined by the events surrounding the donation.

The GS expressed the view that there is no trust left whatsoever between the President and the NOBs

The Deputy GS said: “I don’t think there is any left. I see a situation where office bearers will not open up in an office bearers meeting if the President is present”

Similar sentiments on the lack of trust were expressed by the other NOBs.

The President took a different view. He testified that he did not agree that the recent events had led to a destruction of trust. He testified:

“The issue of trust has been discussed a while ago, in 2007, progress was noted at the CEC. But right now it is being brought into this, how does this happen? I would say that it is coming up again because of those who failed to have me removed; they are trying to find reasons to say you can’t trust this man.”

On the issue of whether there was any level of trust remaining the President testified:

“The lack of trust is on the side of the office bearers not me. I want to work with them. I have said publicly, comrades lets work together, but they say no, we don’t trust you. That is why sensitive information is discussed behind my back. Issues of trust have always been there. This question should have been asked before the R500, 000 issue arose.”

“The main problems are with the GS and President of COSATU. The other poor NOBs are just taken are really just swallowed in this thing, they are forced to repeat what the GS has said.”

On whether relations can be healed amongst the NOBs, he testified:

“Yes, I believe they can be healed if for the sake of the working people of our country, I am prepared to sacrifice to sit down and do what the workers want us to do. If I didn’t care for COSATU I would not need to suffer these blows. Let her President and the GS sit and look at these things.”

These are noble sentiments, but his comments to the Commission about the GS in particular give little cause for optimism that rifts can be healed. It is absolutely apparent that the NOBs do not share the optimism of the President, and he acknowledges it. The stark reality is that they stand apart and that there is too much water under the bridge at this stage to talk realistically of rebuilding trust and mending relationships. The efforts to rebuild trust have floundered, and there can be little doubt that the tensions generated over the revelations and the lack of consultation around the donation have been the most recent contributing factor.

The Commission found it compelling that five of the six NOBs stated that there was no trust between them and their President

The Commission finds that at this point in time there is no level of trust between the NOBs and the President.

12. IN THE LIGHT OF THESE EVENTS AND THE POLICE AND SACP INVESTIGATIONS INTO THE DONATION, IS THE PRESIDENT STILL ABLE TO DISCHARGE HIS RESPONSIBILITIES AS PRESIDENT OF COSATU.

The police and SACP investigations per se should not inhibit the President from discharging his responsibilities as President of COSATU. The outcome of these investigations and what ensues may have a bearing but that would be to enter the realms of speculation.

The President believes strongly that he can discharge his responsibilities. He asserted that he was neither the complainant nor under investigation in the matter. Jacob Zuma and Blade Nzimande were considered capable of discharging their responsibilities and they were under investigation”

What does inhibit the President in the discharge of his duties is his complete isolation from the leadership collective in COSATU. The NOBs are designed to operate as a collective, to work together to implement policy, to guide the federation, to prioritize and plan and to represent the federation.

In the minute of the COSATU CEC of November 2006, the CEC asserted that the constitution was designed to reinforce the principle of worker control and collectivity, not presidential control or individualism. The COSATU constitution “allocated the powers of the President in a manner that reinforce the principle of worker control, collective leadership and internal democracy.” The minute further cited the Presidents role under

the constitution as “in conjunction with other NOBs, to generally supervise the affairs of the Federation between meetings of the NC and CEC”

In circumstances of a complete breakdown of any effective working relationship between the President and the NOBS it is difficult to imagine how the President could do justice to the responsibility accorded him under the constitution.

The GS, in his testimony, spoke to the consequences, in his view, of the current state of affairs:

“We have reached a point now where in the NOBs we can only talk general issues. We can’t even talk about my security if the president is available. Because there are issues about whether the information can be leaked and used elsewhere. When that happens in an organization, the organization is paralysed at the centre. We as COSATU had a relationship with the SACP which is very intimate. That relationship is not possible at least under the leadership of the President.”

In response to a question from the Commission as to why he did not believe they could chart a course going forward (in relation to trust building) that they had charted in 2006/7 the GS responded;

“I guess that I can, but will I ever be able to discuss very sensitive things that I discuss with Blade, I will not. Will I discuss things with him that I have discussed with Zuma and Kgalema Motlanthe which I have, continuously as the General Secretary, I will not.

That is the leadership paralysis I was talking about. It is when the leadership collective has developed so much distrust in one another that they find different ways of addressing sensitive political issues. That is when they have night teleconferences excluding the COSATU President, and that is the paralysis because when you do that it means that the organization has been paralysed.”

On the operational implications of that paralysis, the GS testified:

“It is lack of democracy. Democracy collapses when you start having parallel discussions of matters that should be discussed openly and within the structures of the organization.”

Another issue that the President has to confront going forward is the opposition he faces from a number of affiliates within COSATU. It is one thing not to have the support of certain constituencies in a large organization. That is not uncommon for democratically elected leaders. But it is quite another thing when the level of hostility towards that leadership reaches a point where the constituencies effectively don't want to have anything do with you.

Absent a complete turn around in the current circumstances that confronts the COSATU leadership, which the Commission believes is extremely unlikely, and an approach that paves the way for a reacceptance of the President into the broader body of COSATU, it appears that the President will only be able to discharge his responsibilities as President of COSATU with difficulty.

13. WHETHER AND TO WHAT EXTENT HAVE THE RECENT EVENTS DAMAGED THE REPUTATION OF THE PRESIDENT AND THAT OF COSATU?

This issue in the Commissions view has largely been dealt with in its consideration of the proposition in Paragraph 9 above.

Insofar as the President's comments to the FAWU Congress regarding a lack of leadership in COSATU are concerned, these remarks were unfortunate particularly as they did not represent the view of COSATU nor its collective leadership.

It is understandable that the Presidents failure to share within COSATU his intention not to restand for election before making his intention public, would invite criticism but this does not affect COSATU's or his reputation.

The Commissions view is that the manner in which the President managed the issue of the donation to the SACP damaged his reputation and that of COSATU.

14. RECOMMENDATIONS

The Commission has carefully considered the issue of recommendations.

The Commission recommends that COSATU develop and adopt a protocol on dealing with the media which would define, inter alia, who is authorized to make statements to the media and in what circumstances.

The Commission recommends that the Code of Conduct for National Office Bearers be finalized without further delay

The Commission recommends that COSATU define with greater precision the ambit and degree of collective and individual responsibility to be borne by each of the NOBs

The Commission is mindful of the fact that it has not been constituted as a disciplinary panel.

The Commission notes that the President has not been charged with any code violation which prescribes or suggests a sanction.

On the issue of sanction the COSATU constitution only speaks to the issue of the removal of NOBs (see Clause 9.6). There are three instances in which removal may take place. One is a matter of fact, if an NOB ceases to be a member of an affiliate. The other two are a matter of choice, first by resolution of a special NC or second by resolution of a majority of the CEC.

The Commission is of one mind that it would be inappropriate for it to circumvent the constitutional authority of the CEC by recommending a specific course of action in relation to the President.

The Commission recommends that the approach to be taken in this matter is for the CEC in the first instance to debate whether it accepts the findings of the Commission or not.

If it accepts the findings, in whole or in part, then it will determine whether action is warranted and if so what course of action to follow.

There are a range of approaches that may be adopted and the Commission believes that it is the responsibility of the CEC and the President to engage over a course of action which effectively addresses the current set of circumstances.

If not then it is open to the CEC to consider recourse to the democratic remedy provided for in the constitution.

14. ATTACHMENTS

Schedule A: TORS and attached CEC resolutions

Schedule B: Schedule of Newspaper articles

Schedule C: Bibliography of Annexures and Exhibits and other written submissions

Thus signed at Johannesburg on this _____ day of February 2008.

Charles Nupen
Commissioner

Sophie De Bruyn
Commissioner

Nomazotsho Memani
Commissioner

Peter Harris
Commissioner