

18/04/2023

TO: The Chairperson Transport Portfolio Committee
Parliament

AND TO: Committee Secretary
Ms. V Carelse

PER: (email) [REDACTED]

AND TO: Chairperson Secretary
K Moseki

PER: (email) [REDACTED]

AND TO: SAMSA Chairperson – Ms. Thato Minyuku
SAMSA Board Member – Mr. Tau Morwe
SAMSA Board Member – Mr. Beka Zulu
SAMSA Board Member - Ms. Dorothy Khoza
SAMSA Board Member – Mr. Lucas Haluodi
SAMSA Board Member – Ms. Lindelwa Dlamini
SAMSA Board Member – Mr. Mthunzi Madiya

PER: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

AND TO: Minister of Transport – Minister Lydia Sindisiwe Chikunga
Deputy Minister of Transport – Deputy Minister Lisa Nkosinathi Mangcu

PER: (email) [REDACTED]

Dear Honourable Chairperson and Committee members

REQUEST FOR OVERSIGHT OVER THE SOUTH AFRICAN MARITIME SAFETY AUTHORITY

INTRODUCTION:

1. The Organisation Undoing Tax Abuse (“OUTA”), a non-profit company with registration number 2012/064213/08, is a proudly South African civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation.
2. OUTA was established to reintroduce accountability to government and to challenge the abuse of authority and taxpayers’ money in South Africa.
3. OUTA is further geared towards the harmonious cooperation with government and other institutions such as Parliament to assist wherever necessary in carrying out their mandate in the best interests of South African citizens.
4. OUTA firmly believes that Parliament’s Portfolio Committees are playing a vital role in holding to account the Executive, Government Institutions and State-Owned Entities.
5. Many public entities in South Africa are facing challenges like financial constraints, lack of expertise and governance issues to name but a few. It is therefore crucial for all public entities, big or small, to perform at its best. It is also crucial that all public entities have the undivided attention of its executive and non-executive directors as these directors have a fiduciary duty to ensure good governance. The citizens of South Africa who are ultimately financing these entities, expect it.
6. It is equally important that all public entities be overseen by Parliament’s Portfolio Committees and that recommendations from the Portfolio Committees be implemented. The size of a public entity does not make an entity less accountable when it comes to good governance, financial management, adhering to legislation or implementation instructions from Portfolio Committees.

7. OUTA also believes that when public institutions and stakeholders make presentations to Parliamentary Portfolio Committees, it must be done honestly and they should not withhold crucial information from the members of the committees. If it happens, and the public becomes aware, it is our duty as active citizens to submit our concerns to Parliament's Portfolio Committees to enable and assist the Portfolio Committees to perform/ conduct effective oversight.
8. The purpose of this letter is to outline OUTA's concerns regarding presentations made to the Transport Portfolio Committee by the South African Maritime Safety Authority ("SAMSA") in the past six years, especially the last presentation on 11 October 2022. OUTA feels obligated to share with the Portfolio Committee, information that came to our attention but has never been presented to the committee.
9. This letter will also outline OUTA's concerns regarding the lack of implementation of the Portfolio Committee's instructions to previous Ministers of Transport, the current Minister of Transport ("Minister"), SAMSA Boards and SAMSA Executives.

SOUTH AFRICAN MARITIME SAFETY AUTHORITY

10. SAMSA was established on the 1st of April 1998 under the SAMSA Act 5 of 1998. SAMSA is classified as a Schedule 3, Part A National Public Entity in accordance with the Public Finance Management Act 1 of 1999.
11. With a staff compliment of 321 individuals and a total revenue of R585,2 million according to the 2021/2022 Annual Report, SAMSA is one of the smaller Public Entities in the country, but it fulfils a very exclusive and important role in the maritime environment of South Africa.

APPOINTMENT OF A PERMANENT CEO

12. From May 2016, SAMSA has been operating without a permanent CEO. At all the SAMSA appearances in parliament before the Transport Portfolio from 2016 to date, this issue was discussed and the SAMSA Board and the Minister were instructed to appoint a permanent CEO.

13. For stability and good governance, it is crucial that public entities have good and competent leadership. The CEO is of utmost importance and provides strategic direction and leadership to the entity. However, SAMSA underwent a constant change in leadership. Although the SAMSA Act makes provision for an acting CEO to be appointed for 12 months, when abused, it creates instability and insecurity.
14. On 31 January 2021, the SAMSA CEO position was advertised and the closing date for applications was 12 February 2021. The SAMSA board resolved to appoint an independent external head-hunting service to facilitate the assessment and vetting of applicants. A total of 65 applications were received and a shortlist of 4 candidates was provided to the board on 14 July 2021.
15. After the board conducted interviews on 15 November 2021 and on the strength of the interview performance and scoring and the findings of a competency assessment, the board recommended to the Minister the appointment of Ms Theresa Williams as the SAMSA CEO.
16. Despite numerous enquiries by the board, the Minister failed to finalise the appointment of the recommended candidate.
17. The SAMSA's board then requested the Minister on 26 March 2022 to urgently address the appointment of a secondment from the DoT as an Acting CEO on 1 April 2022. The Minister again failed to respond to the SAMSA board timeously.
18. The failure by the Minister to respond to the board's requests for the consideration and appointment of a CEO or for the appointment of a secondment, left the board with no other choice but to appoint yet another Acting CEO on 1 April 2022. The board appointed Ms Zama Chonco, the SAMSA CFO, to act as the CEO for a period of 6 months.
19. On 22 April 2022, the Minister replied to SAMSA and recommended to the SAMSA board the appointment of Mr Rufus Lekala as the ACEO of SAMSA until a permanent CEO can be appointed. Mr Lekala would have been seconded from Transnet National Port Authority. However, the secondment of Mr Lekala did not take place because of the late submission by the Minister and the board's lack of a resolution on the secondment of Mr Lekala.

20. Ms Chonco was appointed for 6 months only, and the board had to decide on the appointment of another ACEO from 1 October 2022.
21. The board then resolved that the appointment of Ms Chonco would be extended until 1 November 2022 while they try to resolve the secondment of Mr Lekala. By the end of October 2022, the process of appointing an ACEO was still not finalised and the board extended Ms Chonco's acting role for another month.
22. On 11 October 2022 when SAMSA appeared before Parliament's Transport Portfolio Committee, the then deputy Minister Sindisiwe Chikunga reported to the committee that a process still needed to be followed before a permanent CEO for SAMSA can be appointed. The deputy Minister also said that there had been some serious issues and that it was impossible to say what the way forward would be.
23. The deputy Minister did not elaborate on the "serious issues" and the committee did not ask her to elaborate on her statement. It is also unclear what processes still had to unfold before the Minister could indicate whether he accepted the recommendations of the SAMSA board on the appointment of a permanent CEO or not.
24. Early in December 2022, the SAMSA board had to meet urgently to appoint a new ACEO because Ms Chonco's appointment as ACEO came to an end. The board resolved to appoint Mr Ndzimeni Ramugondo, SAMSA's Chief Information Officer, as the next ACEO for a period of 12 months.
25. Former deputy Minister Chikunga was appointed as the Minister on 6 March 2023. She served as the deputy Minister of Transport from June 2012 until May 2019 and again from August 2021 until March 2023. The new Minister therefore has a very good understanding and intimate knowledge of all the issues at SAMSA. The Minister also attended several events at SAMSA in the past and, as stated above, appeared with the SAMSA board before the Portfolio Committee.
26. To date, a permanent CEO for SAMSA has not been appointed. The Ministers of Transport and the members of the SAMSA boards of the past 6 years, failed in their duty to appoint a CEO and ignored the instructions of Parliament. This situation is unacceptable, and we

humbly request the committee to invite the whole board and the Minister to appear before the committee to:

- 26.1. discuss with the Minister and the board the reasons for the delay in the finalisation of the appointment of a permanent CEO at SAMSA; and,
- 26.2. explain what serious issues the Minister alluded to on 11 October 2022 during her appearance as the then deputy Minister.
27. It is important that Ministers, deputy Ministers and boards who failed in their duties and failed to implement the recommendations of Parliament's Portfolio Committee, should be held accountable.

DISABLED PEOPLE SOUTH AFRICA & MORAR INVESTIGATION REPORT

28. The Disabled People of South Africa ("DPSA") is a broad-based black economic empowerment group who, together with other stakeholders, was identified and selected to participate in, and to derive benefit from the maritime economy of the country. DPSA is thus an important stakeholder in the operations of SAMSA and the benefit they derive depends on the optimal operation and performance of SAMSA.
29. In March 2020, the DPSA submitted a complaint to the board of SAMSA complaining about acts of maladministration and malfeasance committed by certain senior officials and managers of SAMSA. DPSA recommended that the matters be investigated and that disciplinary steps are taken against officials that were involved. This complaint was ignored by the board of SAMSA.
30. In August 2020 when the current SAMSA board was appointed, the DPSA submitted their complaints to the new board and continuously followed up with the SAMSA board regarding their submission.
31. DPSA also submitted their concerns to the Minister in March 2020 and followed up with letters to the Minister's office in October 2020 and November 2020.
32. The incidents of alleged unlawful conduct reported by DBSA to the SAMSA board and Minister were the following:

- 32.1. The Acting CEO demanded in January 2018 that a 10% shareholding be transferred to a company of his choice before he would grant the company a bunkering licence.
- 32.2. The Chairperson of SAMSA then deliberately stalled and frustrated any investigations into this matter.
- 32.3. The HR executive and the company secretary were abusing their powers.
- 32.4. The Acting CEO did not divulge that he had been fired at the Transnet National Ports Authority (“TNPA”) for financial misconduct when he was appointed by SAMSA.
- 32.5. The Acting CEO fired the CFO on false allegations. The Acting CEO falsely reported that the CCMA found in SAMSA’s favour and confirmed the CFO’s dismissal when the CFO was reinstated by the CCMA.
- 32.6. The HR Executive ignored the CCMA decision and appointed a new CFO resulting in wasteful expenditure for SAMSA.
- 32.7. A request by the Acting CEO and the Company Secretary to the Minister to transfer funds from the Marine Fund to SAMSA was fraudulent.
- 32.8. The awarding of offshore bunkering licences amounted to fraud and misrepresentation.
- 32.9. The Chairperson of SAMSA took a remunerated appointment at Eskom at their Parliamentary Liaison Offices in 2020.

33. DPSA did not receive any substantial feedback on their complaints from the board or the Minister and decided to approach the High Court with an application to compel the SAMSA board to act on their complaints.

34. The DPSA’s complaints in the High Court application were *inter alia* the following:
 - 34.1. Allegations of acts of impropriety and unlawfulness in the administration and governance of SAMSA that resulted in qualified audits for 4 years.
 - 34.2. SAMSA’s and the South African Marine Safety Authority Fund’s financial losses, resulted in failure to pay salaries to staff.
 - 34.3. Although the SAMSA board has the power to initiate an independent investigation into the serious matters that were reported to them, they failed to do so.
 - 34.4. The SAMSA Chairperson has been tardy and hesitant in her capacity as Chairperson to take the necessary and appropriate action.

- 34.5. The conduct of the Chairperson and the board of SAMSA is inconsistent and in contravention with the Public Finance Management Act 1 of 1999 (PFMA).
- 34.6. DPSA also argued that the failure to act by the SAMSA board was a contravention of their fiduciary duties in terms of the Companies Act and under common law.
35. The matter was never enrolled because the SAMSA board resolved to appoint a forensic investigator to investigate the allegations of DPSA.
36. Morar Incorporated (“Morar”) was appointed by the SAMSA board. It should be noted that the decision by the board to appoint Morar was not unanimous. There were several board members who had their doubts about the ability of Morar Incorporated to investigate the matter.
37. The mandate given to Morar was to investigate the various allegations received from the DPSA. The allegations implicated the following persons:
- 37.1. Mr Sobantu Tilayi, the Chief Operating Officer and Acting Chief Executive Officer (“Mr Tilayi”);
- 37.2. Ms Lesego Mashishi, the Chief Human Capital Officer (“Ms Mashishi”); and,
- 37.3. Mr Lolo Raphadu, the Company Secretary (“Mr Raphadu”).
38. On 8 April 2022, Morar submitted its forensic investigation report to the Chairperson of SAMSA.
39. Morar found that several of the allegations raised against the implicated officials to be true and recommended that disciplinary action should be taken.
40. The officials mentioned in paragraph 37.1, were placed on precautionary suspension by the board on 26 April 2021.

DISCIPLINARY ACTIONS

41. To date, only the disciplinary hearing of Mr Lolo Raphadu was finalised. The hearing of Mr Tilayi is still ongoing while several settlement proposals are also being considered. Ms Mashishi is undergoing medical treatment and her hearing was postponed.

Mr Lolo Raphadu:

42. The former Company Secretary, Mr Raphadu, was found guilty on three charges of misconduct and a recommendation of summarily dismissal proposed.
43. At the con-arb process on 11 January 2023, the CCMA made attempts to persuade SAMSA and Mr Raphadu to reach a settlement. Mr Raphadu maintained that he was innocent, and the settlement attempts failed. Mr Raphadu was adamant that the matter should not be resolved by the CCMA and indicated that he will approach the Labour Court.

Mr Sobantu Tilayi:

44. Mr Sobantu Tilayi's disciplinary hearing was postponed three times in 2022 because Mr Tilayi failed to appear. SAMSA concluded the presentation of its case in December 2022 only. Mr Tilayi was supposed to start with his defence on 23 January 2023, but the matter was postponed due to a medical issue for which Mr Tilayi was hospitalised. The hearing commenced on 6 March 2023 and was at the time of writing this letter still ongoing.
45. Mr Tilayi's legal representative did however present a settlement proposal to SAMSA wherein the following settlement terms were proposed:
- 45.1. A payment equal to six months' salary;
- 45.2. Issuing of a neutral reference letter; and,
- 45.3. Confirmation that Mr Tilayi will in future still be able to be employed by SAMSA.
46. On 9 March 2023, the Acting CEO made recommendations to the SAMSA Board regarding the proposed settlement in the disciplinary hearing of Mr Tilayi. The financial implications for SAMSA with and without a settlement, were placed before the Board in a memorandum. The ACEO, on SAMSA legal representative's advice, recommended that the Board consider a settlement of four month's salary and a neutral reference letter. The third request by Tilayi regarding re-employment would be subject to the normal recruitment and selection processes of SAMSA.
47. To date, no decision has been made by the Board. The inability of the Board to reach consensus on the matter is detrimental for SAMSA.

Ms Mashishi:

48. On 30 January 2023, SAMSA was informed that Ms Mashishi would go into surgery the next day and will be in recovery for 4 to 6 weeks. The hearing was postponed until further notice.
49. This inability of the board to make decisions timeously is not a new concern. The three officials have been suspended from April 2021 with full salary. The allegations and complaints against the officials were made in March 2020 already and it took the SAMSA Board more than a year to decide to initiate an investigation.
50. The failure of the previous board, the current board and the Minister to take action timeously resulted in millions of rands of taxpayers' money spent on an external investigation company, salaries of suspended officials for more than two years, legal costs and a disciplinary process that was externally facilitated by Tokiso Dispute Settlement (Pty) Ltd ("Tokiso"). In September 2022, the costs for Tokiso already reached a million Rand.
51. Not only are the suspended officials being paid their salaries, but acting personnel had to be appointed who also earn an acting allowance in addition to their normal salaries.
52. The failure of the boards (former and current) to act timeously on various issues has resulted in fruitless and wasteful expenses and left SAMSA for the past 3 years to be managed by acting officials in almost all the senior executive positions. At the time when Ms Chonco acted as CEO, SAMSA had an acting CEO, acting CFO, Acting COO and an acting HR executive.
53. In a recent development, a third party notified SAMSA that there were findings made against this third party in the Morar report, without giving the third-party notice that it is being investigated. The third party demanded that certain parts of the Morar report be removed. This development questions the credibility of the Morar report and can have a negative influence on the disciplinary hearing of the suspended officials.

APPOINTMENT OF MR SUBANTO TILAYI

54. Mr Tilayi has been in the employ of SAMSA from 2008. He was the Executive Head: Centre for Shipping Services at SAMSA until March 2011 when he was appointed as the SAMSA COO.

55. With the resignation of Commander Tsietsi Mokhele in July 2016, Mr Tilayi was appointed as the Acting CEO, a position that he held for five years. According to the SAMSA Act, the board is authorised to appoint an acting CEO for a period of only 12 months.
56. One of the DPSA allegations was that Mr Tilayi did not inform SAMSA of his employment history at the TNPA and that he was fired on charges of dishonesty and interfering with tender processes.
57. The Morar investigation into the recruitment and appointment of Mr Tilayi confirmed that Mr Tilayi did not apply for the position at SAMSA, but that he was recruited by the CEO at the time, Commander Mokhele. His appointment was supported by the board's chairperson at the time, Mr Lance Manana. It was also established that Commander Mokhele was Mr Tilayi's manager at Transnet.
58. The Morar report further established that Mr Tilayi's appointment was not done in accordance with the Human Recourse policy of SAMSA and that his appointment was irregular. Consequently, Morar report did not make any further findings and/ or recommendations regarding his employment history or termination at the Transnet National Ports Authority.
59. The Morar report however recommended that a reversal of the appointment of Mr Tilayi may not be practical because he was appointed in 2008 already. SAMSA should rather obtain legal advice to ascertain whether the appointment of Mr Tilayi could be "regularised" or not.
60. If SAMSA did a thorough screening of the employment history of Mr Tilayi, SAMSA would have discovered that Mr Tilayi was fired on charges of dishonesty and interfering with tender processes at TNPA, and it is doubtful that SAMSA would have appointed Mr Tilayi. The irregularities regarding Mr Tilayi's appointment at SAMSA were overlooked and ignored by the previous board.
61. After the new board was appointed in August 2020, certain board members questioned Mr Tilayi's appointment and referenced the allegations tabled against Mr. Tilayi by the DPSA. The allegations were presented in detail at the board meeting of December 2020. Mr Tilayi was present in the December meeting, and he ridiculed the allegations and denied it.

62. The allegations regarding the employment history of Mr Tilayi and the complaints of the DPSA were communicated more than once to the current chairperson by board members, but the chairperson neglected to act until the High Court application of DPSA was served on SAMSA.
63. The boards of SAMSA neglected their fiduciary duties and did not act in the best interest of the organisation. They ignored serious allegations regarding certain officials and didn't take any decisive action.
64. It is OUTA's understanding that the DPSA legal action led to the appointment of a legal firm to obtain advice and to act on behalf of SAMSA by some of the board members. At the same time, the chairperson with the support of remaining board members, appointed another attorney's firm to represent SAMSA. This double briefing of attorneys on the same issue constituted fruitless and wasteful expenditure and pointed out the lack of co-operation between board members. Again, all the above were done at the expense of SAMSA employees and the taxpayers of the country.

FRUITLESS AND WASTEFUL EXPENDITURE

65. OUTA is concerned about the fruitless and wasteful expenditure at SAMSA. It surely is a big concern for many South Africans, and we believe that officials and board members of State-Owned Entities who do not act in accordance with legislative prescripts and with integrity when they are spending taxpayers' money, should be held accountable.
66. It is of utmost importance that the Auditor General of South Africa ("AGSA") perform a thorough audit of SAMSA's financials and that the AGSA use its legislative powers as described in the AGSA Act, to hold the SAMSA board members as the accounting authority to account, and, where necessary, use their powers to claim all the fruitless and wasteful expenditure from implicated officials.
67. OUTA is of the opinion that the fruitless and wasteful expenditure could have been avoided if the SAMSA boards and the Ministers did what they were supposed to do and if they acted in the best interest of the organisation and the country.

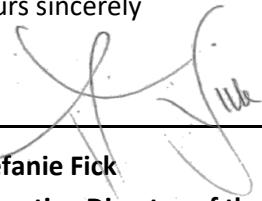
68. Except for the fruitless and wasteful expenses already alluded to, there were several instances where SAMSA were negligent during litigation that resulted in cost orders made against SAMSA like, for example, in the South African Maritime Fuel (SAMF) matter.
69. There are currently pending litigation and threats of civil action against SAMSA for claims of R44 million for intentional harm caused by SAMSA and Mr Tilayi to Ms Simmonds of SAMF.

CONCLUSION

70. SAMSA is mandated through legislation to ensure safety of life at sea, to secure a marine environment free from shipping pollution and to protect and manage South Africa's maritime interests.
71. This includes SAMSA's responsibility to our international marine partners and to honour international agreements.
72. For years now SAMSA limped along with no permanent CEO. Currently, most executive positions are filled by acting officials. The board members cannot work together in harmony, and they are unable to make decisive decisions. SAMSA's partners and service providers are threatening it with litigation and fruitless and wasteful expenditure are running into millions.
73. OUTA is concerned that SAMSA will not be able to fulfil its duties and responsibilities with the many internal problems they have. The lack of leadership and the inability to make decisive decisions, left the institution vulnerable and it can easily escalate to a national and international crisis.
74. It is fair to ask whether SAMSA will be able to act or not if, for example, a major oil spill is reported in our national marine environment. Will SAMSA be able to protect our marine life? What will the reputational risk be for the country if SAMSA fails in their duty?
75. Honourable Chairperson and Members of the Portfolio Committee, South Africa cannot afford another failed institution. We request that you use your powers to conduct a thorough investigation and oversight into the affairs of SAMSA. We request that you apply pressure on the Minister of Transport and the board of SAMSA to fill the vacancies, but most importantly to appoint a permanent CEO. We further request that you invite all the members

of the current board to present the current situation at SAMSA to the Committee without fear, favour or prejudice. We ask you to decide on the competency of all the board members to oversee SAMSA's affairs and if they are acting in the best interests of SAMSA and South Africa.

Yours sincerely



Stefanie Fick
**Executive Director of the Accountability and
Public Governance Division**
OUTA – Organisation Undoing Tax [REDACTED]
[REDACTED]