

**IN THE ESSENTIAL SERVICES COMMITTEE
HELD AT JOHANNESBURG**

Case No.: ES437

In re: Investigation in terms of Section 71 of the Labour Relations Act, 66 of 1995:

Whether the certain services rendered in coal mining industry are essential services.

Designation

Introduction

1. The ESC received a request from Sasol Mining Pty Ltd to conduct an investigation into whether certain services rendered in coal mining industry should be designated as essential services.
2. The Committee considered the request and found the request to be reasonable. The Committee issued a notice to conduct investigation terms of section 71(1) read with sections 70B (1)(d) of the Labour Relations Act 66 of 1995 as amended (LRA) on 6 August 2021 under GN44945. The said notice was corrected by ERRATUM NOTICE published on 20 August 2021 under GN45020.
3. The gazetted terms of reference for the investigation in terms of section 71 were”
Notice is hereby given in terms of section 71, read with section 70B(1)(d) of the Labour Relations Act, 1995 (Act No 66 of 1995 as amended), that the Committee

is in the process of conducting an investigation as to whether the following services are essential:

(2) The following services in the mining industry

- 2.1 Cage operating Services**
- 2.2 Security Protection Services**
- 2.3 Ventilation Services**
- 2.4 Control Room Services**
- 2.5 Medical Health and Emergency Services**
- 2.6 Coal Supply Services**

(see Government Gazette No 45020, GN496 of 2021, dated 20 August 2021)

Details of Hearings

4. The hearings were scheduled as per the notice published in the government gazette.
Viz-
 - (a) 31 August 2021
 - (b) 02 September 2021
 - (c) 03 September 2021
 - (d) 07 September 2021
 - (e) 09 September 2021
 - (f) 10 September 2021
5. At the commencement of the public hearings the interested parties raised concerns regarding the notice, in particular the fact that the erratum notice did not afford them sufficient time to file written representations. The panel appointed by the ESC to determine this matter resolved the issue by extending the time frames and it was agreed that written representations would be filed by October 2021.
6. The parties further indicated that there was a need to hear evidence in this matter. The Committee afforded the parties to lead evidence and submit written and oral arguments.

7. The public hearings attracted several interested parties but not all made submissions. Only Sasol Mining Pty Ltd (“Sasol”) , AMCU and Solidarity participated full in the investigation. It is also important to indicate that whilst the notice as published indicated that the investigation related to certain services in the mining industry, the investigation was limited further during the hearing to only coal mining.

Submissions and Evidence

8. For the purposes of this ruling the panel will not record the evidence as the same is recorded and the panel is also indebted to Sasol for transcribing the record. The panel will refer to the evidence and arguments in its analysis.

Legal Framework

9. In this matter the issue that the committee has to determine is whether the services as listed above in coal mining should be designated as essential services? In determining the matter, it is important to set out the applicable legal framework.
10. Section 23(2) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) states that... “Every worker has the right ... (c) to strike.”
11. Section 36 (1) of the Constitution states inter alia that...“The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including:
 - (a) The nature of the right;
 - (b) the importance and purpose of the limitation;
 - (c) the nature and the extent of the limitation;
 - (d) the relation between the limitation and its purpose; and
 - (e) less restrictive means to achieve the purpose

12. Section 65 (1) (d) (i) of the LRA states that ... “No person may take part in a strike ... if that person is engaged ... in an essential service”.

13. An ‘essential service’ is defined in section 213 of the Act as:

- (a) a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;
- (b) the Parliamentary service;
- (c) the South African Police Service”.

14. Section 39 (1) of the Constitution states that :

- (1) When interpreting the Bill of rights , a court, tribunal or forum –
 - (a) Must promote the values that underlie an open and democratic society based on human dignity , equality and freedom;
 - (b) Must consider international law
 - (c) May consider foreign law.

15. The Constitutional Court in *South African Police Service v Police and Prisons Civil Rights Union and Another* (CCT 89/10) said the following: -

“In order to ascertain the meaning of essential service, regard must be had to the purpose of the legislation and the context in which the phrase appears. An important purpose of the LRA is to give effect to the right to strike entrenched in section 23(2)(c) of the Constitution. The interpretative process must give effect to this purpose within the other purposes of the LRA as set out in Section 1(a). The provisions in question must thus not be construed in isolation, but in the context of the other provisions in the LRA. For this reason, a restrictive interpretation of essential service must, if possible, be adopted so as to avoid impermissibly limiting the right to strike (footnotes excluded)”

16. It is trite that strike action is an important element of collective bargaining, and it is recognised as a primary mechanism through which workers exercise collective power (See ***Ex-Part Chairperson of the Constitutional Assembly in re: Certification of the Constitution of the Republic of South Africa, 1996 (4) SA744 (CC) at paragraph [66]***).

17. In ***SATAWU & Others V Moloto NO and Another 2012 (6) SA 249(CC)*** the Constitutional Court stated that :

“The right to strike is protected as a fundamental right in the Constitution without any express limitation. Constitutional rights conferred without any express limitation should not be cut down by reading implicit limitations into them and when legislative provisions limit or intrude upon those rights they should be interpreted in a manner least restrictive of the right if the text is reasonably capable of bearing that meaning”.

18. Strike action is an important element underlying our collective bargaining system. In *National union of Metal Workers of South Africa and others v Bader Bop (Pty) Ltd and another* , 2003 SA(513(CC) the Court said the following:

“ In the first place , it is of importance for the dignity of workers who, in our constitutional order, may not be treated as coerced employees. Secondly , it is through industrial action that workers are able to assert bargaining power in industrial relations. The right to strike is an important component of a successful collective bargaining system.

19. Having regard to the above, it is clear that our law requires essential services to be restrictively interpreted, and that this means, inter alia, the following:

- It is the service which is essential, not the industry or the institution within which the service falls;
- Only those employees who are truly performing an essential service, may be prohibited from striking; and
- Essential and non-essential service workers may be found working side by side in the same institution.

20. Before the ESC can designate any service as essential, it must be satisfied that the interruption of the said service is likely to endanger life, personal safety or health of the whole or part of the population.

21. The ILO Committee of Experts and ILO Committee on Freedom of Association have interpreted the right to freedom of association in ILO constitution and Convention 87 and the right to collective bargaining in Convention 98 , as including the right to strike.

22. Decision 581 of the ILO reads as follows-

“to determine situations in which a strike could be prohibited , the criterion which must be established in the existence of a clear and imminent threat to the life , personal safety or health of the whole or part of the population.”

23. Having considered the legal framework as indicated above and principles arising from the ILO decisions, the panel concludes that it is trite that, in view of the fact that the right that would be affected by such a designation limit or takes away a fundamental right, such designation must be reasonable and justifiable. Thus, if the ESC finds that parts of the service are not essential the Committee is obliged not to designate such services, as such a designation would be unreasonable and unjustifiable.

Survey and Analysis of Evidence

24. In determining whether the services must be designated as essential, the panel considered the nature of the services and the applicable legal framework.

25. At the outset the panel is of the view that it is important to define certain concepts as they appear in the definition. It is so that essential services are defined as those services the interruption of may endanger the lives , health or safety of the whole or part of the population.

26. It is so that the act does not define the words used in the definition. In its submission Sasol it was submitted that the word interruption means cessation of the rendering of the service in question to such an extent that the cessation of the rendering of the service endangers the life, personal safety, or health of the whole or any part of the

population. Accordingly, whether the interruption causes partial or total cessation of the rendering of the service in question is not determinative, but rather the consequence of the cessation, whether partial or complete.

27. The ESC holds the view that in circumstances where the interruption of the service may be avoided (for example by using replacement labour) the service should not be designated as essential. On behalf of Sasol a concession was made to the effect that there are alternatives. It was submitted however that the alternatives provided by AMCU and Solidarity, viz. replacement labour were not reasonable.
28. The panel agrees with the submission by Sasol that in making the determination the fundamental question is whether an interruption of the rendering a specific service has the required potential (in law) to constitute the defined endangerment to the whole or part of the population.
29. Endanger means “putting at risk”, imperil or jeopardise”. This implies that the conditions prevailing at the time that the designation is made , must be considered , and not the circumstances that may occur at some future stage.
30. The panel is of the view that when considering the threat to life personal safety of the population the question should be how real and /or imminent is that threat. The ILO principles refer to a “clear and imminent threat.” It is thus important that in determining that a service should be designated as essential there must be a direct causal link between the interruption and the particular endangerment.
31. On behalf of Sasol, it was submitted that although endanger includes a ‘clear and imminent threat,’ there need only be a risk of a clear and imminent threat. In addition, ‘clear and imminent’ cannot be relied upon to unduly restrict the meaning of essential service, since, for example, cessation of police services in and of itself does not constitute the requisite endangerment, and the emphasis remains on the risk created by the cessation of the rendering of the service that entails, inter alia, a victim of a serious and violent crime succumbing to injury where a police officer could have prevented the crime from having been committed. The panel agrees with this

observation and in fact finds that in the example provided above there is a clear causal link between the cessation of rendering essential services and the potential harm.

32. On behalf of Sasol, it was submitted that the whole or part of the population is not defined in the LRA and accordingly must carry its ordinary grammatical meaning. Further that for the purposes of this investigation part of the population should be considered to mean.

32.1 In respect of Coal Supply Services: The 'inhabitants' of the Inland Region.

32.2 In respect of the other Services: Sasol employees (i.e., of Sasol Mining or Sasol Limited) or any other person who happens to be present at any relevant workplace (i.e., third party service providers (service providers and/or independent contractors and/or any member of the population) or geographical area in respect of which a Service can be rendered to, and in favour of, such person (service providers and/or independent contractors and/or any member of the population).

32.3 Any part of the Population who can be affected such as illegal miners, farm workers, pedestrians or motorists on the R21, (especially where conveyor belts or pipelines are present

33. It was submitted that in terms of the ordinary grammatical meaning 'part of the population,' means a constituent portion of inhabitants that belongs to something bigger; namely, the whole or entire population of inhabitants of the Republic.

34. During his testimony Mr Lawson sought to define the population as anyone falling outside the threshold of the mine. He further testified that those that are inside the mine are considered to be employees and are therefore not part of the population. The panel of the view that this artificial distinction may lead to untenable results. It would not be correct to equate part of the population with a community. The dangers became

apparent when dealing with the aspect of the zama-zamas who were illegally within the threshold of the mine but could not be said to be employees as they were on the premises illegally. When considering whole or part of the population the panel is of the view that the phrase is wide enough to include all inhabitants of the Republic irrespective of whether they are employees of engaged in illegal activities.

35. As indicated above the right to strike is a fundamental human right and this right should not be interfered with unless there is justification for such interference. It is also important to note that the endangerment to life personal safety or health must not be remote.

36. On behalf of Sasol, it was also submitted that the dicta in SAPS V POPCRU should be considered in its context. The ESC should consider the fact that the Court in this case was dealing with part “c” of the definition. This argument seeks to suggest that in advocating for a restrictive interpretation of essential services the Court was saying this in reference to circumstances where the legislature had designated the institution as essential as opposed to a service.

37. The panel disagrees with this observation, whilst the court in this matter was confronted with a situation where the legislature had indeed designated the whole institution as an essential service the Court in propagating a restrictive interpretation was not only considering the fact that this was a designation where the institution was said to be essential. The court was in fact giving effect to the ILO decision. The ILO Committee of Experts stated the following in relation to essential services:

“The principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner. As an exception to the right to strike, the essential services in which this principle may be entirely or partially waived should be defined restrictively...”

38. One of the services that Sasol sought a designation on is cage operation services. Sasol led the evidence of Madder Steyn and his testimony in essence was that the majority of Sasol mines use cages. The operators are properly trained and for maintenance, especially on the cages and fans, there is a need for proper training and

experience in the field. He testified that when it comes to the ability to switch and maintain the power system that underpins the operation of the cage, the requirements are stricter. The person performing this function must be either an electrician or an electro mechanic, and they also have to have two years working experience before they can be authorised to perform the switching activities. The witness further testified that it is not practical to source replacement labour in a short period.

39. He testified that the most immediate risk should maintenance staff go on strike would be legal non-compliance. If the strike is prolonged there may be challenges on the reliability of equipment such as ventilation and this may lead to a situation where the mine would have to evacuate all employees.
40. The witness conceded however that in circumstances where all employees are on strike the risk is significantly reduced as there would be no people underground. He further testified that the absence of anyone underground could also lead to unsafe conditions being created. This could mean that when people return, they return to areas with high dust concentration, high methane concentrations and possible flooding activities as the pumps were not inspected.
41. It was submitted that should there be an immediate cessation of operational availability of the cage operators, it would mean that the employees who are underground would have to walk 37 kilometres to the nearest incline shaft in order to exit the mine.
42. Whilst it is so that cage operation services are important and crucial for the operation of the mine from a legal compliance point and also for efficient operations of the mine. On the evidence led the panel is not satisfied that cessation of these services would endanger the lives, health and safety of the population or part thereof. The hypothetical situation referred to above where employees have to walk 37 kilometres, firstly assumes that this would be a strike affecting only cage operators and no other employees. Even if that was the case there is an alternative. It may be inconvenient, but it is there. Secondly such an eventuality can only happen if the strike is unprotected. In a protected strike the employer would be given notice and alternatives arrangements should be made.

43. It would be incorrect to deprive employees of a fundamental right to strike in circumstances where the basis of such deprivation is a fear of non-compliance with the LRA. The LRA sets out a process that has to be followed before a strike ensues and this process entails that parties should agree on picketing rules, and also that the employer should be given at least 48 hours' notice before the employees embark on strike action.
44. In relation to the submission that unsafe conditions may be created, and this poses a risk to employees when they return to work, the panel finds that this contention is not supported by any evidence and in fact is negated by the evidence presented by both Sasol and AMCU to the effect that before employees start working a Miner must make/ or declare that working area safe. Thus, there is no risk of the employees lives, safety or health being endangered. As to the risk of flooding, this risk poses a danger to the plant or possibly to machinery and not lives of the population. In "making safe" the Miner or even mine management would not permit employees to return to a flooded mine. Thus, the only real risk is to the plant. If this risk is real, the mine should deal with this in terms of section 75 of the LRA.
45. Mr Steyn also testified that if the mining operations were stopped due to a lack of cage operation services, and the mine was closed with no people in it, there might be a risk of explosions occurring underground due to no one going down the mine to check for fire, methane build-up or other potential hazards. The question which arises is whether such build up would endanger the lives of the population. Mr Lawson and Mr Labuschagne both testified that any explosion underground would not harm anyone as it would be contained underground. Further that an explosion would not happen above surface because methane would be diluted so as to be ineffective if and when it came to surface
46. Having considered the submissions and the evidence the panel finds that Cage Operation Services at a coal mine are not essential services.
47. The other service that Sasol sought the committee to designate as an essential service is Security and Protection Services at coal mines. In this regard Sasol led the

evidence of Mr Van der Merwe, who testified that Sasol uses in- house security and outsourced security services. He testified that the outsourced security on its own would be ineffective given the complex nature of the Secunda complex which is about 4600 square kilometres in extent.

48. Security and protection services protect the entire complex, the infrastructure to transport coal supply, national key points, the rail services and conveyor belts. The protection services are also responsible for governance of the exit points and vetting of those entering and leaving the complex.
49. Under cross examination it was put to Mr Van der Merwe that Sasol can use replacement labour during a strike as it already relied on and used outsourced security. He responded that outsourced security operated under the guidance and supervision of Sasol security. Further that Sasol security understood the complex nature of the operations.
50. It was submitted that Sasol Security Services are the first point of call in the case of illegal underground activity and the SAPS confirmed that their current mandate does not include a police service (protection or investigation) underground.
51. In its evidence and submissions Sasol used the 2016 strike action to support its case that Security Protection Services should be designated as essential services. It is so that this was a protracted strike action and from the evidence the strike was characterised by serious violence. It is unfortunate that in South Africa strike action is characterised by serious acts of violence, however these acts are criminal and should be dealt with as such by authorities. In designating the service as essential the ESC should consider the withdrawal of labour by the employee and the risk or lack thereof that is brought about by such withdrawal of labour to the population.
52. On behalf of Solidarity, it was submitted that Thornburn Security Solutions and SAPS would provide adequate alternative labour in the event that the security personnel of Sasol going on strike. It was argued that the submission that it is not cost effective to contract more personnel in the event of a strike; and that they are not familiar with the environment of Sasol cannot be used as an excuse and should not be taken into account by the ESC when deciding whether to designate this service.

53. The panel agrees that the cost of replacement labour cannot be a factor in determining whether the service is essential or not.
54. On behalf of AMCU it was submitted that if a mine could not replace the striking security staff and/or in some other fashion put in place other security measures that would protect the mine, the mine could not simply carry on business as usual, it would have to stop its operations, clear people off the mine and send people home – in that way people that would normally find themselves at the mine (such as staff) and that would otherwise have been affected by a lack of security, would not be endangered.
55. Whilst the panel has considered this proposition that if the mine does not carry out any business and is shut down, the only risk would be to the property and infrastructure of the mine and not human beings, the panel also is alive to the fact that having multiple unions means that only one there exists a possibility of a dispute of mutual interest that affects only one union, which dispute may lead to a strike and therefore, a strike may take place and the mine might continue its operations.
56. Most of the examples provided by Sasol are of incidents that happened when there was no strike action (other 2016 strike). The panel is of the view that when it is business as usual, security plays a pivotal role in ensuring the safety of the workforce and properties of Sasol. If cable theft happens when employees are underground that poses a serious threat to life and personal safety of the employees who are underground, and Security Services are the first point of call in the case of any illegal underground activity. Given the fact that the SAPS confirmed that their current mandate does not include a police service (protection or investigation) underground, it if security services are interrupted, there exists a real possibility of endangerment to life, personal safety and health of the employees. The argument by AMCU and Solidarity Union, that replacement labour may stand in if Sasol Security Services employees are on strike reinforces the view that an interruption to Security Services may endanger life, or the personal safety of the employees.
57. Having considered the submissions the panel is persuaded that cessation of these services during a strike would endanger the lives or personal safety of the whole or part of the population.

58. In relation to ventilation services both Mr Labuschagne for Sasol and Mr Lawson for AMCU agreed that ventilation services are particularly important in operating a mine. Mr Labuschagne testified that the most important function of ventilation is to remove gas which is primarily methane gas that can result in explosion if that gas is not diluted and dispersed and removed from workplaces. Further that the said gas is flammable and insufficient ventilation supply can and have in the past resulted in methane admissions.
59. He testified further that there are also other gases, other toxins present in the mine. As example, hydrogen sulphate and carbon dioxide displace oxygen resulting in a person walking into a specific area that is poorly ventilated to suffocate due to lack of oxygen. Mr Lawson confirmed this evidence.
60. Mr Labuschagne explained that ventilation services ensure that all the accessible workplaces on a mine, are ventilated effectively 24/7, 365 days a year. This includes remote areas such as pump stations.
61. He testified that if ventilation stops people must be withdrawn from the mine. The witness further testified that even decommissioned mines still required ventilation to avoid catastrophic consequences.
62. The arguments presented by Sasol are premised on the assumption that the mine should be operating as if it is business as usual. When there is a strike, mine management would obviously assess the situation and if there is a risk of endangering the lives of the employees underground, management should not allow employees to go underground. The panel is of the view that if the mine is shut down because of a strike there would be no endangerment to the whole or part of the population. The only likely harm would be financial harm as the mines means of production would be halted.
63. If there are still employees who would want to work and Sasol wishes to continue operating, the notice period should allow them an opportunity to source replacement labour. The reluctance of Sasol to use replacement labour in these circumstances cannot justify an interference with the employees' fundamental right to strike.

64. The panel finds that ventilation services should not be designated as essential services.
65. On behalf of Sasol, it was submitted that the control room function at Sasol Mining consist of staffing or controlling and managing the mine activities – vitals of the mine. Over and above managing the activities, it is also responsible for monitoring, measuring and maintaining of incidents; monitoring and measuring of the underground environment relating to monitoring and managing of the gases, such as flammable gasses (methane) and oxygen levels. Both safe gases and toxic gases underground are measured (therefore ventilation), weather conditions for blasting purposes, water levels, conveyor belts and systems. Which sections are cutting, incidents and accidents. Accidents are reported to the control room which will alert security services, fire services ambulances, and the SAPS. It therefore monitors various process systems.
66. It was submitted further that the control room is also the centre of report for emergency services such as ambulance, incident and accident reporting, as well as any fire incidents. From here, various actions are co-ordinated.
67. Mr Lawson testified that not all mines require control rooms and that it is a choice for a mine to operate through the control room. He also indicated that if control room services are not available information can be captured manually. In cross examination he was asked discuss the overland conveyer belts and the risk of fires in relation to such conveyer belts. He conceded that if the conveyer belts caught fire they could pose a risk to the community if there was a community in the vicinity. He further explained that such fires were not possible if the conveyor belts were turned off.
68. On behalf of AMCU it was submitted that Sasol did not present any evidence relating to conveyor belts and veld fires in its evidence and therefore this evidence was not fully ventilated. The difficulty that is presented by this argument is that it cannot be said that the control room does not perform the monitoring function. Further that it cannot be said that given the extent of Sasol Mining complex and in other big mines control rooms in such mines do not perform this monitoring function.

69. Further it was not disputed that control room would be the centre for reporting medical and other emergencies. Having considered the evidence the panel is of the view that other than monitoring the operations of the mine, this service is essential to the extent that medical emergencies is concerned. Further that even in circumstances where the mine is shut down, this service is necessary to prevent the endangerment to life, personal safety of not only part of the population within the Sasol Mining complex, but those communities where there are conveyor belts.

70. Accordingly, the panel accepts that control room services are essential services.

71. In relation to medical and emergency services, the ESC has designated these services as essential services and to the extent that Sasol Mining renders such services the services are essential services.

72. The final service which Sasol sought the committee to designate as an essential service is coal supply services. On behalf of Sasol, it was submitted that the Committee should designate the services as essential based on the fact that it led the evidence of its witnesses was not disputed. Further that Mr Lawson on behalf of AMCU conceded that coal supply services were essential services. This submission misses the point that in determining whether a service is essential the ESC must be satisfied that the interruption of the service endangers the lives, health and safety of the whole or part of the population.

73. AMCU and Solidarity submitted that coal supply services should not be designated as essential services.

74. The evidence of Sasol firstly related to the need to protect conveyor belts and the fence lines where operations took place. Further that this was important to prevent fires around the communities. The evidence further related the management of dust from the stockpiles. It was further the testimony of the witnesses that without stockpile monitoring and control services, stockpiles of coal could spontaneously combust, turning into fires which in turn could cause harm to nearby communities. On behalf of AMCU it was submitted that this evidence was irrelevant to the investigation as these services are not concerned with how coal supply services are conducted but rather

what the consequences are, if such coal supply services themselves are interrupted. Further these are not concerned with whether or not the various constituent services that enable the Sasol Companies to supply coal cause an endangerment if they are interrupted.

75. The evidence of Sasol was further that the interruption of coal supplies would endanger part of the population in that if coal were not supplied two of its facilities would not be able to process coal into synthetic fuel (Secunda operations), and the other crude oil (Natref in Sasolburg). It was testified that if the facilities are unable to produce fuel this would lead shortage of fuel as Sasol is the sole supplier of inland fuel. Further that as a consequence emergency services and other essential services would experience fuel shortage and would be hindered in providing essential services.
76. It was further submitted that Eskom would not receive sufficient supply of heating oil (HFO) and would in turn not be able to provide electricity. The bakeries would not be able to operate as they do not have electricity ovens and most of them rely on HFO.
77. Both Solidarity and AMCU in this regard referred to the decision of this Committee wherein the ESC panel found that the production distribution and supply of fuel is not an essential service. The ESC panel in arriving at that decision considered the ILO decisions. AMCU and Solidarity also referred this panel to ILO Freedom of Association, Compilation of decisions of the Committee on Freedom of Association, Sixth edition (2018) ("ILO2"), Chapter 10, Section C, Essential Services, para 842 wherein it was said that – "the petroleum sector and oil facilities; the gas sector and production, transport and distribution of fuel are deemed not to constitute essential services".
78. As in the investigation relating to the production , transportation and distribution of fuel, there is no evidence before this panel from the emergency services or any other essential services that if fuel is not produced inland they would be impacted . It is common cause that Sasol is not the only supplier of fuel in the Republic. This if Sasol is unable to supply coal and as a consequence thereof there is a shortage of fuel the coastal producers would still supply oil. The panel finds that there is an alternative.

79. Mr Watruss evidence was also that they supply ESKOM with 50% of HFO, thus it is understood that ESKOM sources the other 50% elsewhere. The perceived crisis that Mr Watruss presented is not real. On the evidence there was a protracted strike in 2016 and there is no evidence that indeed this created a crisis where ESKOM could not start its generators due to the shortage of HFO. There is also no evidence that there was fuel shortage inland to support the contention of Mr Watruss.

80. Having considered the totality of the evidence the panel finds that the interruption of coal supply would not endanger the lives, personal safety or health of the whole of part of the population, accordingly the services should not be designated as essential services.

Determination

The ESC Panel therefore makes the following determination:-

81. The following services performed in coal mining are not designated as essential services

- (i) Cage Operation Services;
- (ii) Ventilation Services; and
- (iii) Coal Supply Services

82. The following services performed in coal mining are designated as essential services

- (i) Control Room Services
- (ii) Medical Health and Emergency Services; and
- (iii) Security / Protection Services;



Ms. Joyce Nkopane
ESC Deputy Chairperson
31 December 2021