



OUTA

ORGANISATION UNDOING TAX ABUSE

MOSEBENZI ZWANE

OUTA'S SUBMISSION TO THE
JUDICIAL COMMISSION OF
INQUIRY INTO STATE
CAPTURE



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INTRODUCTION

1. Mosebenzi Joseph Zwane (“Zwane”) was appointed as Minister of Mineral Resources on 23 September 2015. He was appointed less than a month after being sworn in as a member of the National Assembly on 2 September 2015. Zwane had no experience in mining or in national government and was not a member of the ANC’s national executive committee.
2. He previously served as MEC for Agriculture and Rural Development (2014 – 2015) and MEC for Economic Development, Tourism and Environmental Affairs (2009 – 2013) in the Free State province, under Premier Elias Sekgobelo “Ace” Magashule.
3. The following chapter will demonstrate how the Gupta family captured Zwane. They exploited this relationship to:
 - 3.1. Benefit from the Vrede Dairy Project;
 - 3.2. Facilitate the sale of Optimum Coal Holdings (“OCH”) assets to Tegeta Exploration & Resources (Pty) Ltd (“Tegeta”);
 - 3.3. Mislead Parliament in respect of the aforementioned sale;
 - 3.4. Influence Zwane’s public and media statements in his capacity as Minister;
 - 3.5. Abuse his position as Chair of an Inter-Ministerial Committee investigating the closure of Gupta family bank accounts;

- 3.6. Position their associates as Special Advisors to Zwane in his capacity as Minister.

SYNOPSIS

4. On 24 July 2017, OUTA lodged a criminal complaint against Zwane in respect of some of the above-mentioned allegations. The charges include high treason, theft, fraud, extortion and corruption. The complaint is attached hereto, marked **Annexure Z1**.
5. On 14 October 2017, OUTA also laid a complaint with Parliament's Joint Committee on Ethics and Members' Interests for his numerous breaches of the "Code of the Ethical Conduct and Disclosure of Member Interests for Assembly and Permanent Council Members". The complaint is attached hereto, marked Annexure **Z2**.
6. The above-mentioned complaints were based on, *inter alia*, evidence drawn from the Gupta emails and documents ("Gupta Leaks") which were ostensibly retrieved from the server of SAHARA Computers Pty (Ltd). These Gupta Leaks have substantiated most of the allegations pertaining to state capture and have unveiled evidence of misconduct by the Gupta family, many high-ranking government officials and private individuals.

THE DEFINITION OF STATE CAPTURE

7. OUTA construes the definition of state capture as follows:

“...a situation where powerful individuals, institutions, companies or groups within or outside a country use corruption to shape a nation’s policies, legal environment and economy to benefit their own private interest”.¹

(Own emphasis added).

8. This chapter attempts to illustrate how the Gupta family was able to leverage their influence over Zwane, as Minister of Mineral Resources and MEC for Agriculture and Rural Development in the Free State province, to the benefit of their personal and private interest.

MOSEBENZI ZWANE

ESTINA

9. In 2012, the Free State Department of Agriculture launched a project aimed at uplifting members of the Vrede community through job creation. This project became known as the Vrede dairy project.²

¹ Chene M, “*State Capture: An Overview*”, 11 March 2014.

² See Annexure Z5, ad pg. 8.

10. The Vrede dairy project has been the subject of intense controversy. During the course of 18 January 2018 to 28 May 2018, no less than three preservation orders were granted in respect of money held by the Bank of Baroda (“Baroda”) in its Nedbank account with number 1454095326 (“the Pool Account”). The Pool Account is referred to as such because its credit balance is made up of deposits by multiple depositors.³
11. Although all three orders were set aside because the State failed to prove that reasonable grounds existed that the money deposited into the Pool Account were the proceeds of unlawful activities, the judgements indicated that there were grounds for concern. The relevant judgements, with case numbers 168/2018, 1540/2018 and 360/1778/2018, are annexed hereto as **ANNEXURE Z3, Z4, and Z5** respectively.
12. It is common cause that the unlawful and fraudulent nature of the Vrede Dairy Project was unchallenged in the aforementioned judgements.⁴ The criminal proceedings in respect of the Vrede Dairy Project are ongoing.
13. In March 2012, Mr. MP Thabethe (“Thabethe”) became the head of the Department and was tasked with overseeing the Vrede dairy project. Shortly after his appointment Thabethe travelled to India and met Paras Dairy (“Dairy”), whom Thabethe claimed expressed an interest in the project.⁵

³ See Annexure Z4, ad paragraph 9, pg. 4.

⁴ See Annexure Z4, ad paragraph 20, pg. 9.

⁵ See Annexure Z5, ad pg. 8.

14. On 24 April 2012, a company called Estina (Pty) Ltd (“Estina”) was described as the local representative of Dairy. At the time, Estina’s sole director was Mr. Kamal Vasran (“Vasran”). Estina had no experience in agriculture and only amended its Memorandum of Incorporation to reflect its core business as agriculture when it took on the Vrede dairy project.⁶
15. Estina’s CIPC documents are annexed hereto as **ANNEXURE Z6**.
16. On or about 5 July 2012, the Free State Department of Agriculture awarded Estina a 99-year, rent-free lease on the 4400-hectare Krynaauwslust farm near Vrede, Zwane’s home district. The Department also undertook to commit R114 million a year for three years to set up the dairy- and farming operation on the property. No tender processes were followed, and no due diligence was conducted before the Department contracted with Estina.⁷
17. The National Director of Public Prosecutions (“NDPP”) alleged that on or about 18 April 2013 until May 2016, the Department of Agriculture made seven payments, totalling R220 202 652.00, to Estina. Only R2 million was purportedly used to pay for services relating to the farm. A total of R113 950 000.00 was paid into Estina’s Standard Bank account (3100664860) and a total amount of R106 252 652.00 was paid into Estina’s First National Bank account (62505753906).
18. The NDPP’s affidavit alleging the above is annexed hereto as **ANNEXURE Z7.1** and OUTA’s analysis of these payments is annexed hereto as **ANNEXURE Z7.2**.

⁶ See Annexure Z5, ad pg. 9.

⁷ See Annexure Z5, ad pg. 10.

19. During the period April 2013 to August 2014, Estina made eight transfers from its Standard Bank account to the Pool Account, totalling R110 million. That these transactions occurred, is not disputed.⁸
20. The NDPP further alleges that from 19 April 2013 to 21 August 2013, Estina made four payments from the Pool Account to Oakbay (Pty) Ltd (“Oakbay”) totalling R21.1 million. These payments occurred during the period when Estina received the above-mentioned sums from the Department and transferred R110 million to the Pool Account.⁹
21. The evidence presented by the NDPP indicates that Vasran received loans from Oakbay and then lent the money he received to Estina. Estina then repaid the loan provided by Vasran, who in turn paid the money to Oakbay. In the judgement, this flow of money was described as *“suspect to say the least.”*¹⁰
22. The provincial government, Estina, the Gupta family and Vasram all denied any Gupta-involvement in the project, save for the conclusion of a consulting subcontract of R138,000 between Estina and a Gupta-owned company, Linkway Trading Propriety Limited (“Linkway”).
23. Linkway’s shareholding for the year ended 28 February 2014 was:
 - 23.1. Islandsite Investments 180 Propriety Limited (“Islandsite”) – 53%,
 - 23.2. Ronica Ragavan (“Ragavan”) – 25%,

⁸ See Annexure Z5, ad pg. 10.

⁹ See Annexure Z5, ad pg.13.

¹⁰ See Annexure Z5, pg. 16.

- 23.3. Pragat Investments Proprietary Limited – 22%.
24. Ragavan was a codirector of Linkway, together with one Kenneth Thyse.
25. The directors of Islandsite include:
- 25.1. Ashu Chawla,
 - 25.2. Atul Gupta,
 - 25.3. Rajesh Gupta,
26. An extract from Linkway’s Annual Financial Statements, detailing the shareholding of Linkway is annexed hereto, together with the CIPC documents for Linkway and Islandsite as **ANNEXURE Z8.1** to **ANNEXURE Z8.3**.
27. The Gupta Leaks further show that the Guptas have been the beneficiaries of tens of millions of rands through payments made by the provincial Government to Estina and then by Estina to an offshore Gupta-front company called Gateway Ltd (registered in the United Arab Emirates).¹¹ Spreadsheets extracted from the Gupta Leaks show a total of \$8.35 million (equal to the R84-million at the exchange rate then) was transferred to a Gateway account in August and September 2013. The spreadsheets are annexed hereto as **ANNEXURE Z9**.
28. The evidence obtained from the Sahara computer server includes the following documents¹²:

¹¹ See Annexure Z1, annexure MJZ 6.

¹² See Annexure Z1, annexure MJZ 7 – MJZ 16.

- 28.1. Emails exchanged between the Chawla and Sahara employees on the recruitment of Estina staff from India, obtaining work permits for Estina's employees and approving their contract salaries;
 - 28.2. Emails exchanged between Ravindra Nath and B. Rajendra, CEO of the Bank of India in Johannesburg, that indicate that Estina, alternatively, Linkway or another Gupta linked company, applied for a bank loan for Estina;
 - 28.3. Spreadsheets on the Sahara computer indicate that Sahara hosted Estina's accounting software and oversaw the flow of monies in and out of its account; and,
 - 28.4. Invoices from Gateway to Estina dated 15 September 2013.
29. Furthermore, invoices extracted from the Gupta Leaks¹³ indicates that Vasram, using his Estina e-mail address, invoiced Linkway for "services rendered". Linkway is the company the Guptas acknowledged had done "consulting" on the dairy project in its early stages.
30. These invoices began in May 2011 and continued until early 2013 and suggest that Linkway, paid Vasram fees for the Estina work.
31. Whilst it appears that Zwane did not play a direct role in the Vrede Dairy Project, the following must be noted:
- 31.1. In October 2012 and shortly after the launch of the Estina project, Zwane, officials from his department and a local gospel choir (the Umsingizane

¹³ See Annexure Z1, annexure MJZ17A - MJZ17I.

gospel choir that Zwane promotes) were treated to an all-expenses paid tour of India by the Guptas.¹⁴

- 31.2. During the period 31 January 2013 to 27 August 2013, five meetings were scheduled between Zwane, Tony Gupta and a certain Peter at Sahara at a place designated as “No. 5”.¹⁵ Presumably, “No. 5” is the Gupta residence at Saxonwold.
 - 31.3. From 30 April to 2 May 2013, Zwane attended the Gupta family wedding (of Vega Gupta and Aakash Jahajgarhia) at Sun City, where he stayed for three nights.¹⁶
 - 31.4. Zwane, in his capacity as MEC, had a responsibility to provide oversight over the Department.
32. From the above, it appears that Zwane assisted in furthering the Gupta family’s aims in respect of the Vrede Dairy Project. He did so by either turning a blind eye to the misconduct being perpetrated within the Department or by directly liaising with Tony Gupta and furthering the project in exchange for the trip to India and his later promotion to Minister of Mineral Resources.

¹⁴ See Annexure Z1, annexure MJZ18 – MJZ20.

¹⁵ See Annexure Z1, annexure MJZ23 – MJZ27.

¹⁶ See Annexure Z1, annexure MJZ28.

APPOINTMENT TO CABINET AND CONDUCT AS MINISTER

33. On Tuesday 22 September 2015, President Zuma announced the appointment of Zwane as Minister of Mineral Resources. Zwane was sworn in the following afternoon, on 23 September 2015.
34. Zwane was appointed Minister less than a month after being sworn in as a member of the National Assembly (on 2 September 2015). At the time of his appointment, Zwane had no experience in mining or in national government and was not a member of the ANC's National Executive Committee ("NEC").
35. His Tertiary qualifications comprise of a secondary teacher's diploma from the South African Teachers' College in Pretoria and a certificate in Executive Leadership Municipal Development from the University of Pretoria.
36. President Zuma announced Zwane's appointment to the surprise of the ANC NEC. The NEC had met the previous weekend and had not been advised of the impending appointment.
37. On 20 September 2015, a presidential-level motorcade was reported to have paid a visit to the Gupta family compound in Saxonwold.
38. Zwane's People's Assembly Profile, together with the media articles alleging the above are annexed hereto as a bundle marked **ANNEXURE Z10**.

39. On 1 August 2015, less than two months before President Zuma appointed Zwane as Minister, Mr France Oupa Mokoena of Koena Consulting and Property Developers emailed Rajesh (Tony) Gupta to say: “*Please find attached the CV of Mr Mosebenzi for your attention*”. Tony Gupta forwarded Mokoena’s email, with its attachment, directly to Duduzane Zuma.¹⁷
40. Former Minister of Mineral Resources, Minister Ngoako Ramatlhodi publicly stated that he was removed as minister and replaced by Zwane after he resisted pressure from former Eskom’s CEO, Minister Brian Molefe, and Eskom’s former Chairperson, Minister Ben Ngubane, to suspend Glencore’s mining licenses. At the time, Glencore was the owner of Optimum Coal Mine.¹⁸
41. In the “State of Capture” report (the Public Protector Report), the Public Protector analysed Minister Zwane’s flight records to confirm that Minister Zwane flew from Johannesburg to Zurich, via Dubai, on 29 and 30 November 2015.¹⁹
42. The Public Protector reports that she received information “*from an independent source*” that “*Minister Zwane did in fact meet with Mr Glazenberg in Switzerland at the Dolder Hotel around 30 November 2015 to 5 December 2015, and that the other individuals present during said meeting(s) [were] Mr Rajesh (Tony) Gupta and Mr Essa*”.²⁰

¹⁷ See Annexure Z1, annexure MJZ1 & MJZ2.

¹⁸ We detail the significance hereof in our ESKOM submission.

¹⁹ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 5.105, pg. 125.

²⁰ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 5.110, pg. 126.

43. The Public Protector was unable to explain how Minister Zwane got from Zurich to Dubai, since his official flights (booked on Emirates Airlines from Zurich to Dubai on 2 December 2015; from Dubai to Delhi on 3 December 2015; and from Delhi to Dubai on 5 December 2015) were never used. However, Minister Zwane did board his official flight booked from Dubai to Johannesburg on 7 December 2015.²¹
44. The flight and accommodation bookings obtained from the Gupta Leaks confirm that, on 2 December 2015, when Minister Zwane failed to board his official flight from Zurich to Dubai, he was on board the Guptas' private Bombardier jet, ZS-OAK, along with Tony Gupta and Salim Essa.²²
45. Further, the records evidence that Minister Zwane spent the next two days in India with the Guptas before flying back to Dubai and boarding his official flight back to Johannesburg. Whilst in Dubai, Minister Zwane was booked into the five-star Oberoi hotel paid for by the Guptas' company, Sahara Computers, and was chauffeured around in a BMW 7 Series motor vehicle at the expense of Sahara Computers.²³

²¹ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraphs 5.107 & 5.108, pg. 125.

²² See Annexure Z1, annexure MJZ36.

²³ See Annexure Z1, annexure MJZ36.

SALE OF OPTIMUM HOLDINGS

46. According to the Public Protector Report, the Department of Mineral Resources had to provide approval for the sale of Optimum Coal Holdings (“OCH”) to Tegeta and Minister Zwane also assisted with the negotiations of the sale.²⁴
47. The Public Protector Report states that, Glencore initiated the sale of Optimum Coal Mine to Tegeta during December 2015 and was finalised during April 2016.²⁵
48. The sale was triggered by the enforcement of penalties in terms of the Coal Supply Agreement by Eskom which resulted in Glencore being placed under Business Rescue and ultimately having to sell Optimum Coal Mine. The latter is more completely described in our Eskom Submission.
49. Tegeta is a subsidiary of the Gupta-family holding company, Oakbay Investments (Pty) Ltd (Oakbay). Oakbay has a 29.05% shareholding in Tegeta whilst Duduzane Zuma’s Mabengela Investments (Pty) Ltd holds a 28.53% shareholding.²⁶
50. Following its purchase of Optimum Coal Mine, Tegeta gained lucrative coal supply contracts with Eskom. It includes a R564 million contract awarded in April

²⁴ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraphs 5.316, pg. 271 - 272.

²⁵ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 5.297, pg. 267.

²⁶ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 5.42, pg. 111 - 112.

2016 to supply Arnot power station with 1.2 million tons of coal over six months (excluding the transport costs also payable by Eskom).²⁷

REHABILITATION FUNDS

51. Under Zwane, the Department of Mineral Resources has also approved the release of billions of rands in mine rehabilitation funds to Tegeta under questionable circumstances. The Public Protector investigated the transfer of R280 million from the Koornfontein Rehabilitation Trust Fund on 23 May 2016; and R1,469 billion from the Optimum Mine Rehabilitation Trust Fund on 21 June 2016 to Bank of Baroda accounts.²⁸
52. The Public Protector reported on the apparent illegalities in the Department's release of these mine rehabilitation funds in the State of Capture report. The Public Protector found that, in respect of both Trust Funds:

*"It is clear and apparent that the funds were not ring-fenced for the purposes of investment and capital growth. The interest payment on all the investment accounts were not reinvested and recapitalised but were transferred to the Baroda Main account and utilised."*²⁹

²⁷ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 28.2, pg. 248.

²⁸ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraphs 5.346 – 5.348, pg. 279-280.

²⁹ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraphs 5.348, pg. 280.

53. OUTA also sought assurances from Zwane regarding the ring-fencing of the funds to no avail.
54. It is ultimately the Minister of Mineral Resources, Zwane at the time, who is responsible to ensure that satisfactory arrangements are in place for the prescribed financial provision for mining rehabilitation, in terms of the National Environmental Management Act No. 107 of 1998 and Mineral and Petroleum Resources Development Act No. 28 of 2002.
55. This concern was amplified in an affidavit filed by then Finance Minister, Pravin Gordhan, in litigation between the Minister of Finance and Oakbay Investments, in which Minister Gordhan also expressed alarm at the Department of Mineral Resources' written approval of the release of funds from the Optimum Mine Rehabilitation Trust Fund's Standard Bank account to the Bank of Baroda – particularly in circumstances where the Standard Bank account was closed because of suspicious and unusual transactions on the account.³⁰
56. Despite Zwane's responsibility as the custodian of the rehabilitation funds, a Deputy Director General from the department of Mineral Resources writes to Tegeta granting 'in principle' approval to access the Koornfontein trust funds subject to various considerations / conditions. He received a request from Tegeta to approve the use of the rehabilitation funds for alleged concurrent rehabilitation and the very next day granted approval with full knowledge that it was illegal for Tegeta to do so.

³⁰ See Annexure Z1, annexure MJZ39 & MJZ40.

57. The concerns expressed above along with reports that the Bank of Baroda wanted to close all Gupta associated bank accounts and that there had been a “dipping” into the funds, necessitated OUTA to approach the Gauteng Division of the High Court of South Africa to obtain an urgent interim order directing the Bank of Baroda to continue to hold the funds of the Optimum Mine Rehabilitation Trust until a final order in respect of the administration of said trust could be resolved.
58. Since the abovementioned order was granted, the Asset Forfeiture Unit (AFU) obtained a preservation order in respect of the funds held in both the Brakfontein and Koorfontein Rehabilitation Trusts.
59. During May 2018 all parties involved in both the OUTA application and the AFU application, which included the new Minister of Mineral Resources, reached a settlement in terms of which the Department of Mineral Resources would act as the custodian of the trust funds.
60. OUTA subsequently wrote to the office of the Minister of Mineral Resources on numerous occasions seeking confirmation of the funds’ safekeeping but OUTA’s correspondence has been ignored. OUTA is accordingly uncertain as to whether the funds were indeed received by the office of the Minister of Mineral Resources and the current status of the funds which is deeply concerning.
61. The papers in respect of the aforementioned matter are annexed hereto as **ANNEXURE Z11.**

MINISTER ZWANE'S MISLEADING STATEMENTS

62. In the context of the Optimum Coal Mine acquisition, Eskom as an organ of state had to decide whether to terminate its contract with Glencore, and if so, how to procure the coal that it had previously obtained from Glencore.
63. In a written reply to a parliamentary question from Democratic Alliance MP, Mr TJ Brauteseth on 8 April 2016, Minister Zwane denied ever meeting with any of the Guptas, Gupta employees or close associates since taking office as Minister of Mineral Resources in September 2015. The answer furnished was:
- “The Minister has not met with any member, nor close associate of the Guptas. He has also not attended a meeting with a specified person at the Gupta’s Saxonworld Estate in Johannesburg.”³¹*
64. In a written reply to parliamentary questions from the EFF leader, Mr. Julius Malema, during May 2016, Zwane denied travelling with the Guptas on their trip to Switzerland in January to persuade Glencore to sell Optimum coal mine to their companies Oakbay and Tegeta.³²
65. Again, in a written reply to parliamentary questions from Freedom Front Plus MP, Mr. Anton Alberts on 8 June 2017, Minister Zwane repeated this, saying he had gone on the trip accompanied by an official of his department “...to promote

³¹ See Annexure Z1, annexure MJZ37A.

³² See Annexure Z1, annexure MJZ37B.

mining and [to] address company issues relating to the investment climate in the country in general, and to mitigate imminent retrenchment". Minister Zwane also denied that he had any direct or indirect interests in Oakbay or Optimum mine.³³

66. The travel and accommodation records for Minister Zwane between 2 and 7 December 2015, described above, indicate that these denials are false.

UNDUE INFLUENCE

67. Emails recovered from the "Gupta Leaks" indicate that the Guptas and their known associates (including Duduzane Zuma and Nazeem Howa ("Howa"), the former CEO of Oakbay), have directed and influenced Minister Zwane in the public and media statements he made as Minister of Mineral Resources.
68. In an email from Howa to Duduzane Zuma and Tony Gupta on 2 February 2016, Howa listed fourteen questions he anticipated Minister Zwane could expect from the journalists at a forthcoming Mining Indaba.³⁴ Howa drafted comprehensive answers for Minister Zwane on matters sensitive to the Guptas (including Minister Zwane's alleged family closeness to the Gupta family, the sale of the Optimum mine and his inexperience as a mining minister). Howa requested Tony Gupta's and Duduzane Zuma's further input, stating:

³³ See Annexure Z1, annexure MJZ38.

³⁴ See Annexure Z1, annexure MJZ41 & MJZ42

“I need some help on some of the answers. I think we should also prepare for a question of his role around the Waterkloof landing. Perhaps I can sit with someone this side to help me polish and add to the answers. Let’s chat when you have a chance to review.”

69. During February and March 2016, Howa also exchanged a series of emails with employees of Bell Pottinger (the UK-based, Public Relations firm hired by the Gupta family) over public statements, by the Gupta Family, concerning Minister Zwane’s engagement with the Guptas, particularly during Minister Zwane’s trip to Switzerland. The proposed media statement denies any assistance from Minister Zwane.³⁵
70. The latter evidence the Gupta’s attempts to hide the relationship between them and Minister Zwane, as Minister of Mineral Resources.
71. It further indicates that Minister Zwane was discussing Cabinet business with the Guptas and taking instructions from them. This is further supported by the fact that, in July 2016, Bell Pottinger told Fin24 reporters that it was in possession of the findings of the inter-ministerial committee set up by Cabinet on 13 April 2016 (with Minister Zwane as its chairperson) to investigate the closure of the Guptas’ South African bank accounts.³⁶
72. Bell Pottinger also advised Fin24 that the Inter-Ministerial Committee was recommending a commission of inquiry into the country’s banks and that Zwane

³⁵ See Annexure Z1, annexure MJZ43 & MJZ44.

³⁶ See Annexure Z1, annexure MJZ45.

should be directly contacted. This was two months before Minister Zwane made these findings public on 2 September 2016.

73. Minister Zwane issued a public statement on 2 September 2016 that Cabinet had agreed with the recommendation of the Inter-Ministerial Committee that a judicial inquiry investigate why South Africa's banks had blacklisted Gupta-owned businesses.³⁷
74. Minister Zwane was rebuked by the ANC and the Presidency, who distanced themselves from Minister Zwane's statement about a judicial inquiry into the banking sector and denied that the recommendation had Cabinet's backing. Minister Zwane refused to apologize for the misleading statement or to explain what drove him to mislead the public about what the Cabinet had decided.³⁸

THE INTER-MINISTERIAL COMMITTEE

75. In addition to misrepresenting Cabinet's response to the recommendations of the Inter-Ministerial Committee, Minister Zwane is also alleged to have abused his powers as chair of the committee by improperly trying to influence banks to keep their Gupta-held accounts open.
76. In an affidavit filed on behalf of Nedbank in *Minister of Finance v Oakbay Resources and Others* (litigation concerning the Minister of Finance's powers to

³⁷ See Annexure Z1, annexure MJZ46.

³⁸ See Annexure Z1, annexure MJZ47 & MJZ48.

interfere in bank-client relations), Nedbank's CEO, Mark Brown attests to having attended a meeting with Minister Zwane in May 2016, as chairperson of the Inter-Ministerial Committee.³⁹

77. Minister Zwane was accompanied by Minister Faith Muthambi and her advisor, Mr Mzwanele Manyi (who were not appointed as members of the committee), and not by the Minister of Finance and the Minister of Labour who were the appointed members of the Committee.
78. Mark Brown stated that at this meeting Minister Zwane attempted to persuade Nedbank to keep Gupta companies as clients and to become their primary banker.
79. The recent testimony delivered by the banks during the State Capture Inquiry appears to substantiate the allegations that Minister Zwane used his position as Chair of the Inter-Ministerial Committee to unduly pressure the banks to keep the Gupta account open.

APPOINTMENT OF SPECIAL ADVISORS

80. As Minister of Mineral Resources, Minister Zwane has appointed known Gupta associates as his advisors, most notably Mr. Kubentheran ("Kuben") Moodley ("Moodley") and Mr Malcolm Mabaso ("Mabaso").

³⁹ See Annexure Z1, annexure 49 & MJZ50.

81. Minister Zwane appointed Moodley as his special advisor. The Public Protector's report records that Moodley served as his advisor in 2016 when Tegeta purchased Optimum Coal Mine.⁴⁰
82. Moodley is the sole director of Albatime (Pty) Ltd, a company that made a R10 million payment to Tegeta towards the acquisition of Optimum Coal Mine.⁴¹
83. Moodley is married to Devapushpum Viroshini Naidoo, who served on the Eskom Board as a Non-Executive Director from 11 December 2014 to 2016. She served on the Eskom board during the time of the sale of Optimum Coal Mine and the conclusion of Eskom's coal-supply contracts with new mine-owner Tegeta.⁴²
84. As the Public Protector found, Minister Zwane's appointment of Moodley as his special advisor in these circumstances, presented a conflict of interest as *"Minister Zwane is responsible for ensuring policymaking and policy implementation of service delivery for Eskom. He also oversees the regulation of the MPRDA [Mineral and Petroleum Resources Development Act]. In the execution of his functions the Minister relies on advisors"*.⁴³
85. Minister Zwane also appointed Mabaso as his personal advisor in 2016. Mabaso is purportedly a former business associate of Salim Essa ("Essa"), having served

⁴⁰ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraphs 5.102, pg. 124.

⁴¹ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraphs 5.308, pg. 270.

⁴² Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraphs 5.77, pg. 120.

⁴³ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraphs 5.102, pg. 124.

with Essa as a director of Premium Security and Cleaning Services (Pty) Ltd from July 2013 to October 2015.⁴⁴

CONCLUSION

86. From the above, it is evident that the Gupta family has had a longstanding relationship with Zwane from his time as MEC of Agricultural Development in the Free State Province to his term as Minister of Mineral Resource.
87. It is further evident that the Gupta family has exploited this relationship to further the personal- and private interests to the detriment of the nation.

⁴⁴ See Annexure Z1, ad paragraph 59, pg. 35.