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**AFFIDAVIT**

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I, the undersigned,

**STEFANIE FICK**

do hereby make oath and state:

1.

I am an adult female employed as Head of Legal Affairs by the Organisation Undoing Tax Abuse ("OUTA") with business address 10th Floor, O'Keeffe & Swartz Building, 318 Oak Street, Ferndale, Randburg, Gauteng.

2.

The contents of this affidavit fall within my personal knowledge, unless stated otherwise, and are in all aspects true and correct.



## MANDATE

3.

The Complainant, OUTA is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority with regards to taxpayers' money in South Africa.

4.

In recent months, South Africa has been rocked by the Gupta emails and documents ("Gupta emails") which were ostensibly retrieved from the server of SAHARA Computers Pty (Ltd). These Gupta emails have substantiated most of the allegations pertaining to state capture and have unveiled evidence of misconduct by the Gupta family and many high-ranking government officials. OUTA has access to the emails and established the authenticity of such and released an extensive report on state capture on the 28th of June 2017 titled "No room to hide: A President caught in the act"

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5.

Amongst the Gupta emails were evidence of misconduct on the part of Malusi Nkanyezi Gigaba (Gigaba), Rahesh “Tony” Gupta (Tony Gupta), Ashu Chawla (Chawla) and Gideon Cornelius Christians (Christians) that constitutes crimes of corruption and fraud.

## **BACKGROUND**

6.

According to his curriculum vitae<sup>1</sup>, Christians worked as the Second Secretary (Immigration and Civic Services) for the South African High Commission of New Delhi, India between February 2008 and March 2014. Prior to this, Christians worked in similar capacities in Cape Town, Cameroon and Mauritius and his duties included the facilitation of the prosecution of illegal foreigners.

7.

On or about 19 September 2011, Christians (in his capacity as an employee of the South African High Commission – Immigration and Civic Services) sent an email to Chawla, the CEO of Sahara Computers (Pty)

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<sup>1</sup> It is attached hereto as SF 14.

Ltd, which stated "*Ashu; Attached please find details of the coal.*" Christian's usage of Chawla's first name indicates some familiarity between the two. The email is annexed hereto as **ANNEXURE "SF 1"**.

8.

On or about 8 November 2011, Christians emailed Chawla and one Miguel Dos Santos, notifying them that he had met with a "*Mr Gupta*" on 7 December 2011 and discussed business relating to the sale and purchase of coal. This is presumed to be Tony Gupta as he was forwarded the email by Chawla. Christians further stated that he had been in contact with prospective buyers in China and that he would refer them to an identified client if they were able to match the specifications of coal contained within a coal purchase agreement of 2010, which he attached to the email. In summary, the agreement was between two unidentified parties and set out the terms and conditions for the sale of "*Steam/ Thermal/ Non Coking Coal*" for the purpose of importing coal to China. Finally, he advised them that a coal mine was up for sale in the TETE region of Mozambique. This email and its attachment is annexed hereto as **ANNEXURE "SF 2"**.

9.



Again, the communications indicate some familiarity between Christians, Tony Gupta and Chawla in 2011 already.

10.

On or about 11 June 2013, Chawla sent an email to Christians, asking him to help to finalise his wife and son's visa by "*tomorrow*". This is the first of many requests to expedite visas. Later that same day, Christians replied to the email, asking where they were landing, to which Chawla replied, "*I am sure you not confused about that.....*". Both emails are attached hereto as **ANNEXURE "SF 3"**.

11.

On 20 June 2013, Chawla sent Christians another email requesting visas for eight more people, which he identified as "*TV guys*". The emails are attached hereto as **ANNEXURE "SF 4"**.

12.

On or about 21 June 2013, Chawla initiates a chain of emails with Christians regarding a two-year multiple entry business visa for one Tanvi Gupta. Chawla intended to apply for such a visa, with Christians' help, but misrepresented that the visa was for the purpose of business. In truth,

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Tanvi Gupta was coming to South Africa to get married to Varun Gupta. Chawla states outright that he intends to use the Sahara letter head to facilitate the false business visa and attaches a draft to this effect. Christians himself subsequently questions Chawla on this. The email is attached hereto as **ANNEXURE "SF 5"**.

13.

On or about 17 July 2013, Chawla emailed Christians asking him to get a visa for "*today*". He stated that the visas were required urgently because they were launching the TV station on 9 August and that he might be requesting more visas in a couple of days. Later that same day, Chawla sent Christians another email thanking him for "*all the continuous support*". The emails are attached hereto as **ANNEXURE "SF 6 & SF 7"** respectively.

14.

On or about 8 August 2013, Chawla emails Christians a selection of Mini Coopers for sale in South Africa. The reason for the email is unclear but the nature of the relationship between the two indicates that this may well constitute a form of *quid pro quo* for the assistance rendered by Christians



to Chawla and the Guptas. The email is annexed hereto as **ANNEXUE** "SF 8".

15.

On or about 13 August 2013, Chawla sent Christians two emails in which he requests help with more visas. In the first, Chawla says, "*Brother, Please help. Thanks.*" In the second, he says, "*Brother, One more. Thanks.*" On or about 14 and 19 August 2017, Chawla sent two more emails, without any pleasantries, he only forwards the names and their respective passport numbers. The emails are attached hereto as **ANNEXURE "SF 9 – SF12"** respectively.

16.

On or about 15 February 2014, Chawla forwarded Christians an email chain in which one Anant Sarkaria requests the assistance of Abhinav Shukla in removing his travel ban. Shukla subsequently emailed Chawla twice and in the second email he states that he was instructed to do so by Tony Gupta. The email is attached as **ANNEXURE "SF 13"**.

17.

On or about 21 November 2014, Christians emails his CV to Chawla "*as discussed*", expressing confusion as to why he needs it. On or about 11



December 2014, Chawla forwarded the CV to "*Ronica*" at Oakbay. The email is attached hereto as **Annexure "SF 14"**. (The significance of the specific emails may become apparent after reading paragraph 20 below.)

18.

On or about 27 December 2014, Chawla sends Christians an email with the subject line: "4 Dubai visas". Although the attachments are not available, the descriptions of the attachments indicate that the visas for relatives of Christians were forwarded. The email is annexed hereto as **ANNEXURE "SF 15"**.

19.

On or about 12 February 2015, Chawla sent Christians the passports of various Gupta family members. It would seem that Christians may have assisted to facilitate the immigration of the Gupta family to South Africa. At the very least, it demonstrates improper influence by the Gupta family on the Department of Home Affairs. The email and its attachments are annexed hereto as **ANNEXURE "SF 16"**.

20.





On or about 6 October 2015, Mr Siyamthanda Skota of the Ministry of Home Affairs sent a submission purportedly signed by Minister Gigaba in which he directed that one Ms Munyadziwa and Christians were to be transferred to Mumbai and New Delphi respectively. Christians' appointment was for a period of four years and was subject to him receiving a Top Secret Clearance at the same level of Assistant Director. Major Kobese, the Director: Foreign Office Coordination and Support for the Department of Home Affairs, confirmed his receipt of the signed submission on 14 October 2015. A discussion soon developed between Kobese and Wesane Hlongwane, the Director: People's Acquisition, over which Department was to provide "*a background*" for Christians, in respect of the clearance required. On or about 20 October 2015, Kobese stated that "*this deployment was done outside the normal recruitment process.*" However, in another email on or about 21 October 2015, he also stated that the deployment of Christians was an instruction by the Minister and their role was to carry out that instruction.

Ultimately, on that very same day, Christians is "*unofficially*" provided with the email chain, which he then sends from his official government account, to his Gmail account, before sending it to Chawla, stating:



*“Bhiya Someone sent this to me unofficially....seems there is a fight with HR and FOC to issue the letter to me...The other issue is security clearance...Call me when you can.”*

21.

It appears that Christians is contacting Chawla to ensure that matters are resolved in his favour instead of following formal government channels. This is an indication that Chawla and the Gupta family had, at the very least, a degree of influence over the affairs of the Department of Home Affairs and/or Christians and/or Gigaga. The email chain is annexed hereto as **ANNEXURE “SF 17 and SF 17.1”**.

## **CHARGES**

22.

The apparent close relationship between Christians, Gigaba, Chawla and Tony Gupta should be investigated as it appears from the evidence above that Chawla and Tony Gupta didn't have to follow prescribed procedure and received preferential treatment from government officials. In return, it appears that Christians was rewarded for his assistance. It also appears that Tony Gupta may have had the ability to influence decisions taken by Gigaba and the reason therefor should be properly investigated.



23.

We allege that the conduct on the part of Tony Gupta, Chawla and Christians constitutes, but is not limited to, the crimes of corruption and fraud detailed below.

24.

**Offences in terms of The Prevention and Combating of Corrupt Activities Act 12 of 2004**

24.1. It is my submission that the conduct on the part of Gigaba, Christians, Chawla and Tony Gupta, as detailed above, constitutes contraventions of the following sections of The Prevention and Combating of Corrupt Activities Act 12 of 2004 ("PRECCA"):

24.1.1. Section 3 of PRECCA, which states:

*"Any person who, directly or indirectly-*

*(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*



- (b) *gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-*
- (i) *that amounts to the-*
    - (aa) *illegal, dishonest, unauthorised, incomplete, or biased; or*
    - (bb) *misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;*
  - (ii) *that amounts to-*
    - (aa) *the abuse of a position of authority;*
    - (bb) *a breach of trust; or*
    - (cc) *the violation of a legal duty or a set of rules,*
  - (iii) *designed to achieve an unjustified result; or*
  - (iv) *that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corruption.”*

24.1.2. Section 4 of PRECCA, which states:

*“(1) Any-*

*(a) public officer who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*

*(b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-*

*(i) that amounts to the-*

*(aa) illegal, dishonest, unauthorised, incomplete, or biased; or*

*(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;*

*(ii) that amounts to-*

*(aa) the abuse of a position of authority;*

*(bb) a breach of trust; or*

- (cc) the violation of a legal duty or a set of rules;*
- (iii) designed to achieve an unjustified result; or*
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corrupt activities relating to public officers.*

*(2) Without derogating from the generality of section 2 (4), 'to act' in subsection (1), includes-*

- (a) voting at any meeting of a public body;*
- (b) performing or not adequately performing any official functions;*
- (c) expediting, delaying, hindering or preventing the performance of an official act;*
- (d) aiding, assisting or favouring any particular person in the transaction of any business with a public body;*
- (e) aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body;*
- (f) showing any favour or disfavour to any person in performing a function as a public officer;*

...



*(h) exerting any improper influence over the decision making of any person performing functions in a public body.”*

24.1.3. Gigaba’s position as a Member of Parliament means his alleged conduct may constitute a crime in terms of section 7(1)(a) of PRECCA. Furthermore, it can be inferred that the influence of the Guptas is a contravention of section 7(1)(b). These section read as follows:

*“(1) Any-*

*(a) member of the legislative authority who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*

*(b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a member of the legislative authority, whether for the benefit of that member or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-*

(i) that amounts to the-

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to-

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of the offence of corrupt activities relating to members of the legislative authority.

(2) Without derogating from the generality of section 2(4), 'to act' in subsection (1) includes-

...





- (d) *exerting any improper influence over the decision making of any person performing his or her functions as a member of; or*
- (e) *influencing in any way, the election, designation or appointment of any functionary to be elected, designated or appointed by, the legislative authority of which he or she is a member or of any committee or joint committee of that legislative authority."*

24.1.4. The abovementioned conduct further constitutes a direct contravention of section 21 of PRECCA, which states:

*"Any person who-*

- (a) *attempts;*
  - (b) *conspires with any other person; or*
  - (c) *aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person, to commit an offence in terms of this Act,*
- is guilty of an offence."*

24.1.5. In terms of Section 26 of PRECCA:

*"(1) Any person who is convicted of an offence referred to in-*



- (a) *Part 1, 2, 3 or 4, or section 18 of Chapter 2, is liable-*
- (i) *in the case of a sentence to be imposed by a High Court, to a fine or to imprisonment up to a period for imprisonment for life;*
  - (ii) *in the case of a sentence to be imposed by a regional court, to a fine or to imprisonment for a period not exceeding 18 years; or*
  - (iii) *in the case of a sentence to be imposed by a magistrate's court, to a fine or to imprisonment for a period not exceeding five years.*

...

- (3) *In addition to any fine a court may impose in terms of subsection (1) or (2), the court may impose a fine equal to five times the value of the gratification involved in the offence."*

25.

## **Fraud**

25.1. I further submit that Chawla's conduct, detailed in paragraph 12, constitutes the crime of fraud.



25.2. Fraud is the unlawful and intentional making of a misrepresentation which causes actual or potential prejudice to another.

25.3. Chawla intended for Tanvi Gupta to be furnished with a two-year multiple entry business visa, with Christians assistance, by unlawfully and intentionally misrepresenting that the visa was for the purpose of business. Chawla intended to support this misrepresentation by using the Sahara letterhead. This misrepresentation prejudiced or potentially prejudiced the South African Department of Home Affairs and the Republic of South Africa.

26.

With reference to the contents of this affidavit, I humbly request that the elements of criminal activities such as, but not limited to, fraud and corruption be thoroughly investigated by the SAPS and other relevant law enforcement authorities.

Signed at **RANDBURG** on this 12<sup>TH</sup> day of September 2017.



  
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STEFANIE FICK

I certify that the deponent has acknowledged that she understands the contents of the above declaration and has no objections to taking the prescribed oath or affirmation and that she considers the prescribed oath or affirmation binding on her conscience.

  
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Commissioner of Oaths

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