
SWORN STATEMENT

I, the undersigned,

Benjamin [REDACTED] Theron

do hereby make oath and state:

1.

I am an adult male employed as Chief Operating Officer at the Organisation Undoing Tax Abuse ("OUTA") with its business address as 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 true and correct.

Mandate

3.

The Organisation Undoing Tax Abuse ("OUTA") is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about

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improving the prosperity of our nation. OUTA was established to challenge the abuse of authority with regards to taxpayers' money in South Africa.

Background to the complaint

4.

In recent months, headlines have been dominated by the leaked Gupta emails and documents ("Gupta emails") which were 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 received a copy of these emails from an unknown source, established the authenticity of such and released an extensive report on State Capture titled "No room to hide – A President caught in the act."

5.

Amongst the Gupta e-mails were evidence of misconduct on the part of, amongst other but not limited to, **Atul Gupta, Ajay Gupta and Rajesh Gupta** (hereinafter jointly referred to as the "Guptas") and **Duduzane Zuma** and which constitute possible crimes. The Guptas are businessmen closely linked to several government officials along with several alleged improper transactions concluded between known Gupta owned companies and government departments.

6.

The Gupta family and their associates, at all relevant times, acted severally and jointly in common purpose to perpetrate illegal activities.

Relationships and connections

7.

The Gupta family and President Zuma has also surrounded themselves with advisors and agents to assist in their illegal and improper conduct. Amongst these, but not limited to, are -

Jacinto Rocha

8.

- 8.1. During 2009, Jacinto Rocha (hereinafter referred to as Rocha) was employed as the Deputy Director-General in the Department of Mineral Resources.
- 8.2. Shortly after President Zuma's first inauguration in 2009, Rocha was invited to a meeting at the Presidential Guesthouse, Mahlamba Ndlopfu.
- 8.3. The meeting was also attended by President Zuma, Rajesh "Tony" Gupta, and Duduzane Zuma. At this meeting, President Zuma introduced Rocha to his son, Duduzane Zuma. The Sunday Times quotes Rocha as saying that President Zuma stated:

"Duduzane is my only child involved with money. I would appreciate it if you could help him wherever you could."

- 8.4. Rocha's involvement with the Gupta family since then is notorious. In his capacity as Deputy Director General of Mineral Resources, Rocha was the official who awarded Imperial Crown Trading 231 (Pty) Ltd ("ICT") prospecting rights over the iron ore resource in respect of the Sishen Mine. ICT was a company with no track record in mining but it was 50% owned by the Gupta company JIC Mining in which Duduzane is a major shareholder. The iron ore resource to which Rocha gave ICT exclusive rights was one valued at more than R1 billion. Rocha's awarded the

prospecting right over Sishen to ICT on 30 November 2009. This was within six months of his meeting with President Zuma, Duduzane Zuma and Tony Gupta.

8.5. According to Rocha, Duduzane Zuma and Tony Gupta later recruited him to be an advisor to Ben Martins in anticipation of his appointment as Transport Minister in June 2012. Significantly, they were aware of the pending cabinet reshuffle and the portfolio to be given to Martins, several days before it took place. ¹

8.6. The incidents described by Rocha show:

8.6.1. First, that the President improperly used his influence to provide undue assistance to the Guptas from the beginning of his first term in office;

8.6.2. Second, that State patronage of the Gupta family is directly linked to the business interests of Duduzane Zuma;

8.6.3. Third, that the business interests of Duduzane Zuma are particularly important because, in the words of President Zuma, "*...he is my only child involved with money,*"² and

8.6.4. Fourth, that Duduzane Zuma and the Gupta family know about cabinet reshuffles in advance of their implementation and appear to have the power to place advisors of their choice with Cabinet Members in the hope that these advisors will advance their business interests.

¹ See Annexure ZGF 3.

² Anon, (2017). *'Duduzane is my only son involved with money. Help him wherever you can'*. [online] Available at: <https://www.timeslive.co.za/sunday-times/investigations/2017-06-17-duduzane-is-my-only-son-involved-with-money-help-him-wherever-you-can/>.

Ms Lakela Kaunda

9.

- 9.1. Ms Lakela Kaunda is Chief Operations Officer in the office of the Presidency. She has worked for President Zuma since 2000 and has been a senior advisor in the Office of the Presidency since 2009.
- 9.2. Prior to taking up her position in the Presidency, and while she was an employee of the African National Congress (hereinafter referred to as the "ANC") at Luthuli House, Ms Kaunda had drawn R20 000 per month as a director in the Gupta linked company, Wavestone Computers (Pty) Ltd. She resigned her directorship late in 2008.
- 9.3. Emails show that between November 2012 and January 2013, Ms Kaunda attended four meetings at the Gupta household — a fact which she admits. On 23 January 2013, Kaunda sent an email to Ashu Chawla, attaching the CIPC documents of a company called Ntomb'Nkulu Investments CC. She wrote: *"Document for T [Tony Gupta]. We will use this vehicle. He has the ID."* In response to an enquiry by the Sunday Times newspaper, Ms Kaunda said:
- "Gupta made an offer for me to join one of their companies and asked for an existing company to be a partner. I confirm that I sent the e-mail to Chawla about Ntomb'Nkulu Investments. I later contacted him to inform that I wish to decline and indicated that I do not want to participate in any business or other activities with them."*³
- 9.4. Ms Kaunda says she did not take further part in the business. Yet, her version is inherently suspicious. When she sent her email to Tony Gupta advising him to use Ntomb'Kulu as the vehicle to be used by the Gupta family, she had two days

³ Anon, (2017). *Guptas courted president's aide, Lakela Kaunda*. [online] Available at: <https://www.timeslive.co.za/sunday-times/news/2017-06-11-guptas-courtied-presidents-aide-lakela-kaunda/>.

previously resigned her membership in the CC and transferred her interest to her son, Siphesihle Fezeka Njabulo Kaunda.⁴ A draft resolution dated 22 March 2013, obtained from the Sahara Server, and to be signed as Directors by Duduzane Zuma and Tony Gupta, provided for the transfer of six ordinary shares in Dixie Investments (Pty) Ltd to Ntomb’Nkulu.⁵ In the circumstances, it appears that Ms Kaunda intended to take advantage of the Gupta family offer of largesse but took care to ensure that the interest in Ntomb’Nkulu would be held by her son, not her, by the time that it was issued shares by the Guptas.

9.5. Ms Kaunda was made a non-executive director of Ubank in December 2013. The following year, the Guptas began making enquiries in connection with a purchase of the bank. By August, they had signed a non-disclosure agreement with a view to tabling an offer for Ubank.⁶

10.

10.1. The closeness of the relationship between President Zuma and the Gupta family is reflected in the fact that Tony Gupta was involved in drafting a letter, in President Zuma’s name, to Sheikh Mohammed Bin Rashid Al Maktoum of the United Arab Emirates (hereinafter referred to as the “UAE”), requesting assistance with proposed residency status in the UAE.⁷

10.2. The letter was sent from Ashok Narayan to Tony Gupta under cover of an email dated 20 January 2016 which stated “*Sir ji, revised letter*”.⁸ The file name of the letter is “*JZ letter to Sheikh Mohammed rev 2001.16.docx*” which suggests that this was not the first revision to its contents.

⁴ See Annexure ZGF 7.

⁵ See Annexure ZGF 8.

⁶ See Annexure ZGF 9 and ZGF 10.

⁷ See Annexure ZGF 11.

⁸ See Annexure ZGF 12.

10.3. The letter itself states the following above the signature line of President Zuma:

"I fondly remember our meeting in the UAE and the gracious hospitality and warmth extended to me during my visit. It is with this sentiment that I am happy to inform you that my family has decided to make the UAE, and specifically Dubai, a second home and have already acquired a residence located at Emirates Hills, Dubai (Villa No. L-35, Lailak Street No.1). It will be a great honor for me and my family to gain your patronage during our proposed residency in the UAE especially around security issues since my son and the family will be travelling quite extensively in and out of the UAE.

To this end I would be grateful if you would kindly grant an audience to my son,

. Duduzane Zuma to meet with you and formally introduce the family to you."

11.

The President denies any knowledge of this letter and to date has failed and/or refuses to take steps against the Guptas.

Zuma family members' ties to the Gupta family

12.

Apart from President Zuma, there appear to be three known points of contact between the Zuma and Gupta families, namely:

12.1. The President's wife, Gloria Bongzi Ngema-Zuma, whom he married in 2012;

12.2. Duduzile Zuma, the President's daughter from his third wife, the late Kate Matsho;

and

12.3. Duduzane Zuma, the President's son from this third wife, the late Kate Matsho.

Gloria Bongzi Ngema-Zuma

13.

13.1. Ngema-Zuma's relationship with the Gupta family appears to have started in 2010, when she was rumoured to be engaged to President Zuma.

13.2. Public records reveal that, during 2010, the Gupta family assisted to purchase a property for Ngema- Zuma.⁹

13.2.1. CIPC documents show that, in the first quarter of 2010, Ngema-Zuma registered the Sinqumo Trust.¹⁰ Ngema-Zuma is the only listed Trustee of the Sinqumo Trust.

13.2.2. In April 2010, shortly after the Sinqumo Trust was registered, the trust purchased a house in the affluent suburb of Waterkloof Ridge, Pretoria ("the Property").¹¹ Shortly thereafter, Ngema-Zuma took occupation of the Property.

13.2.3. According to reports, the Property cost R5.4 million. The Bank of Baroda registered a bond over the property in the amount of R3.8 million. On 7 April 2016, the City Press reported that it had been granted access to the records and share registers of some Gupta-owned companies, including JIC Mining. City Press reported that an extract of the minutes of a JIC Mining board meeting held on 10 February 2010 recorded that the Bank of Baroda agreed to grant a facility to the Sinqumo Trust in the amount of R3.84 million, on condition that JIC would guarantee all amounts owed by Sinqumo Trust under the facility. The JIC Board agreed to do this.¹²

⁹ See Annexure ZGF 13. Also see Coie, S. (2017). *First Lady's house backed by Guptas*. [online] CityPress. Available at: <http://city-press.news24.com/News/first-ladys-house-backed-by-guptas-20160417>

¹⁰ See Annexure ZGF 14. Also see Code for South Africa. (2017). *Trusts | Open Data | Code for South Africa*. [online] Available at: <https://data.code4sa.org/dataset/Trusts/3jhi-ewix/data?q=Sinqumo>.

¹¹ See Annexure ZGF 15.

¹² See Annexure ZGF 16.

- 13.2.4. Mabengela Investments (Pty) Ltd is a Gupta linked company in which Tony Gupta and Duduzane Zuma each hold a 25% shareholding. Documents recently obtained from the Sahara Company server show that Mabengela Investments (Pty) Ltd pays R65 000.00 per month,¹³ which is labelled as a “monthly investment”.¹⁴ It is difficult to see how these payments could be described as “investments” unless Mabengela Investments (Pty) Ltd regards the gratuitous payment of R65 000 per month for the benefit of President Zuma’s wife as an investment in political protection of its business interests and those of its associated Gupta companies.
- 13.2.5. This inference as to the true reason underlying the Gupta family assistance for the purchase of Ngema-Zuma’s home is reinforced by the fact that the Gupta family have sought to conceal the facts in this regard. In November 2012, the Gupta family spokesperson, Gary Naidoo, denied that the Gupta family or its businesses contributed in any way to the raising or paying of the bond for Ms Ngema Zuma.¹⁵

Duduzile Zuma

14.

- 14.1. On 13 August 2008, approximately eight months after President Zuma’s election as president of the ANC, Duduzile Zuma was appointed to the Board of Sahara Sahara Computers (Pty) Ltd and Sahara Consumables (Pty) Ltd.
- 14.2. Duduzile Zuma spent 13 months on the boards of these companies. On 30 September 2009, Duduzile Zuma resigned from her directorships of Sahara Computers and Sahara Consumables.

¹³ See Annexures ZGF 17 and ZGF 18.

¹⁴ See Annexure ZGF 19.

¹⁵ See Annexure ZGF 20. Also see Craig McKune, S. (2017). *Guptas 'bankroll' s Zuma's bond*. [online] The M&G Online. Available at: <https://mg.co.za/article/2012-11-30-00-guptas-bankroll-s-zumas-bond>.

- 14.3. When she was appointed to Sahara's Board, Duduzile was only 26 years old. It is unclear whether she had any tertiary qualifications. She certainly had no business experience that could qualify her for such responsibility in a company of the size of Sahara. The only reasonable conclusion is that her appointment was an attempt by the Gupta family to ingratiate themselves to President Zuma.
- 14.4. The timing of her appointment was no coincidence. It took place just after President Zuma's election as ANC President and when it was now inevitable that he would become South Africa's next President.

Duduzane Zuma

15.

- 15.1. During a 2011 interview with the *City Press* newspaper,¹⁶ Duduzane Zuma is reported to have said:

"I was introduced to the Gupta family by my father in late 2001, just like I met many people... At that time, my father said, I've got an interest in taking an IT direction in my life, and at that point they were doing the Sahara thing. It just made sense... If it wasn't for the Guptas, I would've gone the tenderpreneur route. 100%. What other options do I have? Then there would've been plundering."

- 15.1.1. It is difficult to imagine an innocent explanation for Duduzane Zuma's meteoric rise within the Sahara organisation.
- 15.1.2. He was first appointed to Sahara's board of directors on 13 August 2008. At the time, he was only 26 years old and could boast no obvious qualifications.

¹⁶ News24. (2017). 'I would have been further if my surname wasn't Zuma'. [online] Available at: <http://www.news24.com/Archives/City-Press/I-would-have-been-further-if-my-surname-wasnt-Zuma-20150429>.

15.1.3. Duduzane Zuma was appointed to the board together with his twin sister, Duduzile.

As pointed out above, their appointments coincided with President Zuma's election as President of the ANC, and with that election, his assumption of an office that designated him to be President of the Republic in 2009.

15.1.4. At the age of 35, Duduzane Zuma has amassed a vast fortune. He has multiple business interests many of which involve the Gupta family. A spreadsheet of Gupta Group companies saved on the Sahara Server¹⁷ demonstrates that, through Mabengela Investments, Duduzane holds interests in the following entities:

1. Afripalm Technology;
2. Infinity Media Networks;
3. Localiga;
4. Islandsite Investments;
5. Idwala Coal;
6. Goldridge Trading;
7. Gemini Mood Trading;
8. Oakbay Metals;
9. Elgasolve; and
10. Dixie Investments.

15.2. Duduzane Zuma provides access to his father. By way of illustration we refer to an email chain from the Sahara company's server¹⁸ which shows how he facilitated a

¹⁷ See Annexure ZGF 21.

¹⁸ See Annexure ZGF 22 (A-F).

meeting between President Zuma and Vladimir Evtushenkov, the Chairman of a Russian investment company called Sistema.

- 15.2.1. On 23 December 2014 Sistema's Managing Director, Evginy Chuikov, wrote an email to Duduzane Zuma. From the tone of this email, this was not the first time the two had corresponded. In the email, Chuikov wrote:

"I hope you are well and enjoying the run up to Christmas and New Year. I wanted to touch base with you as Vladimir Evtushenkov is planning to be in Davos on the 21st and 22nd January and we wanted to schedule a meeting with the delegation from South Africa. I understand that President Jacob Zuma may also be present and we would very much welcome a meeting with him. I would appreciate your guidance in this matter or perhaps a contact of the relevant person in his administration that could help us set this up. I look forward to hearing from you."

- 15.2.2. Duduzane Zuma responded on 1 January 2015. He told Chuikov that he was travelling at the time, and could only attend to the request upon his return on 15 January 2015.

- 15.2.3. On 18 January 2015, Chuikov reminded Duduzane Zuma about his commitment to make an appointment with President Zuma at Davos. He wrote:

"I hope you are well and back following your travels. I wanted to follow up on our correspondence over the Christmas break to see if there may be an opportunity for our Chairman Vladimir Evtushenkov to meet with President Zuma at Davos. I appreciate that his schedule must be very busy but we would naturally aim to find the most convenient time. Please let me know if this could be arranged."

- 15.2.4. On 20 January 2015 Duduzane Zuma sent the details of George Moloisi who is the man who could arrange the meeting. It was clear from this email that Duduzane

had spoken to Moloisi or the President, because he indicated that *"He is expecting your call..."*.

- 15.2.5. Sistema appears to have succeeded in arranging the meeting. Chuikov stated the following in reply:

"Thank you very much for putting me in touch with Mr Moloisi. We have spoken and are now discussing suitable time for the meeting. Please let me know if you also plan to be in Davos as Mr Evtushenkov and I would be delighted to see you too."

- 15.2.6. President Zuma met Evtushenkov in Davos and on 27 January 2015. Chuikov wrote to thank Duduzane Zuma for arranging the meeting:

"Thank you for setting up the meeting with President Zuma for our Chairman Vladimir Evtushenkov. We met in Davos and had a very productive and warm catch up.

In the meeting Mr Evtushenkov raised the topic of possible investments in South Africa with particular focus on healthcare and "Smart City" technologies. As you know Sistema is very keen to nurture our relationship and identify joint business opportunities. President Zuma expressed his support for these efforts and mentioned that both areas of focus may be of interest in South Africa."

- 15.3. Duduzane Zuma uses his influence to benefit Gupta companies. Below I set out the incident where Duduzane Zuma facilitated a meeting between Ajay Gupta and Mcebisi Jonas, at which Ajay Gupta attempted to bribe Jonas into accepting the post of Minister of Finance, and the role played by Duduzane Zuma in the appointment of Rocha as advisor to Minister Martins.

- 15.4. Below, I show how individuals friendly to the Guptas were appointed to high public offices after their CVs were forwarded to Duduzane Zuma:

- 15.4.1. Minister Zwane was appointed Minister of Mineral Resources after his CV was forwarded to Duduzane Zuma;
- 15.4.2. Richard Seleke was appointed Director General of Public Enterprises after his CV was forwarded to Duduzane Zuma;
- 15.4.3. Colin Matjila was appointed to the Board of Eskom after his CV was forwarded to Duduzane Zuma; and
- 15.4.4. I show how the President reassigned powers to Minister Muthambi after a request for such reassignment was forwarded to Duduzane Zuma.

16.

Transnet's Executive Directors

There is clear evidence of improper relationships between the Guptas and Messrs Sharma, Singh and Molefe during their tenure at Transnet.

Sharma

- 16.1. Sharma was chair of Transnet's Acquisitions and Disposals committee from June 2010 to December 2014.
- 16.2. The Gupta email records over this period reveal that Sharma shared confidential Transnet Board documents with the Gupta family. These included documents pertaining to Japan's Mitsui & Co's proposed urgent sale of electric locomotives to Transnet; and the agenda of a crucial meeting of Transnet's Acquisitions and Disposals committee in May 2014.
- 16.3. The committee then agreed to escalate the costs of the 1,064 locomotives tender from R39-billion to R52-billion (from which Essa's Tequesta stood to make billions

in professional fees from bidders). About a week before this meeting, Sharma sent the agenda to Tony Gupta at his wdrsa1@gmail.com email address.¹⁹

Brian Molefe

16.4. Brian Molefe was Transnet's CEO from February 2011 to March 2015.

16.5. The Public Protector recorded in the *State of Capture* report that:²⁰

"Mr Brian Molefe ("Molefe") is friends with members of the Gupta family. A. Gupta admitted during my interview with him on 4 October 2016 that Mr Molefe is his 'very good friend' and often visits his home in Saxonwold."

16.6. In conducting the *State of Capture* investigation, the Public Protector obtained and analysed the cell phone records of certain individuals, including that of Molefe, to establish their relationships with the Gupta family and their business associates. As is detailed further below (in respect of Molefe's tenure as CEO of Eskom), the Public Protector found that (during the period August 2015 to April 2016) Molefe regularly made and received calls to and from Ajay Gupta, and made frequent visits to the Saxonwold area (where the Gupta home is situated).²¹

Anjo Singh

16.7. Anoj Singh worked as Transnet's CFO from July 2012 to August 2015. During this period, he was treated to four suspiciously timed Gupta-funded trips to Dubai. Booking confirmations reveal that:

¹⁹ The email and the document are attached as Annexures **SOE 38 & SOE 39**

²⁰ Public Protector, '*State of Capture report*', Report 6 of 2016 at para 5.95, p 122.

²¹ Public Protector, '*State of Capture report*,' Report 6 of 2016 paras 5.96-5.101, pp 122-124.

- 16.7.1. From 6 to 9 June 2014, Singh stayed at the Oberoi Hotel in Dubai with Tony Gupta. This was three months after Transnet's award of the locomotives tender. It was also the time during which bidding for the Neotel deal was open.²²
- 16.7.2. From 7 to 12 August 2014, Singh again stayed at the Oberoi Hotel. Chawla forwarded Singh's reservation to an associate in Dubai, saying "[p]lease swipe the card for all charges". It was during that month, Transnet notified Neotel that it was the new preferred bidder.²³
- 16.7.3. From 7 to 9 November 2014, Singh was allegedly accommodated in the Oberoi Hotel in Dubai at the Gupta's expense. Weeks later, Neotel was awarded the contract concerned, worth R 1.8 billion. It paid Homix, a letterbox company allegedly connected to the Guptas, R41m.²⁴
- 16.8. Singh was again hosted in the Oberoi from 24 to 26 February 2015. The Guptas paid all expenses.²⁵
- 16.9. AmaBhungane has identified further evidence that Singh has business ties to the Guptas. It reported that:²⁶

"Company documents submitted to the Ras al-Khaimah Investment Authority indicate that on May 1, 2014, Indian national Vivek Sharma transferred ownership in a company, Venus Ltd, to Singh. We could not establish its purpose. Ras al-Khaimah is one of seven emirates making up the United Arab Emirates. The investment authority provides a highly secretive offshore company jurisdiction. Vivek Sharma and his father were Gupta associates, numerous e-mail exchanges show. This includes an invitation for Tony Gupta to attend Vivek's wedding in March 2014."

²² See Annexure SOE 40

²³ See Annexure SOE 41

²⁴ See Annexure SOE 42

²⁵ See Annexure SOE 43

²⁶ AmaBhungane, "#GuptaLeaks: Guptas and associates score R5.3 billion in locomotives kickbacks", 1 June 2017.

Improper conduct

Mabel Petronella (“Vytjie”) Mentor

17.

Mabel Petronella (“Vytjie”) Mentor, was an ANC member of parliament. In 2004, Ms Mentor was elected as Chairperson of Parliament’s Portfolio Committee on Public Enterprises — Parliament’s oversight body into, inter alia, South Africa’s state owned enterprises. In an affidavit deposed to by Ms Mentor and filed in the North Gauteng High Court, she swore to the following facts: ²⁷

“[7] I have been a member of the African National Congress since the 1980s. In 2002, I was elected as a member of parliament. In 2004, I was elected as Chairperson of the Portfolio Committee on Public Enterprises.

[8] In or around 2010, I received a telephone call from a woman (I do not know her name) inviting me to a meeting, ostensibly with the President at the Union Buildings. I boarded a flight from Cape Town to Johannesburg to attend this meeting.

[9] When I arrived at OR Tambo International Airport, Mr Gupta met me. I was surprised and had never met Mr Gupta before. Mr Gupta informed me that the President was unavailable.

[10] Mr Gupta took me unknowingly to the Gupta’s Sahara office where he introduced me to the senior Gupta brother. When I left the Sahara office, I was still under impression that I was being taken to Pretoria in order to meet with the President. However, I was taken to the Gupta’s residence in Saxonwold, where I was introduced to the other brothers. Within fifteen minutes of my arrival at their home, members of the Gupta family had already offered me the position of Minister of Public Enterprises.

²⁷ President of the Republic of South Africa v Office of the Public Protector and Another, case no.: 79808/16.

[11] There was a condition attached to their offer: upon my appointment as Minister of Public Enterprises, I was required to cancel South African Airways' ("SAA") routes to India. This route would be taken over by an airline in which the Gupta family had shares.

[12] My impression was that the members of the Gupta family whom I met had knowledge of the fact that cabinet positions were to be reshuffled. They were after all brazen enough to offer me the position of Minister of Public Enterprises.

[13] I declined the offer and told the Gupta representatives that they lacked the authority to make such an offer. As I was leaving, the President entered the room. I recounted the offer and advised him that I could not, in good conscience, accept the offer. The President responded and said 'It's okay ntombazana, you have come such a long way in crutches' and saw me out.

[14] Approximately one week later and to my surprise, the President shuffled his cabinet. As part of this reshuffle, he replaced Ms Hogan with Mr Gigaba as Minister of Public Enterprises."

18.

Ms Mentor's affidavit directly implicates the Guptas. It places President Zuma at the Gupta household when the improper offer was made to her. It thus demonstrates that the Gupta family members were peddling Cabinet posts and that the President was complicit in this.

Mcebisi Jonas

19.

Mcebisi Jonas, the former Deputy Minister of Finance, reported a similar incident.

- 19.1. During October 2015 the Deputy Finance Minister, Mcebisi Jonas was invited to a meeting by Duduzane Zuma and Fana Hlongwane. The meeting was ultimately held on 23 October 2015 at the Rosebank Hyatt. An hour into the meeting, Duduzane Zuma requested the meeting to be moved to a quieter venue. Duduzane Zuma drove Jonas to the Gupta household in Saxonwold, where Jonas met with one of the Gupta brothers, whose name he does not recall.²⁸
- 19.2. At this meeting, the Gupta brother offered Jonas the position of Minister of Finance in exchange for a cash payment of R600 000.00 immediately and the promise of more money later. Jonas declined the offer and left the meeting. After this meeting, he warned the incumbent Finance Minister, Nhlanhla Nene, that his position was in danger.
- 19.3. On 9 December 2015, the President removed Nene from the office of Minister of Finance and replaced him with David van Rooyen. Van Rooyen had no experience in finance, and had served as a parliamentary backbencher. Van Rooyen was, however, closely connected to the Gupta Family. The true extent of his connection was revealed in the Public Protector's report entitled "*State of Capture*". The Public Protector's investigation included records of Van Rooyen's mobile phone activity. This investigation revealed that –
- 19.3.1. In the period preceding Nene's dismissal, Van Rooyen frequented the Gupta Household in Saxonwold. This in circumstances when he should have been in Cape Town as Parliament was in session; and
- 19.3.2. the night before Nene's dismissal, Van Rooyen made several telephone calls from the Gupta Household.

²⁸ Jonas Answering Affidavit in Minister of Finance v Oakbay and Others, Case no. 80978/2016, pp6-8, paras 12-16, Annexure NAT 1

- 19.4. On Van Rooyen's first day he arrived with two advisors, Mohamad Bobat and Ian Whitley. Both of these men were closely connected to Gupta family businesses. A few hours into his appointment, Whitley sent an email attaching strategic Treasury documents to a series of close Gupta business associates. Whitley's covering email, comprised only two words: "*Gents, finally*".
- 19.5. Van Rooyen's appointment was an economic disaster. The President was forced to replace Van Rooyen with Gordhan on 13 December 2015.
- 19.6. Gordhan was an effective Finance Minister. However, his second tenure as Finance Minister was characterised by conflict with President Zuma. On 27 March 2017, President Zuma dismissed Gordhan and Jonas. This occurred in circumstances where Gordhan acted against Gupta interests.
- 19.7. Gordhan was replaced as Minister of Finance by Malusi Gigaba, someone perceived to be close to the Guptas.
- 19.8. The sequence of events relating to the President's repeated replacement of the Minister of Finance leads unavoidably to the conclusion that his decisions in this regard have been influenced by the interests of the Gupta family and his son whose fortune is inextricably linked to theirs.

The Waterkloof landing

20.

The emails from the Sahara Server also show that during 2015, an employee at Oakbay arranged for a private aviation company to meet with the President at short notice so that arrangements could be made to spare the Guptas the inconvenience of having to depart South Africa from International Departures at OR Tambo Airport.

- 20.1. Duduzane Zuma, Shanice Zuma and members of the Gupta family (including Tony Gupta) were scheduled to depart Johannesburg for Mauritius using Oakbay's private jet, with call sign "ZSOAK".²⁹
- 20.2. The Gupta family procured the intervention of the President to change this state of affairs. This is apparent from an exchange of emails on 5 and 6 June 2015 between Bernhardt de Kock and Ms Ronica Ragavan, the CEO of Oakbay Investments, and Robbie Irons of Fireblade.³⁰

Themba Maseko

21.

- 21.1. Themba Maseko, the erstwhile CEO of the Government Communications and Information System (hereinafter referred to as the "GCIS") has gone on record publicly to describe another instance of direct Presidential intervention to support the Guptas.
- 21.2. In late 2010, the Gupta family were in the process of establishing their newspaper, *The New Age*. GCIS is mandated to, *inter alia*, handle State expenditure on advertising. Maseko was responsible for overseeing an annual advertising budget of R600 million. Maseko gave the following account to the Public Protector, which is paraphrased below from the *State of Capture* report:³¹
- 21.3. In late 2010 Maseko received several requests for meetings from members of the Gupta family. Maseko agreed to the meeting.
- 21.4. On the day of the meeting, while *en route* to the venue, Maseko received a telephone call from the President's office. The personal assistant indicated that the

²⁹ See Annexure ZGF 4.

³⁰ Annexure ZGF 5.

³¹ Public Protector, 'State of Capture report', Report 6 of 2016/2017 at p97, para 5.20

President desired to speak with Maseko. When the President came on the line, he greeted Maseko and said "*kuna labafana bakwaGupta badinga uncedo lwakho. Ngicela ubancede.*" Loosely translated, this meant that the following: "*The Guptas need your help. Please help them.*"

21.5. Maseko told the President that he was *en route* to Saxonwold, when the President said: "*Kulungile ke baba*" - "*It's fine then.*"

21.6. Maseko met with Ajay Gupta and one of his brothers. During the meeting, Ajay Gupta asked Maseko to channel advertising spent to *The New Age*. When Maseko raised the fact that the advertising spent in fact lay with the individual departments, Ajay Gupta was undeterred. He said that if Maseko encountered any problems with Ministers, the Gupta brothers would summon those Ministers to Saxonwold.

21.7. A few weeks later, a senior staffer at *The New Age* demanded a meeting with Maseko the following day. Maseko was on his way to the Nedbank Golf Challenge in Sun City, and indicated that he was unable to make such an appointment. An hour later, Ajay Gupta telephoned Maseko, demanding a meeting the following day. When Maseko refused, Ajay Gupta said: "*I will talk to your seniors in Government and you will be sorted out.*"

Mogokare Richard Seleke

22.

22.1. On Friday 28 July 2017, OUTA laid charges³² of fraud, extortion, corruption and high treason against the Director General of Public Enterprises Mogokare Richard

³² Randburg CAS NUMBER:578/7/2017

Seleke at the Randburg Police Station in Johannesburg. These charges also related to the Guptas in that:³³

- 22.2. Seleke was the cut-out who passed confidential emails from Eskom to the Guptas, inserted himself into state-owned entities' deals and helped his friends the Guptas use confidential information to buy a cheap mine and rip off billions of rand from South Africa.
- 22.3. He tried to cover his tracks with an anonymous email address but failed.
- 22.4. Seleke served on the Transnet board from November 2014 until November 2015, chairing the risk committee and serving on the acquisitions and disposals committee. At the same time, he was the director general of the Free State's Department of Economic Affairs.
- 22.5. Unofficially, he was the go-between who helped the Guptas manipulate massive pay-offs from Transnet and Eskom deals.
- 22.6. In March 2015, Seleke emailed Ashu Chawla, the CEO of the Guptas' Sahara Computers, sending him a spreadsheet showing how the Gupta empire would be paid hundreds of millions of US dollars for brokering Transnet's locomotive deal with China South Railways.
- 22.7. Later in 2015 Seleke received confidential Eskom information from Koko Matshela, then Eskom Executive for Technical and Commercial, and passed it on to the Guptas *via* Chawla and Tony Gupta. This helped the Guptas purchase the embattled Optimum coal mine from Glencore, by giving them information they could use to manipulate the deal.
- 22.8. In June 2015, Seleke emailed his CV to Duduzane Zuma – he used his anonymous email as an alias to send "my CV" and signed it from "Richard" thus blowing his

³³ In the interest of brevity the evidence submitted under this complaint has not been attached and will be made available upon request.

own cover – and by November he was appointed director general of the national Department of Public Enterprises by, President Jacob Zuma.

- 22.9. Still using his “anonymous” email, Seleke passed on information about Denel to the Guptas.

23.

Mosebenzi Zwane

- 23.1. On Monday 24 July 2017, OUTA laid charges³⁴ of treason against minister Mosebenzi Zwane, for actively aiding state capture and causing massive financial loss to South Africa.
- 23.2. OUTA laid charges of treason, corruption, extortion, fraud and theft against Mineral Resources Minister Mosebenzi Zwane at the Randburg police station in Johannesburg. These charges also related to the Guptas in that:³⁵
- 23.3. Zwane’s conduct underlines the compromised position of President Jacob Zuma, who appointed the underqualified Zwane as Minister of Mineral Resources in September 2015 – after his CV was vetted by the Guptas – and retained him ever since despite widespread public knowledge of his behaviour.
- 23.4. Zwane abused his position to promote the Vrede dairy project in the Free State with a company called Estina, which benefitted the Gupta empire; this cost the Free State at least R183.95 million. He was crucial in arranging the illegal landing of the Guptas’ wedding flight at Waterkloof Air Force Base.
- 23.5. He facilitated the sale of Optimum Coal Holdings assets to the Guptas and his department later authorised the release of the two mine rehabilitation trust funds linked to those mines – a total of nearly R1.8 billion – which apparently went into

³⁴ Randburg CAS NUMBER: 482/7/2017

³⁵ In the interest of brevity, the evidence submitted under this complaint has not been attached and will be made available upon request.

Gupta accounts at the Bank of Baroda and disappeared. He also tried to defend the Guptas' banking access.

- 23.6. Zwane's rewards from the Guptas included all-expenses-paid trips to their family weddings in Sun City and India, a Dubai trip, and an all-expenses paid trip to India for himself and his local gospel choir.

Ms Faith Muthambi

24.

24.1. On 17 July 2017, OUTA laid charges³⁶ of treason against Minister of Communications Faith Muthambi. These charges also related to the Guptas in that:³⁷

24.1.1. Muthambi knowingly and deliberately shared three confidential Cabinet memoranda, through emails with Tony Gupta, Duduzane Zuma and Sahara's CEO Ashu Chawla.

24.1.2. She was responsible in the appointment of Motsoeneng, who was instrumental in funding the ANN7 Breakfast Show, although ANN7 is a competitor to SABC and for which the SABC paid R43 million to Infinity Media, a company affiliated to Duduzane Zuma and the Guptas.

24.1.3. She further sent a series of emails to Tony Gupta on matters of executive policy and the scope of her ministerial powers is.

24.1.4. The first of these emails reads: "*These sections must be transferred to the Minister of Communications*". This refers to an attached document describing the statutory

³⁶ Brixton CAS NUMBER: 223/7/2017

³⁷ In the interest of brevity, the evidence submitted under this complaint has not been attached and will be made available upon request.

provisions which "*must be transferred*" to her portfolio, from the Postal and Telecommunications portfolio.

24.1.5. The second email reads: "*Sentech's signal distribution must rest with the Ministry of Communications*". Again the attached document motivates why there should be a transfer of powers and functions over Sentech from the Minister of Postal and Telecommunications.

24.1.6. In another email to Chawla, on a draft proclamation in the name of the President, transferring more administration, powers and functions to her portfolio, Muthambi's words are even more strident: "*See attached Proclamation that President must sign.*"

24.2. Emails flowed freely out of the Ministry of Communications from Faith Muthambi, and Tony Gupta, Ashu Chawla, Duduzane Zuma and others with the intention of advancing the Gupta family to the expense of the State and tax payers.

Unlawful gratification and benefits received / The *quid pro quo*

25.

Throughout their improper dealings and relationships with government official the Guptas received several gratification and/or benefits. Some of these include, but is not limited to –

Transnet's locomotives tender and the R5,3 billion kickback to Tequesta

26.

26.1. During July 2012, Messrs Sharma, Molefe and Singh was in charge of overseeing a tender to purchase 1064 locomotives at a value of R50 billion.

- 26.2. The tender was awarded on 17 March 2014 and was divided between four suppliers (on the advice of Regiments Capital). These included China South Rail (Hong Kong) Co. Ltd, which was contracted to supply 359 locomotives – 60% of the electric locomotives procured; China North Rail, General Electric and Bombardier.
- 26.3. The Gupta emails have revealed that a company registered in Hong-Kong (Tequesta (Pty) Ltd) earned a 21% “*advisory services fee*” of the contract value of Transnet’s procurement from China South Rail (dubbed CSR’s “Project 359”) – R3.8 billion of the R18.1 billion contract.
- 26.4. Tequesta is a Gupta front company set up with the knowledge and assistance of Seleke for the purposes of channelling public funds to the Guptas. Its sole director is the Gupta’s principal business associate, Essa.
- 26.5. China South Rail (hereinafter referred to as “CSR”) and Tequesta concluded a “Business Services Development Agreement” on 18 May 2015.³⁸ In terms of the agreement, Tequesta would provide “*advisory and consultant services*” to CSR in respect of Project 359.
- 26.5.1. Clause 6.1.1 provides that “*Tequesta shall be entitled to an Advisory Fee of 21% (Twenty one percent) of the Contract value of Project 359...*”, payable when CSR receives payment from Transnet.
- 26.5.2. Extraordinarily, the final clause of the contract (in Annexure A) provides that:
- “The company [CSR] will not require any proof of delivery of the above services since it is understood that the project would not have materialised without the active efforts of Tequesta to provide the services listed above”.*

³⁸ A copy of the agreement is attached as Annexure SOE 33.

- 26.6. The most innocent interpretation of this clause is that it reflects that Tequesta was able to peddle the Gupta family's political connections within Transnet, in order to divert work to CSR in breach of all Constitutional and statutory requirements relating to the procurement of goods by organs of state.
- 26.7. Following the conclusion of the "*Business Services Development Agreement*", Transnet placed two further procurement orders with CSR for another 95 and 100 electric locomotives, at a cost of R2.7 billion and R4.4 billion, respectively. It appears that no competitive tender process was followed for these acquisitions. Tequesta claimed the same 21% service fee from CSR for these contracts – bringing its total earnings from Transnet's procurement from CSR to R5.3 billion.
- 26.8. Reconciling leaked records, *AmaBhungane* has exposed the particular role that Iqbal Sharma played in ensuring that Transnet purchased its electric locomotives from CSR. *AmaBhungane* explains that, six months before the award of the R50 billion locomotives tender, Sharma ensured that a competing offer for the provision of 100 electric locomotives from Japan's Mitsui & Co was thwarted.
- 26.9. *Amabhungane* reported as follows:³⁹

"Six months earlier, in October 2013, Transnet's Sharma e-mailed Rajesh Gupta and senior Gupta employee Ashu Chawla. By this time, it should be noted, Sharma was about to be a business partner to Essa and the Guptas – he was negotiating his and their imminent joint acquisition of VR Laser, a steel cutting business. But these e-mails were not about VR Laser.

To Chawla, Sharma sent a memorandum that had been submitted to the acquisitions and disposals committee, which he headed. It motivated for the urgent acquisition by 'confinement' – that is, without a tender – of 100 electric locomotives

³⁹ Copies of this article and the emails that it cites are attached as Annexures SOE 34 - SOE 37

from Japan's Mitsui & Co pending the finalisation of the 1,064 tender, which had been delayed. If the Guptas were batting for CSR, the award to a competitor would have threatened their interests. Sharma provided the solution.

To Rajesh Gupta, better known as Tony, Sharma e-mailed two letters: One from him to the department of public enterprises director-general, and the other a draft reply from the director-general.

The letter to the director-general was in the form of Sharma seeking advice from the department, which represents government as Transnet's shareholder.

But in it Sharma expressed serious doubt about the acquisition, saying: 'My own view as chairman ... is to decline the request for confinement and procure by way of an open and transparent tender process.'

He added that it 'could appear' that Transnet's freight rail division, which had motivated the acquisition, wanted to favour 'particular companies that have enjoyed similar treatment in the past'.

The director-general's draft reply – which, metadata shows, Sharma authored himself – concluded: 'We do not readily support the use of confinement as a method of procurement and in this instance we would urge the [acquisitions and disposals committee] to not grant approval for this procurement with a confinement.'

The record shows that Mitsui & Co did not get the contract for the extra 100 locomotives, but that CSR did. We could find no evidence that this followed an open tender. End result: By early 2014, CSR had contracts to supply Transnet with 95, 100 and 359 locomotives – 554 units in total."

Transnet – VR Laser Services

27.

- 27.1. While the Guptas and their business associates gained directly from the Transnet procurement from CSR, they also stood to benefit indirectly through the local sub-contracting conditions. The winning bidders were required to source 60% of the locomotive components from South African subcontractors.
- 27.2. In February 2014, a few weeks prior to Transnet awarding the locomotives tender (on 17 March 2014), Tony Gupta and Duduzane Zuma acquired shares in local steel-cutting and processing company, VR Laser Services (Pty) Ltd (through their company Westdawn Investments, and Craysure Investments which is a wholly-owned subsidiary of Westdawn Investments).
- 27.3. Each of the four winning bidders visited VR Laser Services to assess the possibility of subcontracting work to them. The Gupta family and Duduzane Zuma accordingly stood to benefit handsomely from the local subcontracting condition.

Transnet – Regiments/ Trillian advisory contracts

28.

- 28.1. Gupta associates also benefitted from Transnet's procurement of advisory consultant services from Regiments Capital and later Trillian, both Gupta-linked companies.
- 28.2. The Regiments Group comprises *inter alia* Regiments Capital (Pty) Ltd which is a financial advisory business, and a range of other financial services companies. Wood has a 32% shareholding in the Regiments Group through the Zara Family

Trust. The other two directors and major shareholders in the Group are Litha Nyhonyha and Niven Pillay.

- 28.3. Wood had always been the director primarily responsible for Regiments Capital. In the course of 2015 and early 2016 Wood fell out with Nyhonyha and Pillay. According to the latter, this was because of their misgivings about Wood's close business relationships with the Guptas and Wood ultimately took his financial advisory business to Trillian Capital (Pty) Ltd on 1 March 2016.⁴⁰
- 28.4. The extraordinary and convoluted manner in which Transnet's payments to Regiments for advisory services ballooned, and then how Trillian acquired the benefits of Regiments' contracts with Transnet, is detailed in the *Betrayal of the Promise* report.⁴¹
- 28.5. Transnet's employment of these companies and the escalation in Transnet's payment for their services appears to have been facilitated primarily by the newly-appointed Transnet CFO, Anoj Singh.
- 28.6. Regiments Capital is a fund management and investment advisory company, specialising in public sector infrastructure projects. The company was initially subcontracted in 2012 by McKinsey & Company, after Transnet invoked unexplained conflicts of interest with McKinsey preferred subcontractors and proposed that Regiments be appointed as a substitute. Transnet's payment for financial advisory services for the locomotives deal was initially capped at R35.2 million, with Regiments given an estimated R10 million share.
- 28.7. Singh proceeded to transfer the bulk of the work under the McKinsey contract to Regiments, to amend the contract scope, and – with Molefe's approval – increase

⁴⁰ Wood's dispute with Nyhonyha and Pillay remains unresolved. It is being ventilated in the Gauteng High Court, Johannesburg in case number 35530/2016. The facts stated in this chapter relating to Wood, Regiments and Trillian emerge from the papers in that case.

⁴¹ *Supra* at pp 28-30.

the contract value to an astonishing R265 million. As the *Betrayal of Promise Report* explains (drawing on *AmaBhungane's* investigative reports):⁴²

"Singh, signing on behalf of Transnet, also increased the contract value by R6 million, bringing the total contract to R41.2 million, of which a R21 million 'fixed price' would go to Regiments, according to the amaBhungane investigation. Two months later, in April 2014, Singh sent a memo to Molefe in which he motivated for a post-facto revision in the fee allocation to Regiments, asking to add an additional R78.4 million. The additional fee was apparently based on Regiments' own calculation of 'the billions' its advice had supposedly saved Transnet. Singh's rationale was that Regiments had apparently demonstrated to Transnet that it could save money by splitting the locomotive order between four bidders (ultimately awarded), rather than choosing one or two. According to Singh, as summarised by amaBhungane, although this would make each locomotive more expensive, as bidders would have a smaller volume to dilute their overheads, the full complement of 1 064 could be delivered more quickly. Based on this reasoning, the amendment to the original contract value increased Regiment's payment from R21 million to R99.5 million. Molefe provided approval for this.

In early 2015, the then group treasurer of Transnet, Mathane Makgatho, resigned unexpectedly. The media reported that she told her staff: 'I arrived here with integrity, and I will leave with my integrity intact.' She was replaced by Phetolo Ramosebudi, the previous group treasurer of SAA, who weeks after his appointment on April 28 2015, compiled a proposal purporting to approve a 'contract extension' for Regiments' support to Transnet on the locomotive

⁴² *Betrayal of the Promise: How South Africa is Being Stolen*, May 2017. Available online at: <http://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf> at p 28.

transaction, raising its fee from the previous R99.5 million by R166 million to total R265.5 million.”

- 28.8. In 2015, the Guptas reportedly sought to buy a stake in Regiments Capital. After the directors of Regiments refused the purchase offer, the Guptas, apparently operating through Essa, bought over a small investment firm, Trillian Asset Management. Essa acquired a 60% stake in Trillian, and was registered as its sole director.⁴³
- 28.9. In December 2015, Transnet (now acting under its new Board) paid Trillian R93.5 million for acting as “*the lead arranger*” for a R12 billion loan by a syndicate of banks to finance Transnet’s locomotives purchase. It appears from the papers in Wood’s dispute with his former partners that he performed most of the work relating to the arrangement of the R12 billion loan while he was still employed by Regiments Capital, yet Transnet paid the R93.5m to Trillian. Moreover, the *Betrayal of the Promise* report notes:⁴⁴

“Usually in such a deal, the lead arranger would be one of the lenders – typically an experienced financial or advisory institution, lending at least as much money as each of the others. Trillian Asset Management was a small boutique asset manager, arguably without the capacity to lead a R12 billion bank syndicate. Furthermore, the SOE’s own corporate treasury, one of the largest in the country, could arguably have arranged the loan itself. Trillian allegedly did at least R170 million worth of work for Transnet. It remains unclear what kind of work could justify such large pay-outs of state resources.”

⁴³ Sunday Times ‘*Transnet deals fall into Gupta man’s lap*’, 22 May 2016.

⁴⁴ *Betrayal of the Promise: How South Africa is Being Stolen*, May 2017. Available online at: <http://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf> at p 28. at p 29.

- 28.10. In August 2016, *AmaBhungane* reported that, by the end of June 2016, Transnet had paid Trillian a further R74 million for invoices that appeared “*remarkably skimp on detail*” and did not indicate time or personnel allocated.⁴⁵
- 28.11. Further see the report by Geoff Budlender SC which was drafted for T Sexwale on allegations with regard to the Trillian Group of companies, and related matters.

29.

Transnet – Appointment of Ms Linda Mabaso

- 29.1. Minister Lynne Brown facilitated the appointment of Gupta associates to the Transnet Board in December 2014. Which included Ms Linda Mabaso, who was appointed chairperson of Transnet.
- 29.2. In July 2014, the Guptas assisted Ms Mabaso to obtain a business visa to India for her son Sphilile Malcolm Mabaso. They also arranged his flights to India.⁴⁶
- 29.3. Sphilile Malcolm Mabaso was also a business associate and co-director with Essa in Premium Security and Cleaning Services (Pty) Ltd – 2013/127549/07.
- 29.4. Malcolm Mabaso was appointed as a special adviser to Minister Zwane in October 2015.⁴⁷

Eskom – Appointment of Colin Matjila

30.

- 30.1. Minister Gigaba appointed Colin Matjila to Eskom’s Board in June 2011 and as Acting CEO on 1 April 2014. This was after Essa sent Matjila’s CV to Tony Gupta

⁴⁵ amaBhungane , ‘Gupta-linked firm’s R167m Transnet Bonanza’, 28 August 2016.

⁴⁶ See Annexures SOE 49, SOE 50 & SOE 51

⁴⁷ amaBhungane ‘The Gupta-owned’ state enterprises’, 24 March 2016.

on 22 March 2014 and Tony Gupta forwarded the CV to Duduzane Zuma on 23 March 2014.⁴⁸

- 30.2. Matjila has shared directorships with Essa, in Inca Energy (Pty) Ltd - 2009/022231/07 and Nu Age Energy (Pty) Ltd - 2010/024567/07. Through his company Matlapeng Resources, Matjila is a 59.4% shareholder in Newshelf 960 (Pty) Ltd where he is a co-director with the CEO of Oakbay Resources, Ms Ronica Ragavan.
- 30.3. On 30 April 2014, within a month of being appointed as CEO, Matjila was responsible for irregularly approving Eskom's R43 million contract to sponsor the Gupta's New Age newspaper's "*business breakfasts*".

Eskom – Board and other appointments

31.

- 31.1. Shortly after her appointment as Minister in May 2014, Minister Brown recommended the appointment of a new Eskom Board to Cabinet. Cabinet confirmed the appointments in line with Brown's recommendation on 11 December 2014. These appointments included numerous individuals who had personal or business relationships with the Gupta family and their close business associates:⁴⁹
- 31.1.1. Dr Ben Ngubane, who Brown also appointed as chair of the Eskom Board in September 2015. Dr Ngubane served as a co-director (with Essa) of the natural resources exploration company, Gade Oil and Gas (Pty) Ltd from May 2013 to November 2014.⁵⁰

⁴⁸ The emails and CV are attached as Annexures **SOE 44 & SOE 45**

⁴⁹ Public Protector, '*State of Capture*', Report 6 of 2016/2017 at pp 119-120 paras 5.74 – 5.80. Also see *amaBhungane*, '*The 'Gupta owned' state enterprises*', 24 March 2016.

⁵⁰ Ben Ngubane resigned from the Eskom Board in June 2017.

- 31.1.2. Mark Pamensky, who sat on the Board of the Gupta's Oakbay company (Oakbay Resources and Energy (Pty) Ltd) until May 2017.⁵¹ Pamensky also served as a director on the boards of numerous other companies in which the Guptas hold a stake, including Shiva Uranium (Pty) Ltd, Yellow Star Trading 1099 (Pty) Ltd, and BIT Information Technology (Pty) Ltd. Pamensky also has direct business interests in Oakbay and Shiva Uranium and is a known friend of Essa;
- 31.1.3. Ms Viroshni Naidoo who is the wife of Kuben Moodley and a friend and business associate of the Guptas and Essa. Moodley is a director of Albatime (Pty) Ltd, which contributed to Tegeta's purchase of Optimum Coal Mine. Moodley also served as a co-director with Pamensky of BIT Information Technology;
- 31.1.4. Romeo Khumalo, who was a co-director with Essa at Ujiri Mining Technologies (Pty) Ltd (until Essa resigned in August 2015);
- 31.1.5. Ms Nazia Carrim, who is married to a first cousin of Essa, Muhammad Noor Hussains and;
- 31.1.6. Ms Mariam Cassim, a former employee of the Gupta's Sahara Computers company.
- 31.2. Minister Brown transferred both Brian Molefe and Anoj Singh from Transnet to Eskom.
- 31.3. In April 2015, Minister Brown appointed Molefe as acting CEO of Eskom, in August 2015, she appointed Singh as acting CFO at Eskom. Both appointments were made permanent in October 2015.
- 31.4. Under their management, Eskom abused its position to force Glencore's sale of Optimum Coal Mine ("OCM") to Tegeta and then allow Tegeta to profit from lucrative coal supply contracts with Eskom. It did so by, amongst others:⁵²

⁵¹ Pamensky resigned as Eskom director in November 2016, after the release of the Public Protector's State of Capture report.

⁵² Public Protector, 'State of Capture', Report 6 of 2016/2017 at pp 337-341, para 6.5.

- 31.4.1. Cancelling the Cooperation Agreement that Eskom's procurement officers and Tender Board Committee had negotiated with Glencore in respect of its coal supply to Hendrina power. The Board referred the matter to then Acting CEO, Molefe, who refused to approve the negotiated terms and cancelled the Agreement;
- 31.4.2. Levying a fine on Glencore of over R2 billion, referring the matter to arbitration and issuing a summons for the same penalty amount on the same day. As the Public Protector noted *"It is unclear as to why Eskom proceeded to refer a matter to arbitration and issue a summons on the same day. It can only be inferred that Eskom wished to exert pressure on OCH/OCM"*⁵³;
- 31.4.3. Refusing to re-negotiate terms with OCM and seeking to enforce the penalty levied against OCM, with the result OCM/OCH's Business Rescue Practitioners had no option but to look for possible entities to purchase OCM. To date, Singh remains the CFO of Eskom;
- 31.4.4. Refusing to consent to the sale of OCM to another purchaser (Pembani), so that Tegeta emerged as the only remaining entity that wished to make the purchase;
- 31.4.5. Forcing the sale of all shares held by Optimum CH, as Eskom refused to consent to a standalone transaction with OCM being the only entity sold;
- 31.4.6. Concluding lucrative contracts to supply coal to Arnot Power Station with coal from OCM. This essentially increased the financial stability of OCM and decreased Tegeta's obligations of post-commencement finance to OCM; and
- 31.4.7. Authorising an extraordinary pre-payment to Tegeta in the amount of R586 million, for the purchase of coal from Tegeta and delivery by OCM to Arnot Power Station. The Pre-Payment was approved by a committee of Eskom representatives at a meeting held at 21h00 on 11 April 2016. This was the very same day on which

⁵³ Public Protector, 'State of Capture', Report 6 of 2016/2017 at pp 339, para 6.9. (l).

Tegeta's request for approximately R600 million of bridging finance for the purchase of all shares in OCH was made to, and rejected by, the Loan Consortium of Banks and the day before payment fell due.

- 31.5. To date, Eskom has concluded coal supply-contracts with Tegeta, at inflated prices, to the estimated value of R11,7 billion.⁵⁴
- 31.6. Eskom's role in unlawfully assisting Tegeta to force the sale of OCM and all the shares in OCH, and its subsequent award of coal supply contracts to Tegeta for OCH's coal mines, is detailed in the Public Protector's "*State of Capture*" report.
- 31.7. In examining the role of the Board, the Public Protector disclosed evidence in the form of cell phone records of Molefe's regular interactions with Ajay Gupta and his close business associates in Tegeta.
- 31.8. The Public Protector found that:⁵⁵
 - 31.8.1. Between the period of 2 August 2015 and 22 March 2016 – being the period when Tegeta's forced purchase of OCM and OCH was being facilitated by Eskom – Molefe had called Ajay Gupta a total of 44 times and Ajay Gupta had called Molefe a total of 14 times;
 - 31.8.2. Between 23 March 2016 and 30 April 2016, Ms Ronica Ragavan (a director of Tegeta) made 11 calls to Molefe and sent 4 text messages to him. Of the calls made, 7 were made between 9 April 2016 and 12 April 2016. This includes one call made on 11 April 2016, when the prepayment was granted to Tegeta by Eskom; and
 - 31.8.3. Molefe was in the Saxonwold area, where the Gupta family resides, on 19 occasions between 5 August 2015 and 17 November 2015.

⁵⁴ amaBhungane and Scorpio, '#GuptaLeaks: How Eskom was captured', 10 June 2017.

⁵⁵ Public Protector "*State of Capture*" Report 6 of 2016/2017 at p 300-303, para 6.1.

- 31.9. The Public Protector concluded that the evidence reveals “a distinct line of communication between Molefe of Eskom, the Gupta family and directors of their companies in the form of Ms Ragavan and Howa. These links cannot be ignored as Molefe did not declare his relationship with the Gupta family.”⁵⁶
- 31.10. In addition to its unlawful facilitation of business to Tegeta, Eskom has paid Trillian Capital Partners (Pty) Ltd over R400 million for management consulting and advisory services.⁵⁷ Trillian Capital is 60% owned by Trillian Holdings (Pty) Ltd (a company in which Salim Essa has a majority stake and is the sole director) and 25% owned by Zara W (Pty) Ltd (a company owned and directed by Eric Wood); Eric Wood is one of the three directors of Trillian Capital; and Trillian Capital is one of the companies that contributed to Tegeta's price of Optimum Coal Mine.⁵⁸
- 31.11. The leaked records provide further evidence of corrupt ties that have facilitated these deals. After he became Eskom CFO, Anoj Singh stayed in the Oberoi Hotel in Dubai from December 17 to 24, 2015. The bill was sent to the Gupta's Sahara Computers. This trip started two days after Tegeta obtained Optimum Coal Holdings.⁵⁹
- 31.12. In the wake of Molefe's resignation (following the release of the Public Protector's *State of Capture* report), in November 2016, Minister Brown approved the Board's recommendation to appoint Koko as acting CEO of Eskom.
- 31.12.1. As Group Executive of Generation (i.e., as the Eskom executive responsible for securing coal for power stations), Koko had approved Eskom's controversial pre-payment of R586 million to Tegeta, which facilitated Tegeta's purchase of Optimum Mine.

⁵⁶ Public Protector “*State of Capture*” Report 6 of 2016/2017 at p 303, para 6.1(*ee*).

⁵⁷ amaBhungane and Scorpio, ‘#GuptaLeaks: How Eskom was captured’, 10 June 2017.

⁵⁸ Public Protector “*State of Capture*” Report 6 of 2016/2017 at p 269 paras 5.304 – 5.306.

⁵⁹ See Annexure SOE 46

- 31.12.2. As has been pointed out above, Koko repeatedly leaked confidential and privileged information from Eskom to the Guptas through Seleke and referred to Tony Gupta as "the Boss".
- 31.12.3. In January 2016, Koko and Mantsha, the CEO of Denel were flown to Dubai and accommodated at the Oberoi hotel at the Gupta's expense. In advance of their stay, Chawla wrote to the hotel stating: "*Sahara will pay the entire bill, please do not ask any credit card guarantee from the guest at the time of check-in.*"⁶⁰

The Neotel/ Homix transactions

32.

- 32.1. In 2014, Neotel allegedly paid R66-million in kickbacks to a Gupta-linked, shell company - Homix (Pty) Ltd, to secure contracts from Transnet. A further R25 million was agreed but not yet paid.
- 32.2. Neotel's CEO, Sunil Joshi reportedly agreed to pay a 10% "commission" fee to Homix to secure Transnet's purchase of R300 million in telecommunication network equipment from Neotel and a 2% "success fee" for Transnet's award of a five-year, R1.8-billion contract with Neotel for network services.
- 32.3. Neotel's board commissioned an investigation into the payments after the company's auditors blew the whistle to it in April 2015.
- 32.4. Neotel had made two suspicious payments to Homix for no apparent services rendered in the amounts of R34.5 million in April 2014 (after Neotel was awarded the R300 million network equipment contract) and of R41million in February 2015 (after Neotel was awarded the network services contract).

⁶⁰ See Annexures SOE 47 & SOE 48

- 32.5. In the course of Neotel's investigation, former managing director of the Guptas' Sahara Systems, Ashok Narayan, identified himself as the CEO of Homix.
- 32.6. On investigating the sources of Homix's funds (which also included Regiments Capital, Cutting Edge Commerce, Sechaba Computer Systems and Burlington Strategy Advisors - a Regiments Group Company), AmaBhungane reported that the company was indeed no more than a front, with ties to the Gupta's primary business associate, Salim Essa:⁶¹

"The company through which at least R250-million owed was a hole in the wall led by a ghost. With millions in its account, Homix was no more than a room behind a plain blue door abutting a latrine in a run-down office block in Centurion. Neighbours said the door hardly ever opened.

Its sole director, one Yakub Bhikhu, is untraceable and his credit history gives his most recent employment status – in 2013 – as 'unemployed'.

Homix's bank records show no sign that the company had staff. There were no salary payments, and only four months of payments to Vodacom for what appears to have been a single cell phone bill.

For the rest, the cash just flowed out again, mainly to Bapu Trading – a company even more obscure...

At the end of the six months in April last year, Homix's account had a balance of less than R200,000. But tens of millions more must have flowed in, as the outflows continued apace.

⁶¹ AmaBhungane, 'The Guptas and the R250 million "kickback laundry"', 29 October 2016.

A report on an investigation by an official agency, submitted to former public protector Thuli Madonsela and leaked this week, records that Homix purchased 16 batches totalling over R65-million in foreign currency from Mercantile Bank, to be remitted to Hong Kong as payment for imports.

But Mercantile got suspicious and reported three of the purchases, totalling R14.4-million, to the Reserve Bank's financial surveillance department, which froze it after inquiries revealed that customs documentation for the supposed matching imports had been falsified.

The report states: 'Homix remitted exorbitant amounts of money offshore illegally.'

The R51-million that got through to Hong Kong, according to the report, went to two companies: YKA International Trading Company and Morningstar International Trade. AmaBhungane could not trace YKA's sole director, a Chinese resident.

Morningstar's registered director and owner is Mahashveran Govender, a South African. But amaBhungane could not trace him either, not least as the residential address he gave Hong Kong's company registrar is a run-down at in central Johannesburg, where there was no sign of him.

Morningstar's Hong Kong registered address, however, gives a possible clue about where the money may have gone. It is a small, 15th floor office in Sheung Wan, the old part of Hong Kong.

The same flat is also the registered address of three Essa companies – Tequesta Group, Regiments Asia and VR Laser Asia."

- 32.7. Neotel's board subsequently reported its payments to Homix to the police as possible bribery.
- 32.8. The circumstances surrounding the Neotel-Homix agreement suggest the involvement in the scheme of Transnet's CFO, Anoj Singh and CEO, Brian Molefe, who approved the awards to Neotel. The background to these contracts were investigated by *AmaBhungane*, which reported: ⁶²

"At the end of 2013, Transnet put the master agreement out to tender. It was provisionally awarded to a competitor, T-Systems, but the latter withdrew by agreement some months later, an insider said, when it became apparent its solutions were inappropriate.

In April 2014, during this hiatus, Neotel paid its first R30-million to Homix. The Deloitte correspondence identifies the payment as relating to routers and other equipment that Neotel sold to Transnet.

Transnet is understood to have paid Neotel about R300-million for the equipment. Neotel's payment to Homix equals a 10% "commission".

In August 2014, Transnet notified Neotel that it was the new preferred bidder for the master agreement and that negotiations should be concluded before Christmas.

By early December, individuals close to the negotiations have claimed, Transnet became intransigent without clear reason. To protect sources, they cannot be identified.

⁶² amaBhungane , "Kickback' scandal engulfs Transnet", 31 July 2015.

A week later, they said, Neotel's chief executive, Sunil Joshi, met Transnet's chief financial officer, Anoj Singh, to whom the state-owned entity's procurement structures reported. After the meeting, Joshi allegedly asked his staff to approach Homix again.

A "success fee" was agreed with Homix – 2% of the R1.8-billion value of the master agreement with Transnet, equating to R36-million, plus R25-million in respect of a related agreement to sell assets to Transnet. Within hours, Transnet was ready to resume negotiations.

The next day, a Saturday, representatives from both sides met and resolved remaining issues – without any overt assistance from Homix. The master agreement was signed before Christmas."

- 32.9. Subsequently, it emerged that Transnet (under Molefe) awarded two more large projects – for closed-circuit television (CCTV) systems worth R835 million to Neotel without any tender and while Neotel was interacting with Homix.⁶³

Denel – Board appointments and contracts

33.

- 33.1. On 24 July 2015, Minister Brown overhauled the Denel Board, leaving only one board member in place: the Gupta-beneficiary - Nkopane "Sparks" Motseki.

- 33.1.1. A company in which Motseki is the sole director was allocated 1,3% in the Gupta-led consortium that bought Shiva Uranium in 2010.⁶⁴

⁶³ AmaBhungane, 'Transnet 'kickback' scandal widens', 7 August 2015.

⁶⁴ *Betrayal of the Promise* report p 34.

- 33.1.2. The Guptas had sponsored a trip by Motseki to Mumbai and Delhi in 2010.⁶⁵
- 33.1.3. In his capacity as Treasurer of the MK Military Veterans Association, Motseki had assisted to procure a donation of R850 000 from the Guptas to fund the conference of the association in 2010.⁶⁶
- 33.2. The list of new Denel Board members that Minister Brown recommended to Cabinet reportedly bore no resemblance to the one prepared by her department.
- 33.3. As the State Capacity Research Project notes, the new Denel Board "*also lacked skills and experience: there was, for example, not a single engineer (Denel being a highly technical state-owned company) and most had never served on a corporate board before.*"⁶⁷
- 33.4. Minister Brown again appointed known Gupta and Zuma associates to the Board. A key appointment was former advisor to Minister Faith Muthambi, Lungisani Daniel Mantsha as chair of the new Denel Board.
- 33.5. Shortly after his appointment on 24 July 2015, Mantsha suspended Denel's CEO, Riaz Salojee, its CFO, Fikile Mhlontlo and company secretary, Ms Elizabeth Africa. No formal reasons were given at the time. The suspensions were subsequently alleged to be for their roles in Denel's acquisition of Land Systems South Africa from BAE Systems, but questions were raised about the strength of the charges.⁶⁸
- 33.6. There are strong suspicions that the three company managers were suspended to make way for the Denel – VR Laser Asia deal.⁶⁹

⁶⁵ See Annexure SOE 52

⁶⁶ See Annexures SOE 53, SOE 54, SOE 55, SOE 56.

⁶⁷ *Betrayal of the Promise* report p 34.

⁶⁸ Mail & Guardian, 'VR Laser and the Guptas', 5 February 2016.

⁶⁹ Mail & Guardian, 'Guptas conquer state arms firm Denel', 5 February 2016.

- 33.7. As the chair of the Denel Board, Mantsha facilitated the conclusion of the Denel Asia joint venture between Denel and VR Laser Asia, a Gupta-aligned company.⁷⁰
- 33.8. VR Laser Asia is wholly owned by Gupta business partner, Salim Essa, and is an associate company of VR Laser Services, a South African steel-cutting business in which the Guptas and Duduzane Zuma have an interest (through Westdawn Investments).⁷¹
- 33.9. Westdawn Investments (also known as JIC Minister Services) has a 25% stake in VR Laser Services, and Salim Essa has a 75% stake. Duduzane Zuma and Tony Gupta control Westdawn Investments.
- 33.10. VR Laser Services is registered to the same Sandton office park where other Gupta businesses are based.
- 33.11. VR Laser Services has only three directors: Salim Essa, Pushpaveni Govender (a director of other Gupta companies) and Kamal Singhala (a nephew of the Guptas in his mid-20s, who gives as his address the Gupta's Saxonwold compound).⁷²
- 33.12. On 10 December 2015, the day after President Zuma appointed Des Van Rooyen as Minister of Finance, Mantsha submitted Denel's application to National Treasury for approval of the Denel Asia joint venture.⁷³
- 33.13. The Denel Asia joint venture was formally announced in January 2016. The joint venture was concluded by Denel without approval from the Minister of Finance or the Minister of Public Enterprises, as prescribed by the Public Finance Management Act.

⁷⁰ amaBhungane, 'How Denel was hijacked', 30 May 2016.

⁷¹ amaBhungane, 'Guptas conquer state arms firm Denel', 5 February 2016.

⁷² Mail & Guardian, 'VR Laser and the Guptas', 5 February 2016. The joint venture was dissolved and derregistered in May 2017.

⁷³ amaBhungane, 'GuptaLeaks: How the Guptas screwed Denel', 10 June 2017.

33.14. The incentive for the deal was allegedly a US \$4 billion tender to deliver long-range artillery to the Indian army. However, the terms of the deal were weighted heavily in favour of the Guptas in that:

33.14.1. Drafts of the joint venture agreement forwarded to the Guptas and Seleke show that Denel gave up its intellectual property to Denel Asia in return for little more than a promise of a R100 million marketing contribution from VR Laser Asia that was to be treated as an interest-bearing shareholder's loan to the Company by VR Laser Asia.⁷⁴

33.14.2. Moreover, in relation to its Indian operations, Denel Asia proposed to enter into a joint venture with an Indian investment company controlled by Anil Gupta and Adani Enterprises in terms of which the Indian investment company would have a right of first refusal to manufacture any products that Denel SOC Ltd. had licenced Denel Asia to manufacture or sell.⁷⁵

33.15. The Gupta email records evidence direct and improper ties between Mantsha and the Guptas. The emails evidence that –

33.15.1. Mantsha was flown to and accommodated in India and Dubai at the expense of the Guptas on several occasions.

33.15.2. In August 2015, Mantsha was flown to India, in the Gupta's jet (ZS-OAK) and in the company of Angoori Gupta, Rajesh Gupta, Arti Gupta, Sashank Singhala, Amankant Singhala, Salim Essa and Gysbert van den Berg. He was accommodated for a few nights with the Guptas at the ICT Maratha Hotel in Mumbai, in a room near the Guptas' presidential suite, at the Guptas' cost.⁷⁶

⁷⁴ See the drafts of the Investment Company Agreement and the JV Agreement forwarded to the Guptas and Seleke on 18 October 2015 which are attached as Annexures SOE 21, SOE 22, SOE 23, SOE 24 and the files called Attachment.docx attached to both emails)

⁷⁵ See Annexures SOE 57 & SOE 58

⁷⁶ See Annexures SOE 59 & SOE 60

- 33.15.3. In October 2015, Mantsha travelled to and from Dubai, accompanied by Duduzane Zuma and his wife (Shanice Zuma). Flights were booked for all three by the Gupta's travel agents and were invoiced to the Gupta's Sahara company. A visa was arranged by Sahara (Chawlu and Tony Gupta) for Mantsha.⁷⁷
- 33.15.4. On 3 January 2016, Sahara's CEO, Chawla confirmed travel arrangements for Mantsha. Mantsha was booked into the Oberoi Hotel in Dubai and Chawla arranged a concierge service for Mantsha to an exclusive housing estate in Dubai, at the expense of the Gupta's Sahara company.⁷⁸
- 33.15.5. Mantsha sent the Guptas confidential information he received in his capacity as Chairperson of Denel, including information Minister of Public Enterprises.
- 33.15.6. On 23 November 2015, Mantsha received an email from Keromamang Mhlongo, of the Department of Public Enterprises, whose Minister, Lynne Brown, has political oversight of Denel. The email was titled "*PFMA Section 54(2) Pre-Notification on the Proposed Formation of Denel Asia*," the e-mail was Minister Brown's response to Denel's notification to her of the proposed tie up. The e-mail was marked "confidential" and was meant to advise both Denel executives and the government in their dealings with the Guptas.⁷⁹
- 33.15.7. Five days later, on 28 November 2015, Mantsha forwarded Minister Brown's e-mail, using his law firm's address, to Ashu Chawla, CEO of Sahara.⁸⁰
- 33.15.8. Mantsha also sent the Guptas his personal bills. On 3 August 2015, Mantsha sent his municipal rates bill of R14 238 for his Randburg home, dated 11 June 2015, to Sahara's CEO, Ashu Chawla, saying: "*Please find the attached document for your urgent attention.*"⁸¹

⁷⁷ See Annexures SOE 61 & SOE 62

⁷⁸ See Annexures SOE 63 & SOE 64

⁷⁹ See Annexure SOE 65

⁸⁰ See Annexure SOE 66

⁸¹ See Annexure SOE 67

Prevention and Combating of Corrupt Activities Act, 2004

34.1. *"Section 3 General offence of corruption*

Any person who, directly or indirectly-

...

(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."

34.2. Section 1 defines 'gratification', as -

- "(a) money, whether in cash or otherwise;*
- (b) any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage;*
- (c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;*
- (d) any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation;*
- (e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;*
- (f) any forbearance to demand any money or money's worth or valuable thing;*
- (g) any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty;*
- (h) any right or privilege;*
- (i) any real or pretended aid, vote, consent, influence or abstention from voting;*
or

(j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage;”

34.3. According to section 24 the following presumptions are allowed under the following circumstances -

“(1) Whenever a person is charged with an offence under Part 1 or 2, or section 21 (in so far as it relates to the aforementioned offences) of Chapter 2, proof that that person, or someone else at the instance of that person-

(a) accepted or agreed or offered to accept any gratification from; or

(b) gave or agreed or offered to give any gratification to,

any other person-

(i) who holds or seeks to obtain a contract, licence, permit, employment or anything whatsoever from a public body, private organisation, corporate body or other organisation or institution in which the person charged was serving as an official;

(ii) who is concerned, or who is likely to be concerned, in any proceedings or business transacted, pending or likely to be transacted before or by the person charged or public body, private organisation, corporate body, political party or other organisation or institution in which the person charged was serving as an official; or

(iii) who acts on behalf of a person contemplated in subparagraph (i) or (ii), and,

if the State can further show that despite having taken reasonable steps, it was not able with reasonable certainty to link the acceptance of or agreement or offer to accept or the giving or agreement to give or offer to give the gratification to any

lawful authority or excuse on the part of the person charged, and in the absence of evidence to the contrary which raises reasonable doubt, is sufficient evidence that the person charged accepted or agreed or offered to accept such gratification from that person or gave or agreed or offered to give such gratification to that person in order to act, in a manner-

(aa) that amounts to the-

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

(bbb) 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;

(bb) that amounts to-

(aaa) the abuse of a position of authority;

(bbb) a breach of trust; or

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

(cc) designed to achieve an unjustified result; or

(dd) that amounts to any other unauthorised or improper inducement to do or not to do anything.

(2) Whenever a public officer whose duties include the detection, investigation, prosecution or punishment of offenders, is charged with an offence involving the acceptance of a gratification, arising from-

(a) the arrest, detention, investigation or prosecution of any person for an alleged offence;

(b) the omission to arrest, detain or prosecute any person for an alleged offence; or

(c) the investigation of an alleged offence,

it is not necessary to prove that the accused person believed that an offence contemplated in paragraphs (a) to (c) or any other offence had been committed.”

35.

Intimidation Act, 1982

35.1. Intimidation is defined in section 1 of the Act as when -

“Any person who-

(a) without lawful reason and with intent to compel or induce any person or persons of a particular nature, class or kind or persons in general to do or to abstain from doing any act or to assume or to abandon a particular standpoint-

(i) assaults, injures or causes damage to any person; or

(ii) in any manner threatens to kill, assault, injure or cause damage to any person or persons of a particular nature, class or kind; or

(b) acts or conducts himself in such a manner or utters or publishes such words that it has or they have the effect, or that it might reasonably be expected that the natural and probable consequences thereof would be, that a person perceiving the act, conduct, utterance or publication-

(i) fears for his own safety or the safety of his property or the security of his livelihood, or for the safety of any other person or the safety of the

property of any other person or the security of the livelihood of any other person;

...

shall be guilty of an offence and liable on conviction to a fine not exceeding R40 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment."

36.

Fraud

Fraud is the unlawful and intentional making of a misrepresentation which causes actual or potentially prejudicial to another.

37.

Forgery and uttering

Is the unlawfully and intentionally making a false document to the actual or potential prejudice of another and the unlawful and intentional passing off of said document to the actual or potential prejudice of another.

38.

Extortion

The crime of extortion is committed when a person unlawfully and intentionally obtains some advantage which may be of either patrimonial or a non-patrimonial nature, from another by subjecting the latter to pressure which induces him or her to hand over the advantage.

Treason

A person commits high treason if, owing allegiance to the Republic of South Africa, he/ she unlawfully engages in conduct within or outside the Republic of South Africa, with the intention of -

- Overthrowing the government of the Republic
- Coercing the government by violence into any action or inaction
- Violating, threatening or endangering the existence, independence or security of the Republic, or
- Changing the constitutional structure of the Republic.

Prevention of Organised Crime Act, 1998

40.1. Section 2 of the Act defines specific offences relating to organised crime as -

"2 Offences

(1) Any person who-

*(a)(i) receives or retains any property derived, directly or indirectly, from a **pattern of racketeering** activity; and*

(ii) knows or ought reasonably to have known that such property is so derived; and

(iii) uses or invests, directly or indirectly, any part of such property in acquisition of any interest in, or the establishment or operation or activities of, any enterprise;

- (b)(i) *receives or retains any property, directly or indirectly, on behalf of any enterprise; and*
- (ii) *knows or ought reasonably to have known that such property derived or is derived from or through a **pattern of racketeering** activity;*
- (c)(i) *uses or invests any property, directly or indirectly, on behalf of any enterprise or in acquisition of any interest in, or the establishment or operation or activities of any enterprise; and*
- (ii) *knows or ought reasonably to have known that such property derived or is derived from or through a **pattern of racketeering** activity;*
- (d) *acquires or maintains, directly or indirectly, any interest in or control of any enterprise through a **pattern of racketeering** activity;*
- (e) *whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity;*
- (f) *manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a **pattern of racketeering** activity;*

or

- (g) *conspires or attempts to violate any of the provisions of paragraphs (a), (b), (c), (d), (e) or (f),*

within the Republic or elsewhere, shall be guilty of an offence.


(2) The court may hear evidence, including evidence with regard to hearsay, similar facts or previous convictions, relating to offences contemplated in subsection (1), notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair..."

40.2. In turn '**pattern of racketeering**' is defined in section 1 read with schedule 1 as -
The planned, ongoing, continuous or repeated participation or involvement in at least **two** offences referred to below **and** of which **one** of the offences occurred after the commencement of this Act (21 January 1999) and the **last** offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to below:

- Any offence contemplated in sections 3 – 16 of the Prevention and Combating of Corrupt Activities Act, 2004;
- Extortion;
- Fraud;
- Forgery or uttering a forged document knowing it to have been forged;
- Any offence contemplated in sections 1(1) of the Intimidation Act, 1982
- any conspiracy, incitement or attempt to commit any offence referred to above.

41.

Therefore, based on the contents of this affidavit, I submit that the elements of criminal activities such as, but not limited to, fraud, high treason, racketeering and corruption be thoroughly investigated by the South African Police Service and other relevant law enforcement authorities.

Ba 
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Signed at Randburg on this 3rd day of August 2017.



Deponent

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

Signed and sworn before me, at RANDBURG on this 3rd day of AUGUST 2017.

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