
AFFIDAVIT

I, the undersigned,

BENJAMIN [REDACTED] THERON

do hereby make oath and state:

1.

I am an adult male employed as a Chief Operations Officer 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.

Handwritten signature and initials in the bottom right corner of the page.

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 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, 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 has access to the emails, established the authenticity of such and released an extensive report on state capture on 28 of June 2017 titled "No room to hide: A President caught in the act."

5.

Amongst these emails and documents, was evidence of conduct that constitutes crimes of Fraud, Extortion, High Treason and Corruption on the part of Mogokare Richard Seleke ("Seleke"), the Director General of the Department of Public Enterprises of the Republic of South Africa.



BACKGROUND

The Presidential appointment

6.

Seleke was a member of the Transnet board from 11 December 2014 to 27 November 2015. While on the board, Seleke served on the Acquisitions and Disposals Committee and chaired the Risk Committee. According to Transnet annual reports, as a Transnet director, Seleke was paid R144 000 during 2015 and R421 000 in 2016; he was also one of three Transnet directors who shared fees totalling R642 000 as Transnet nominated trustees of the pension funds. As a Transnet board member, Seleke was involved in seconding Brian Molefe and Anoj Singh to Eskom.

The power to appoint the Directors General of a national department vests exclusively in the President in terms of section 12(1)(a) of the Public Service Act of 1994. The President appointed Seleke as Director General of Public Enterprises in December 2015. He did so after Seleke had forwarded his curriculum vitae to Duduzane Zuma on 29 June 2015, apparently for consideration by others for appointment to the then vacant position of Director General of Public Enterprises. Copies of the documents are attached hereto and marked "SOE 2" and "SOE 3".

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Gupta emails

7.

Seleke has had an unlawful and improper relationship with the Gupta family since, at least, the start of 2015. Seleke has an anonymous email address infoportal1@zoho.com, from which he conducts Gupta related business under the pseudonym "Businessman". (Please refer to the comments attached hereto and marked "SOE 3.1" for the explanation of this conclusion.) Seleke's use of this anonymous email is an indication that he was aware that what he was doing was wrong and an attempt to hide what he was doing.

- 7.1 Using his infoportal1 address, Seleke had acted as a conduit between persons associated with **China South Railways** ("CSR") and the Gupta family. On 7 January 2015, close to a year before he was appointed Director General of Public Enterprises, Seleke received an email from zhangminyu54642@qq.com which is the email address for China South Railways' Indian subsidiary, CSR ZELC (India) Private Limited.

In 2015, he was head of the Free State Department of Economic Development, Small Business, Tourism and Environmental Affairs. Seleke was also on the Transnet board with effect from 11 December 2014 until 27 November 2015. While on the Transnet board, Seleke served on the Acquisitions and Disposals Committee and chaired the Risk Committee. He

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thus abused his position on the board – and particularly on its Acquisitions and Disposals Committee.

On 22 March 2015, Seleke forwarded this email to Ashu Chawla of the Guptas Sahara company. Attached to the forwarded email, was a spreadsheet indicating how Gupta linked companies were to be paid hundreds of millions of US dollars for their role in brokering Transnet's purchase of locomotives from China South Railways (Hong Kong), a subsidiary of China South Railways ("CSR"). Copies of the documents are attached hereto and marked "**SOE 5**" and "**SOE 6**".

There is no conceivable basis upon which Seleke might lawfully have been involved in email correspondence of this nature.

- 7.2 In the context of the Eskom/**Tegeta** Exploration & Resources (Pty) Ltd ("Tegeta") debacle, Seleke used his infoportal1 email to act as a conduit for Matshela Koko ("Koko"), the then former Eskom Group Executive: Technical and Commercial. Seleke used it to unlawfully share confidential Eskom documents with the Gupta family to the advantage of Tegeta in its attempts to purchase the Optimum coal mines from Glencore.

On 7 August 2015, Koko forwarded to Seleke a letter that the business rescue practitioners for Optimum Coal Mine (Pty) Ltd (in Business Rescue) ("OCM") had sent to Eskom. Seleke, in turn, forwarded this letter to Athul

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Chawla Copies of the documents are attached hereto and marked "SOE 7" and "SOE 8".

On 4 November 2015, Koko forwarded to Seleke a privileged legal opinion that Eskom had received from senior counsel advising on Eskom's rights in terms of its coal supply agreement with OCH. Seleke, in turn, forwarded this letter to wdrsa1@gmail.com which is an email address used by Tony Gupta. Copies of the documents are attached hereto and marked "SOE 9" and "SOE 10".

- 7.3 Seleke's collusion with Koko to provide improper assistance to the Gupta family in relation to Eskom matters, was not confined to the Tegeta/OCH case.

On 4 November 2015 Koko forwarded to Seleke a letter from **Just Coal** (Pty) Ltd ("Just Coal") complaining about Eskom's cancellation of its contract to provide coal for various Eskom Power Stations including Rotran, Matla and Arnot. The cancellation of the Just Coal's coal supply contract would provide an opening for the Guptas to profit by concluding a replacement coal supply contract with Eskom through Tegeta. In this context, Koko's email stated "Please give the Boss. The fight begins" Seleke had no difficulty identifying who "the Boss" was. He immediately forwarded Koko's email to Tony Gupta at his wdrsa1@gmail.com email address.

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Copies of the documents are attached hereto and marked "**SOE 11**" and "**SOE 12**".

- 7.4 Seleke, in his "BusinessMan" infoportal1 guise, was also included on much of the internal Gupta Group correspondence relating to the creation of **Denel Asia** and attempts to set up Denel India. Copies of the documents are attached hereto and marked "**SOE 13**" and "**SOE 26**".

He reciprocated by forwarding to Chawla internal correspondence between the Minister of Public Enterprises and Denel in relation to her tentative misgivings about the formation of Denel Asia. Copies of the documents are attached hereto and marked "**SOE 27**" and "**SOE 28**".

- 7.5 Seleke appears to have been involved with the Gupta company **Tequesta** Group Ltd ("Tequesta") which benefited from the Transnet / CSR locomotive purchase. On 15 December 2015, he forwarded a blank Tequesta letterhead received from Salim Essa to Chawla. Copies of the documents are attached hereto and marked "**SOE 29**" and "**SOE 30**".

On 1 March 2016, Seleke forwarded to Tony Gupta a spreadsheet analysing trends in the rand exchange rate, the balance of payments and the balance of payments over the periods of office of all Presidents and

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Ministers of Finance since democracy. Copies of the documents are attached hereto and marked "SOE 31" and "SOE 32".

The most likely purpose behind the production of this spreadsheet was an attempt to influence public debate over merits of retaining Minister Gordhan in office as Finance Minister.

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The Public Enterprises is important to the Guptas because of their interest in contracts with state-owned enterprises. Against the backdrop of Seleke's sustained improper relationship with the Guptas, it is difficult to find an innocent explanation for the President's appointment of him to the position of Director General of Public Enterprises.

President Zuma's appointment and retention of Seleke as Director General of Public Enterprises evidences his use of presidential powers to promote and protect the interests of the Guptas and their business associates, including the President's son, Duduzane Zuma. It also evidences the unlawful use of the President's appointment powers for improper purposes, and is a strong indication that an improper relationship exists between President Zuma and the Gupta family.

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CHARGES**Fraud**

9.

We allege that Seleke committed Fraud in that he unlawfully and intentionally made misrepresentations knowing it was false which caused actual and/or potential prejudice.

Contraventions of the Public Finance Management Act ("PFMA")

10.

We allege that Seleke acted in contravention of the PFMA. Seleke *inter alia* neglected to make "effective, efficient, economical and transparent use of the resources of the department" and he failed to safeguard and to the maintain the assets of the DPE.

11.

In terms of section 86(1) of the PFMA:

"An accounting officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer willfully or in a grossly negligent way fails to comply with a provision of section 38, 39 or 40."

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Extortion

12.

We allege that Seleke's conduct, as detailed above, was unlawful and intentional as he obtained advantages by exerting pressure which induced the handover of the advantages.

High Treason

13.

We allege that Seleke's conduct, as detailed above, constitutes high treason as it violated, threatened and endangered the existence, independence and security of the Republic of South Africa, or had the effect or potential effect of changing the Constitutional structure of the Republic of South Africa.

14.

Seleke, as a citizen of the Republic of South Africa and Director General of Public Enterprises, unquestionably owed his allegiance to the Republic. He intentionally and unlawfully participated in activities which violated, threatened and endangered the existence, independence and security of the Republic.

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15.

In terms of **Section 51(1)** of the Criminal Law Amendment Act 105 of 1997 (subject to subsections (3) and (6)), a Regional Court or a High Court shall sentence a person it has convicted of High Treason, to imprisonment for life.

Corruption

16.

We allege that Seleke's conduct, as detailed above, constitutes contraventions of the following sections of The Prevention and Combating of Corrupt Activities Act 12 of 2004 ("POC"):

a. **Section 3** of the POC, 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-*

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- (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."*

b. **Section 4** of the POC, 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*

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- (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.*

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(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;
- (g) diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person; or
- (h) exerting any improper influence over the decision making of any person performing functions in a public body."

c. **Section 7** of the POC, which states:

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"(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;*

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- (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-

- (a) absenting himself or herself from;
- (b) voting at any meeting of;
- (c) aiding or assisting in procuring or preventing the passing of any vote in;
- (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."

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d. **Section 21** of the POC, 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."

e. **Section 34** of the POC, which states:

"(1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed-

- (a) an offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2;*
or

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- (b) *the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more;*

must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation referred to in section 17C of the South African Police Service Act, 1995, (Act 68 of 1995)."

17.

In terms of **Section 26** of POC:

"(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.*


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- (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."*

18.

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

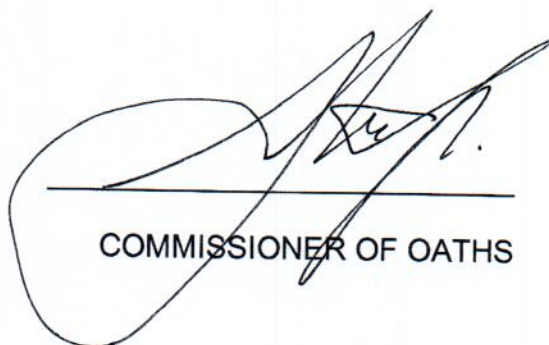
Signed at **RANDBURG** on this 28th day of **JULY** 2017.



DEPONENT

I CERTIFY that the deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn to before me at **Randburg** on this the 28th day of **July** 2017, the regulations contained in Government Notice No. R35 dated the 14 March 1980 having been complied with.

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