

AFFIDAVIT

I, the undersigned,

CHRISTIAAN WILHELM FREDERICH NEETHLING

do hereby make oath and state:

1. I am an adult male and Head of Investigations of the Organisation Undoing Tax Abuse ("OUTA") with its business address situated at 10th Floor, O'Keeffe & Swartz Building, Oak Avenue, Ferndale, Randburg.
 - 1.1. I am fully authorised to depose to this affidavit.
 - 1.2. The contents of this affidavit fall within my personal knowledge, unless stated otherwise, and are in all aspects true and correct.

A MANDATE

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

B INTRODUCTION

3. During the course of 2019, OUTA conducted an investigation into a series of irregularities pertaining to the Pro-Active Funding Model ("PAF") implemented by the National Lotteries Commission ("NLC"). In our preliminary findings, we

have established a reasonable suspicion that the so-called PAF is being utilised in an illegal manner without the proper executive oversight.

4. As part of its investigation, OUTA has identified an array of private entities and individuals who had participated in the NLC's PAF programme, and subsequently benefited from funding originating directly from the NLC.
5. It should be noted that the purpose of this affidavit is not to address the legitimacy of PAF as national policy *per se*, but rather to illustrate the criminal activity that had transpired from the utilisation of such policy by both public servants and private individuals alike.

C AWARDING OF GRANT AGREEMENT: IAMFGG NPC

6. On the 9th of April 2018, the NLC approved an application made by I am for Made God's Glory NPC ("IAMFGG") for a grant allocation of R11,375,00.00 (ELEVEN MILLION THREE HUNDRED AND SEVENTY-FIVE RAND), under project number 108033, purportedly for a charitable cause in line with the PAF model. A copy of the correspondence to this effect, namely a letter of award from the NLC to I am Made 4 God's Glory dated 9 April 2018, is attached hereto and marked **ANNEXURE "SF1"**.
7. IAMFGG is a non-profit organisation (NPO) registered on the 24th of May 2012 with Registration number 102-498-NPO. The following individuals are board members of IAMFGG:
 - 7.1. Lesley Ramulifho with ID no: 800511 5293 087 as Chairperson;
 - 7.2. Liesl Joy Moses with ID no: 810322 0116 085 as treasurer; and
 - 7.3. Joseph Tshabalala with ID no: 870317 5306 084 as Secretary
8. Subsequently, a grant agreement was entered into between the NLC and IAMFGG of which the latter is cited as the grantee. A copy of the grant agreement is attached hereto and marked **ANNEXURE "SF2"**.

9. The grant agreement was duly signed by Lesley Ramulifho, representative and chairperson of IAMFGG and Philemon Letwaba ("Letwaba"), representative and chief operating officer of the NLC on the 12th of April 2018. Letwaba has served as the NLC's COO from May 2014 until present. During the course of February 2020, Letwaba was placed on "leave of absence", however, OUTA is unaware until which date Letwaba was absent or whether he is still on such leave.

D RECEIPT OF GRANT FUNDING: IAMFGG

10. Following the conclusion of the grant agreement on 12th of April 2018, amounts of R 9,100,000.00 and R 2,275,000.00 were deposited into a Nedbank Current account, account number 1140879235 on the 22 April 2018 and the 6 July 2018 respectively. As apparent from the Nedbank bank statement(s) attached hereto and marked **ANNEXURE "SF3"**, it is reasonable to conclude that the holder of the Nedbank Current Account with account number 1140879235 is in fact IAMFGG. The payment sequence is stipulated as to be paid in tranches, namely "*Tranche 1*" and "*Tranche 2*" respectively as reflected in paragraph 4 of **ANNEXURE "SF4"**.
11. The account from which the deposits had been made is conclusively that of the NLC's. Of particular interest is the fact that the payments had been divided into the so-called tranches, effectively breaking 2 payments into payment less than R10,000,000.00 respectively. In this regard, the first tranche payment of R9,100,00.00 was deposited on 20 April 2018, while second tranche amounting to R2,275,000.00 was deposited on 6 July 2018.
12. In this regard, it should also be noted that tranche-based payments cannot reasonably be justified in terms of the grant agreement as the description thereof is fictional.¹ In the ordinary course of business, tranche payments are utilised to guarantee delivery by a contracting party. In this instance, IAMFGG did not deliver a "*satisfactory progress report*" prior to the receipt of the second

¹ See paragraph 4 of the grant agreement.

tranche payment. It is thus reasonable to conclude that this practice amounts to smurfing.²

13. In short, smurfing amounts to the division of large sums of money into much smaller transactions and is carried out by using multiple bank accounts. Such bank accounts may seem legitimate (at face value) as smurfing is conducted using a legitimate banking system. Consequently, unlawful proceeds can be laundered with little suspicion.

**E CHRONOLOGICAL ANALYSIS OF NEDBANK CURRENT ACCOUNT:
 10/01/2017 to 16/08/2018**

14. Upon conclusion of comparative analysis of **ANNEXURE “SF3”**, OUTA is confident to conclude that the grant funding so deposited into the business account of IAMFGG (account no: 1140879235) had not been utilised for the purpose(s) as stipulated in the grant agreement. The tables below illustrate the distribution of funds after IAMFGG had received funding from the NLC.

Table 1: Legal Drafting

DATE	LINE ITEM DESCRIPTION	AMOUNT
30/04/2018	Legal Drafting	R 67,000.00
05/05/2018	Legal Drafting	R 50,000.00
07/05/2018	Legal Drafting	R 100,000.00
07/05/2018	Legal Drafting	R 50,000.00
07/05/2018	Legal Drafting	R 30,000.00
08/05/2018	Legal Drafting	R 50,000.00
11/05/2018	Legal Drafting	R 26,000.00
16/05/2018	Legal Drafting	R 33,000.00
18/05/2018	Legal Drafting	R 28,400.00
21/05/2018	Legal Drafting	R 200,000.00
30/05/2018	Legal Drafting	R 10,000.00
07/07/2018	Legal Drafting	R 50,000.00
07/07/2018	Legal Drafting	R 25,000.00
10/07/2018	Legal Drafting	R 100,000.00
10/07/2018	Legal Drafting	R 30,000.000
11/07/2018	Legal Drafting	R 16,000.00

² See *The Enablers: The Bankers, Accountants and Lawyers that Cashed in on State Capture*, Open Secrets, at page 17.

12/07/2018	Legal Drafting	R 32,000.00
13/07/2018	Legal Drafting	R 15,000.00
14/07/2018	Legal Drafting	R 40,000.00
14/07/2018	Legal Drafting	R 25,000.00
16/07/2018	Legal Drafting	R 30,000.00
19/07/2018	Legal Drafting	R 10,000.00
25/07/2018	Legal Drafting	R 900.00
		R 1,018,300.00

15. It is important to note that IAMFGG was not involved in any form of legal proceedings at the time that the payment in Table 1 were made. Furthermore, is unreasonable to suggest that such payments relate to transfer and conveyancing fees related to the construction of a sports complex. In this regard, utilisation of grant funding for purposes of "legal drafting" is grossly irregular and in contravention of the obligations set out in the grant agreement.

Table 2: Upbrand Properties

DATE	LINE ITEM DESCRIPTION	AMOUNT
04/05/2018	Upbrand Properties	R 500,000.00
09/05/2018	Upbrand Properties	R 500,000.00
09/07/2018	Upbrand Properties	R 1,000,000.00
		R 2,000,000.00

Table 3: Management Fees

DATE	LINE ITEM DESCRIPTION	AMOUNT
30/04/2018	Management Fee	R 50,000.00
05/05/2018	Management Fee	R 20,000.00
07/05/2018	Management Fee	R 25,000.00
07/07/2018	Management Fee	R 100,000.00
20/07/2018	Management Fee	R 2,000.00
		R 197,000.00

Table 4: Franchise Fees

DATE	LINE ITEM DESCRIPTION	AMOUNT
28/04/2018	Franchise Fee	R 67,000.00
28/04/2018	Franchise Fee	R 67,000.00
28/04/2018	Franchise Fee	R 67,000.00
30/04/2018	Franchise Fee	R 38,500.00
05/05/2018	Franchise Fee	R 500,000.00
		R 739,500.00

16. The monies reflected as having been made for “franchise fees” is in contravention of clause 2.2.3 of the grant agreement. Furthermore, it is reasonable to conclude that the monies were utilised for franchising purposes of an Ocean Basket restaurant, managed and operated by Ramulifho. Attached hereto is a media article published by GroundUp in partner with the Citizen, dated 22 October 2019, illustrating the purchase the Ocean Basket by Ramulifho, marked **ANNEXURE “SF5”**.³

Table 5: Sports Complex Related Payments

DATE	LINE ITEM DESCRIPTION	AMOUNT
07/05/2018	Construction Sports Centre	R 500,000.00
30/05/2018	Thundavula Sports Complex	R 2,000.00
17/07/2018	Sports Centre	R 5,000.00
19/07/2018	Sports Centre	R 10,000.00
20/07/2018	Sports Centre	R 5,500.00
20/07/2018	Sports Centre	R 2,000.00
		R 524,500.00

17. According to a media article published on 20 January 2020,⁴ approximately 5% of the allocated grant had been utilised for purposes of the construction of a sports complex. OUTA is unable to determine whether the remainder of such funds had been utilised for the purposes set out in the grant agreement.

Table 6: Miscellaneous Payments

DATE	LINE ITEM DESCRIPTION	AMOUNT
04/05/2018	19771579998	R 5,000,000.00
07/07/2018	KFER TO 49771575/9998	R 700,000.00
		R 5,700,000.00

Table 7: Additional Miscellaneous Payments

DATE	LINE ITEM DESCRIPTION	AMOUNT
28/04/2018	Adv. Ridgard	R 83,000.00
03/05/2018	Ahdis Trading	R 50,000.00
03/05/2018	Lush Interiors	R 40,000.00
04/05/2018	Retail Park	R 50,000.00
04/05/2018	Cash Withdrawal fee	R 755.00

³ See <https://citizen.co.za/news/south-africa/investigation/2194125/how-lawyer-allegedly-spent-lottery-millions-meant-for-rehab-on-lavish-lifestyle/>.

⁴ See <https://www.groundup.org.za/article/money-lottery-goes-cousin-national-lotteries-commission-boss/>.

05/05/2018	KT Mogano Investments	R 200,000.00
07/05/2018	J Sibanda	R 500,000.00
08/05/2018	Vaja Products Pty Ltd	R 132,000.00
08/05/2018	Bradlows ref 3197196	R 19 599.95
08/05/2018	Bryan	R 5,400.00
08/05/2018	Nico electricity	R 400.00
11/05/2018	Blueridge Trading cc	R 3,400.00
18/05/2018	Transport	R 10,000.00
24/05/2018	Cliff Electricity	R 6,000.00
25/05/2018	Gryphon Lighting CC	R 10,280.00
25/05/2018	Sunkambe (Pty) Ltd	R 3,000.00
04/06/2018	Travelling	R 2,500.00
20/06/2018	Transport	R 557.00
10/07/2018	Mashabele Courier Pty Ltd	R 50,000.00
10/07/2018	Kenneth Kotelo	R 12,000.00
16/07/2018	Cliff	R 6,000.00
18/07/2018	Cliff	R 10,000.00
		R 1,194,891.95

18. OUTA is unable to determine whether IAMFGG had adhered to the above-mentioned obligations as set out in the grant agreement. However, even if IAMFGG had done so, the information reflected in the bank statements and/or audited financial statements ought to reflect the exact transactions as reflected in the tables above. Thus, the NLC reasonably ought to have known about IAMFGG's transactional history subsequent to the latter receiving grant funding.

19. The NLC would therefore have at the least supposedly been negligent had they transferred the second tranche payments without confirming the aforementioned audited financial statements corresponded with the reality on the ground and the expectation created as per the grant agreement.

20. Should the NLC therefore cite the contrary, it (as a public entity) failed in its duties as contemplated in the Public Finance Management Act, 1999 ("PFMA") in that it exposed, and continued to do so, the NLC to severe financial loss in maintaining the grant agreement.

21. It is important to note that none of the payments as referred to above suggest that the grant monies were utilised for purposes of fulfilling IAMFGG's obligations as set out in the grant agreement.

F LEGAL FRAMEWORK

PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, 2004 ("PRECCA")

22. In terms of section 4 of PRECCA, a public officer⁵ is guilty of an offense under the following circumstances, if such public officer:
- 22.1. is 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
- 22.2. is 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 that amounts to illegal, dishonest, unauthorised, incomplete, or biased misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or

⁵ According to PRECCA, the term 'public officer' refers to any person who is a member, an officer, and employee or servant of a public body. In this regard, the totality of personal on both executive and operation level within the NLC is potentially subject to the provisions of section 4.

functions arising out of a constitutional, statutory, contractual or any other legal obligation;⁶

22.3. designed to achieve an unjust result or that amounts to any other unauthorised or improper inducement to do or not to do anything.

23. Furthermore, the public officer's act (his or her conduct in physically putting his agenda into action) includes the following:⁷

23.1. voting at any meeting of a public body;

23.2. performing or not adequately performing any official functions;

23.3. expediting, delaying, hindering or preventing the performance of an official act;

23.4. aiding, assisting or favouring any particular person in the transaction of any business with a public body;

23.5. 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;

23.6. showing any favour or disfavour to any person in performing a function as a public officer;

23.7. 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

23.8. exerting any improper influence over the decision making of any person performing functions in a public body.

⁶ Section 4(1)(b)(ii) describes that such an act by a public officer must amount to the abuse of a position of authority, a breach of trust or the violation of a legal duty or set of rules.

⁷ Section 4(2)(a)-(h).

PREVENTION OF ORGANISED CRIME ACT, 1998 ("POCA")

RACKETEERING

24. In terms of section 2(1)(a) to (b) of POCA, a person is guilty of an offense if such person:
- 24.1. receives or retains any property derived, directly or indirectly, from a pattern of racketeering activity; and
 - 24.2. knows or ought reasonably to have known that such property is so derived; and
 - 24.3. 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;
 - 24.4. receives or retains any property, directly or indirectly, on behalf of any enterprise; and
 - 24.5. knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity.
25. Additionally, section 1(c) to (f) provides that a person is guilty of an offense, if such person:
- 25.1. 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
 - 25.2. knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;
 - 25.3. acquires or maintains, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activity;

- 25.4. 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; or
- 25.5. 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.

MONEY LAUNDERING

26. In terms of section 4 of POCA, a person is guilty of an offense, if such person knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and –
- 26.1. enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or
- 26.2. performs any other act in connection with such property, whether it is performed independently or in concert with any other person, which has or is likely to have the effect –
- 26.2.1. of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or
- 26.2.2. of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere

to avoid prosecution or to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence.

PUBLIC FINANCE MANAGEMENT ACT, 1999

27. As the NLC is considered a public entity in terms of the Public Finance Management Act, 1999 ("the PFMA") various provisions relating to financial conduct and fiduciary duties are applicable to the NLC.
28. In terms of section 49(2)(a) of the PFMA, the NLC's Board is the entity's Accounting Authority.⁸ For purposes of identifying liability, note that all liability accrues to the Board as the responsible party in terms of the PFMA.
29. In conjunction with its fiduciary duties over the Fund, the Board also has the following fiduciary duties in terms of the PFMA, contravention of which is enforceable by law:
 - 29.1. exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;
 - 29.2. act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;
 - 29.3. seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state (own emphasis added);
 - 29.4. act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of the PFMA; and

⁸ The NLC classifies as a public entity as it is listed as such in Schedule 1 of the PFMA.

- 29.5. use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.
30. In turn, the members of the Board must:⁹
- 30.1. disclose to the accounting authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting authority; and
- 30.2. withdraw from the proceedings of the accounting authority when that matter is considered, unless the accounting authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.
- 30.3. Non-compliance with disclosure of personal interest is in contravention of the PFMA.
31. In terms of section 51(1)(a), the accounting authority must ensure that the public entity has and maintains:
- 31.1. effective, efficient and transparent systems of financial and risk management and internal control;
- 31.2. a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and

⁹ Section 50(2) of the PFMA.

- 31.3. an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
 - 31.4. a system for properly evaluating all major capital projects prior to a final decision on the project.
32. Section 51(1)(b)(i) – (iii) provides that the accounting authority must take effective and appropriate steps to:
- 32.1. collect all revenue due to the public entity concerned; and
 - 32.2. prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and
 - 32.3. manage available working capital efficiently and economically.
33. In terms of section 51(1)(c) – (e), the accounting authority:
- 33.1. is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;
 - 33.2. must comply with any tax, levy, duty, pension and audit commitments as required by legislation;
 - 33.3. must take effective and appropriate disciplinary steps against any employee of the public entity who:
 - 33.3.1. contravenes or fails to comply with a provision of the PFMA;
 - 33.3.2. commits an act which undermines the financial management and internal control system of the public entity; or
 - 33.3.3. makes or permits an irregular expenditure or a fruitless and wasteful expenditure.

34. Moreover, in terms of section 51(1)(f) – (h), the accounting authority:
- 34.1. is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament or the relevant provincial legislature and to the relevant executive authority or treasury, as may be required by the PFMA;
 - 34.2. must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment; and
 - 34.3. must comply, and ensure compliance by the public entity, with the provisions of the PFMA and any other legislation applicable to the public entity.
35. Lastly, section 51(2) provides that if an accounting authority is unable to comply with any of the responsibilities determined for an accounting authority as referred to above, the accounting authority must promptly report the inability, together with reasons, to the relevant executive authority and treasury.

G CONCLUSION

36. Upon consideration of the factual illustration(s) as set out above, read together with the legal framework. it is clear that the elements reflected in such framework had been adequately set out. In instances where the elements are distorted due to OUTA's limited investigative capability to pursue further investigations, we urge the SAPS to do so in line with its statutory powers.

37. OUTA remains committed in assisting the SAPS with any further investigations and is amenable to the production of additional evidence if and when possible.

DEPONENT

The Deponent has acknowledged that he/she knows and understands the contents of this affidavit which was signed and sworn to before me at _____ on this the ____ day of _____ 2020 the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.

COMMISSIONER OF OATHS