




# OUTA

ORGANISATION UNDOING TAX ABUSE

## PRASA

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





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**SYNOPSIS**

1. During the course of 2008 to 2015, approximately 142 instances of corruption have been identified by the Passenger Rail Agency of South Africa SOC Ltd (“PRASA”) as highlighted by various reports<sup>1</sup>. Of particular interest are tenders awarded by PRASA to Siyangena Technologies (Pty) Ltd (“Siyangena”) and Swifambo Rail Leasing (Pty) Ltd (“Swifambo”).
  
2. Since identifying the series of procurement irregularities relating to the tenders awarded to Siyangena and Swifambo referred to above, no prosecutions have emanated from investigations conducted by the Directorate for Priority Crime Investigations (“DPCI”). For this reason, PRASA’s former Chairperson, Popo Simon Molefe (“Molefe”) instituted an application under case number 36337/17 in the High Court of South Africa (Gauteng Division, Pretoria).

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See paragraphs 15 to 17 below.

3. The application, which is currently pending, is attached hereto as an electronic copy and marked “**CHOOCHOO1**”. Essentially, Molefe (acting on behalf of PRASA), sought relief, *inter alia*, that the DPCI finalise all outstanding investigations pertaining to the identified irregularities within PRASA.
4. On or about, 4 May 2018 date, OUTA was successfully joined as an intervening party to the proceedings. A copy of OUTA’s founding papers and the relevant judgment handed down by Davis J is attached hereto as an electronic copy and marked “**CHOOCHOO2.1**” and “**CHOOCHOO2.2**”

## IRREGULAR AWARDING OF TENDERS

5. The factual background of the tenders referred to above are illustrated in Molefe’s founding affidavit<sup>2</sup> to the application, however, the essential facts that lead to the pending investigations (which are currently stagnant) will be explained in brief detail below.

## THE SIYANGENA AGREEMENT

6. Siyangena had been appointed as a nominated subcontractor to suppliers that have been tasked to upgrade the Nasrec and Doornfontein stations prior to the 2010 Soccer World Cup. Siyangena’s involvement was purportedly

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<sup>2</sup> See “CHOOCHOO1”, ad paragraph 75, page 36.

extended to an additional seven stations. Such irregular extension was not preceded by an agreement between PRASA and Siyangena directly.

7. In the absence of an open tender process, by late 2010/2011, PRASA concluded an agreement with Siyangena for the installation of systems in a further 62 stations.<sup>3</sup> The value of this agreement totaled approximately R1,95 billion.
8. By 2013/2014, PRASA yet again concluded an agreement with Siyangena to upgrade an additional 151 stations, of which the contract value amounted to approximately R2,5 billion.

## THE SWIFAMBO AGREEMENT

9. On or about 25 March 2013, PRASA concluded an agreement with Swifambo for the purchasing of 70 diesel-electric and hybrid locomotives. The contract value for this particular agreement amounted to approximately R3,5 billion.
10. This agreement was concluded in the absence of legitimate procurement procedures.

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<sup>3</sup> Ibid, ad paragraph 7.

## CURRENT STATUS OF THE SIYANGENA AND SWIFAMBO AGREEMENTS

11. Following the identification of an array of procurement irregularities relating to both Siyangena and Swifambo, PRASA instituted judicial review proceedings against both parties, seeking to *inter alia*, declare the agreements void *ab initio*, unlawful and set the agreements aside.
12. The founding papers of the judicial review proceedings brought against Siyangena under case number 7839/16, is attached hereto as an electronic copy and marked "**CHOOCHOO3**".
13. Similarly, the founding papers of the judicial review proceedings brought against Swifambo under case number 2015/42219, are attached hereto as an electronic copy and marked "**CHOOCHOO4**".
14. OUTA has been advised that both matters are currently pending before the Pretoria and Johannesburg High Court respectively.

## INVESTIGATIONS CONDUCTED BY VARIOUS ENTITIES

15. In order to refrain from cumbersome repetition of facts and relevant findings, OUTA attached hereto electronic copies of reports for the Commission of Inquiry into State Capture's ("the commission") favorable consideration. The

findings of these reports are self-explanatory and justifies further action to be taken by the commission.

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## CONSOLIDATED LIST OF INVESTIGATIVE REPORTS

16. Attached hereto is a consolidated index table, marked **“CHOOCHOO5”**, listing various forensic reports compiled by third parties into irregularities within PRASA. The table reflects summarised findings and recommendations made per report referred to.
  
17. In addition, OUTA attaches hereto in electronic format the forensic reports compiled by the following entities as referred to in annexure **“CHOOCHOO5”**:
  - 17.1. Deloitte – marked **“CHOOCHOO6 – CHOOCHOO7”**;
  - 17.2. ENS Africa – marked **“CHOOCHOO8 – CHOOCHOO9”**;
  - 17.3. Funduzi – marked **“CHOOCHOO10 – CHOOCHOO11”**;
  - 17.4. Gobodo – marked **CHOOCHOO12 – CHOOCHOO13”**;
  - 17.5. JGL Forensic Services – marked **“CHOOCHOO14 – CHOOCHOO15”**;
  - 17.6. KPMG – marked **“CHOOCHOO16 – CHOOCHOO17”**;
  - 17.7. Nexus – marked **“CHOOCHOO18 – CHOOCHOO28”**;
  - 17.8. Phukubje Pierce Masithela Attorneys - marked **“CHOOCHOO29 – CHOOCHOO32”**;
  - 17.9. PriceWaterhouseCoopers – marked **“CHOOCHOO33”**;
  - 17.10. Sekela Xabiso – marked **“CHOOCHOO34 – CHOOCHOO35”**;
  - 17.11. Strategic Investigations – marked **“CHOOCHOO36 – CHOOCHOO37”**;

- 17.12. Bowman Gilfillan – marked “**CHOOCHOO38 – CHOOCHOO47**”; and
- 17.13. Tshisevhe Gwina Ratshimbilani Incorporated - marked “**CHOOCHOO48**”.
18. The Public Protector’s report (Report No 3 of 2015/2016) on an investigation into allegations of maladministration relating to financial mismanagement, tender irregularities and appointment irregularities against PRASA, entitled “*Derailed*” is attached hereto as an electronic copy and marked “**CHOOCHOO49**”.
19. To date, minimal action has been taken by law enforcement agencies in holding the individuals responsible for the illicit conduct reflected in various forensic reports to account.

## CONCLUSION

20. In consideration of the illustrations as set out above, it is apparent that PRASA has been captured through systematic engagements with third parties, particularly stemming from coordinated procurement practices – which are not only irregular, but criminal.
21. Although the network of malpractice and corruption may become convoluted in an abundance of facts, one should not neglect to appreciate the fact that both state and private entities cannot act for themselves. It is individuals who

enable such entities to engage in business practices detrimental to the South African public.

22. For this reason, it is not PRASA that is inherently crippled, but individuals who advanced their personal interests that contributed to its demise.