
AFFIDAVIT

I, the undersigned,

STEFANIE FICK

hereby declare under oath the following:

1. I am an adult female employed as Head of Legal Affairs by the Organisation Undoing Tax Abuse (OUTA) with business address 10th Floor, O'Keeffe & Swarts 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.

A. MANDATE & INTRODUCTION

3. OUTA is a proudly South African non-profit civil action organisation, supported and publicly funded by people who are passionate about improving the prosperity of our nation. OUTA was established to reintroduce accountability to government and to challenge the abuse of authority with regards to taxpayers' money in South Africa.
4. In recent months, South Africa has been rocked by the Gupta emails and documents (#GuptaLeaks) which were retrieved from the server of SAHARA Computers Pty (Ltd). These #GuptaLeaks have substantiated most of the allegations pertaining to state capture and have unveiled evidence of misconduct by the Gupta family, many high-ranking government officials and private individuals.

5. Amongst the #GuptaLeaks were evidence of conduct that constitutes crimes of fraud, in the alternative theft, extortion, corruption and high treason on the part of Mosebenzi Joseph Zwane ("Minister Zwane"), who is the Minister of Mineral Resources of the Republic of South Africa. This misconduct occurred during Minister Zwane's tenure as Minister of Mineral Resources as well as his tenure as MEC for Agriculture and Rural Development in the Free State province.
6. Based on the aforementioned information, OUTA lodged a criminal complaint against Minister Zwane at Randburg police station under CAS 482/7/2017. The investigation is ongoing.
7. These charges are so severe that OUTA contends that Minister Zwane's misconduct constitutes a breach of the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members. We thus make this complaint to Parliament's Joint Committee on Ethics and Members' Interests, in the hopes that they sanction Minister Zwane to a degree appropriate for his misconduct.

B. THE PARTIES

8. The Complainant is the ORGANISATION UNDOING TAX ABUSE, a non-profit Company with limited liability, with company registration number 2012/0642/1308 and NPC number 124-38, duly registered in accordance with company laws of the Republic of South Africa, and with its principal place of business situated at 10th Floor, O'Keefe & Swartz Building, 318 Oak Avenue, Randburg, Gauteng.
9. The Respondent is MOSEBENZI JOSEPH ZWANE, an adult male and Minister of Mineral Resources for the Republic of South Africa.



C. THE COMPLAINT

Background

10. The facts disclosed in official investigations, media investigations and the documents from Sahara's computer server reveal numerous instances of misconduct on the part of Minister Zwane, but for the purposes of this affidavit we shall only focus on those that occurred after his appointment as a Member of Parliament on 2 September 2015.
11. On or about 2 September 2015, Mr Zwane was sworn in as a Member of the National Assembly. On 22 September 2015, President Zuma announced the appointment of Mr Zwane as Minister of Mineral Resources. Minister Zwane was sworn in the following afternoon, on 23 September 2015. In the Cabinet reshuffle on 30 March 2017, President Zuma retained Minister Zwane as Minister of Mineral Resources.
12. Minister Zwane had no experience in mining or in national government and was not a member of the ANC's national executive committee. He had previously served as MEC for Agriculture and Rural Development (2014 – 2015) and MEC for Economic Development, Tourism and Environmental Affairs (2009 – 2013) in the Free State province, under Premier Ace Magashule. His academic qualifications are a secondary teacher's diploma from the South African Teachers' College in Pretoria and a certificate in Executive Leadership Municipal Development Programme from the University of Pretoria.
13. President Zuma announced Minister Zwane's appointment to the surprise of the ANC National Executive Committee, which had met the previous weekend and had not been advised of the impending appointment.
14. Minister Zwane's appointment appears to have been vetted, if not orchestrated, by the Guptas, using Duduzane Zuma as a conduit to President Zuma.

- 14.1. On 1 August 2015, less than two months before President Zuma appointed Minister Zwane as Minister, Mr France Oupa Mokoena (of Koena Consulting and Property Developers) emailed Rajesh (Tony) Gupta to say: "*Please find attached the CV of Mr Mosebenzi for your attention*". Tony Gupta forwarded Mokoena's email, with its attachment, directly to Duduzane Zuma. Attached hereto as Annexure **MJZ 1** and **MJZ 2**.
- 14.2. On 20 September 2015, a presidential-level motorcade was reported to have paid a visit to the Gupta family compound in Saxonwold.
15. During May 2017, former Mineral Resources, Mr Ngoako Ramatlhodi publicly stated that he was removed as minister and replaced by Minister Zwane after he resisted pressure from Eskom's CEO, Minister Brian Molefe and Eskom's chairperson, Minister Ben Ngubane, to suspend Glencore's mining licences.
16. At the time that Mr Ngubane pressurised Minister Ramatlhodi to suspend the Glencore mining licences, Glencore was then the owner of Optimum Coal Mine, which was subsequently purchased (with the assistance of the new Minister Zwane) by the Gupta-Zuma owned company, Tegeta. The Optimum Coal mine became the subject of lucrative coal-supply deals that Tegeta proceeded to conclude with Eskom on terms considerably more favourable to Tegeta than those to which Glencore had been subject prior to the purchase, and which, for no apparent reason, obliged Eskom to purchase the coal from Tegeta at a price of 19.69/GJ as opposed to the price of R18.68/GJ which was the Optimum Coal Mine price to Tegeta and the price for which Eskom could have contracted directly with the Optimum Coal Mine.
17. Minister Ramatlhodi's account of the circumstances surrounding his removal is published in an article by amaBhungane, '*How Brian Molefe 'helped' Gupta Optimum heist*', dated 16 May 2017, attached hereto as Annexure **MJZ 3**, and reads in relevant part:

"Former Mining Minister Ngoako Ramatlhodi has made damning new allegations that Eskom chief executive Brian Molefe and chair Ben Ngubane effectively pressed him to blackmail resources giant Glencore.

When he did not comply, he says, President Jacob Zuma fired him within weeks. At the time the Gupta family were angling to buy Optimum, the coal mine that supplies Eskom's Hendrina power station.

Glencore, which then owned Optimum, had placed it into business rescue in August after Molefe refused to renegotiate the price of a long-term supply contract and reinstated a disputed R2.17-billion penalty that Optimum supposedly owed for supplying substandard coal.

Speaking from Limpopo on Friday, Ramatlhodi, then minister of mineral resources, said he met with Molefe and Ngubane at the latter's insistence. At the meeting, they allegedly demanded that he suspend all Glencore's mining licenses in South Africa, pending the payment of the R2.17-billion penalty.

Eskom had tried to issue a legal summons for the penalty on 5 August 2015, but Optimum's business rescue practitioners, appointed only the day before, batted away the claim, citing legislation which restricts new claims once a company is in business rescue.

Glencore maintained the Hendrina contract was losing it R100-million a month and it could no longer support the losses. Business rescue, an alternative to liquidation, puts independent managers in charge in an attempt to save a company.

Ramatlhodi told amaBhungane: "They insisted that I must suspend all the Glencore mining licenses pending the payment of the R2-billion... You must remember that the country was undergoing load-shedding at that time. I said to them: how many mines do these people have supplying Eskom? How many more outages are we going to have?"

A suspension of all of Glencore's licenses would have brought Glencore's 14 coal operations to a standstill and risked the jobs of its 35 000 employees in South Africa. At the time Glencore supplied roughly 14% of Eskom's coal needs, including virtually all of the coal for the Hendrina power station.

Ramatlhodi said Ngubane was very insistent, but he refused: "I said I'm not going to shut the mines.

He said Ngubane then told him that he would have to report on their meeting to President Jacob Zuma straightaway as the president needed to be in the know before leaving on a foreign trip.

On 2 September 2015, Zuma arrived in China for a commemoration of victory over the Nazis in World War II. There he was due to meet Russian President Vladimir Putin.

Ramatlhodi said he was removed as mines minister shortly after Zuma's return. Zuma announced unexpectedly on 22 September that year that Mosebenzi Zwane, a Free State politician linked to the Guptas, would replace Ramatlhodi.

Zuma moved Ramatlhodi to public service and administration at the time, but fired him along with finance minister Pravin Gordhan and other members of his cabinet earlier this year."

Minister Zwane's improper use of his Office

18. In the "State of Capture" report (the Public Protector Report), the Public Protector analysed Minister Zwane's flight records to confirm that Minister Zwane flew from Johannesburg to Zurich, via Dubai, on 29 and 30 November 2015.

19. For brevity sake, only the relevant sections of the Public Protector Report have been extracted and attached as Annexure **MJZ 4**.
20. The Public Protector reports that she received information *"from an independent source"* that *"Minister Zwane did in fact meet with Mr Glazenberg in Switzerland at the Dolder Hotel around 30 November 2015 to 5 December 2015, and that the other individuals present during said meeting(s) [were] Mr Rajesh (Tony) Gupta and Mr Essa"*.
21. The Public Protector was unable to explain how Minister Zwane got from Zurich to Dubai, since his official flights (booked on Emirates Airlines from Zurich to Dubai on 2 December 2015; from Dubai to Delhi on 3 December 2015; and from Delhi to Dubai on 5 December 2015) were never used. However, Minister Zwane did catch his official flight booked from Dubai to Johannesburg on 7 December 2015.
22. The flight and accommodation bookings obtained from the #GuptaLeaks confirm that, on 2 December 2015, when Minister Zwane failed to board his official flight from Zurich to Dubai, he was on board the Guptas' private Bombardier jet, ZS-OAK, along with Tony Gupta and Salim Essa.
23. Further, the records evidence that Minister Zwane spent the next two days in India with the Guptas before flying back to Dubai and catching his official flight back to Johannesburg. Whilst in Dubai, Minister Zwane was booked into the five-star Oberoi hotel paid for by the Guptas' company, Sahara Computers, and was chauffeured around in a BMW 7 Series motor vehicle, at the expense of Sahara Computers. Documents supporting the latter is attached hereto as Annexure **MJZ 5**.
24. According to the Public Protector Report Minister Zwane had to provide approval for the sale and he also assisted with the negotiations of the sale with Tegeta.
25. The Public Protector Report states that, Glencore (Pty) Ltd (Glencore) intimated the sale of Optimum Coal Mine to Tegeta (Pty) Ltd (Tegeta) during December 2015 and which was finalised during April 2016.

26. The sale was triggered by the enforcement of penalties in terms of the Coal Supply Agreement by Eskom which resulted in Glencore being placed under Business Rescue and ultimately having to sell Optimum Coal Mine. The latter is more completely described in a Criminal Complaint submitted to the Randburg Police Station (Cas number: 594/10/2017) in respect of Mr Matshela Koko and will be provided upon request.
27. Tegeta is a subsidiary of the Gupta-family holding company, Oakbay Investments (Pty) Ltd (Oakbay). Oakbay has a 29.05% shareholding in Tegeta whilst Duduzane Zuma's Mabengela Investments (Pty) Ltd holds a 28.53% shareholding.
28. Following its purchase of Optimum Coal Mine, Tegeta gained lucrative coal supply contracts with Eskom from Optimum Coal Mine. These include a R564 million contract awarded in April 2016 to supply Arnot power station with 1.2 million tons of coal over six months (excluding the transport costs also payable by Eskom).
29. The City Press reported in June 2016, that:
- "At R470 a ton, Tegeta's Arnot contract is one of Eskom's most expensive. In May, last year, Public Enterprises Minister Lynne Brown told Parliament that Eskom paid an average price of R230.90 a ton for coal, and that the average price of Eskom's five most expensive contracts was a "delivered price" of R428.84 a ton.*
- ...
- City Press has established that, with transport, Tegeta is paid roughly R580 a ton, pushing the total value of the six-month contract up to just under R700 million."*
- (City Press article: "How Eskom bailed out the Guptas" published 12 June 2016)
30. As part of its agreement with Glencore, Tegeta also gained control over an estimated R1.5 billion rehabilitation trust fund held in respect of mining rights held by Optimum Coal Holdings. The rehabilitation trust fund is required by the Mineral and Petroleum Resources Development Act, 2002, and the National Environmental Management Act,

1998, to finance the rehabilitation of the mine upon its closure and managed by the Minister of Mineral Resources.

31. Investigative journalists at *AmaBhungane* and *Scorpio* calculate that, altogether:

"the Guptas have received contracts worth R11.7-billion from Eskom for coal alone. None of these contracts was awarded as the outcome of a competitive bidding process, and the R11.7-billion does not include the contracts that Tegeta inherited when it bought Optimum Coal, nor does it include invoices totalling R419-million for management consulting and advisory services delivered to Eskom by Trillian Capital Partners, a company majority owned by Salim Essa." Attached hereto as Annexure **MJZ 6**.

32. Under Minister Zwane, the Department of Mineral Resources has also approved the release of billions of rands in mine rehabilitation funds to Tegeta in questionable circumstances. The Public Protector investigated the transfer to Bank of Baroda accounts of:

32.1. R280 million from the Koornfontein Rehabilitation Trust Fund on 23 May 2016; and

32.2. R1,469 billion from the Optimum Mine Rehabilitation Trust Fund on 21 June 2016.

33. The Public Protector reported on the apparent illegalities in the Department's release of these mine rehabilitation funds in the State of Capture report. The Public Protector found that, in respect of both Trust Funds

"It is clear and apparent that the funds were not ring-fenced for the purposes of investment and capital growth. The interest payment on all the investment accounts were not reinvested and recapitalised but were transferred to the Baroda Main account and utilised."

34. In an affidavit filed by former Finance Minister Pravin Gordhan in litigation between the Minister of Finance and Oakbay Investments, attached hereto as Annexure **MJZ 7** and **MJZ 8**, Minister Gordhan also expressed alarm at the Department of Mineral Resources' written approval of the release of funds from the Optimum Mine Rehabilitation Trust Fund's Standard Bank account to the Bank of Baroda – particularly in circumstances where the Standard Bank account was closed because of suspicious and unusual transactions on the account. Mr Gordhan's affidavit and the FIC's report is attached.
35. On or about 26 September 2017, in *The Organisation Undoing Tax Abuse v the Trustee(s) for the time of the Optimum Mine Rehabilitation Trust and Others* (unreported case 65616/2017) the Gauteng Division of the High Court of South Africa directed the Bank of Baroda to continue to hold the funds of the Optimum Mine Rehabilitation Trust in the name of the trustees until the final order in respect of the administration of said trust can be resolved. The matter was postponed until 7 December 2017.

Minster Zwane's misleading statements

36. In the context of the Optimum Coal accusation, Eskom as an organ of state had to decide whether to terminate its contract with Glencore, and if so, how to procure the coal that it had previously obtained from Glencore.
37. In a written reply to a parliamentary question from Democratic Alliance MP, Mr TJ Brauteseth on 8 April 2016, Minister Zwane denied ever meeting with any of the Guptas, Gupta employees or close associates since taking office as Minister of Mineral Resources in September 2015. The answer furnished was: "*The Minister has not met with any member, nor close associate of the Guptas. He has also not attended a meeting with a specified person at the Gupta's Saxonworld Estate in Johannesburg.*"



38. In a written reply to parliamentary questions from the EFF leader, Mr Julius Malema, in May 2016, Zwane denied travelling with the Guptas on their trip to Switzerland in January to persuade Glencore to sell Optimum coal mine to their companies Oakbay and Tegeta; and
39. In a written reply to parliamentary questions from Freedom Front Plus MP, Mr Anton Alberts on 8 June 2017, Minister Zwane repeated this, saying he had gone on the trip accompanied by an official of his department “...to promote mining and [to] address company issues relating to the investment climate in the country in general, and to mitigate imminent retrenchment”. Minister Zwane also denied that he had any direct or indirect interests in Oakbay or Optimum mine.
40. The parliamentary questions and Minister Zwane’s replies are attached hereto as Annexure **MJZ 9 to MJZ 11**.
41. The travel and accommodation records for Minister Zwane between 2 and 7 December 2015 indicate that these denials are false as evidenced by Annexure **MJZ 5**.

Minster Zwane’s improper relationships

42. Emails recovered from the #GuptaLeaks indicate that the Guptas and their known associates (including Duduzane Zuma and Nazeem Howa, the former CEO of the Gupta-owned company, Oakbay), have directed and influenced Minister Zwane in the public and media statements he makes as Minister of Mineral Resources.
43. In an email from Mr Howa to Duduzane Zuma and Tony Gupta on 2 February 2016, Mr Howa listed fourteen questions he anticipated Minister Zwane could expect from the journalists at a forthcoming Mining Indaba. Said communication is attached hereto as Annexure **MJZ 12 and MJZ 13**.

44. Mr Howa drafted comprehensive answers for Minister Zwane on matters sensitive to the Guptas (including Minister Zwane's alleged family closeness to the Gupta family, the sale of the Optimum mine and his inexperience as a mining minister). Mr Howa requested Tony Gupta's and Duduzane Zuma's further input, stating:

"I need some help on some of the answers. I think we should also prepare for a question of his role around the Waterkloof landing. Perhaps I can sit with someone this side to help me polish and add to the answers. Let's chat when you have a chance to review."

45. During February and March 2016, Mr Howa also exchanged a series of emails with employees of Bell Pottinger (the UK-based, Public Relations firm hired by the Gupta family) over public statements concerning Minister Zwane's engagement with the Guptas, particularly during Minister Zwane's trip to Switzerland. The proposed media statement denies any assistance from Minister Zwane.

46. These emails evidence the Gupta's attempts to hide from the public the relationship between them and Minister Zwane, as Minister of Mineral Resources. An attempt which has been proven to not be false. Said e-mails are attached hereto as Annexure **MJZ 14** and **MJZ 15**.

47. The emails also indicate that Minister Zwane was discussing Cabinet business with the Guptas, and taking instructions from them. This is further supported by the fact that, in July 2016, Bell Pottinger told *Fin24* reporters that it was in possession of the findings of the inter-ministerial committee set up by Cabinet on 13 April 2016 (with Minister Zwane as its chairperson) to investigate the closure of the Guptas' South African bank accounts.

48. Bell Pottinger advised *Fin24* that the Inter-Ministerial Committee was recommending a commission of inquiry into the country's banks, and that Minister Zwane, should be directly contacted. This was two months before Minister Zwane made these findings public on 2 September 2016. The *Fin24* report on the incident is attached hereto as Annexure **MJZ 16**.

49. Minister Zwane issued a public statement on 1 September 2016, announcing that Cabinet had agreed on the recommendation of the Inter-Ministerial Committee that a judicial inquiry investigating why South Africa's banks had blacklisted Gupta-owned businesses.
50. The recommendation included that the inquiry look into the current mandates of the Banking Tribunal and the Banking Ombudsman; consider the current Financial Intelligence Centre Act and the Prevention of Combating of Corrupt Activities Act in relation to the banks' conduct; reconsider South Africa's clearing bank provisions to allow for new banking licences to be issued; and investigate the establishment of a state bank of South Africa with the possible corporatisation of the Post Bank to be considered as an option. A report of the statement issued by Minister Zwane is attached hereto as Annexure **MJZ 17**.
51. Minister Zwane was rebuked by the ANC and the Presidency, who distanced themselves from Minister Zwane's statement about a judicial inquiry into the banking sector and denied that the recommendation had Cabinet backing. Media reports of the statements issued by the ANC and the Presidency are attached hereto as Annexure **MJZ 18** to **MJZ 19**. Minister Zwane refused to apologise for the misleading statement or to explain what drove him to mislead the public about what the Cabinet had decided.

Minister Zwane's abuse of his position on the Inter-Ministerial Committee

52. In addition to misrepresenting Cabinet's response to the recommendations of the Inter-Ministerial Committee, Minister Zwane is also alleged to have abused his powers as chair of the committee by improperly trying to influence banks to keep their Gupta-held accounts open.

53. In an affidavit filed on behalf of Nedbank in *Minister of Finance v Oakbay Resources and Others* (litigation concerning the Minister of Finance's powers to interfere in bank-client relations), Nedbank's CEO, Mark Brown attests to having attended a meeting with Minister Zwane in May 2016, as chairperson of the Inter- Ministerial Committee.
54. Minister Zwane was accompanied by Minister Faith Muthambi and her advisor, Mr Mzwanele Manyi (who are not appointed as members of the committee), and not the Minister of Finance and Minister of Labour who were its appointed members.
55. Mark Brown stated that, at this meeting, Zwane attempted to persuade Nedbank to keep Gupta companies as clients and to become their primary banker. The article detailing the aforementioned conduct and the relevant portion of the affidavit are attached hereto as Annexure **MJZ 20** and **MJZ 21** respectively.

Minister Zwane's conflicts of interest

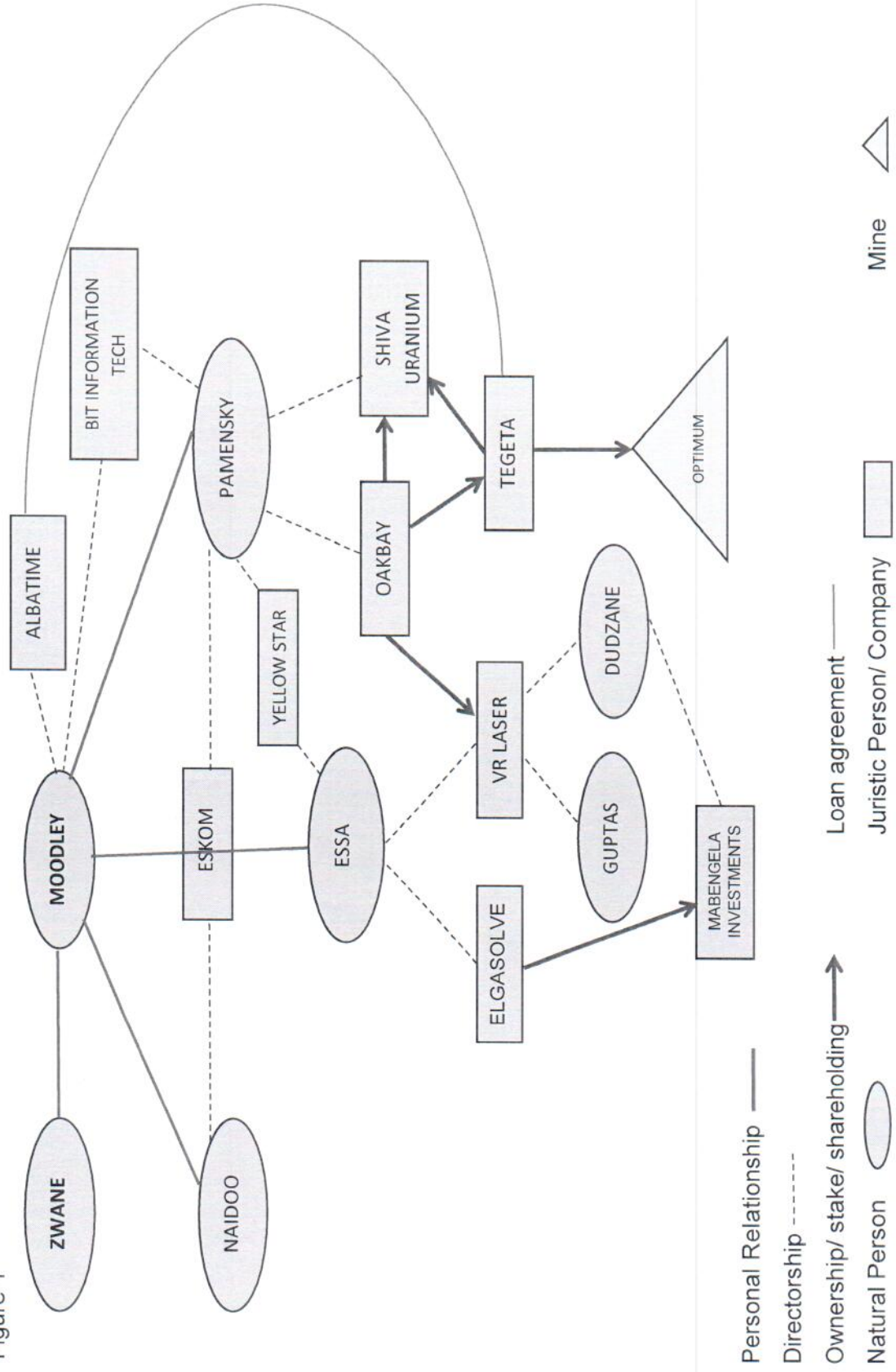
56. As Minister of Mineral Resources, Minister Zwane has appointed known Gupta associates as his advisors, most notably Mr Kubentheran ("Kuben") Moodley and Mr Malcolm Mabaso.
57. Minister Zwane appointed Mr Moodley as his special advisor. The Public Protector's report records that Mr Moodley served as his advisor in 2016, during the Tegeta purchase of Optimum Coal Mine.
- 57.1. Mr Moodley is a known friend of the Gupta family and Mr Essa. Mr Essa is the sole director of Elgasolve and is the majority shareholder of VR Laser Services. Elgasolve in turn holds a 21.5% stake in Duduzane Zuma's company, Mabengela Investments. Oakbay and Duduzane Zuma (amongst other investors) further also holds shares along with Mr Essa in VR Laser Service.

- 57.2. Mr Moodley is the sole director of Albatime (Pty) Ltd, a company that made a R10 million payment for the benefit of Tegeta towards the acquisition of Optimum Coal Mine.
- 57.3. Mr Moodley is married to Devapushpum Viroshini Naidoo, who served on the Eskom Board as a Non-Executive Director from 11 December 2014 to 2016, which includes at the time of the sale of Optimum Coal Mine and the conclusion of Eskom's coal-supply contracts with new mine-owner Tegeta.
- 57.4. As the Public Protector found, Minister Zwane's appointment of Mr Moodley as his special advisor in these circumstances, presented a conflict of interest as *"Minister Zwane is responsible for ensuring policymaking and policy implementation of service delivery for Eskom. He also oversees the regulation of the MPRDA [Mineral and Petroleum Resources Development Act]. In the execution of his functions the Minister relies on advisors"*.
- 57.5. Mr Moodley also has business ties to Mr Mark Vivian Pamensky, another close business associate of the Gupta family.
- 57.6. Mr Pamensky has served as a director of the Guptas' company Oakbay Resources and Energy (Pty) Ltd from 25 September 2014 to 10 June 2017, and as a Non-Executive Director of Eskom from 11 December 2014 to November 2016).
- 57.7. Mr Pamensky is also a director of Shiva Uranium, in which Oakbay Resources has a 74% stake and Tegeta a 19.6% stake.
- 57.8. Mr Pamensky is also a director of Yellow Star Trading 1099, of which Mr Essa is a director; and Oakbay Resources and Energy which is 64% owned by Atul Gupta.

57.9. Mr Moodley served with Mr Pamensky as directors of BIT Information Technology (Pty) Ltd from 4 March 2004 to 16 March 2005, and is said to be a friend of Pamensky. Figure 1 below sets out the relationships as described above.

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Figure 1



[Handwritten signature]

58. Minister Zwane also appointed Mr Malcolm Mabaso as his personal advisor in 2016:

58.1. Mr Mabaso is a former business associate of Mr Essa, having served with Mr Essa as a director of Premium Security and Cleaning Services (Pty) Ltd from July 2013 to October 2015.

D. LEGAL AND REGULATORY FRAMEWORK

59. THE CODE OF THE ETHICAL CONDUCT AND DISCLOSURE OF MEMBERS' INTERESTS FOR ASSEMBLY AND PERMANENT COUNCIL MEMBERS (THE CODE)

59.1. Clause 2.4, in terms of which a Member is obligated to act in a manner that is selflessness; with integrity; objectivity; openness; honesty and leadership.

59.2. In terms of clause 10.1.1.3 of the Code, a member breaches the Code if the member "*contravenes clauses 4.1...[and] 5.2.... of this Code.*"

59.3. Clause 4.1 creates an obligation on a Member to:

- Act in accordance with the rules, principles and obligations set forth by the code;
- uphold the law as directed by the oath or affirmation of allegiance sworn by all elected Members;
- always act in accordance with the public trust;
- discharge the obligations placed upon them by the Constitution, Parliament and the public by placing the public interest above their own;
- maintain the public trust in the integrity of Parliament and be committed to the eradication of all forms of discrimination.



- 59.4. Clause 5.2.2, in terms of which a Member is obligated not to use his or her influence as a public representative when dealing with an organ of State to improperly advantage the direct personal, private financial, or business interests of that Member of his or her family.
- 59.5. Clause 5.2.3, in terms of which a Member is obligated not to engage in any personal or private or business activity, which leads to the use of information or knowledge acquired in his or her dealings with an organ of State as a public representative which is not available in the public domain, in such a manner as to improperly advantage any of the aforementioned interests of such Member or any immediate family of that Member or any business partner of that Member or the immediate family of that Member;
- 59.6. Clause 9.3.8, in terms of which a Member must disclose foreign travel, other than personal visits paid by the Member, business visits unrelated to the Member's role as a public representative and official and formal visits paid for by an organ of State or the Member's party.

60. THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

- 60.1. Each Minister and Deputy Minister, before the Chief Justice or another judge designated by the Chief Justice, must swear or affirm as follows:

*"I, A.B., swear/solemnly affirm that I will be **faithful to the Republic of South Africa** and will **obey, respect and uphold the Constitution** and **all other law of the Republic**; and I undertake to **hold my office** as Minister/Deputy Minister with **honour and dignity**; to be a true and faithful counsellor; not to **divulge directly or indirectly any secret matter entrusted to me**; and to **perform the functions of my office***

conscientiously and to the best of my ability. (In the case of an oath: *So help me God.*)” Own emphasis added

- 60.2. Members of the National Assembly, permanent delegates to the National Council of Provinces and members of provincial legislatures, before the Chief Justice or a judge designated by the Chief Justice, must swear or affirm as follows:

*“I, A.B., swear/solemnly affirm that I will be **faithful to the: Republic of South Africa** and will **obey, respect and uphold the Constitution and all other law of the Republic**; and I solemnly promise to **perform my functions** as a member of the National Assembly/permanent delegate to the National Council of Provinces/member of the legislature of the province of C.D. **to the best of my ability.** (In the case of an oath: *So help me God.*)”* Own emphasis added

E. CONCLUSION

61. The misconduct on the part of Minister Zwane, detailed above, constitutes numerous breaches of the Code.
62. Minister Zwane has breached the Code in terms of paragraph 10.1 in that he acted *contra* the principles set out in clause 2.4 and which is included in the standards set out in clause 4.1.1 by:
- 62.1. Taking decisions against the interests of the public;
- 62.2. Allowing himself to be influenced by the Gupta family in conflict with her role as a Member;

- 62.3. Making appointments without any regard to the merits of such appointments;
 - 62.4. Misleading Parliament;
 - 62.5. Failing to declare his ties to the Gupta family and subsequently acting in a manner against the public interest;
 - 62.6. Failing to promote and support ethical conduct by leadership and example by facilitating unlawful activity by the Gupta Family;
63. Furthermore, Minister Zwane has breached the Code in terms of paragraph 10.1 in that he acted *contra* the standards set out in clause 4.1.2 to 4.1.5 by:
- 63.1. Acting contrary to his Oaths of Office as a Minister and a Member of Parliament;
 - 63.2. Abusing his power as a Minister and a Member of Parliament to the benefit of the Gupta family;
 - 63.3. Placing his own interests and those of the Gupta family above those of the public;
 - 63.4. Misleading Parliament and acting in a manner which damaged the public's confidence and trust in the integrity of Parliament;
64. In addition, Minister Zwane has breached the Code in terms of clause 10.1 in that he acted *contra* to the provisions set out in clause 5.2.2 and 5.2.3 by:
- 64.1. Misusing his influence as a Member of Parliament and Minister of Mineral Resources to further a private agenda.



65. Finally, Minister Zwane has breached the Code in terms of clause 10.1 in that he acted contra to the provisions set out in clause 9.3.8, by failing to disclose the fact that he travelled with Tony Gupta and Salim Essa to Dubai and India on 2 December 2015.
66. As such, we ask that the Committee recognise the severity of Minister Zwane's misconduct and employ such sanctions as it deems fit.

Signed at RANDBURG on this 14th day of OCTOBER 2017.


DEPONENT

I CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT WHICH WAS SIGNED AND SWORN TO BEFORE ME AT **RANDBURG** ON THIS 16th DAY OF **OCTOBER 2017**, THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NO. R1258 OF 21 July 1972, AS AMENDED, AND GOVERNMENT NOTICE NO. R1648 OF 19 AUGUST 1977, AS AMENDED, HAVING BEEN COMPLIED WITH.


COMMISSIONER OF OATHS

Full name:

Position held:

Business Address:

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