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**AFFIDAVIT**  
**(IN TERMS OF SECTION 27 OF THE NATIONAL**  
**PROSECUTING AUTHORITY ACT 32 OF 1998)**

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I, the undersigned,

[REDACTED] HEYNEKE

ID: [REDACTED]

do hereby make oath and state:

1. I am duly authorised to depose to this affidavit in my capacity as a Portfolio Manager at the Organisation Undoing Tax Abuse ("OUTA").
2. The contents of this affidavit came to my knowledge within the normal course of business and, unless stated otherwise, are in all aspects true and correct.

3. I am an adult male employed as a Portfolio Manager: State Capture & Transport, by OUTA with business address 318 Oak Street, 10th Floor, O'Keeffe & Swartz Building, Ferndale, Randburg, Gauteng.
4. In my capacity as Portfolio Manager, I have in my possession and under my control records, accounts and other documents relevant to the subject matter.
5. By virtue of the foregoing, the facts and allegations deposed by me fall within my personal knowledge and are to the best of my belief both true and correct, save where otherwise stated or where it so appears from the context. Where I make legal submissions, I do so based on legal advice.

#### **MANDATE & INTRODUCTION**

6. 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.
7. OUTA is a non-profit company incorporated under the Companies Act 2008 with non-profit company registration number: 2012/064213/08, and with its head office situated at 318 Oak Avenue, Randburg, Gauteng, South Africa.

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## THE PARTIES

8. The persons and entities, as mentioned below, are implicated in various illegal, irregular and suspicious acts, transactions and agreements will be able to assist with investigations based on this referral.

8.1 Mosebenzi Joseph Zwane ("Zwane"), a major male with South African identification number [REDACTED] Zwane is currently a Member of Parliament and chairperson of the Transport Portfolio Committee. He was the Minister of Mineral Resources of the Republic of South Africa from 2015 until 2018 and a former Member of the Executive Council (MEC) in the Free State Province.

8.2 Topsy Roselina Zwane, a major female with South African identification number [REDACTED] She is the spouse of Mosebenzi Zwane and the Speaker of the Phumelela Local Municipality. She accompanied Zwane to several community meetings where details of the Vrede Dairy Project were conveyed to the public. She was part of the Phumelela Local Council who approved the lease of the Krynaauwslust farm near Vrede to the Provincial Government. It is unknown if she recused herself from meetings with regards to this decision.

8.3 France Oupa Mokoena, a major male with South African identification number [REDACTED] He is a businessman in Vrede and an active



director on several companies based in the Free State. Mokoena is the person who mailed Zwane's CV to Tony Gupta (see details below in this affidavit). He also attended meetings between Zwane and the community of Vrede and meetings between Zwane and the Phumelela Local Council. Zwane rewarded his friend Mokoena with an appointment as a Board Member of the State Diamond Trader (SDT). The State Diamond Trader is a state-owned entity established in terms of Section 14 of the Diamonds Amendment Act, 29 of 2005. The company is classified as a Schedule 3b entity of the Public Finance Management Act (PFMA).

- 8.4 Tshegofatso Innocentia Motaung, a major female with South African identification number [REDACTED] Motaung is a former official at the Department of Agriculture in the Free State. She accompanied Zwane on the choir tour to India. She is the mother of Zwane's child and is currently employed at the Department of Public Enterprises. The relevance of Motaung's importance in this matter is discussed later in this affidavit.

## **EVIDENCE & INFORMATION**

9. On 14 October 2016, the Public Protector released the "State of Capture" report wherein it was recommended that a commission of inquiry be appointed to collect evidence and to investigate allegations of state capture, corruption and fraud in the public sector including organs of the State.



10. The Commission of Inquiry into State Capture ("State Capture Commission") was established and commenced with its inquiry in August 2018. To date, several witnesses testified and/or submitted statements to the State Capture Commission. Extracts from witness testimonies and statements submitted to the State Capture Commission will form part of this affidavit.
11. For the past two and a half years, headlines have been dominated by the leaked Gupta emails and documents ("GuptaLeaks") which were retrieved from the server of SAHARA Computers Pty (Ltd). The GuptaLeaks 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." Information and documentation retrieved from the GuptaLeaks will form part of this affidavit.

## **BACKGROUND**

12. Former President Zuma appointed Zwane to Cabinet as Minister of Mineral Resources on 22 September 2015. Zwane was sworn in the next day. In a Cabinet reshuffle on 30 March 2017, former President Zuma retained Zwane as Minister of Mineral Resources.



13. Former President Zuma's appointment and retention of Zwane as Minister of Mineral Resources is evidence of his use of presidential powers to promote and protect the interests of the Guptas and their business associates, including the former President's son, Duduzane Zuma. It is also evidence of the unlawful use of the President's appointment powers for improper purposes and is a strong indication that an improper relationship exists between former President Zuma and the Gupta family.
14. The facts disclosed in official investigations, media investigations and the documents from Sahara's computer server indicate that:
  - 14.1 Zwane was appointed as Minister of Mineral Resources by President Zuma after first being vetted by members of the Gupta family and without the prior knowledge of the ANC National Executive Committee.
  - 14.2 Prior to his appointment, in June 2012, as MEC for Agriculture in the Free State Province, Zwane promoted the establishment of a "mega" Vrede Dairy Project with Estina (Pty) Ltd, which cost the province at least R220 million. The Guptas were intimately involved in the project and were beneficiaries of it.



- 14.3 Shortly after the launch of the Vrede dairy project, in October 2012, Zwane and his local gospel choir were gifted by the Guptas to an all-expenses-paid trip to India.
- 14.4 In March 2013, as MEC for Agriculture and Rural Development in the Free State, Zwane furnished invitees for the Gupta Sun City wedding with an official invitation from the MEC's office, which facilitated the landing of an aircraft with wedding guests at the Waterkloof Air Force Base.
- 14.5 Prior to his appointment to Cabinet, Zwane attended numerous meetings with Tony Gupta. Zwane was also flown to and accommodated in Dubai and India, in the company and at the expense of the Guptas on several occasions.
- 14.6 As Minister of Mineral Resources, Zwane utilised his public office to facilitate the sale of Optimum Coal Mine from Glencore to Tegeta Exploration & Resources (Pty) Ltd ("Tegeta"), a company that is owned by the Guptas and their close business associates, Mr Salim Essa and Duduzane Zuma. In December 2015, Zwane flew to Switzerland to meet with Glencore's CEO, in the company of Messer's Rajesh (Tony) Gupta and Salim Essa, to influence Glencore into selling its Optimum Coal Mine to Tegeta. This sale was followed shortly by the conclusion of coal-supply contracts between Tegeta and Eskom at escalated prices. The Public

Protector concluded that the contracts appeared only to benefit the shareholders of Tegeta.

- 14.7 In December 2015, the Guptas facilitated medical treatment for Zwane at the Max Super Speciality Hospital in New Delhi, India.
- 14.8 Zwane's Department of Mineral Resources also authorised the release of the Koorfontein Mine's R280 million rehabilitation trust fund and the Optimum Coal Mine's R1.43 billion rehabilitation trust fund into Bank of Baroda accounts, without ensuring that these funds were properly ring-fenced and secure and would be utilised for its proper purpose.
- 14.9 As Minister of Mineral Resources, Zwane appointed known Gupta associates as his special and personal advisors, namely Mr Kuben Moodley and Mr Malcolm Mabaso.
- 14.10 As Minister of Mineral Resources, Zwane was assisted in his public and media statements by Gupta family members and known Gupta associates, including Mr Nazeem Howa, Tony Gupta, Duduzane Zuma and the Gupta-hired PR firm, Bell Pottinger.
- 14.11 On 13 April 2016, former President Zuma appointed Zwane to chair an inter-ministerial committee to investigate the closure of the Guptas' South African bank accounts. The banks accused Zwane of abusing this



position by trying to influence them to keep their Gupta-held accounts open.

- 14.12 Even though Zwane made a misrepresentation on the findings of the inter-ministerial committee and publicly announced that Cabinet endorsed the IMC findings regarding the closure of the Gupta accounts, he was retained in the Cabinet by former President Zuma and remained responsible for the Mineral Resources Portfolio which was of obvious importance to the Gupta family.
- 14.13 During Zwane's tenure as Minister of Mineral Resources, he replied to Parliamentary questions from other MP's and the Mineral Resources Portfolio Committee. His answers to Parliamentary questions were vague and dishonest.
15. In light of these facts, the conclusions can be drawn with confidence, that Zwane had an improper and corrupt relationship with the Gupta family. He abused his public office to enrich the Gupta family and their business associates and abandoned his oath as Member of the Executive Council of the Free State Province, as a member of Parliament of the Republic of South Africa and as Minister of Mineral Resources.

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### ZWANE'S INVOLVEMENT IN THE ESTINA DAIRY PROJECT

16. From 2012, Zwane and Free State Premier, Ace Magashule, promoted a mega-dairy project in the Free State.
17. The Department of Agriculture launched a provincial intervention, known as and referred to as the Mohoma Mobung, which was aimed at the revitalising of the agricultural sector in the province through investment in several agricultural initiatives.
18. The Vrede Dairy Project was identified as the flagship project intended for the upliftment of the Vrede community through sustainable job creation opportunities.
19. In his budget vote speech on 22 March 2012, Zwane, as the MEC for Agriculture and Rural Development mentioned the development of a dairy hub in the Free State and said the following:  
*"Honourable Speaker, the department has identified Thabo Mofutsanyane as a dairy hub and an amount of R17.0 million is allocated for this development. Vrede, QwaQwa and Ficksburg towns will benefit from this initiative. Production and processing plants will be established, and this will create 150 jobs within the value chain."*

The said budget vote speech is attached hereto and marked as **ANNEXURE "HRH1"**.



20. In April 2012 Estina (Pty) Ltd submitted a business proposal for the establishment of the Vrede Project.
21. Several witnesses at the State Capture Commission testified and submitted statements which confirmed that from early 2012 Zwane promoted the establishment of a dairy farm in the Vrede district. Several meetings were addressed by Zwane and witnesses testified that *inter alia*, the government would give them cows, that they would be beneficiaries of the dairy project with a 52% shareholding and that the project will bring jobs and prosperity to Vrede. The attendees were also told that the beneficiaries would be taken to India for training.
22. In a statement submitted to the State Capture Commission, Mr Albert Doctor Radebe stated that during June 2012, Zwane addressed a Council meeting of the Phumelela Local Municipality. Radebe was a Councillor of the said municipality. According to Radebe, Zwane convinced the Council to lease 4,400 hectares of agricultural land owned by the municipality, to the Free State Department of Agriculture. Zwane and the officials told the Council that the Department would pay off the commercial farmers who leased the land from the Council and that the Department would pay the Council market related rates. The statement of Radebe is attached hereto and marked as **ANNEXURE "HRH2"**.
23. In his statement to the State Capture Commission, Moses Moremi, the former Municipal Manager of the Phumelela Local Municipality supported Radebe's statement. He went on to state the following:



*"In his presentation the HOD quoted the following "the MEC for Rural Development and Agriculture at the time Honourable Mosebenzi Zwane in his departmental budget vote 2012/2013 resolved that a dairy and processing plant would be established in Vrede and a specific amount would be set aside for the project. The project will be one of the biggest in the country as the department will be partnering with a company from India (PARAS) and thus attracting foreign direct investment to the Free State Province. The project during its initial phase will employ 500 permanent employees and the total investment in property, plant and machinery (PPE) at the initial phase is estimated at around five hundred million rand (R500,000,000.00). The project will place Phumelela in an international map and will have massive economic spin offs for the local and neighbouring farmers (emerging and commercial) who will provide raw milk at an attractive price."*

Moremi's statement is attached hereto and marked as **ANNEXURE "HRH3"**.

24. On 17 July 2012, a meeting took place between the Mayor of Phumelela, Mr Tlokotsi John Motaung, the representative for a company called Zanya Investments (Pty) Ltd, Mr Ashok Narayan (who was also an advisor in the Office in the Premier of the Free State and an employee of Sahara Computers), a lawyer Mr Johann Schalkwyk, and a local businessman Mr Oupa France Mokoena. A draft lease agreement was presented to Mr Moremi, the Municipal Manager for the lease of the property known as Krynaauwlust 275 consisting of 3368ha.



25. Based on the presentation of the HOD as described in paragraph 23 above and the proposed leased agreement as described in paragraph 24, a legal opinion was sought by the municipality. At the Council meeting held on 10 August 2012, it was resolved that the Municipal Manager, Moses Moremi, was authorised to enter into a lease agreement with the Department of Agriculture for the lease of the Krynaauwlust farm, instead of a lease agreement with a third party.
26. The agreement that was signed between the Phumelela Local Municipality and the Department of Agriculture was not a lease agreement as described by the minutes of the special Council meeting, but was in fact a cession of rights and obligations to the Department, because the farm was occupied by farmers who had valid lease agreements with the Local Municipality with a termination date of 30 September 2013. The agreement was nevertheless signed on 12 September 2012. The agreement forms part of Annexure "HRH3". In terms of the agreement, the Provincial Government shall pay over the rent collected from the farmers, to the municipality, in the amount of R958,880.00. It is unknown if this amount was indeed collected and paid over to the Phumelela Local Municipality.
27. On or about 5 July 2012 the Department of Agriculture in the Free State and Estina (Pty) Ltd entered into a Memorandum of Agreement for the management of the Vrede Dairy Project.
28. Under the Vrede dairy project, MEC Zwane's Department of Agriculture awarded a Gupta-linked company, Estina (Pty) Ltd, a 99-year, rent-free lease on the



4400ha Krynaauwslust farm near Vrede. This long-term lease agreement was registered in the Deeds Office on 18 January 2013. A copy of the said Notarial Lease is marked and attached hereto as **ANNEXURE "HRH4"**.

29. From 18 April 2013 until 5 May 2016 the Free State Province's Department of Agriculture paid R220,202,652.00 (Two Hundred and Twenty Million Two Hundred and Two Thousand Six Hundred and Fifty Two Rand) to Estina in terms of the management agreement between the parties.

30. The amounts and dates it was paid, are as follows:

•	18 April 2013	-	R34,950,000.00
•	26 April 2013	-	R30,000,000.00
•	3 May 2013	-	R19,050,000.00
•	20 December 2013	-	R29,950,000.00
•	25 July 2014	-	R30,000,000.00
•	8 May 2015	-	R60,000,000.00
•	5 May 2016	-	R46,252,652.00

31. Documents retrieved from the GuptaLeaks show that shortly after the first payments were made to Estina, an amount of approximately USD 8 million was paid from Estina to a UAE based company called Gateway. This amount was paid in three tranches to Gateway. On 11 August 2012 (USD 2million), 5 September 2012 (USD 3 million) and on 23 September 2012 (USD 3 million). On 12 August 2012 an amount of USD 1,986,000.00 was paid back to Linkway (Pty)

Ltd, a Gupta affiliated company in South Africa. The payments were captured on a spreadsheet that shows all transactions of Gupta companies in the UAE and is attached hereto and marked as **ANNEXURE "HRH5"**.

32. Evidence at the State Capture Commission by Anna Susanna Fourie, a former Deputy Director-General of Financial Governance at the Free State Provincial Treasury, indicated that on advice from the Provincial Legal Services, no procurement processes were followed, and no due diligence of Estina was conducted before the Department contracted with Estina. The affidavit with annexures of Mrs Fourie is attached hereto and marked as **ANNEXURE "HRH6"**.
33. The project was mired in controversy. Estina had no capacity to manage and implement the project. Estina's sole director was Kamal Vasram, who worked in information technology (as a retail sales manager for Toshiba's South African subsidiary) and had no farming background. In its proposal, Estina claimed that an Indian company, Paras Dairy, was jointly involved in the project and would provide expertise. This claim was refuted by Paras Dairy, which claimed that it had no knowledge of the project.
34. During or around October 2013, National Treasury investigated the Department's contracts with Estina. The investigation team conducted *inter alia* an interview with the Department's Chief Financial Officer, Mr Seipati Dlamini (notably, as Minister of Mineral Resources, Zwane appointed Mr Dlamini as national Deputy



Director-General: Mineral Regulation in November 2016, without following due process and without Cabinet approval).

35. Some of the shocking information conveyed to the Treasury investigators are the following:

35.1 The Free State agriculture department did not follow any supply-chain procedures when agreeing to fund the project through Estina, a private company;

35.2 The department did not conduct due diligence on Estina or its claimed partnership with Paras, a major dairy company in India;

35.3 The Free State paid grants directly into Estina's bank account, and the responsible official admitted she had no real evidence of how the money was being spent;

35.4 A "feasibility study" was only done after the contract was signed. It appears the "loosely drafted" contract – skewed in Estina's favour – was drawn up by Premier Ace Magashule's legal adviser. The contract commits the department to shelling out R342-million and Estina will be billed for the balance of the R570-million project cost "if necessary";

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- 35.5 Small-scale farmers, who were supposed to be beneficiaries of a 51% share in the scheme, were only identified at a late stage of the project and the official could not explain how they were chosen; and
- 35.6 Approval for the project was rushed through even though there was no budget, no feasibility study and no urgency.
36. One of the investigators remarked in apparent exasperation: *"Estina is using government's money to establish a plant, putting cows on land that is given by government rent-free. Now they get to make a fortune off the infrastructure."*
37. The disclosures were made in a confidential transcript, which recorded the extraordinary interview with the Free State Department of Agriculture Chief Financial Officer, Dipatle Dlamini. The transcript of this interview is attached hereto and marked as **ANNEXURE "HRH7"**.
38. On 13 August 2014, following the National Treasury's investigation, the Department cancelled its contract with Estina (Pty) Ltd. Management of the project was taken over by the Free State Development Corporation (FDC). The FDC indicated that the cow housing shed was inadequate and that the processing plant that was built by Estina would require additional investment if it were viable at all. The FDC also reportedly admitted (in a meeting of the Portfolio Committee for Economic Development in the Free State Legislature) that none of the 80 beneficiaries purportedly identified for the project were involved in the project.

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After the cancellation, the Department still made two payments to Estina, which seems highly irregular.

39. Of particular concern, is the evidence of a “kickback” from the Guptas to Zwane and other officials in the Department, for facilitating the Estina scheme. In October 2012, shortly after the launch of the Vrede Dairy Project, Zwane, officials from his department and a local gospel choir (the Umsingizane gospel choir) that Zwane promotes were hosted on an all-expenses-paid tour of India by the Guptas.

#### **ZWANE AND THE GOSPEL CHOIR’S TRIP TO INDIA**

40. At the State Capture Commission witnesses testified that Zwane told audiences at public engagements that the beneficiaries of the Vrede Dairy Project will be taken to India for training. This training in India never materialised. Instead, Zwane, officials from his department, and a local gospel choir were hosted on an all-expenses tour to India in October 2012.
41. Details of this trip are evidenced in emails and records obtained from the GuptaLeaks. The tour was planned by the Guptas and their employees who made all the flight and accommodation bookings for Zwane and the touring party.
42. On 13 October 2012, Zwane personally sent a list detailing which members of the party should share rooms and who should get their own. This mail was sent to Ashok Narayan, who would later become an advisor in the office of the Free State

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Premier. Narayan forwarded the email to Ashu Chawla, the Sahara Computers CEO, who then made all the necessary arrangements. This is evident in the string of emails attached hereto as **ANNEXURE "HRH8"**.

43. One of the officials of interest who accompanied Zwane and the choir to India is Tshegofatso Innocentia Motaung [REDACTED] She worked with Zwane in the Free State Department of Agriculture. She is also the mother of one of Zwane's sons, Kearabetswe Zamangwe Zwane born on 3 October 2013.
44. Motaung signed an invitation letter on behalf of Zwane to invite an Indian Minister to visit the Free State. This invitation letter forms part of the documentation that enabled the Waterkloof landing for the Gupta wedding at Sun City and will be discussed later in this affidavit.
45. In pictures of the tour retrieved from the GuptaLeaks, Zwane and the rest of the tour party can be seen at Indian locations. The pictures are attached hereto and marked as **ANNEXURES "HRH9" & ANNEXURE "HRH10"** respectively.
46. This would not be the last time Zwane was hosted by the Guptas on an all-expenses trip overseas. More evidence of this type of gratification will be discussed later in this affidavit.



**ZWANE'S CLOSE ASSOCIATION WITH THE GUPTA'S**

47. Zwane had a close relationship with the Guptas. From 2012 he was a regular visitor at the Saxonwold compound of the Guptas and enjoyed several trips to Dubai, India and Switzerland arranged and paid for by the Gupta family.
48. The diary of Tony Gupta, retrieved from the GuptaLeaks, shows that Zwane visited the Saxonwold compound at least nine times between September 2012 and January 2014. Many of these meetings took place when the Vrede Dairy Project kicked off and Peter Thabethe, the HOD of Agriculture in the Free State, accompanied Zwane on several occasions. Thabethe, without Zwane visited Saxonwold to meet with Tony Gupta on numerous other occasions. The annexures below were retrieved from the GuptaLeaks and are evident of the meeting requests by Tony Gupta and the acceptance thereof by Zwane.
- 16 September 2012 (ANNEXURE "HRH11-A")
  - 5 January 2013 (ANNEXURE "HRH11-B")
  - 1 February 2013 (ANNEXURE "HRH11-C")
  - 13 March 2013 (ANNEXURE "HRH11-D")
  - 18 July 2013 (ANNEXURE "HRH11-E")
  - 27 August 2013 (ANNEXURE "HRH11-F")
  - 17 September 2013 (ANNEXURE "HRH11-G")
  - 17 January 2014 (ANNEXURE "HRH11-H")
  - 31 January 2014 (ANNEXURE "HRH11-I")



49. On 30 April to 2 May 2013, Zwane attended the Gupta family wedding (of Vega Gupta and Aakash Jahajgarhia) at Sun City, where he stayed for three nights. The confirmation of Zwane's attendance and stay is attached hereto and marked **ANNEXURE "HRH12"**.
50. On 22 July 2013, Ashok Narayan sent a request to Ashu Chawla for the use of the chopper. A flight was scheduled for Tony Gupta, Mosebenzi Zwane, Ashok Narayan, a certain Mr Richard and Duduzane Zuma from Grand Central Airport to Harrismith on the 25<sup>th</sup> of July 2013. From there the men would travel to QwaQwa by road and fly back the same afternoon to Johannesburg. The reason for the meeting is unknown, but what is clear is that the Guptas were willing to facilitate a flight for Zwane to the Free State. The correspondence from Narayan is attached hereto and marked as **ANNEXURE "HRH13"**.
51. On 9 September 2014, a year before Zwane's appointment as Minister of Mineral Resources, Travel Excellence confirmed flight tickets for Tony Gupta, Salim Essa, Mosebenzi Zwane and Surya Kant Singhala (the son of Ajay Gupta). The travel itinerary for the group was as follows:
- 13 September 2014 - OR Tambo to Dubai (Flight EK766);
  - 14 September 2014 - Dubai to Delhi (Flight EK516);
  - 16 September 2014 - Delhi to Dubai (Flight EK511);
  - 17 September 2014 - Dubai to Zurich (Flight EK85);
  - 20 September 2014 - Zurich to Dubai (Flight EK86);

- 21 September 2014 - Dubai to OR Tambo (Flight EK765)

The confirmation from Travel Excellence and the flight tickets are marked and attached hereto as **ANNEXURES "HRH14-A", "HRH14-B", "HRH14-C" and "HRH14-D"**. The purpose of this flight is unknown and should be investigated to establish why the Guptas would pay and facilitate a trip for Zwane to Switzerland and India.

52. AN invoice for accommodation in India from 14 September 2014 until 16 September 2014 was retrieved from the GuptaLeaks. It shows that Mosebenzi Zwane, Salim Essa and Tony Gupta were accommodated at an Orbit Resort and that Sahara picked up the bill. The invoice is attached hereto and marked as **ANNEXURE "HRH14-E"**.
53. The following night, 16 September 2014 Zwane was accommodated in the Oberoi Hotel in Dubai, and he departed on the 17<sup>th</sup> of September 2014. Ashu Chawla made the reservation and arranged for payment. The reservation confirmation is attached hereto and marked as **ANNEXURE "HRH14-F"**.

#### **ZWANE'S ROLE IN THE WATERKLOOF LANDING**

54. Zwane used his position as MEC to aid the landing of the Guptas' wedding guests at the Waterkloof Air Force Base.



55. In March 2013, an official letter signed and sent on behalf of Zwane (as MEC for Agriculture and Rural Development in the Free State), extended an open invitation to Shivpal Yadav, a minister in the Indian state of Uttar Pradesh, to visit the Free State Province. The letter of invitation was copied to the Indian High Commissioner to South Africa, Virendra Gupta. This invitation helped secure the aircraft's landing at the Waterkloof Air Force Base. Yadav was one of about 200 guests from India who attended the wedding after arriving in the Jetway Airbus at the Waterkloof Air Force Base.
56. A chain of emails from the GuptaLeaks is evidence that the letter of invitation was, in fact, prepared by Ashok Narayan and forwarded to Ashu Chawla.
57. In an email dated 8 March 2013 Narayan attach a draft invitation letter addressed to Shivpal Yadav on a letterhead of the MEC of Agriculture and Rural Development, M.J. Zwane. This mail and draft letter are attached hereto and marked as **ANNEXURE "HRH15"** and **ANNEXURE "HRH16"**.
58. In an email dated 11 March 2013, Narayan attached a final draft invitation to Yadav with the following message to Ashu Chawla:
- "Sir. Pls check if this is OK before I get it signed"*
- On the same date, Chawla replied:
- "Just add Lucknow before Uttar Pradesh and then print and get it sign and send me the signed copy please"*



These mails of Narayan and Chawla are attached hereto and marked **ANNEXURE "HRH17"**.

59. Also, on 11 March 2013, a certain P.J. Tsebela sent an email to Tshegofatso Innocentia Motaung, who is an official in the Agriculture Department of the Free State, the mother of Zwane's child and who also accompanied Zwane to India on the choir tour sponsored by the Guptas, with a message:

*"Kindly find the scanned letter as requested"*

Motaung immediately after that forward the letter to Ashok Narayan with a message:

*"Scanned copy for your attention. Sorry for the delay, we were temporarily off-line"*

These emails and scanned letter are attached hereto and marked as **ANNEXURE "HRH18"** and **ANNEXURE "HRH19"** respectively.

60. It appears that the letter was signed on behalf of Zwane by Motaung herself. It is not clear if Zwane knew about this letter and that he instructed Motaung to sign it. What is evident is that Motaung was involved with the final transmission of the letter to Ashok Narayan and eventually Ashu Chawla. If Motaung signed the letter without instruction from Zwane, it would appear that she acted without authority. If she was instructed to sign by Zwane, it is clear that Zwane and Motaung was prepared to sign a letter to assist the Guptas with an official invitation to an Indian minister.



61. Motaung is currently employed as a Deputy Director at the Department of Public Enterprises. She was appointed by former DG Richard Seleke. On 6 March 2018 she signed off the Departments Annual Performance Plan together with *inter alia* DG Seleke and Minister Pravin Gordhan. The signature of Motaung on this document and the signature on the invitation letter of MEC Zwane appears to be similar. As stated in paragraph 60 above, the role of the current Deputy Director: General Management in DPE should be investigated to determine her involvement in the Gupta plane landing at Waterkloof and if she is fit and proper to be employed in a senior position in the Department of Public Enterprises. The relevant page of the Annual Performance Plan of DPE with Motaung's signature is attached hereto and marked as **ANNEXURE "HRH19A"**.
62. The flight for the Gupta wedding, a private civilian affair, was cleared to land at Waterkloof by the South African National Defence Force. Permission was granted on application from the Indian High Commission, on the basis that the Airbus 330 was a "VIP" flight carrying a delegation from India.
63. The timing of Zwane's letter of invitation is suggestive of an ulterior and improper purpose. In February 2013, the Minister of Defence, Nosiviwe Mapisa-Nqakula, had refused a request by a Gupta family envoy – a representative of the Gupta family's Sahara company – for approval to land at the Waterkloof Air Force Base. The Indian High Commissioner to South Africa, Virendra Gupta, then became



instrumental in securing permission for the use of Waterkloof. On the strength of the open letter of invitation to an official "delegation" from Zwane, the Indian High Commission obtained clearance for the landing from then-chief of state protocol, Mr Vusi Bruce Koloane. This timing, together with the fact that the Free State government's official meeting was not publicised at all, is (at the very least), suggestive of an abuse of powers on the part of Zwane as MEC.

#### **THE APPOINTMENT OF ZWANE AS MINISTER OF MINERAL RESOURCES**

64. On 22 September 2015, former President Zuma announced the appointment of Zwane as Minister of Mineral Resources. Zwane was sworn in the following afternoon, on 23 September 2015.
65. Zwane was appointed a Minister less than a month after being sworn in as a member of the National Assembly (on 2 September 2015). 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 (2013 – 2015) and MEC for Cooperative Government and Human Settlements, Agriculture and Economic Development (2009 – 2013) in the Free State Province, under former 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.



66. Former President Zuma announced Zwane's appointment to the surprise of the ANC National Executive Committee, which met the previous weekend and had not been advised of the impending appointment. The circumstances around the appointment and reaction from Members of Parliament are fully described in the City Press of 27 September 2015. A copy of the article is attached hereto as **ANNEXURE "HRH20"**.
67. Zwane's appointment appears to have been vetted, if not orchestrated, by the Guptas, using Duduzane Zuma as a conduit to former President Zuma. On 31 July 2015, less than two months before President Zuma appointed Zwane as Minister, Mr France Oupa Mokoena of Koena Consulting and Property Developers emailed Tony Gupta and said:
- "Please find attached the CV of Mr Mosebenzi Zwane for your attention".*
- This mail is attached hereto as **ANNEXURE "HRH21"**. Tony Gupta forwarded Mokoena's email, with its attachment, directly to Duduzane Zuma. This mail is attached hereto as **ANNEXURE "HRH22"**. The CV attached to the mails is attached hereto and marked as **ANNEXURE "HRH23"**.
68. In May 2017, former Mineral Resources Minister Ngoako Ramatlhodi publicly stated that he was removed as minister and replaced by Zwane after he resisted pressure from Eskom's CEO, Brian Molefe and Eskom's chairperson, Ben Ngubane, to suspend Glencore's mining licences. At the time that Mr Ngubane pressurised former Minister Ramatlhodi to suspend the Glencore mining licences, Glencore was at that stage the owner of Optimum Coal Mine, which was

subsequently purchased (with the assistance of the then-new Minister, Zwane) by the Gupta-Zuma owned company, Tegeta.

69. 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 was subjected to before the purchase.
70. Former 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 and marked as **ANNEXURE "HRH24"**.
71. On 28 November 2018 former Minister Ramatlhodi testified at the State Capture Commission. His evidence was based on a statement, dated 7 November 2018 that he submitted to the State Capture Commission. The statement is attached hereto and marked as **ANNEXURE "HRH25"**.
72. In paragraph 21 on page 3 of the statement, former Minister Ramathlodi states the following:
- "The same evening Mr. Molefe called me to say Dr. Baldwin Ben Ngubane, his Chairperson wanted to meet with me. We then met in the office in the presence of some officials. At that meeting Dr. Ngubane basically instructed me to shut down all Glencore owned mines. He said that he needed a decision to be made*



*in the meeting so that he could report to the President, who was leaving on a foreign mission on that day. I informed him that I was unable to take a decision like that without due processes being followed as these processes would enable me to make an informed decision."*

73. One of the officials Adv Ramathlodi referred to in his statement, is Dr Thidedi Ramontja, the Director-General of the Department of Mineral Resources at that time. During questioning at the State Capture Commission, Ramontja confirmed that he was present at the said meeting.
74. When the former President returned from his overseas trip which Ngubane mentioned in the meeting, Zuma informed Ramathlodi that he was redeployed as Minister of Public Service and Administration and Zwane was appointed as the Minister of Mineral Resources.

#### **ZWANE APPOINTS GUPTA ASSOCIATES AS HIS ADVISORS, DESPITE CONFLICTS OF INTEREST**

75. As Minister of Mineral Resources, Zwane appointed known Gupta associates as his advisors, most notably Mr Kubentheran ("Kuben") Moodley and Mr Malcolm Mabaso.



76. 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.
77. Mr Moodley is a known friend of the Gupta family and Salim Essa, the Gupta's close business associate and sole director, *inter alia*, of Elgasolve (which holds a 21.5% stake in Mabengela Investments) and VR Laser Services, a company in which the Gupta family's investment vehicle and Duduzane Zuma owns shares.
78. 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.
79. He was also a co-director of Lornavision (Pty) Ltd, a company that was awarded the sole right to collect outstanding TV licence fees on behalf of the SABC. This contract has been declared null and void by the High Court after it was found that the SABC did not follow correct procurement procedures when Lornavision was appointed.
80. 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 the time of the sale of Optimum Coal Mine and the conclusion of Eskom's coal-supply contracts with new mine-owner Tegeta.



81. As the Public Protector found, Zwane's appointment of Mr Moodley as his special advisor in these circumstances, presented a conflict of interest – as *“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”*.
82. Mr Moodley also has business ties to Mr Mark Vivian Pamensky, another close business associate of the Gupta family. Mr Pamensky 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). Pamensky was also a director of Shiva Uranium, in which Oakbay Resources has a 74% stake and Tegeta a 19.6% stake. 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.
83. Zwane also appointed Mr Malcolm Mabaso as his personal advisor. 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 and the son of former Transnet Board Chairperson, Linda Mabaso.
84. Mr Mabaso was reportedly brought to National Treasury by Minister Des van Rooyen, on the first day of his brief spell in office as Minister of Finance in



December 2015. Minister Van Rooyen appointed Mr Ian Whitley and Mr Mohamed Bobat – both business associates of the Gupta family and Mr Eric Wood – as his advisors. However, on his arrival at Treasury, Minister Van Rooyen also sought to ensure that Mr Mabaso was given a desk, despite Mr Mabaso not being a Treasury or Department employee.

85. In his testimony at the State Capture Commission, the former DG of the Department of Mineral Resources, Dr Thibedi Ramontja testified that the day Zwane was sworn in as Minister, he went to the Union Buildings to receive the new Minister. On that day, the new advisors of the Minister were already there and present when Zwane was sworn in. The transcript of Dr Ramontja's testimony at the State Capture Commission can be found at the following link - [https://www.sastatecapture.org.za/site/files/transcript/69/14\\_March\\_2019\\_Sessions.pdf](https://www.sastatecapture.org.za/site/files/transcript/69/14_March_2019_Sessions.pdf).
86. Ramontja also testified that the relationship between the Minister and himself as DG was not as it should be and that he had to take instructions from the Minister's advisors and that the advisors interfered with the tasks and administration of the DG's office.
87. On 10 December 2015 Ramontja was called to the Minister's office but was led to the office of Mabaso. Mabaso informed Ramontja that he was instructed by Zwane to inform Ramontja that he must resign within 20 minutes. Ramontja had 19 years' service in the Department, was highly qualified and served under seven



Ministers. He was forced to write his resignation letter and hand it to Mabaso on 10 December 2015. This incident was highly irregular and unprecedented and should be explored, for it is the function and prerogative of the President to appoint and expel DG's.

88. The fact that the new Minister had already appointed advisors and that they were there when he got sworn in is a matter of great concern. This matter should be investigated to establish if the correct procedures were followed with regards to the appointment of advisors and by whom and when they were officially appointed.

#### **ZWANE'S ROLE AND INVOLVEMENT IN THE OPTIMUM PURCHASE**

89. Evidence obtained from the GuptaLeaks and testimony at the State Capture Commission show that Zwane was in Switzerland, Dubai and India for the period 29 November 2015 to 7 December 2015. In the "State of Capture" report, the Public Protector analysed Zwane's flight records to confirm that Zwane flew from Johannesburg to Zurich, via Dubai, on 29 and 30 November 2015.
90. The Public Protector was unable to explain how Zwane got from Zurich to Dubai, since his official flights (booked on Emirates Airlines (i) from Zurich to Dubai on 2 December 2015; (ii) from Dubai to Delhi on 3 December 2015; and (iii) from Delhi to Dubai on 5 December 2015) were never used. However, Zwane did board his official flight booked from Dubai to Johannesburg on 7 December 2015.



91. The answer to how Zwane travelled from Zurich to Delhi and to Dubai, was found in the GuptaLeaks. The chief pilot for the Guptas, Wollie de Kock, obtained an overflight permit for ZS-OAK, the Gupta passenger jet, to fly from Zurich to Delhi on 2 December 2015 and from Delhi to Dubai on 4 December 2015. He informed Ashu Chawla about the permit, at which point Chawla confirmed the passengers on the flight. The passengers were Salim Essa, Tony Gupta, Srikant Singhala, Paras Mal Lodha, Mrs Lodha, Mosebenzi Joseph Zwane and Maleatlana Joel Raphela. Raphela is a Deputy Director-General of Mineral Regulation in the Department of Mineral Resources. The correspondence between De Kock and Chawla is attached hereto and marked as **ANNEXURE "HRH26"**.
92. At the State Capture Commission, Dr Ramontja testified that Mr Raphela was part of the official delegation that went to Switzerland, but that Raphela told him that he was excluded from all meetings with Minister Zwane.
93. On 7 December 2015, Zwane was transported between the Oberoi Hotel, Emirates Hill and the airport with a BMW 7 Series. The total duration for the use of the vehicle was 3 hours and the amount charged was 825AED. A reminder to pay this outstanding amount was sent to Ashu Chawla by the Concierge Service of the Oberoi Hotel. The said email is attached hereto as **ANNEXURE "HRH27"**.
94. When Zwane was in Delhi from 2 – 4 December 2015, he was admitted to the Max Healthcare Super Speciality Hospital. [REDACTED]



[REDACTED]  
[REDACTED] It is suspected  
that the Guptas facilitated and paid for this medical treatment. [REDACTED]  
[REDACTED]

95. Mr Clinton Martin Ephron, CEO of Glencore coal business in South Africa, testified at the State Capture Commission that representatives of Glencore had two meetings with Zwane at the Dolder Hotel in Zurich, Switzerland on 1 and 2 December 2015.
96. The first meeting on 1 December 2015, was between Mr Ivan Glasenberg (CEO of Glencore), Zwane and Salim Essa, who was introduced as Zwane's advisor. The meeting was about the Optimum Coal Mine and the problems regarding the continued supply of coal to Eskom. Zwane suggested that Glencore could reach an agreement with the Guptas to sell the mine.
97. On 2 December 2015 Mr Ephron joined Mr Glasenberg in a second meeting with Zwane. Salim Essa and Tony Gupta accompanied Zwane to this meeting. Zwane noted the importance of securing employment at the mine and his concerns should Optimum enter into liquidation.
98. After Zwane left the meeting, the parties reached a verbal agreement that Glencore would sell Optimum Coal Mine to the Guptas for R2,15billion. During this discussion, Tony Gupta also proposed to Mr Glasenberg that the



rehabilitation trust funds of Optimum should be converted from equity instruments into cash equivalents before signature of any agreement.

99. The statement of Mr Ephron to the State Capture Commission is attached hereto and marked as **ANNEXURE "HRH29"**.

#### **REHABILITATION FUNDS OF KOORNFONTEIN AND OPTIMUM MINES**

100. Under Zwane, the Department of Mineral Resources also approved the release of billions of rand in mine rehabilitation funds to Tegeta in apparently unlawful circumstances.
101. The Public Protector investigated the transfers from Standard Bank to Bank of Baroda accounts in the amounts of:
- R280 million from the Koorntfontein Rehabilitation Trust Fund on 23 May 2016;
- R1,469 billion from the Optimum Mine Rehabilitation Trust Fund on 21 June 2016.
102. 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."*

103. In an affidavit filed by former Finance Minister Pravin Gordhan in litigation between the Minister of Finance and Oakbay Investments, attached hereto and marked as **ANNEXURE "HRH30"**, 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. The FIC's report that shows the suspicious and unusual transactions on Gupta affiliated accounts is attached hereto and marked **ANNEXURE "HRH31"**.
104. In September 2017 OUTA filed an urgent application in the High Court, Gauteng Division, Pretoria wherein an order was sought for Bank of Baroda to continue to hold the Rehabilitation Trust funds of Optimum and Koornfontein mines. This application was brought to ensure that the Guptas will not be able to withdraw or utilise any of the funds.
105. This was also necessary to prohibit anybody from utilising any of the funds after it was established that a Deputy Director in the Department of Mineral Resources approved access to the funds.

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106. Zwane, as minister of Mineral Resources, approved the release of the Rehabilitation Funds to Bank of Baroda where an amount of approximately R100 million was utilised by the Guptas for so-called ongoing rehabilitation. It also became clear why Tony Gupta pressured Glasenberg of Glencore to convert the funds from equity instruments into cash equivalents before signature of the agreement between Glencore and Tegeta.
107. The court ordered the Bank of Baroda to hold and secure the funds. A copy of the said Court Order is attached hereto as **ANNEXURE "HRH32"**.
108. In April 2018 the Court ordered that the funds be transferred to a Nedbank account to secure the funds. A copy of this order is attached and marked as **ANNEXURE "HRH33"**.

#### **ZWANE TAKES INSTRUCTION FROM GUPTA ASSOCIATES**

109. Emails recovered from the Sahara computer server show that the Guptas and their known associates (including Duduzane Zuma and Nazeem Howa, the former CEO of the Gupta-owned company, Oakbay), directed and influenced Zwane in the public and media statements he made as Minister of Mineral Resources.
110. In an email from Mr Howa to Duduzane Zuma and Tony Gupta on 2 February 2016, attached hereto and marked **ANNEXURE "HRH34"** and **ANNEXURE**

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“HRH35”, Howa listed fourteen questions he anticipated Zwane could expect from the journalists at a forthcoming Mining Indaba. Mr Howa drafted comprehensive answers for Zwane on matters sensitive to the Guptas (including Zwane’s alleged closeness to the Gupta family, the sale of the Optimum mine and his inexperience as a mining minister).

111. 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.”*
112. In 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 Guptas) over public statements concerning Zwane’s engagement with the Guptas, particularly during Zwane’s trip to Switzerland. These emails show the Gupta’s sustained efforts to direct public statements from and concerning Zwane, as Minister of Mineral Resources, and their concern to conceal their relationship with the Minister. The emails are attached hereto and marked **ANNEXURE “HRH36”** and **ANNEXURE “HRH37”**.
113. The emails also indicate that Zwane was discussing Cabinet business with the Guptas, and taking instructions from them, it 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 Zwane as its chairperson) to investigate the closure of the Guptas' South African bank accounts. Bell Pottinger advised Fin24 that the Inter-Ministerial Committee was recommending a commission of inquiry into the country's banks and that Zwane, should be directly contacted. This was two months before Zwane made these findings public on 1 September 2016. The Fin24 report on the incident is attached hereto and marked **ANNEXURE "HRH38"**.

#### **ZWANE'S UNETHICAL CONDUCT IN PARLIAMENT**

114. Zwane received several questions from Members of Parliament regarding his relationship with the Guptas. Hereunder are questions and answers that show Zwane did not answer truthfully or provided vague answers to avoid the real issues at hand. This relates to unethical behaviour and is in contravention with the Oath of Office he took when he was appointed as a cabinet minister.
115. In a written reply to a parliamentary question from Democratic Alliance MP, Mr TJ Brauteseth on 8 April 2016, Zwane denied ever meeting with any of the Guptas, Gupta employees or close associates since taking office as Minister of Mineral Resources. 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 Saxonwold Estate in Johannesburg."*



This answer is untruthful insofar as it differs with the accepted meeting requests of Tony Gupta that were accepted by Zwane, as discussed earlier in this statement. This question and answer as published by Parliament is attached hereto and marked as **ANNEXURE "HRH39"**.

116. In a written reply to a parliamentary question from the EFF leader, Mr Julius Malema, in May 2016, Zwane denied travelling with the Guptas on their trip to Switzerland to persuade Glencore to sell Optimum coal mine to their companies Oakbay and Tegeta. The travel and accommodation records for Zwane between 2 and 7 December 2015 indicate that these denials are false, and the answer is untruthful insofar as it differs with the mails that were sent to Capt Wollie de Kock, the Chief Pilot of ZS-OAK with the passenger list confirmed by Ashu Chawla. This question and answer as published by Parliament is attached hereto and marked as **ANNEXURE "HRH40"**.

117. In a written reply to parliamentary questions from Freedom Front Plus MP, Adv Anton Alberts on 8 June 2017, Zwane repeated this denial, 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"*. Zwane also denied that he had any direct or indirect interests in Oakbay or Optimum mine. This question and answer as published by Parliament is attached hereto and marked as **ANNEXURE "HRH41"**.



118. With regards to a question from Adv Anton Alberts of the Freedom Front Plus on who Zwane met and who travelled with him, dated 22 April 2016, Zwane said that he is not at liberty to disclose who he met in Switzerland, or who was the official that travelled with him. Zwane clearly showed his reluctance to play open cards with Parliament. His answer is vague and evasive. The question and answer as published by Parliament is attached hereto and marked **ANNEXURE "HRH42"**.
119. On 9 June 2017, Mr Willie Madisha asked Zwane follow up questions regarding his trip to Switzerland. Mr Madisha wanted to know how he travelled to Switzerland, and what were the circumstances of the trip and the relationship with the Guptas. Again, Zwane did not answer the question and gave an evasive explanation of an official trip that was part of his mandate. The question and answer as published by Parliament is attached hereto and marked **ANNEXURE "HRH43"**.
120. A question from the Cope leader, Mr Lekota dated 9 June 2017 asked about the funding of the Switzerland trip. Zwane answered that the Department of Mineral Resourced paid for the trip, thereby unknowingly indicating that he and the official who travelled with him wasted the Departments money when they did not fly with the tickets that were acquired by the Department. The question and answer as published by Parliament is attached hereto and marked **ANNEXURE "HRH44"**.
121. On 23 August 2016, Mr Lorimer of the DA asked Zwane who was his advisors. Zwane answered that he has two advisors, Malcolm Mabaso and Adv Zarina

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Kellerman. Zwane did not disclose that Kuben Moodly was also his advisor as stated by the Public Protector in the "State of Capture" report and testified at the State Capture Commission by former DG Ramontja. The question and answer as published by Parliament is attached hereto and marked **ANNEXURE "HRH45"**.

122. Ms Deirdre Carter of Cope asked Zwane on 21 October 2016 about the transfer of the Optimum rehabilitation funds, who requested the transfer, details of the approval granted and the conditions thereof. Zwane was again evasive in his answer by stating that the matter was the subject of ongoing legal proceedings. That was a blatant lie because legal proceedings on the rehabilitation funds only commenced in 2017. The question and answer as published by Parliament is attached hereto and marked **ANNEXURE "HRH46"**.

**PARLIAMENTARY PORTFOLIO COMMITTEE: MINERAL RESOURCES AND  
ENERGY'S EFFORTS TO SET UP AN INQUIRY**

123. The Portfolio Committee: Mineral Resources and Energy tried for more than a year to get Zwane to appear before them and account for State Capture allegations in the Department of Mineral Resources. These efforts failed, and it is unsure if the current committee will re-open the inquiry.



124. On 23 August 2017 the Parliamentary Portfolio Committee on Mineral Resources and Energy decided to call the then Minister Zwane to its meeting to account for allegations of State Capture involving his Department. Zwane was unable to attend on that day due to a Cabinet meeting. The Chairperson decided that the Committee would communicate with the Minister to find a suitable date for him to attend a meeting. The minutes and summary of this Portfolio Committee meeting is attached hereto and marked as **ANNEXURE "HRH47"**.
125. The House Chairperson of the Committees, Mr Cedric Frolink issued a directive to summon the Minister of Mineral Resources to respond to allegations of State Capture. The Minister appeared before the Committee on 18 October 2017 and made it clear that he will not answer questions that are subject to the *sub judice* rule as he does not want to jeopardise other investigations. The Minister was asked to clarify a number of claims that had surfaced in the public domain. In his response, the Minister denied all allegations. For some of the questions, he requested that he not reply as the matter was *sub judice*. He questioned the authenticity of the leaked Gupta emails asking by whom these emails were validated. He suggested that these emails should be tested and declared admissible in court before being probed about their content. The Minister said it was unfortunate that some members thought he was captured as he could attest that he had never been captured by anyone. The minutes and summary of this Portfolio Committee meeting is attached hereto and marked as **ANNEXURE "HRH48"**.



126. A date was set by the Minister to meet with the Committee on 28 November 2017, but the Minister sent an apology that he would not attend because of illness. The Committee convened the next day and agreed to ask the Minister to make himself available at the Committee's first meeting in 2018. The minutes and summary of this Portfolio Committee meeting is attached hereto and marked as **ANNEXURE "HRH49"**.
127. On 21 February 2018, the Portfolio Committee convened to engage with Minister Zwane. However, two days before the meeting, the Chairperson received a letter stating that the Minister would be unavailable to appear before the Committee. In response to the Chairperson's correspondence pointing out the importance of the meeting and the possibility of adjusting the time, the Minister indicated that he had to appear before the NCOP and later attend a Cabinet Committee meeting on the same day. Members were frustrated by the actions of the Minister and, especially, the flimsy and possibly untrue, reasons for being unable to attend meetings even when the Minister himself had set the date for the meeting. The Committee finally decided that the way forward lay in setting aside efforts to question the Minister again and to commence with preparations for a formal inquiry. The minutes and summary of this Portfolio Committee meeting is attached hereto and marked as **ANNEXURE "HRH50"**.
128. A meeting was called by the Chairperson of the Mineral Resources Portfolio Committee following a resolution by the Committee on 21 February 2018 to institute an inquiry to probe the role of the former Minister of Mineral Resources,



Mr Mosebenzi Zwane, in allegations of State Capture. Zwane's failure to attend the meetings prompted the Committee to resolve to institute an inquiry into the allegations of maladministration at the Department of Mineral Resources. The parliamentary Legal Services were requested to draft the terms of reference that would guide the Committee in conducting the inquiry, and this meeting was meant to review them. The Committee resolved to proceed with the inquiry and gave itself 60 days to complete the process beginning immediately after Easter. The minutes and summary of this Portfolio Committee meeting is attached hereto and marked as **ANNEXURE "HRH51"**.

129. On 25 April 2018, the Portfolio Committee was presented with the envisaged terms of reference to the Committee by a Parliamentary Legal Adviser. The National Assembly rules empowered the Portfolio Committee (PC) to initiate an inquiry into alleged governance failures and maladministration within the DMR. The Chairperson concluded with a request that the Legal Adviser and the Committee Secretary draw up a process that included what Members had said in the meeting, with an indication of an envisaged time of conclusion. A preliminary list of witnesses was handed out, but not discussed. The minutes and summary of this Portfolio Committee meeting is attached hereto and marked as **ANNEXURE "HRH52"**.
130. On 12 September 2018, a Parliamentary legal adviser briefed Members on the status of the Committee's inquiry into matters of State Capture within the Department. While the inquiry had started, the request for authorisation of funds

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to go and interview witnesses had not generated any response, and accordingly the team had not been able to travel. As a result, the inquiry stalled. The Zondo Commission had also started looking into allegations of State Capture which would be related to former Minister Zwane. The Commission, of course, enjoyed the benefits of sufficient resources, technical expertise and investigative capacity. However, Parliament as an arm of government may conduct its own investigative processes and inquiries, regardless of the fact that there might be duplication with other entities. Effectively the continuance of the Committee's inquiry came to an end and it is not clear if they will carry on with any further inquiries regarding the conduct of former minister Zwane. The minutes and summary of this Portfolio Committee meeting is attached hereto and marked as **ANNEXURE "HRH53"**.

131. OUTA made a submission to the Mineral Resources Portfolio Committee on 18 May 2018. This was an effort to assist the Committee with their inquiry and to enable the Committee to get access to the GuptaLeaks. The events as described above resulted in OUTA not being called upon for any further assistance. OUTA's submission to the Committee is attached hereto and marked as **ANNEXURE "HRH54"**.

132. It is evident that Zwane's continuous absence and delays resulted in the Mineral Resources' Committee's inability to investigate and hold an inquiry into the alleged unlawful actions of the former Minister. To date Zwane has not appeared at any inquiry. Although he was removed as a Minister by President Ramaphosa, he is still a Member of Parliament and a Chairperson of a Portfolio Committee.

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**ZWANE'S ROLE AND ABUSE OF HIS POSITION ON THE INTER-MINISTERIAL COMMITTEE**

133. On 21 April 2016, the Department of Government Communication and Information Systems ("GCIS") released a media statement on the Cabinet meeting of 13 April 2016. In paragraph 5.2 of the statement it says that Cabinet noted the actions by four banks that gave notice to close the bank account of a company. Cabinet then endorsed that the Ministers of Finance, Labour and Mineral Resources should open a constructive engagement with the banks to find a lasting resolution to the matter. The Cabinet statement is attached hereto and marked as **ANNEXURE "HRH55"**.
134. This came after four banks (ABSA, FNB, Standard Bank and Nedbank) notified the Guptas in April 2016 that they would close their accounts and terminate their relationships with the Guptas and Gupta affiliated businesses.
135. Representatives of the four banks testified at the State Capture Commission, and they all had similar experiences when they were invited by Zwane to meet the Inter-Ministerial Committee ("IMC"). All of them required an agenda for the meeting and confirmation on who will attend the meeting. They were informed that there would be no set agenda for the meetings and that it would be a discussion convened for purposes of gaining clarity on media reports.
136. Absa and FNB declined to meet with the IMC. Standard Bank met with the IMC on 5 May 2016 and Nedbank met the IMC on 6 May 2016.

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137. In the meeting with Standard Bank it was stated at the State Capture Commission that it became clear from the comments and enquiries by Ministers Zwane and Oliphant and Mr Manyi that their main concern was the reversal of the decision to close the Gupta entities' bank accounts and that they wanted to secure a favourable outcome for the Guptas.
138. In the Nedbank meeting, the overall impression from Nedbank was that the IMC wanted to determine if there was a coordinated decision between the banks to terminate relationships with the Guptas and whether Nedbank would consider becoming the primary banker in the circumstances where the Gupta family member resigned from the entities whose bank accounts were closed.
139. Neither of the banks was prepared to facilitate the Gupta family or any Gupta related entities any more. The meeting with the IMC did not impact their decisions.
140. The statements of Standard Bank and Nedbank can be obtained from the following links:
- [https://www.sastatecapture.org.za/site/files/documents/12/Statement-Standard\\_Bank.pdf](https://www.sastatecapture.org.za/site/files/documents/12/Statement-Standard_Bank.pdf)
- <https://www.sastatecapture.org.za/site/files/documents/14/Statement-Nedbank.pdf>



141. It is important to note that one of the concerns that Standard Bank had when they decided to close the Gupta bank accounts was that Minister Zwane accompanied a Gupta delegation to Switzerland to negotiate the purchase of Optimum coal mine. Mr Stinton testified at the State Capture Commission as follows:

*"Then at the end of 2015 it was announced that Minister Zwane had accompanied a Gupta delegation to Switzerland to negotiate the purchase of the Optimum Coal Mine from Glencore. That on its own would have been concerning to us, because Minister Zwane was the Minister of Minerals at the time and in terms of the Mineral and Petroleum Resources Development Act, he would have been obliged to approve any change and control of that mine and so to be part of the buyers delegation, if it occurred, would have been concerning and give rise to suspicions. Similarly, it was reported at the time in the Financial Mail, which is a fairly reputable publication, that the Oakbay Group of Companies had strongly denied that the Minister attended these meetings, had been part of the delegation, and yet a spokesman for the Minister readily admitted that he had been there. And that denial of what is a stated fact, gave rise to suspicions on our part and concerns."*

142. On 1 September Minister Zwane in his capacity as chairperson of the IMC published a media release wherein it was stated inter alia that Cabinet resolved the following:

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- 142.1 To recommend to the President that given the nature of the allegations and the responses received, that the President consider establishing a Judicial Enquiry in terms of section 84(2)(f) of the Constitution;
- 142.2 To consider the current mandates of the Banking Tribunal and the Banking Ombudsman. Evidence presented to the IMC indicated that all of the actions taken by the banks and financial institutions were as a result of innuendo and potentially reckless media statements, and as a South African company, Oakbay had very little recourse to the law. Looking into these mandates and strengthening them would go a long way in ensuring that should any other South African company find itself in a similar situation, it could enjoy equal protection under the law, through urgent and immediate processes being available to it as it required by the Constitution;
- 142.3 To consider the current Financial Intelligence Centre Act and the Prevention of Combatting of Corrupt Activities Act regarding the relevant reporting structures set out therein as evidence presented to the IMC was unclear on whether the various banks and financial institutions, as well as the Reserve Bank and Treasury, complied with these and other pieces of legislation. The IMC was also briefly ceased with the implications of legal action against any of these entities and the potential impact that would have on the volatility of the Rand as well as the measures that could be put in place to protect the economy. This was not something



that fell within the mandate of the IMC and should, therefore, be considered by the Judicial Enquiry;

142.4 To re-consider South Africa's clearing bank provisions to allow for new banking licences to be issued and, in so doing, to create a free market economy. The IMC was presented with evidence suggesting that the South African banking system is controlled by a handful of clearing banks which ensured that every other local or international bank participating in the South African banking sector would need to go through these clearing banks to have their transactions cleared, thereby creating an oligopoly. Evidence was also presented that these institutions may have placed undue pressure on banks that sought to assist the company by subjecting them to unwarranted auditing processes. It is unclear why the Reserve Bank will not issue new banking licences to other banks, and this would need to be given careful attention by the Judicial Enquiry as it did not fall within the purview of the IMC; and

142.5 The establishment of a State Bank of South Africa with the possible corporatisation of the Post Bank being considered as an option. Evidence presented to the IMC suggested that all of South Africa's economic power vests in the hands of particular institutions, institutions who have shown that their ability to act unilaterally is within their mandate and is protected.



143. The following day (2 September 2016) the Presidency brought out a media statement stating that the statement issued by the Minister of Mineral Resources, Mr Mosebenzi Zwane on 1 September 2016, on the work of the task team established to consider the implications of the decisions of certain banks and audit firms to close down the accounts and withdraw audit services from the company named Oakbay Investments, was issued in his personal capacity and not on behalf of the task team or Cabinet.
144. The statement went further to say Minister Zwane is a member of the task team. He did not speak on behalf of Cabinet, and the contents of his statement did not reflect the position or views of Cabinet, the Presidency or government. The unfortunate contents of the statement and the inconvenience and confusion caused by the issuing thereof were deeply regretted.
145. It is clear that Zwane acted without Cabinet's knowledge and that the "findings" of the IMC were not approved by Cabinet. Although this is serious misconduct, to misrepresent Cabinet, former President Zuma deemed it fit to only reprimand Zwane for his statement. This is evident in a Parliamentary Answer given by the former President on a question from Mr D.J. Maynier dated 16 October 2016. The question and answer is attached hereto and marked as **ANNEXURE "HRH56"**.

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**FINAL COMMENTS**

146. From entering the political space, Mosebenzi Zwane did not act in the best interest of the country. He abused his position in the Free State as MEC, as Minister of Mineral Resources and as a Member of Parliament. From 2012 to date, there is a golden thread that attaches him to the Guptas. His actions and decisions led to millions of Rands of damage to the country. He never co-operated when he was given the opportunity to explain himself to Parliament. Zwane intimidated people, and there were suspicions raised that he could be involved with the death of people who stood up against the Vrede Dairy Project and wanted to tell the world the truth. He abused his position and appointed friends to positions on Boards of State-Owned Enterprises. He went so far as to undermine Cabinet to protect the Guptas. The evidence is clear that he enjoyed a close relationship with the Guptas and his actions and trips abroad in the company of the Guptas and Salim Essa (especially his trip to Switzerland in 2014) should be thoroughly investigated.
147. Zwane's actions were not only condemned in South Africa, but abroad he also brought South Africa into disrepute and shame. In an article about the Vrede Dairy Project, titled - *"In Depth: How Mandela's political heirs grow rich off corruption"* – it is described in detail how the Vrede Dairy Project and Zwane's involvement damaged the legacy of Nelson Mandela and the image of South Africa. The said article, a must-read, is attached hereto and marked **ANNEXURE "HRH57"**.



**CHARGES****148. Fraud**

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

**149. Extortion**

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

**150. High Treason**

In terms of **Section 96** of our Constitution:

*"(1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.*

*(2) Members of the Cabinet and Deputy Ministers may not-*

- (a) undertake any other paid work;*
- (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or*



- (c) *use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person."*

151. Furthermore, each Minister must swear/affirm before the Chief Justice or another judge designated by the Chief Justice, as follows:

*"I, \_\_\_\_\_, 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."*

152. We allege that Zwane'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.

153. Zwane, as a citizen of the Republic of South Africa and Minister of Communications, 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.



154. 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.

155. **Corruption**

We allege that Zwane'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-*

(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*
- (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.*
- (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:

"(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;*

*(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."*



- 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*



- (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)."*

156. 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-*

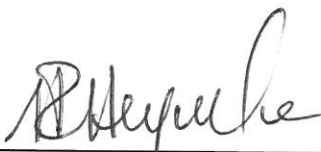
- (i) in the case of a sentence to be imposed by a High Court, to a fine or to imprisonment up to a period for imprisonment for life;*
- (ii) in the case of a sentence to be imposed by a regional court, to a fine or to imprisonment for a period not exceeding 18 years; or*
- (iii) in the case of a sentence to be imposed by a magistrate's court, to a fine or to imprisonment for a period not exceeding five years.*



(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."*

157. 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 law enforcement authorities.

Signed at RANDBURG on this 30<sup>TH</sup> day of SEPTEMBER 2019.

  
 \_\_\_\_\_  
 DEPONENT

I CERTIFY that the deponent has acknowledged that ~~she~~/he knows and understands the contents of this Affidavit which was signed and sworn to before me at RANDBURG on this 30<sup>th</sup> day of SEPTEMBER 2019, the regulations contained in Government Notice No. R35 dated the 14 March 1980 having been complied with.

**ANDREA KORFF**  
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