



OUTA

ORGANISATION UNDOING TAX ABUSE

NO ROOM TO HIDE

A President caught in the act

**A document by the
Organisation Undoing Tax Abuse (OUTA)**

Foreword

Over the past few years, various formal attempts have been made to remove Jacob Zuma from his position as the President of South Africa, through Parliamentary motions of no confidence and debates within the ANC’s National Executive Committee (NEC) structures.

OUTA believes that significant and sufficient input has been provided on President Zuma’s questionable conduct - be it various investigative media reports and the recent Public Protector’s reports on Nkandla and State Capture - to warrant his removal. President Zuma’s supporters on the other hand, have often claimed insufficient evidence against him at the time when Members of Parliament or the ANC’s NEC were asked to vote or decide on his removal.

Normally in democratic societies where good governance prevails and those in authority are expected to act in the interests of the people, it takes just one of the incidents or events presented in this document to be sufficient cause to remove a sitting president from power. For some unexplained reason, the removal of President Zuma requires far more compelling evidence to convince those in authority to act in the interests of the country. This document provides the links and detail in a range of compelling cases against Zuma.

A document with focus and strategic intent

While that the evidence stacked against President Zuma has been substantive and

sufficient, what we believed to be essential was a compelling case document that could piece together the facts and evidence in a manner that placed beyond doubt, the veracity of the claims against him. This document was developed in the format of a court application encompassing strong and compelling legal arguments.

Furthermore, OUTA took advice that instead of turning in haste to the courts, we should present our case document to Parliament, with a view to requesting the same to be tabled for discussion with the House of Assembly. In doing so, we believe all MP’s will be sufficiently empowered with substantive information about President Zuma’s conduct, during the forthcoming Vote of No Confidence, whether by secret ballot or not.

Our case document shows that President Zuma has without doubt:

- Allowed himself to be influenced in his appointment of Cabinet members;
- Appointed poorly qualified and incompetent individuals in decision making positions (and retained them when he had ample reason and opportunity to remove them);
- Allowed corrupt individuals to benefit from state coffers or failed to institute action when he became aware of such conduct;
- Mismanaged his Cabinet in a manner that has had a detrimental effect on the country and the economy;
- Used or manipulated state resources or appointments to avoid prosecution for at least 783 charges;

- Willfully and maliciously lied or misled Parliament and the nation; and
- Abused his position to enrich himself, his family, his friends and his cronies.

The building of this case document has taken several months, with a team of experienced investigators, researchers and legal counsel.

The ‘winds of evidence for change’ get Stronger

Well into OUTA’s project and case building process, two reports surfaced in May 2017 that added to the sordid picture of state capture, these being:-

- The first was a report on a probe by the South African Council of Churches – SACC, titled “Unburdening Panel”, released on 18 May 2017.
- The second followed shortly thereafter, being a report released on 25 May 2017 by a team of academics under the Public Affairs Research Institute – PARI: “Betrayal of the Promise -How South Africa is being Captured.”

Then came the gripping saga of the “Gutpa E-Mail Leaks” at the end of May 2017, which has continued unabated throughout June. The facts and documents from these E-Mail Leaks, have no doubt provided significant support and strength to the claims presented in our case document and we thus recognize and thank the investigation teams at AmaBungane, Scorpio and the Times Media, who have trawled through the content of thousands of documents and e-mails obtained from a server within Sahara - a Gupta owned company.

The format of the narration within our case document, has been carefully laid out in several chapters to provide a solid basis for informed decision making by those in authority to act with clear conscience. Indeed, it paints the picture of a President who has much more to account for than previously exposed.

The Journey Forward

Following the presentation of this document to the Speaker of Parliament on 28th June 2017, OUTA will ensure that all MP’s will receive the same, preferably through the formal engagement processes as requested of the Speaker by OUTA.

OUTA will also present this case document to other relevant institutions and people in authority, such as the African National Congress’s NEC, the Hawks, the Minister of Police, the National Prosecuting Authority and the Public Protector.

As the case document has also been prepared and compiled in a manner that makes it suitable for presentation in a court of law, OUTA will contemplate turning to the Constitutional Court when convinced that it would be meaningful to do so.

Removing President Zuma from power is the primary step that needs to be taken, before South Africa can start the journey and period of redressing the debilitating effects that his conduct and the situation of state capture has had on our country.

A Judicial Commission of Inquiry into State Capture doesn't halt our action.

While we welcome the undertaking from the President to signal the formation of a Judicial Commission of inquiry into state capture, we trust that this decision will not be used as a reason or excuse by some to stave off decisions or actions available to them in the quest to remove President Zuma.

Commissions of inquiry are known take years to unfold and the extent of our current problems and plundering of the states coffers does not allow South Africa the luxury of wasting any more time in addressing the matter at hand.

OUTA thus believes that while a full and credible judicial commission of inquiry should be encouraged, this should not preclude all other attempts to remove President Zuma from power sooner rather than later.

OUTA's Mandate and call to action

OUTA is a non-profit civil action organisation, funded by tens of thousands of individuals and businesses, whose main aim is to hold government accountable for the abuse of power, corruption and maladministration. In doing our work, we ensure that more tax revenues are made available to the benefit all in South Africa, especially the poor and vulnerable.

To date, we have conducted several successful actions and interventions that have saved South Africa from unnecessary and wasteful expenditure, whilst holding those

responsible to account for their actions. We believe that our work, combined with that of many others within civil society to remove the State President from power, should be welcomed as an attempt to ensure that South Africa is managed in the best interests of the people.

We submit this document with the trust and hope that those in authority will reflect thereon and commit to a future in which leadership is held accountable for their actions. We do so in the belief that the evidence herein is substantive and strong enough to convince those in doubt as to the seriousness and veracity of the President’s transgressions and furthermore, with the intention of taking this matter as far as is required, to bring about President Zuma’s removal.

We look forward to working with those who take this matter seriously.

Wayne Duvenage

Organisation Undoing Tax Abuse (OUTA) - Chairperson

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CHAPTER 1: INTRODUCTION

The purpose of this report

- 1 In its *Nkandla* judgment, the Constitutional Court reminded the nation and its highest public office-bearers, the President and members of Parliament, that –

“One of the crucial elements of our constitutional vision is to make a decisive break from the unchecked abuse of State power and resources that was virtually institutionalised during the apartheid era. To achieve this goal, we adopted accountability, the rule of law and the supremacy of the Constitution as values of our constitutional democracy.”¹

- 2 This report is a sad testament to how far removed from this Constitutional vision we have been led by President Zuma. President Zuma and his Cabinet have allowed and enabled rampant abuse of State Power and Resources, for the benefit of the President, his family, their associates in the Gupta family² and others. In the process President Zuma and his associates have been responsible for a succession of Constitutional violations. President Zuma has repeatedly lied to Parliament about his misconduct, and his government, has with impunity trampled over the fundamental rights of ordinary South Africans.

- 3 This report has been prepared to assist Parliament to exercise its Constitutional obligation to hold President Zuma and his Cabinet accountable in the

¹ *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016) (“*Nkandla* judgment”) at para 1, with reference to sections 1(c) and (d) of the Constitution.

² Gupta Family includes Messrs Atul, Ajay and Rajesh Gupta

forthcoming vote of no confidence. Much of the unconstitutional conduct of President Zuma and his Cabinet concerns facts that are in the public domain. We do not deal with those facts in the main body of this report because they concern matters of public knowledge. The main body of the report details facts that have recently emerged from the “Gupta emails” leaked from the Sahara Computers’ server and that have not previously been assembled in one place.

- 4 The disclosures from the “Gupta emails” justify the removal of President Zuma and his Government. Viewed alongside the succession of other publicly documented Constitutional violations, they make the case for the removal of President Zuma and his Government unanswerable.
- 5 In this introduction, we briefly describe these publicly documented Constitutional violations of President Zuma and his Government before outlining the facts flowing from the “Gupta emails” that are addressed in the main body of the report.

The unconstitutional interference with the Criminal Justice System

- 6 President Zuma came to power with the cloud of hundreds of corruption charges hanging over his head. These charges related to his corrupt relationship with Schabir Shaik in the period in which he was a member of the provincial government of KwaZulu Natal.
- 7 Since assuming office as President, President Zuma has systematically sought to avoid any trial on the corruption charges brought against him and has unconstitutionally abused his powers over the Criminal Justice System to protect himself from prosecution.

8 In this regard, he and his Government have been responsible for:

8.1 Repeated instances of unconstitutional interference with the Office of the National Director of Prosecutions:

8.1.1 The unlawful removal of Mr Pikoli from the Office of the National Director of Public Prosecutions (NDPP);³

8.1.2 The unlawful appointment of Mr Simelane from the Office of the NDPP;⁴

8.1.3 The acting appointment of Ms Jiba to the Office of NDPP when she was unfit for office as an advocate;⁵ and

8.1.4 The attempt to buy Mr Nxasana out of his Office as NDPP by paying him more than R17 million to leave office.⁶

8.2 Repeated instances of unconstitutional interference with the institutions required to investigate corruption independently:

8.2.1 The unlawful replacement of the Directorate of Special Operations (“the Scorpions”) by the Directorate for Priority Crimes (“the Hawks”)

³ Pikoli v President of the Republic of South Africa and Others 2010 (1) SA 400 (GNP)

⁴ Democratic Alliance v President of the Republic of South Africa and Others 2013 (1) SA 248 (CC)

⁵ General Council of The Bar of South Africa v Jiba and Others 2017 (1) SACR 47 (GNP)

⁶ The precise circumstances of Mr Nxasana’s departure from office are the subject of pending litigation. It is undisputed that the President concluded an agreement with Mr Nxasana in terms of which he recognised that Mr Nxasana was a fit and proper person to hold office as NDPP but paid Mr Nxasana R17.3 million in a settlement agreement that provided for his departure from the office. A copy of the relevant agreement is Annexure **INT 1**. Mr Nxasana states that he did not want to leave office but was pressurized by the President to do so. He links this pressure to the President’s mistaken belief that Mr Nxasana had been meeting with Bulelani Ngcuka, the former NDPP who had instituted charges against Mr Zuma. Copies of the affidavits of Mr Nxasana and the President in this regard are attached – **INT 2 and INT 3**.

without sufficient safeguards to ensure that corruption in government is independently investigated and prosecuted;⁷

8.2.2 The unlawful removal of General Dramat from his position as head of the Hawks;⁸

8.2.3 The unlawful appointment of General Ntlemeza to the position as Head of the Hawks;⁹

8.2.4 The unlawful removal of Mr McBride from his position as Head of the Independent Police Investigative Directorate (IPID) for failing to go along with the attempts to remove General Dramat.¹⁰

9 While President Zuma and his government have pre-occupied themselves with attempts to ensure that he is not prosecuted, the Criminal Justice System has sustained damage. As a result, violent crime and corruption have increased dramatically.

The Nkandla debacle

10 The Nkandla debacle is notorious. While millions of South Africans live in abject poverty, President Zuma’s government misappropriated hundreds of millions of rands for upgrades of his Nkandla homestead.

⁷ Glenister v President of the RSA 2011 (3) SA 347 (CC)

⁸ Helen Suzman Foundation v Minister of Police and Others (1054/2015) [2015] ZAGPPHC 4 (23 January 2015);

⁹ Helen Suzman Foundation v Minister of Police and Others (1054/2015) [2015] ZAGPPHC 4 (23 January 2015); Helen Suzman Foundation and Another v Minister of Police and Others 2017 (1) SACR 683 (GP)

¹⁰ McBride v Minister of Police and Others (Helen Suzman Foundation As Amicus Curiae) 2016 (2) SACR 585 (CC)

- 11 When the Public Protector investigated the matter she concluded that the President had violated the Executive Members' Ethics Act and the Executive Ethics Code. As Remedial Action she ordered the President to pay back the amount by which he had unlawfully been enriched, to reprimand the responsible Ministers for their handling of the Nkandla project and to report to Parliament on what he had done.
- 12 The President simply ignored the Remedial Action handed down by the Public Protector. As a result, he was found by the Constitutional Court to have acted in a manner inconsistent with the Constitution.¹¹

Misleading Parliament

- 13 The Nkandla affair also showed the capacity of the President to mislead Parliament. On 15 November 2012, in response to parliamentary questions, President Zuma said the following:

“By the time government came, the contractors were on site that had been enlisted by the family and not by the government or Public Works. Government had a plan regarding what it wanted to do. Government wanted to improve the fence, etc. I told government that I had my own plan – which was a comprehensive plan – to extend my home. What then happened was that I allowed government to meet with the contractors who

¹¹EFF v Speaker, NA 2016 (3) SA 580 (CC)

were already on site because government, from a security point of view, insisted that they needed to participate.”¹²

14 This statement was misleading. It suggests that President Zuma’s private construction project was already underway when the Department of Public Works first met with the private contractors. The statement created the impression that the publicly funded upgrades still had to be arranged around a private construction project. The true facts were that the Department of Public Works were meeting with President Zuma and his architect Mr Minehle **before** the private construction project had commenced.

As Mr Minehle reported to the Public Protector:

14.1 There was a meeting on site with the Department of Public Works and the President on 12 August 2009;

14.2 There was another meeting with the Department of Public Works on 20 August 2009 at which Mr Minehle made a presentation on the design of the three new houses that comprised President Zuma’s private construction project.

14.3 Construction on these three private dwellings commenced only after that meeting, on 24 August 2009.¹³

¹² FULL TRANSCRIPT OF PARLIAMENTARY EXCHANGE WITH PRESIDENT ZUMA ON NKANDLA SCANDAL. Available at: <http://constitutionallyspeaking.co.za/full-transcript-of-parliamentary-exchange-with-president-zuma-on-nkandla-scandal/>

¹³ Public Protector Report “Secure in Comfort”, Report 6 of 2016/2017 pp 132-3 paras 6.5.8 to 6.5.12.

15 President Zuma also stated that *“My residence Nkandla has been paid for by the Zuma family. All the buildings and every room we use in that residence was built by ourselves as a family, and not by Government.”* He insisted in Parliament that Government had only paid for *“security enhancements”* or *“security upgrades”* at his Nkandla residence. This was patently false, as government fitted the bill for the building of the visitors’ centre, an amphitheatre, a cattle kraal, a chicken run and the swimming pool – all at President Zuma’s private Nkandla residence and none of which could reasonably be construed as *“security enhancements”*.¹⁴ His misleading statements in this regard led to the absurd spectacle of public officials trying to justify the swimming pool as a fire fighting measure.

16 President Zuma also misled Parliament in relation to the Public Protector’s *State of Capture* report.

16.1 During October 2016, the President attempted to interdict the Public Protector from releasing the *State of Capture* report.

16.2 On 25 October 2016, in an oral question session in the National Council of Provinces, President Zuma was asked why he attempted to interdict the release of the report. In his response, President Zuma said:

“I interdicted it because she was going to issue a report having not talked to me or asked me questions.”

¹⁴ <http://constitutionallyspeaking.co.za/full-transcript-of-parliamentary-exchange-with-president-zuma-on-nkandla-scandal/>

16.3 This was untrue. A few days after this, the erstwhile Public Protector released recordings of her interview with President Zuma and his attorney. The transcript of this interview demonstrates that the President was afforded an opportunity to answer these questions, but failed to do so.¹⁵ Instead, through his attorney, he sought to avoid the questions by asking for the meeting to be postponed.

The social grants debacle

17 The social grants debacle is possibly even more disturbing than the Nkandla debacle. It presented, as the Constitutional Court put it, “*a potential catastrophe*”, as the Government placed in jeopardy the livelihood of over 17 million social grant beneficiaries.¹⁶ The Department of Social Development and the South African Social Security Agency (SASSA) put at risk the payment of social grants to millions of impoverished South Africans by failing to arrange a new delivery mechanism during the three year period in which the Constitutional Court’s suspended order of invalidity of the existing contract with Cash Paymaster Services (Pty) Ltd (“CPS”) was in force.¹⁷

18 When the Black Sash approached the Constitutional Court earlier this year to ensure the continued payment of social grants and to ensure court oversight over

¹⁵ The transcript of this recording can be located from the following website:

http://www.pprotect.org/library/investigation_report/2016-17/Annexure_A1_Interview_between_President_Zuma%20and_the%20Public_Protector.pdf

¹⁶ Black Sash Trust v Minister of Social Development and Others (Freedom Under Law NPC Intervening) (CCT48/17) [2017] ZACC 8; 2017 (5) BCLR 543 (CC); 2017 (3) SA 335 (CC) (17 March 2017) (“Black Sash Trust v Minister of Social Development”) at para 15

¹⁷ See Allpay Consolidated Investment Holdings (Pty) Ltd v CEO, SA Social Security Agency 2014 (4) SA 179 (CC)

a proposed new contract between SASSA and CPS, the Constitutional Court commented on the shameful manner in which government had conducted itself:

“This Court and the country as a whole are now confronted with a situation where the executive arm of government admits that it is not able to fulfil its constitutional and statutory obligations to provide for the social assistance of its people. And, in the deepest and most shaming of ironies, it now seeks to rely on a private corporate entity, with no discernible commitment to transformative empowerment in its own management structures, to get it out of this predicament.”¹⁸

19 Affidavits subsequently filed by the current and former CEO’s of SASSA reveal that the Minister of Social Development, Minister Bathabile Dlamini, was responsible for this state of affairs. She had taken charge of the project to put in place a new grant delivery mechanism, appointed work streams responsible for this project and directed that they should report to her, not to SASSA.¹⁹ Furthermore, she had misled the Court by failing to disclose these facts and leaving the blame to be carried by the SASSA executives from whom she had removed responsibility for the project.²⁰

20 As the Cabinet Member responsible for ensuring the proper administration of grant payments, Minister Dlamini had to be held accountable for what was possibly the greatest failure of the Constitutional requirements of service delivery

¹⁸ Black Sash Trust v Minister of Social Development and Others at para 8.

¹⁹ See the letter addressed by Minister Dlamini to the CEO of SASSA on 9 July 2015 which is reproduced in footnote 20 of the judgment of the Constitutional Court in Black Sash Trust v Minister of Social Development

²⁰ Black Sash Trust v Minister of Social Development at para 20

since the advent of democracy. Inexplicably, President Zuma not only retained her in his Cabinet in the reshuffle of 30 March 2017 but left her in charge of the Social Development Portfolio she had so manifestly mismanaged.

An outline of this report

21 The facts set out above are all in the public domain. What has not been in the public domain until recently are the documents leaked from the Sahara Computers Server. These documents are plainly relevant to Parliament’s duties in relation to the vote of no confidence. They show how the Gupta family has managed, with the assistance of the President, to control state resources and state power for their private benefit. This report is designed to present Parliament with the facts in relation to these documents in a readily available and accessible form.

22 In Chapter 2 we describe the links between President Zuma and the Gupta family.

22.1 We show that the Gupta family has been cultivating close relations with President Zuma from the point at which he was elected President of the African National Congress (ANC) and thus earmarked for election as President of the Republic.

22.2 We describe the reciprocal manner in which the Gupta family has looked after the financial interests of President Zuma’s family and how President Zuma, in turn, has protected the Gupta family’s business interests and

ceded control to them of important government decisions including appointments of Ministers and senior public officials.

23 In the remaining chapters, we describe how this process has played out in relation to the four Government Departments that are of most significance to the Gupta family:

23.1 The Department of Public Enterprises which exercises control over the State-Owned Enterprises (SoEs) from which billions of rands have been diverted to Gupta companies²¹;

23.2 The Department of Mineral Resources, which exercises authority over the Mining Industry in which Gupta companies are heavily invested;

23.3 The Department of Communications, which is important to the Guptas because of their broadcasting interests; and

23.4 The Ministry of Finance that has attempted to protect State resources from being unlawfully diverted to Gupta companies.

24 Chapter 3 describes how President Zuma, and his appointed Ministers for Public Enterprises, Malusi Gigaba and Lynne Brown, have overseen the plundering of billions of rands of public resources through the unlawful conclusion of contracts by SoE's to the benefit of companies owned and controlled by the Gupta family, President Zuma's son Duduzane Zuma and their business associates. These contracts include:

²¹ Company details are provided in more detail in Chapter 2 and 3.

- 24.1 Transnet’s unlawful award of a R50 billion tender for freight locomotives on 17 March 2014 from which the Gupta-linked company, Tequesta (Pty) Ltd earned more than R5.2 billion in a 21% “service fee” from the successful bidder, China South Rail (Hong Kong) Co. Ltd.
- 24.2 Transnet’s award to Neotel of a R300 million network equipment contract and a five-year network service contract worth R1.8 billion in 2014 and early 2015, which resulted in kickbacks of R66 million to a Gupta-linked company, Homix (Pty) Ltd;
- 24.3 Eskom’s award of an estimated R11.7 billion rands worth of coal-supply contracts at inflated prices to Tegeta Exploration and Resources (Pty) Ltd between 2015 and 2016. The Guptas’ Oakbay Investments company holds a 34.5% stake in Tegeta; Duduzane Zuma’s Mabengela Investments (Pty) Ltd holds a 28.5% stake.
- 24.4 Eskom’s conclusion of a R43 million contract with the Guptas’ media company, TNA (Pty) Ltd, in October 2014. South African Airways, Transnet and Denel concluded similar contracts with TNA Media for millions of rands.
- 24.5 Denel’s conclusion of a joint venture with a Gupta-linked company, VR Laser Asia, in January 2016 in terms of which VR Laser Asia, would acquire Denel’s intellectual property and a 49% stake in Denel Asia’s expansion into the Asian market.

25 These contracts have been facilitated by Ministers Gigaba and Brown’s appointment of Gupta-linked individuals to the Boards of Transnet, Eskom and Denel.

26 The Gupta family’s improper access to billions of rands in the procurement budgets of SoE’s has been more recently been secured by President Zuma’s appointment of Mr Richard Seleke as Director-General of Public Enterprises.

26.1 Long before Mr Seleke had any formal role in the Department of Public Enterprises he had an established record of being used as a secret conduit for the supply of confidential government information to the Guptas.

26.2 He was appointed to his post as Director General of Public Enterprises after he submitted his CV to Duduzane Zuma.

27 In Chapter 4 we consider the role of Mr Mosebenzi Zwane, Minister of Mineral Resources, and the inferences to be drawn from President Zuma’s appointment and retention of Minister Zwane in his Cabinet. We show that:

27.1 Mr 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.

27.2 Minister Zwane has a longstanding improper relationship with the Gupta family going back to his days as MEC for Agriculture in the Free State Province and was directly involved in facilitating the landing of an aircraft with Gupta wedding guests at the Waterkloof Air Force Base.

27.3 Prior to his appointment to Cabinet, Mr Zwane attended numerous meetings with Tony Gupta. Minister Zwane was also flown to Dubai, and accommodated at the luxury Oberoi Hotel in Dubai, in the company and at the expense of the Guptas on at least two other occasions in 2013.

27.4 As Minister of Mineral Resources, Mr Zwane utilised his Public Office to facilitate the sale of Optimum Coal Mine from Glencore to the Gupta-linked Tegeta Exploration & Resources (Pty) Ltd.

27.5 While the dispute over Optimum Coal was taking place, and Eskom was supposed to be at arm’s length with the Guptas and Tegeta, Mr Richard Seleke who had been Mr Zwane’s Director-General in the Free State Department of Economic Development prior to Mr Zwane’s appointment as Minister of Mineral Resources (and who had no legitimate role whatsoever in relation to the Optimum Coal dispute) was used as a conduit to leak confidential Eskom documents to Tony Gupta²².

27.6 Minister Zwane’s Department of Mineral Resources also authorised the release of Koornfontein Mine’s R280 million rehabilitation trust fund and Optimum Coal Mine’s R1.43 billion rehabilitation trust fund into Bank of Baroda accounts, without ensuring that these funds were properly ring-fenced, secure and would be utilised for their proper purpose.

27.7 As Minister of Mineral Resources, Mr Zwane has been instructed in his public and media statements by Gupta family members and known Gupta

²² The facts in this regard are set out in Chapter 3.

associates, including Tony Gupta (former Oakbay CEO), Mr Nazeem Howa, Duduzane Zuma and the Gupta-hired public relations firm, Bell Pottinger.

27.8 In his capacity as Chair of an Inter-Ministerial Committee to investigate the closure of the Guptas’ South African bank accounts, Minister Zwane issued a public statement announcing that Cabinet had agreed that a judicial inquiry would investigate why South Africa’s banks had blacklisted Gupta-owned businesses. In fact, Cabinet had done nothing of the sort.

27.9 Despite the fact that Minister Zwane had publicly misrepresented what Cabinet had decided; he has been retained in the Cabinet by President Zuma and remains responsible for the Mineral Resources Portfolio that is of obvious importance to the Gupta family.

28 In Chapter 5 we consider the role of another Minister who has been “captured” by the Gupta family, Minister Faith Muthambi, who was Minister of Communications before her transfer to the Public Administration Portfolio. We show that:

28.1 During the course of July and August 2014 (shortly following her appointment as Minister of Communications), Minister Muthambi personally sent e-mails to Tony Gupta on confidential matters of national government policy and on the assistance, she wanted from him to assume powers which were, at the time, assigned to the Minister of Posts and Telecommunications.

- 28.2 On 8 July 2014, Minister Muthambi appointed Hlaudi Motsoeneng as permanent COO of the SABC, in defiance of the Public Protector's Findings against him of abuses of power, fraud and maladministration at the SABC. Mr Motsoeneng facilitated the SABC's effective sponsorship of the Guptas' media outlet, The New Age.
- 28.3 In December 2015, Minister Muthambi reportedly offered to appoint Ms Vuyo Batyi as the Chairperson of the Independent Communications Authority of South Africa (ICASA) on condition that she grant the Guptas' ANN7 media company, Infinity Media (Pty) Ltd, a free-to-air television licence. Duduzane Zuma also has a stake in Infinity Media. When Ms Batyi refused to comply with this condition for appointment, Minister Muthambi declined to gazette her appointment.
- 28.4 In May 2016, Minister Muthambi attended meetings that the Inter-Ministerial Committee held with banks on the closure of the Guptas' bank accounts, despite her not having been appointed by Cabinet to this committee.
- 28.5 Minister Muthambi appointed Mr Lungisani Daniel Mantsha and Mr Mzwanele Manyi as her legal and special advisors. Both have close ties to the Guptas.
- 29 We note that Minister Muthambi has been subject to strident criticism by the Courts and Parliament in relation to the performance of her functions as a Minister. Nevertheless, she has been retained in the Cabinet by President Zuma.

30 In Chapter 6 we consider the role of the Guptas in relation to appointments to the position of Minister of Finance.

30.1 We describe the offer made by the Gupta family and Duduzane Zuma for Mr Mcebisi Jonas to become Minister of Finance.

30.2 We describe the circumstances in which Minister Nene was briefly replaced by Minister van Rooyen as Minister of Finance.

30.3 We show the clear influence that the Gupta family exercised in relation to the brief appointment of Mr van Rooyen as Finance Minister and how the advisors who accompanied Mr van Rooyen into office immediately contrived to leak confidential government information to the Guptas through Mr Seleke.

30.4 We describe the attempts by Treasury to prevent public resources from being plundered for the benefit of Gupta-linked companies and we record the sustained conflict between Minister Gordhan and the Gupta family leading up to his removal from Office by President Zuma.

30.5 We conclude that the inference is inescapable that the interests of the Gupta family influenced the decision of President Zuma to replace Minister Gordhan.

31 In the final chapter, we set out the legal principles that the Constitutional Court has held to be applicable to the National Assembly and its members when they consider a vote of no confidence. We show that on a proper application of these principles, the National Assembly and its members would be failing in their

Constitutional duty if they voted to allow President Zuma and his Cabinet to remain in office beyond the forthcoming vote of no confidence.

CHAPTER 2: PRESIDENT ZUMA AND THE GUPTAS

President Zuma’s ties to the Gupta Family

- 1 To understand the influence exercised by President Zuma’s patronage network, one must consider the links between the Zuma family and the Gupta family. In this chapter, we explore the close relationship between President Zuma, his family and the Gupta family.
- 2 The exact date on which President Zuma befriended the Gupta family is unclear. In a 2016 advertisement — taken out in *The New Age* newspapers by Oakbay entitled “*Gupta family, An Inconvenient Truth*,”²³ — the Gupta family stated as follows:

“Like many other South African businesses, we interact with the Government. Our interaction with the current president began in 2000, which was before he became president. In fact, friendship with the previous president was as strong...”

- 3 The advertisement makes clear that the Gupta family have a long-standing relationship with President Zuma spanning seventeen years. In their own words, the Gupta family describe this relationship as a “friendship”. The suggestion in the advertisement that the particular relationship with President Zuma is no stronger than the relationship that the Gupta family had with his predecessor, President Mbeki is immaterial. The Gupta family have deliberately cultivated

²³ News24. (2017). Guptas: We were friends with Zuma before he was president. [online] Available at: <http://www.news24.com/SouthAfrica/News/guptas-we-were-friends-with-zuma-before-he-was-president-20160318>.

friendships with whomever has held positions of power in the Government or the ANC. The invitation lists to their family weddings and family parties reads like a Who’s Who of ruling party politics.²⁴ The reason for this is obvious – the Gupta family look to cultivate close relationships with all holders of political power who are in a position to benefit their business interests.

4 The President is obviously permitted to have friends. The issue is the President’s utilisation of the power and influence attached to his position to benefit those friends, and through them, himself or members of his family. The President came to power under the cloud of pending corruption charges relating to his “friendship” with Schabir Shaik while he held office in the KwaZulu Natal provincial government. His “friendship” with the Gupta family has been far more damaging for good governance in South Africa.

5 A search for direct links and correspondence between the President and the Gupta family would be both naïve and futile. The malfeasance committed by President Zuma is rarely recorded in correspondence. The President often uses intermediaries. An example of this came to light on 18 June 2017, in an article published by the *Sunday Times* newspaper.²⁵

5.1 During 2009, Mr Jacinto Rocha was employed as the Deputy Director-General in the Department of Mineral Resources.

²⁴ Copies of these invitation lists are attached **ZGF 1 & ZGF 3**

²⁵ Pressreader.com. (2017). *PressReader.com - Connecting People Through News*. [online] Available at: <https://www.pressreader.com/south-africa/sunday-times/20170618/281479276407139>.

5.2 Shortly after President Zuma’s first inauguration in 2009, Rocha was invited to a meeting at the Presidential Guesthouse, Mahlamba Ndlopfu.

5.3 The meeting was also attended by President Zuma, Rajesh “Tony” Gupta, and Duduzane Zuma. At this meeting, President Zuma introduced Mr Rocha to his son, Duduzane Zuma. The *Sunday Times* quotes Mr Rocha as saying that President Zuma stated:

“Duduzane is my only child involved with money. I would appreciate it if you could help him wherever you could.”

5.4 Mr Rocha’s involvement with the Gupta family since then is notorious. In his capacity as Deputy Director General of Mineral Resources, Mr Rocha was the official who awarded Imperial Crown Trading 231 (Pty) Ltd (“ICT”) prospecting rights over the iron ore resource in respect of the Sishen Mine. ICT was a company with no track record in mining but it was 50% owned by the Gupta company JIC Mining in which Duduzane is a major shareholder. The iron ore resource to which Mr Rocha gave ICT exclusive rights was one valued at more than R1 billion. Mr Rocha’s awarded the prospecting right over Sishen to ICT on 30 November 2009. This was within six months of his meeting with President Zuma, Duduzane Zuma and Tony Gupta.

5.5 According to Mr Rocha, Duduzane Zuma and Tony Gupta later recruited him to be an advisor to Ben Martins in anticipation of his appointment as Transport Minister in June 2012. Significantly, they were aware of the

pending cabinet reshuffle and the portfolio to be given to Mr Martins, several days before it took place.²⁶

6 The incidents described by Mr Rocha show:

6.1 First, that the President improperly used his influence to provide undue assistance to the Guptas from the beginning of his first term in office;

6.2 Second, that State patronage of the Gupta family is directly linked to the business interests of Duduzane Zuma;

6.3 Third, that the business interests of Duduzane Zuma are particularly important because, in the words of President Zuma, “...*he is my only child involved with money*,”²⁷ and

6.4 Fourth, that Duduzane Zuma and the Gupta family know about cabinet reshuffles in advance of their implementation and appear to have the power to place advisors of their choice with Cabinet Members in the hope that these advisors will advance their business interests.

7 In relation to the latter, there is mounting evidence that the Gupta family has the power improperly to influence the President’s decisions on Cabinet appointments. Gupta family offers of Cabinet positions have been confirmed under oath on two separate occasions.

²⁶ See Annexure **ZGF 3**.

²⁷ Anon, (2017). *'Duduzane is my only son involved with money. Help him wherever you can'*. [online] Available at: <https://www.timeslive.co.za/sunday-times/investigations/2017-06-17-duduzane-is-my-only-son-involved-with-money-help-him-wherever-you-can/>.

8 Mabel Petronella (“Vytjie”) Mentor, was an ANC member of parliament. In 2004, Ms Mentor was elected as Chairperson of Parliament’s Portfolio Committee on Public Enterprises — Parliament’s oversight body into, *inter alia*, South Africa’s state owned enterprises. In an affidavit deposed to by Ms Mentor and filed in the North Gauteng High Court, she swore to the following facts:²⁸

“[7] I have been a member of the African National Congress since the 1980s. In 2002, I was elected as a member of parliament. In 2004, I was elected as Chairperson of the Portfolio Committee on Public Enterprises.

[8] In or around 2010, I received a telephone call from a woman (I do not know her name) inviting me to a meeting, ostensibly with the President at the Union Buildings. I boarded a flight from Cape Town to Johannesburg to attend this meeting.

[9] When I arrived at OR Tambo International Airport, Mr Gupta met me. I was surprised and had never met Mr Gupta before. Mr Gupta informed me that the President was unavailable.

[10] Mr Gupta took me unknowingly to the Gupta’s Sahara office where he introduced me to the senior Gupta brother. When I left the Sahara office, I was still under impression that I was being taken to Pretoria in order to meet with the President. However, I was taken to the Gupta’s residence in Saxonwold, where I was introduced to the other brothers. Within fifteen

²⁸ President of the Republic of South Africa v Office of the Public Protector and Another, case no.: 79808/16.

minutes of my arrival at their home, members of the Gupta family had already offered me the position of Minister of Public Enterprises.

[11] There was a condition attached to their offer: upon my appointment as Minister of Public Enterprises, I was required to cancel South African Airways’ (“SAA”) routes to India. This route would be taken over by an airline in which the Gupta family had shares.

[12] My impression was that the members of the Gupta family whom I met had knowledge of the fact that cabinet positions were to be reshuffled. They were after all brazen enough to offer me the position of Minister of Public Enterprises.

[13] I declined the offer and told the Gupta representatives that they lacked the authority to make such an offer. As I was leaving, the President entered the room. I recounted the offer and advised him that I could not, in good conscience, accept the offer. The President responded and said ‘It’s okay ntombazana, you have come such a long way in crutches’ and saw me out.

[14] Approximately one week later and to my surprise, the President shuffled his cabinet. As part of this reshuffle, he replaced Ms Hogan with Mr Gigaba as Minister of Public Enterprises.”

- 9 Ms Mentor’s affidavit directly implicates President Zuma. It places President Zuma at the Gupta household when the improper offer was made to her. It thus

demonstrates that President Zuma (i) knew that the Gupta family members were peddling Cabinet posts; and (ii) was complicit in this.

10 Mcebisi Jonas, the former Deputy Minister of Finance, reported a similar incident, which we detail in Chapter 6 of this report. In short, on 23 October 2015, Mr Jonas was invited to a meeting with Duduzane Zuma. Duduzane Zuma moved the meeting to the Gupta Household in Saxonwold. There, Mr Jonas met with Ajay Gupta and Mr Fana Hlongwane. Ajay Gupta offered Mr Jonas R600 000.00 in cash to accept the position of Minister of Finance, then being occupied by Nhlanhla Nene.

11 The Guptas also have ready access to the President when they require his intervention on their behalf. By way of illustration, emails from the Sahara Server also show that during 2015, an employee at Oakbay arranged for a private aviation company to meet with the President at short notice so that arrangements could be made to spare the Guptas the inconvenience of having to depart South Africa from International Departures at OR Tambo Airport.

11.1 Duduzane Zuma, Shanice Zuma and members of the Gupta family (including Tony Gupta) were scheduled to depart Johannesburg for Mauritius using Oakbay’s private jet, with call sign “ZSOAK”.²⁹

11.2 They were using the services of Fireblade Aviation and did not want to subject themselves to the experience of having to pass through customs and immigration at International Departures. Fireblade Aviation operates

²⁹ See Annexure **ZGF 4**.

a business services terminal at OR Tambo International Airport. It is separate from the main terminals at OR Tambo. However, at the time Fireblade could not offer Customs and Immigration facilities at their terminal. So Fireblade passengers still needed to pass through Customs and Immigration at the International Departures Terminals at OR Tambo.

11.3 The Gupta family procured the intervention of the President to change this state of affairs. This is apparent from an exchange of emails on 5 and 6 June 2015 between Mr Bernhardt de Kock and Ms Ronica Ragavan, the CEO of Oakbay Investments, and Mr Robbie Irons of Fireblade.³⁰

12 President Zuma has also surrounded himself with advisors who have close relationships with the Gupta family.

12.1 Ms Lakela Kaunda is Chief Operations Officer in the office of the Presidency. She has worked for President Zuma since 2000 and has been a senior advisor in the Office of the Presidency since 2009.

12.2 Prior to taking up her position in the Presidency, and while she was an employee of the ANC at Luthuli House, Ms Kaunda had drawn R20 000 per month as a director in the Gupta linked company, Wavestone Computers (Pty) Ltd. She resigned her directorship late in 2008.

12.3 Emails show that between November 2012 and January 2013, Ms Kaunda attended four meetings at the Gupta household — a fact which she admits. On 23 January 2013, Kaunda sent an email to Ashu Chawla, attaching the

³⁰ Annexure ZGF 5.

CIPC documents of a company called Ntomb’Nkulu Investments CC. She wrote: “*Document for Mr T [Tony Gupta]. We will use this vehicle. He has the ID.*”³¹ In response to an enquiry by the Sunday Times newspaper, Ms Kaunda said:

*“Mr Gupta made an offer for me to join one of their companies and asked for an existing company to be a partner. I confirm that I sent the e-mail to Chawla about Ntomb’Nkulu Investments. I later contacted him to inform that I wish to decline and indicated that I do not want to participate in any business or other activities with them.”*³²

12.4 Ms Kaunda says she did not take further part in the business. Yet, her version is inherently suspicious. When she sent her email to Tony Gupta advising him to use Ntomb’Kulu as the vehicle to be used by the Gupta family, she had two days previously resigned her membership in the CC and transferred her interest to her son, Siphesihle Fezeka Njabulo Kaunda.³³ A draft resolution dated 22 March 2013, obtained from the Sahara Server, and to be signed as Directors by Duduzane Zuma and Tony Gupta, provided for the transfer of six ordinary shares in Dixie Investments (Pty) Ltd to Ntomb’Nkulu.³⁴ In the circumstances, it appears that Ms Kaunda intended to take advantage of the Gupta family offer of

³¹ See Annexures **ZGF 6**.

³² Anon, (2017). *Guptas courted president's aide, Lakela Kaunda*. [online] Available at: <https://www.timeslive.co.za/sunday-times/news/2017-06-11-guptas-courted-presidents-aide-lakela-kaunda/>.

³³ See Annexure **ZGF 7**.

³⁴ See Annexure **ZGF 8**.

largesse but took care to ensure that the interest in Ntomb’Nkulu would be held by her son, not her, by the time that it was issued shares by the Guptas.

12.5 Ms Kaunda was made a non-executive director of Ubank in December 2013. The following year, the Guptas began making enquiries in connection with a purchase of the bank. By August, they had signed a non-disclosure agreement with a view to tabling an offer for Ubank.³⁵

13 The closeness of the relationship between President Zuma and the Gupta family is reflected in the fact that Tony Gupta was involved in drafting a letter, in President Zuma’s name, to Sheikh Mohammed Bin Rashid Al Maktoum of the UAE, requesting assistance with proposed residency status in the UAE.³⁶ The letter was sent from Mr Ashok Narayan to Tony Gupta under cover of an email dated 20 January 2016 which stated “*Sir ji, revised letter*”.³⁷ The file name of the letter is “*JZ letter to Sheikh Mohammed rev 2001.16.docx*” which suggests that this was not the first revision to its contents.

14 The letter itself states the following above the signature line of President Zuma:

“I fondly remember our meeting in the UAE and the gracious hospitality and warmth extended to me during my visit. It is with this sentiment that I am happy to inform you that my family has decided to make the UAE, and specifically Dubai, a second home and have already acquired a

³⁵ See Annexure **ZGF 9** and **ZGF 10**.

³⁶ See Annexure **ZGF 11**.

³⁷ See Annexure **ZGF 12**.

residence located at Emirates Hills, Dubai (Villa No. L-35, Lailak Street No.1). It will be a great honor for me and my family to gain your patronage during our proposed residency in the UAE especially around security issues since my son and the family will be travelling quite extensively in and out of the UAE.

To this end I would be grateful if would kindly grant an audience to my son, Mr. Duduzane Zuma to meet with you and formally introduce the family to you.”

- 15 The President denies any knowledge of this letter. If that were the case one would expect the President to have been outraged at the presumptuousness of the Gupta family in drafting a letter in his name to another head of state, and to have taken steps against Tony Gupta. However, nothing of the sort has happened.
- 16 This is not the first time that the President has been content to suffer embarrassment through the use of his name in matters relating to the Guptas. In Chapter 4 below we describe in detail the events relating to the unauthorised use of the Waterkloof Airbase as a landing strip for guests coming from India to a Gupta family wedding. For present purposes we point out that Mr Vusi Bruce Koloane was the official in the Department of International Relations and Cooperation who unlawfully pressurised members of the South African Airforce at Waterkloof to allow the Gupta aeroplane to land there by claiming that he was under pressure from President Zuma to do so. Again, if Mr Koloane had used the name of President Zuma in vain, one would have expected President Zuma

to have been outraged with him. However, when Mr Koloane left the Department of International Relations and Cooperation, President Zuma rewarded him by appointing him as Ambassador to the Netherlands.

17 In matters relating to the Guptas, it seems that the President, is content for people to use his name with impunity.

Zuma family members’ ties to the Gupta family

18 Apart from President Zuma, there appear to be three known points of contact between the Zuma and Gupta families, namely:

18.1 The President’s wife, Gloria Bongzi Ngema-Zuma, whom he married in 2012;

18.2 Duduzile Zuma, the President’s daughter from his third wife, the late Kate Matsho; and

18.3 Duduzane Zuma, the President’s son from this third wife, the late Kate Matsho.

19 The bulk of this chapter is dedicated to Duduzane Zuma, given the extent of his relationship with the Gupta family. Before addressing this relationship, however we briefly set out the ties between the Guptas and Gloria Bongzi Ngema-Zuma and Duduzile Zuma.

(i) Gloria Bongzi Ngema-Zuma

20 Ngema-Zuma’s relationship with the Gupta family appears to have started in 2010, when she was rumoured to be engaged to President Zuma.

21 Public records reveal that, during 2010, the Gupta family assisted to purchase a property for Ngema- Zuma.³⁸

21.1 CIPC documents show that, in the first quarter of 2010, Ngema-Zuma registered the Sinqumo Trust.³⁹ Ngema-Zuma is the only listed Trustee of the Sinqumo Trust.

21.2 In April 2010, shortly after the Sinqumo Trust was registered, the trust purchased a house in the affluent suburb of Waterkloof Ridge, Pretoria (“the Property”).⁴⁰ Shortly thereafter, Ngema-Zuma took occupation of the Property.

21.3 According to reports, the Property cost R5.4 million. The Bank of Baroda registered a bond over the property in the amount of R3.8 million. On 7 April 2016, the City Press reported that it had been granted access to the records and share registers of some Gupta-owned companies, including JIC Mining. City Press reported that an extract of the minutes of a JIC Mining board meeting held on 10 February 2010 recorded that the Bank of Baroda agreed to grant a facility to the Sinqumo Trust in the amount of R3.84 million, on condition that JIC would guarantee all amounts owed by Sinqumo Trust under the facility. The JIC Board agreed to do this.⁴¹

³⁸ See Annexure **ZGF 13**. Also see Comrie, S. (2017). *First Lady's house backed by Guptas*. [online] CityPress. Available at: <http://city-press.news24.com/News/first-ladys-house-backed-by-guptas-20160417>

³⁹ See Annexure **ZGF 14**. Also see Code for South Africa. (2017). *Trusts | Open Data | Code for South Africa*. [online] Available at: <https://data.code4sa.org/dataset/Trusts/3jhi-ewix/data?q=Sinqumo>.

⁴⁰ See Annexure **ZGF 15**.

⁴¹ See Annexure **ZGF 16**.

21.4 Mabengela Investments (Pty) Ltd is a Gupta linked company in which Tony Gupta and Duduzane Zuma each hold a 25% shareholding. Documents recently obtained from the Sahara Company server show that Mabengela Investments (Pty) Ltd pays R65 000.00 per month,⁴² which is labelled as a “monthly investment”.⁴³ It is difficult to see how these payments could be described as “investments” unless Mabengela Investments (Pty) Ltd regards the gratuitous payment of R65 000 per month for the benefit of President Zuma’s wife as an investment in political protection of its business interests and those of its associated Gupta companies.

21.5 This inference as to the true reason underlying the Gupta family assistance for the purchase of Ngema-Zuma’s home is reinforced by the fact that the Gupta family have sought to conceal the facts in this regard. In November 2012, the Gupta family spokesperson, Gary Naidoo, denied that the Gupta family or its businesses contributed in any way to the raising or paying of the bond for Ms Ngema Zuma.⁴⁴

(ii) Duduzile Zuma

22 On 13 August 2008, approximately eight months after President Zuma’s election as president of the ANC, Duduzile Zuma was appointed to the Board of Sahara Sahara Computers (Pty) Ltd and Sahara Consumables (Pty) Ltd.

⁴² See Annexures **ZGF 17** and **ZGF 18**.

⁴³ See Annexure **ZGF 19**.

⁴⁴ See Annexure **ZGF 20**. Also see Craig McKune, S. (2017). *Guptas 'bankroll' Mrs Zuma's bond*. [online] The M&G Online. Available at: <https://mg.co.za/article/2012-11-30-00-guptas-bankroll-mrs-zumas-bond>.

23 Duduzile Zuma spent 13 months on the boards of these companies. On 30 September 2009, Duduzile Zuma resigned from her directorships of Sahara Computers and Sahara Consumables.

24 When she was appointed to Sahara’s Board, Duduzile was only 26 years old. It is unclear whether she had any tertiary qualifications. She certainly had no business experience that could qualify her for such responsibility in a company of the size of Sahara. The only reasonable conclusion is that her appointment was an attempt by the Gupta family to ingratiate themselves to President Zuma.

25 The timing of her appointment was no coincidence. It took place just after President Zuma’s election as ANC President and when it was now inevitable that he would become South Africa’s next President.

(iii) Duduzane Zuma

26 During a 2011 interview with the *City Press* newspaper,⁴⁵ Duduzane Zuma is reported to have said:

“I was introduced to the Gupta family by my father in late 2001, just like I met many people...At that time, my father said, I’ve got an interest in taking an IT direction in my life, and at that point they were doing the Sahara thing. It just made sense.”

⁴⁵ News24. (2017). ‘I would have been further if my surname wasn’t Zuma’. [online] Available at: <http://www.news24.com/Archives/City-Press/I-would-have-been-further-if-my-surname-wasnt-Zuma-20150429>.

‘If it wasn’t for the Guptas, I would’ve gone the tenderpreneur route. 100%. What other options do I have? Then there would’ve been plundering’.”

27 It is difficult to imagine an innocent explanation for Duduzane Zuma’s meteoric rise within the Sahara organisation.

27.1 He was first appointed to Sahara’s board of directors on 13 August 2008.

At the time, he was only 26 years old and could boast no obvious qualifications.

27.2 Duduzane Zuma was appointed to the board together with his twin sister, Duduzile. As pointed out above, their appointments coincided with President Zuma’s election as President of the ANC, and with that election, his assumption of an office that designated him to be President of the Republic in 2009.

28 At the age of 35, Duduzane Zuma has amassed a vast fortune. He has multiple business interests many of which involve the Gupta family. A spreadsheet of Gupta Group companies saved on the Sahara Server⁴⁶ demonstrates that, through Mabengela Investments, Duduzane holds interests in the following entities:

28.1 Afripalm Technology;

28.2 Infinity Media Networks;

⁴⁶ See Annexure **ZGF 21**.

28.3 Localiga;

28.4 Islandsite Investments;

28.5 Idwala Coal;

28.6 Goldridge Trading;

28.7 Gemini Mood Trading;

28.8 Oakbay Metals;

28.9 Elgasolve; and

28.10 Dixie Investments.

29 Duduzane Zuma provides access to his father. By way of illustration we refer to an email chain from the Sahara company’s server⁴⁷ which shows how he facilitated a meeting between President Zuma and Mr Vladimir Evtushenkov, the Chairman of a Russian investment company called Sistema.

29.1 On 23 December 2014 Sistema’s Managing Director, Evginy Chuikov, wrote an email to Duduzane Zuma. From the tone of this email, this was not the first time the two had corresponded. In the email, Chuikov wrote:

“I hope you are well and enjoying the run up to Christmas and New Year. I wanted to touch base with you as Vladimir Evtushenkov is planning to be in Davos on the 21st and 22nd January and we wanted to schedule a meeting with the delegation

⁴⁷ See Annexure **ZGF 22 (A-F)**.

from South Africa. I understand that President Jacob Zuma may also be present and we would very much welcome a meeting with him. I would appreciate your guidance in this matter or perhaps a contact of the relevant person in his administration that could help us set this up. I look forward to hearing from you.”

29.2 Duduzane Zuma responded on 1 January 2015. He told Chuikov that he was travelling at the time, and could only attend to the request upon his return on 15 January 2015.

29.3 On 18 January 2015, Chuikov reminded Duduzane Zuma about his commitment to make an appointment with President Zuma at Davos. He wrote:

“I hope you are well and back following your travels. I wanted to follow up on our correspondence over the Christmas break to see if there may be an opportunity for our Chairman Vladimir Evtushenkov to meet with President Zuma at Davos. I appreciate that his schedule must be very busy but we would naturally aim to find the most convenient time. Please let me know if this could be arranged.”

29.4 On 20 January 2015 Duduzane Zuma sent the details of George Moloisi who is the man who could arrange the meeting. It was clear from this email that Duduzane had spoken to Moloisi or the President, because he indicated that *“He is expecting your call...”*

29.5 Sistema appears to have succeeded in arranging the meeting. Chuikov stated the following in reply:

"Thank you very much for putting me in touch with Mr Moloisi. We have spoken and are now discussing suitable time for the meeting. Please let me know if you also plan to be in Davos as Mr Evtushenkov and I would be delighted to see you too."

29.6 President Zuma met Evtushenkov in Davos and on 27 January 2015. Chuikov wrote to thank Duduzane Zuma for arranging the meeting:

"Thank you for setting up the meeting with President Zuma for our Chairman Vladimir Evtushenkov. We met in Davos and had a very productive and warm catch up."

In the meeting Mr Evtushenkov raised the topic of possible investments in South Africa with particular focus on healthcare and "Smart City" technologies. As you know Sistema is very keen to nurture our relationship and identify joint business opportunities. President Zuma expressed his support for these efforts and mentioned that both areas of focus may be of interest in South Africa."

30 Duduzane Zuma uses his influence to benefit Gupta companies.

30.1 We have already alluded to:

30.1.1 the incident where Duduzane Zuma facilitated a meeting between Ajay Gupta and Mcebisi Jonas, at which Ajay Gupta attempted to bribe Mr Jonas into accepting the post of Minister of Finance, and

30.1.2 the role played by Duduzane Zuma in the appointment of Mr Rocha as advisor to Minister Martins.

30.2 In Chapters 3 and 4 below, we show how individuals friendly to the Guptas were appointed to high public offices after their CVs were forwarded to Duduzane Zuma:

30.2.1 Minister Zwane was appointed Minister of Mineral Resources after his CV was forwarded to Duduzane Zuma;

30.2.2 Mr Richard Seleke was appointed Director General of Public Enterprises after his CV was forwarded to Duduzane Zuma;

30.2.3 Mr Colin Matjila was appointed to the Board of Eskom after his CV was forwarded to Duduzane Zuma; and

30.3 In Chapter 5 below, we show how the President reassigned powers to Minister Muthambi after a request for such reassignment was forwarded to Duduzane Zuma.

(iv) The abuse of the President’s powers in favour of the Gupta family

31 President Zuma has shown a readiness to utilise his position, and the influence with which it comes, to benefit the Gupta family.

32 We have referred above to -

- 32.1 President Zuma’s apparent willingness to turn a blind eye to the conduct of the Guptas and their supporters in relation to the Waterkloof Airbase fiasco and the letter to Sheikh Mohammed Bin Rashid Al Maktoum, and
- 32.2 his intervention with Mr Rocha in support of Duduzane Zuma and the Guptas.
- 33 In Chapter 6 below we describe the Cabinet Committee appointed to look into the conduct of banks that refused to do business with the Guptas. That Committee was appointed by the Cabinet over which President Zuma presides. It’s establishment can accordingly be seen as another instance of the use of Presidential power to support the interests of the Guptas.
- 34 Mr Themba Maseko, the erstwhile CEO of the Government Communications and Information System (“GCIS”) has gone on record publicly to describe another instance of direct Presidential intervention to support the Guptas.
- 35 In late 2010, the Gupta family were in the process of establishing their newspaper, *The New Age*. GCIS is mandated to, *inter alia*, handle State expenditure on advertising. Mr Maseko was responsible for overseeing an annual advertising budget of R600 million. Mr Maseko gave the following account to the Public Protector, which is paraphrased below from the *State of Capture* report:⁴⁸

⁴⁸ Public Protector, ‘*State of Capture report*’, Report 6 of 2016/2017 at p97, para 5.20

- 35.1 In late 2010 Maseko received several requests for meetings from members of the Gupta family. Maseko agreed to the meeting.
- 35.2 On the day of the meeting, while *en route* to the venue, Maseko received a telephone call from the President’s office. The personal assistant indicated that the President desired to speak with Maseko. When the President came on the line, he greeted Maseko and said “*kuna labafana bakwaGupta badinga uncedo lwakho. Ngicela ubancede.*” Loosely translated, this meant that the following: “*The Guptas need your help. Please help them.*”
- 35.3 Maseko told the President that he was *en route* to Saxonwold, when the President said: “*Kulungile ke baba.*” (“*It’s fine then.*”).
- 35.4 Mr Maseko met with Ajay Gupta and one of his brothers. During the meeting, Ajay Gupta asked Mr Maseko to channel advertising spent to *The New Age*. When Mr Maseko raised the fact that the advertising spent in fact lay with the individual departments, Mr Ajay Gupta was undeterred. He said that if Mr Maseko encountered any problems with Ministers, the Gupta brothers would summon those Ministers to Saxonwold.
- 35.5 A few weeks later, a senior staffer at *The New Age* demanded a meeting with Maseko on the following day. Mr Maseko was on his way to the Nedbank Golf Challenge in Sun City, and indicated that he was unable to make such an appointment. An hour later, Ajay Gupta telephoned Mr Maseko, demanding a meeting the following day. When Mr Maseko

refused, Ajay Gupta said: *“I will talk to your seniors in Government and you will be sorted out.”*

36 These examples illustrate the control of Presidential power to assist the Guptas and the assumption on the part of the Guptas that they can depend on executive power to be exercised in a manner that protects their interests. In the four chapters that follow, we show how this assumption of the Guptas is borne out by events in relation to the four Government Departments that are of most significance to them:

36.1 The Department of Public Enterprises which exercises control over the state owned enterprises from which billions of rands have been diverted to Gupta companies,

36.2 The Department of Mineral Resources, which exercises authority over the mining industry in which Gupta companies are heavily invested;

36.3 The Department of Communications, which is important to the Guptas because of their broadcasting interests; and

36.4 The Ministry of Finance that has attempted to protect State resources from being unlawfully diverted to Gupta companies.

CHAPTER 3: THE GUPTA-ZUMA PLUNDERING OF PUBLIC RESOURCES THROUGH STATE-OWNED ENTERPRISES

Overview: The key facts

1 President Zuma, and his appointed Ministers for Public Enterprises, Malusi Gigaba and Lynne Brown, have overseen the plundering of billions of rands of public resources through the unlawful conclusion of contracts by State-Owned Enterprises (SoEs) to the benefit of companies owned and controlled by the Gupta family, Duduzane Zuma and their business associates.⁴⁹ This includes, but is evidently not limited to –

1.1 Transnet’s unlawful award of a R50 billion tender for freight locomotives in 17 March 2014. From and associated with this tender –

1.1.1 The Gupta-linked company, Tequesta (Pty) Ltd – whose sole director is the Gupta’s business partner, Salim Essa – earned a staggering 21% “service fee” from the primary successful bidder, China South Rail (Hong Kong) Co. Ltd, totalling R5 billion;

1.1.2 The Gupta family and Duduzane Zuma stood to earn lucrative sub-contracts with the successful bidders, through their newly-acquired stake in the local steel cutting and processing company, VR Laser Services (Pty) Ltd;

⁴⁹ A spreadsheet prepared by Sahara of “the Sahara Group of companies” is attached **SOE 1**. It describes many (but not all) of the Gupta companies.

- 1.1.3 The advisory services company, Regiments Capital (Pty) Ltd – whose executive director, and 32% shareholder, Mr Eric Wood, is a business associate of the Guptas and Mr Essa – earned hundreds of millions of rands in service fees from Transnet.
- 1.1.4 Trillian Capital Partners – a company in which Mr Essa holds a 60% stake and Wood a 25% stake and to which Mr Wood took the financial advisory business he had previously conducted in the name of Regiments Capital, has since late 2015, earned more than a hundred million rands in service fees in Transnet.
- 1.2 Transnet’s award to Neotel of a R300 million network equipment contract and a five-year network service contract worth R1.8-billion in 2014 and early 2015, which resulted in kickbacks of R66m to a Gupta-linked front company, Homix (Pty) Ltd;
- 1.3 Eskom’s award of an estimated R11.7 billion worth of coal-supply contracts at inflated prices to Tegeta Exploration and Resources (Pty) Ltd between 2015 and 2016. The Guptas’ Oakbay Investments company holds a 34.5% stake in Tegeta; Duduzane Zuma’s Mabengela Investments (Pty) Ltd holds a 28.5% stake; and Mr Essa’s Elgasolve a 21,5% stake.
- 1.4 Eskom’s conclusion of a R43 million contract with the Gupta’s media company, TNA (Pty) Ltd in October 2014. South African Airways, Transnet and Denel have concluded similar contracts with TNA Media for millions of rands.

- 1.5 Denel’s conclusion of a joint venture with Gupta-linked company VR Laser Asia in January 2016, in terms of which VR Laser Asia would acquire Denel’s intellectual property and a 49% stake in Denel Asia’s expansion into the Asian market.
- 2 In its analysis of the capture and exploitation of SoEs, the State Capacity Research Project describes the “repurposing *modus operandi*” that has been employed by the Guptas and their associates, with the apparent complicity of Zuma’s appointed Ministers of Public Enterprises.⁵⁰
- 3 In essence, the *modus operandi* entails four steps:
- A new minister changes the board composition of a SoE;
 - The SoE announces a major new acquisition or build project;
 - People brought on to the board who have close personal links to some of the bidders; and
 - The tender is awarded in circumstances where there is a clear conflict of interest.⁵¹
- 4 Notwithstanding the media’s exposure of the corruption and conflicts that have been exploited on the SoE Boards, the current Minister of Public Enterprises, Lynne Brown has continued to appoint to – and recycle across – SoE Boards the very individuals who are identified as colluders with the Guptas and their

⁵⁰ *Betrayal of the Promise: How South Africa is Being Stolen*, May 2017. Available online at: <http://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf>.

⁵¹ *Betrayal of the Promise: How South Africa is Being Stolen*, May 2017. See p 47.

business associates. These include Mr Brian Molefe, Mr Anoj Singh, Mr Iqbal Sharma, Dr Ben Ngubane, Mr Colin Matjila and Mr Matshela Koko.

5 Ministers Gigaba and Brown’s appointment and re-appointment of these compromised individuals is evidently done with the blessing of President Zuma. Notwithstanding the public controversies around maladministration and corruption in public enterprises, President Zuma retained Ms Brown as Minister of Public Enterprises in his latest Cabinet reshuffle of 30 March 2017. He also appointed Mr Gigaba as Minister of Finance to replace Minister Gordhan.

6 Further, as former Minister of Public Enterprises, Barbara Hogan advised the Public Protector that, President Zuma took a special interest in appointments to the Boards of Eskom and Transnet.⁵²

7 Moreover, President Zuma has exercised his powers under section 12(1)(a) of the Public Service Act 1994 to appoint as Director General of the Department of Public Enterprises, Mr Richard Seleke, a person who has a lengthy track record of abusing his office to promote the interests of the Guptas and Duduzane Zuma. By so doing, President Zuma has facilitated the improper use of public resources for the benefit of the Guptas and his son.

8 In the light of these facts, the following conclusions appear inescapable:

8.1 Ministers Malusi Gigaba and Lynne Brown have abused the public office of Minister of Public Enterprises by appointing compromised and

⁵² Public Protector, State of Capture report. Report 6 of 2016/2017 at p 90, para 5.16(e).

conflicted directors to SoE companies, to the benefit of the Gupta family and their business associates, including Duduzane Zuma;

8.2 President Zuma has abused his appointment powers in appointing and retaining Minister Gigaba and Minister Brown in his Cabinet and by appointing Mr Seleke as Director General of Public Enterprises;

8.3 An improper relationship exists between President Zuma and the Gupta family.

9 The remainder of this chapter details the key facts and the supporting evidence. We start with the appointment of Mr Seleke because this is an appointment which most clearly evidences the improper use of Presidential Power.

MR SELEKE, THE PRESIDENT’S APPOINTMENT AS DIRECTOR GENERAL

10 The power to appoint the Directors General of a National Department vests exclusively in the President in terms of section 12(1)(a) of the Public Service Act. The President appointed Mr Seleke Director General of Public Enterprises in December 2015. He did so after Mr Seleke had forwarded his curriculum vitae to Duduzane Zuma on 29 June 2015, apparently for consideration by others for appointment to the then vacant position of Director General of Public Enterprises.⁵³

11 Mr Seleke has had an unlawful and improper relationship with the Gupta family since at least the start of 2015.

⁵³ A copy of the email from Mr Seleke and the attached CV and certificates are Annexures **SOE 2, SOE 3 & SOE 4**

- 11.1 Mr Seleke has an anonymous email address infoportal1@zoho.com from which he conducts Gupta related business under the pseudonym “Businessman”.
- 11.2 Using his infoportal1 address Mr Seleke had acted as a conduit between persons associated with South China Railways and the Gupta family. On 7 January 2015, close to a year before he was appointed Director General of Public Enterprises, Mr Seleke received an email from zhangminyu54642@qq.com which is the email address for China South Railways’ Indian subsidiary, CSR ZELC (India) Private Limited.⁵⁴ On 22 March 2015, Mr Seleke forwarded this email to Mr Chawla of the Gupta’s Sahara company. Attached to the forwarded email was a spreadsheet indicating how Gupta linked companies were to be paid hundreds of millions of US dollars for their role in brokering Transnet’s purchase of locomotives from China South Railways.⁵⁵ There is no conceivable basis upon which Mr Seleke might lawfully have been involved in email correspondence of this nature.
- 11.3 In the context of the Eskom/Tegeta controversy which is discussed below, Mr Seleke used his infoportal1 email to act as a conduit for Mr Matshela Koko, the then former Eskom Group Executive: Technical and Commercial, unlawfully to share confidential Eskom documents with the

⁵⁴ See [http://www.mycorporateinfo.com/in/business/csr-zelc-\(india\)-private-limited/U52100MH2015FTC261540](http://www.mycorporateinfo.com/in/business/csr-zelc-(india)-private-limited/U52100MH2015FTC261540).

⁵⁵ The email and the spreadsheet are attached as Annexure **SOE 5** & **SOE 6**. The Gupta role in the Transnet / CSR locomotive purchase is discussed below.

Gupta family so as to advantage Tegeta in its attempts to purchase the Optimum coal mine from Glencore.

11.3.1 On 7 August 2015, Mr Koko forwarded to Mr Seleke a letter that the business rescue practitioners for Optimum Coal Holdings (Pty) Ltd had sent to Eskom. Mr Seleke, in turn, forwarded this letter to Mr Chawla,⁵⁶ and

11.3.2 On 4 November 2015, Mr Koko forwarded to Mr Seleke a privileged legal opinion that Eskom had received from senior counsel advising on Eskom’s rights in terms of its coal supply agreement with Optimum Coal. Mr Seleke, in turn, forwarded this letter to wdrsa1@gmail.com which is an email address used by Tony Gupta.⁵⁷

11.4 Mr Seleke’s collusion with Mr Koko to provide improper assistance to the Gupta family in relation to Eskom matters was not confined to the Tegeta / Optimum Coal case. On 4 November 2015 Mr Koko forwarded to Mr Seleke a letter from Just Coal (Pty) Ltd complaining about Eskom’s cancellation of their contract to provide coal for various Eskom Power Stations including Rotran, Matla and Arnot. The cancellation of the Just Coal’s coal supply contract would provide an opening for the Guptas to profit by concluding a replacement coal supply contract with Eskom through Tegeta. In this context, Mr Koko’s email stated “[p]lease give the Boss. The fight begins.” Mr Seleke had no difficulty identifying who “the

⁵⁶ The email and the letter are attached as **SOE 7 & SOE 8**

⁵⁷ The email and the opinion are attached as **SOE 9 & SOE 10**

Boss” was. He immediately forwarded Mr Koko’s email to Tony Gupta at his wdrsa1@gmail.com email address.⁵⁸

11.5 Mr Seleke, in his “BusinessMan” infoportal1 guise, was also included on much of the internal Gupta Group correspondence relating to the creation of Denel Asia and attempts to set up Denel India.⁵⁹ He reciprocated by forwarding to Mr Chawla internal correspondence between the Minister of Public Enterprises, and Denel in relation to her tentative misgivings about the formation of Denel Asia.⁶⁰

11.6 Mr Seleke appears to have been involved with the Gupta company Tequesta which benefited from the Transnet / CSR locomotive purchase discussed below. On 15 December 2015, he forwarded a blank Tequesta letterhead received from Mr Salim Essa to Mr Chawla.⁶¹

11.7 On 1 March 2016, Mr Seleke forwarded to Tony Gupta a spreadsheet analysing trends in the rand exchange rate, the balance of payments and the balance of payments over the periods of office of all Presidents and Ministers of Finance since democracy.⁶² The most likely purpose behind the production of this spreadsheet was an attempt to influence public debate over merits of retaining Minister Gordhan in office as Finance Minister.

⁵⁸ The email and the letter are attached as **SOE 11 & SOE 12**

⁵⁹ Copies of the emails and draft agreements or resolutions attached thereto are attached as Annexures **SOE 13 - SOE 26**.

⁶⁰ Copies of the email and the attached letter from the Minister are attached as Annexures **SOE 27 & SOE 28**.

⁶¹ Copies of the email and the attached letter from the Minister are attached as Annexures **SOE 29 & SOE 30**.

⁶² Copies of the email and the attached letter from the Minister are attached as Annexures **SOE 31 & SOE 32**.

12 The Public Enterprises portfolio is one of particular importance for the Guptas because of their interest in contracts with state owned enterprises. Against the backdrop of Mr Seleke’s sustained improper relationship with the Guptas, it is difficult to find an innocent explanation for the President’s appointment of him to the position of Director General of Public Enterprises.

MINISTER GIGABA’S APPOINTMENTS

13 President Zuma announced his appointment of Malusi Gigaba as Minister of Public Enterprises on 31 October 2010.

14 Shortly after his appointment, Minister Gigaba appointed Gupta linked individuals to Transnet and Eskom’s Boards, where they oversaw the R50 billion locomotives tender and other Gupta-linked contracts with Regiments, VR Laser Services (Pty) Ltd and companies in the Trillian group.

Transnet: December 2010 – December 2014

15 In December 2010, Minister Gigaba appointed Mr Iqbal Sharma to the Transnet Board. While Minister Gigaba sought to appoint Mr Sharma as chairperson of the Transnet Board, this appointment was vetoed by Cabinet because of Mr Sharma’s known ties to the Gupta family.⁶³ Instead, in June 2011, Mr Sharma became the chairperson of the Transnet Board’s new Acquisitions and Disposals Committee.

⁶³ amaBhungane, ‘#GuptaLeaks: Guptas and associates score R5.3bn in locomotives kickbacks’, 1 June 2017, Available at: <http://amabhungane.co.za/article/2017-06-01-guptaleaks-guptas-and-associates-score-r53bn-in-locomotives-kickbacks>

16 In February 2011, Minister Gigaba appointed Mr Brian Molefe as CEO of Transnet, and in July 2012, Minister Gigaba appointed Mr Anoj Singh as CFO of Transnet.

Transnet’s locomotives tender and the R5,3 billion kickback to Tequesta

17 Messrs Sharma, Molefe and Singh oversaw the issue, in July 2012, of a tender to purchase 1064 locomotives at a value of R50 billion tender.

18 The tender was awarded on 17 March 2014. The tender award was split between four suppliers (on the advice of Regiments Capital). These included China South Rail (Hong Kong) Co. Ltd, which was contracted to supply 359 locomotives – 60% of the electric locomotives procured; China North Rail, General Electric and Bombardier.

19 The leaked records from the Sahara computer server have revealed that a company registered in Hong-Kong, Tequesta (Pty) Ltd earned a 21% “advisory services fee” of the contract value of Transnet’s procurement from China South Rail (dubbed CSR’s “Project 359”) – i.e., R3.8 billion of the R18.1 billion contract.

20 Tequesta is a Gupta front company set up with the knowledge and assistance of Mr Seleke for the purposes of channelling public funds to the Guptas. Its sole director is the Gupta’s principal business associate, Mr Essa.

21 China South Rail (“CSR”) and Tequesta concluded a “Business Services Development Agreement” on 18 May 2015.⁶⁴ In terms of the agreement,

⁶⁴ A copy of the agreement is attached as Annexure **SOE 33**.

Tequesta would provide “advisory and consultant services” to CSR in respect of Project 359.

21.1 Clause 6.1.1 provides that *“Tequesta shall be entitled to an Advisory Fee of 21% (Twenty one percent) of the Contract value of Project 359...”,* payable when CSR receives payment from Transnet.

21.2 Extraordinarily, the final clause of the contract (in Annexure A) provides that:

“The company [CSR] will not require any proof of delivery of the above services since it is understood that the project would not have materialised without the active efforts of Tequesta to provide the services listed above”.

22 The most innocent interpretation of this clause is that it reflects that Tequesta was able to peddle the Gupta family’s political connections within Transnet, in order to divert work to CSR in breach of all Constitutional and statutory requirements relating to the procurement of goods by organs of state.

23 Following the conclusion of the “Business Services Development Agreement”, Transnet placed two further procurement orders with CSR for another 95 and 100 electric locomotives, at a cost of R2.7 billion and R4.4 billion, respectively. It appears that no competitive tender process was followed for these acquisitions. Tequesta claimed the same 21% service fee from CSR for these contracts – bringing its total earnings from Transnet’s procurement from CSR to R5.3 billion.

24 Reconciling leaked records, *AmaBhungane* has exposed the particular role that Mr Iqbal Sharma played in ensuring that Transnet purchased its electric locomotives from CSR. *AmaBhungane* explains that, six months before the award of the R50 billion locomotives tender, Mr Sharma ensured that a competing offer for the provision of 100 electric locomotives from Japan’s Mitsui & Co was thwarted.

24.1 *Amabhungane* reported as follows:⁶⁵

“Six months earlier, in October 2013, Transnet’s Sharma e-mailed Rajesh Gupta and senior Gupta employee Ashu Chawla. By this time, it should be noted, Sharma was about to be a business partner to Essa and the Guptas – he was negotiating his and their imminent joint acquisition of VR Laser, a steel cutting business. But these e-mails were not about VR Laser.

To Chawla, Sharma sent a memorandum that had been submitted to the acquisitions and disposals committee, which he headed. It motivated for the urgent acquisition by ‘confinement’ – that is, without a tender – of 100 electric locomotives from Japan’s Mitsui & Co pending the finalisation of the 1,064 tender, which had been delayed. If the Guptas were batting for CSR, the award to a competitor would have threatened their interests. Sharma provided the solution.

To Rajesh Gupta, better known as Tony, Sharma e-mailed two letters: One from him to the department of public enterprises director-general, and the other a draft reply from the director-general.

⁶⁵ Copies of this article and the emails that it cites are attached as Annexures **SOE 34 - SOE 37**

The letter to the director-general was in the form of Sharma seeking advice from the department, which represents government as Transnet’s shareholder.

But in it Sharma expressed serious doubt about the acquisition, saying: ‘My own view as chairman ... is to decline the request for confinement and procure by way of an open and transparent tender process.’

He added that it ‘could appear’ that Transnet’s freight rail division, which had motivated the acquisition, wanted to favour ‘particular companies that have enjoyed similar treatment in the past’.

The director-general’s draft reply – which, metadata shows, Sharma authored himself – concluded: ‘We do not readily support the use of confinement as a method of procurement and in this instance we would urge the [acquisitions and disposals committee] to not grant approval for this procurement with a confinement.’

The record shows that Mitsui & Co did not get the contract for the extra 100 locomotives, but that CSR did. We could find no evidence that this followed an open tender. End result: By early 2014, CSR had contracts to supply Transnet with 95, 100 and 359 locomotives – 554 units in total.”

Transnet – VR Laser Services

- 25 While the Guptas and their business associates gained directly from the Transnet procurement from CSR, they also stood to benefit indirectly through the local sub-contracting conditions. The winning bidders were required to source 60% of the locomotive components from South African subcontractors.

- 26 In February 2014, a few weeks prior to Transnet being awarded the locomotives tender (on 17 March 2014), Tony Gupta and Duduzane Zuma acquired shares in local steel-cutting and processing company, VR Laser Services (Pty) Ltd (through their company Westdawn Investments, and Craysure Investments which is a wholly-owned subsidiary of Westdawn Investments).
- 27 Each of the four winning bidders visited VR Laser Services to assess the possibility of subcontracting work to them. The Gupta family and Duduzane Zuma accordingly stood to benefit handsomely from the local subcontracting condition.

Transnet – Regiments/ Trillian advisory contracts

- 28 Gupta associates also benefitted from Transnet’s procurement of advisory consultant services from Regiments Capital and later Trillian, both Gupta-linked companies.
- 29 The Regiments Group comprises *inter alia* Regiments Capital (Pty) Ltd which is a financial advisory business, and a range of other financial services companies. Mr Wood has a 32% shareholding in the Regiments Group through the Zara Family Trust. The other two directors and major shareholders in the Group are Mr Litha Nyhonyha and Mr Niven Pillay. Mr Wood had always been the director primarily responsible for Regiments Capital. In the course of 2015 and early 2016 Mr Wood fell out with Mr Nyhonyha and Mr Pillay. According to the latter, this was because of their misgivings about Mr Wood’s close business relationships with the Guptas. The three partners attempted to reach an agreement in terms of which Mr Wood would leave the Regiments Group but

take with him the advisory business he had been conducting in the name of Regiments Capital (Pty) Ltd and would either pay Mr Nyhonyha and Mr Pillay or be paid by them, the amount necessary to ensure that what he took out of the Regiments Group accurately reflected his 32% interest in the Group. Mr Wood ultimately took his financial advisory business to Trillian Capital (Pty) Ltd on 1 March 2016.⁶⁶

30 The extraordinary and convoluted manner in which Transnet’s payments to Regiments for advisory services ballooned, and then how Trillian acquired the benefits of Regiments’ contracts with Transnet, is detailed in the *Betrayal of the Promise* report.⁶⁷

31 Transnet’s employment of these companies and the escalation in Transnet’s payment for their services appears to have been facilitated primarily by the newly-appointed Transnet CFO, Anoj Singh.

32 In summary:

32.1 Regiments Capital is a fund management and investment advisory company, specialising in public sector infrastructure projects. The company was initially subcontracted in 2012 by McKinsey & Company, after Transnet invoked unexplained conflicts of interest with McKinsey preferred subcontractors and proposed that Regiments be appointed as a substitute. Transnet’s payment for financial advisory services for the

⁶⁶ Mr Wood’s dispute with Mr Nyhonyha and Mr Pillay remains unresolved. It is being ventilated in the Gauteng High Court, Johannesburg in case number 35530/2016. The facts stated in this chapter relating to Mr Wood, Regiments and Trillian emerge from the papers in that case.

⁶⁷ *Supra* at pp 28-30.

locomotives deal was initially capped at R35.2 million, with Regiments given an estimated R10 million share.

32.2 Mr Singh proceeded to transfer the bulk of the work under the McKinsey contract to Regiments, to amend the contract scope, and – with Mr Molefe’s approval – increase the contract value to an astonishing R265 million. As the *Betrayal of Promise Report* explains (drawing on *AmaBhungane’s* investigative reports):⁶⁸

“Singh, signing on behalf of Transnet, also increased the contract value by R6 million, bringing the total contract to R41.2 million, of which a R21 million ‘fixed price’ would go to Regiments, according to the amaBhungane investigation. Two months later, in April 2014, Singh sent a memo to Molefe in which he motivated for a post-facto revision in the fee allocation to Regiments, asking to add an additional R78.4 million. The additional fee was apparently based on Regiments’ own calculation of ‘the billions’ its advice had supposedly saved Transnet. Singh’s rationale was that Regiments had apparently demonstrated to Transnet that it could save money by splitting the locomotive order between four bidders (ultimately awarded), rather than choosing one or two. According to Singh, as summarised by amaBhungane, although this would make each locomotive more expensive, as bidders would have a smaller volume to dilute their overheads, the full complement of 1 064 could be delivered more quickly. Based on this reasoning, the amendment to the original contract value increased Regiment’s

⁶⁸ *Betrayal of the Promise: How South Africa is Being Stolen*, May 2017. Available online at: <http://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf> at p 28.

payment from R21 million to R99.5 million. Molefe provided approval for this.

In early 2015, the then group treasurer of Transnet, Mathane Makgatho, resigned unexpectedly. The media reported that she told her staff: ‘I arrived here with integrity, and I will leave with my integrity intact.’ She was replaced by Phetolo Ramosebudi, the previous group treasurer of SAA, who weeks after his appointment on April 28 2015, compiled a proposal purporting to approve a ‘contract extension’ for Regiments’ support to Transnet on the locomotive transaction, raising its fee from the previous R99.5 million by R166 million to total R265.5 million.”

32.3 In 2015, the Guptas reportedly sought to buy a stake in Regiments Capital. After the directors of Regiments refused the purchase offer, the Guptas, apparently operating through Mr Essa, bought over a small investment firm, Trillian Asset Management. Mr Essa acquired a 60% stake in Trillian, and was registered as its sole director.⁶⁹

32.4 In December 2015, Transnet (now acting under its new Board) paid Trillian R93.5 million for acting as “*the lead arranger*” for a R12 billion loan by a syndicate of banks to finance Transnet’s locomotives purchase. It appears from the papers in Mr Wood’s dispute with his former partners that he performed most of the work relating to the arrangement of the R12 billion loan while he was still employed by Regiments Capital, yet Transnet paid

⁶⁹ Sunday Times ‘*Transnet deals fall into Gupta man’s lap*’, 22 May 2016.

the R93.5m to Trillian. Moreover, the *Betrayal of the Promise* report notes:

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“Usually in such a deal, the lead arranger would be one of the lenders – typically an experienced financial or advisory institution, lending at least as much money as each of the others. Trillian Asset Management was a small boutique asset manager, arguably without the capacity to lead a R12 billion bank syndicate. Furthermore, the SOE’s own corporate treasury, one of the largest in the country, could arguably have arranged the loan itself. Trillian allegedly did at least R170 million worth of work for Transnet. It remains unclear what kind of work could justify such large pay-outs of state resources.”

32.5 In August 2016, *AmaBhungane* reported that, by the end of June 2016, Transnet had paid Trillian a further R74 million for invoices that appeared “*remarkably skimp on detail*” and did not indicate time or personnel allocated.⁷¹

The Neotel/ Homix scandal

33 In 2014, Neotel paid R66-million in apparent kickbacks to a Gupta-linked, letter box company, Homix (Pty) Ltd, to secure contracts from Transnet. A further R25-million was agreed but not yet paid. Neotel’s CEO, Mr Sunil Joshi reportedly agreed to pay a 10% “commission” fee to Homix to secure Transnet’s purchase of R300-million in telecommunication network equipment from Neotel and a 2%

⁷⁰ *Betrayal of the Promise: How South Africa is Being Stolen*, May 2017. Available online at: <http://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf> at p 28. at p 29.

⁷¹ amaBhungane, ‘*Gupta-linked firm’s R167m Transnet Bonanza*’, 28 August 2016.

“success fee” for Transnet’s award of a five-year, R1.8-billion contract with Neotel for network services.

34 Neotel’s board commissioned an investigation into the payments after the company’s auditors blew the whistle to it in April 2015. Neotel had made two suspicious payments to Homix for no apparent services rendered: of R34.5 million in April 2014 (after Neotel was awarded the R300 million network equipment contract) and of R41million in February 2015 (after Neotel was awarded the network services contract).

35 In the course of Neotel’s investigation, former managing director of the Guptas’ Sahara Systems, Mr Ashok Narayan, identified himself as the CEO of Homix.

36 On investigating the sources of Homix’s funds (which also included Regiments Capital, Cutting Edge Commerce, Sechaba Computer Systems and Burlington Strategy Advisors, a Regiments Group Company), AmaBhungane reported that the company was indeed no more than a front, with ties to the Gupta’s primary business associate, Salim Essa:⁷²

“The company through which at least R250-million owed was a hole in the wall led by a ghost. With millions in its account, Homix was no more than a room behind a plain blue door abutting a latrine in a run-down office block in Centurion. Neighbours said the door hardly ever opened.

Its sole director, one Yakub Bhikhu, is untraceable and his credit history gives his most recent employment status – in 2013 – as ‘unemployed’.

⁷² AmaBhungane, ‘The Guptas and the R250 million “kickback laundry”’, 29 October 2016.

Homix’s bank records show no sign that the company had staff. There were no salary payments, and only four months of payments to Vodacom for what appears to have been a single cell phone bill.

For the rest, the cash just flowed out again, mainly to Bapu Trading – a company even more obscure...

At the end of the six months in April last year, Homix’s account had a balance of less than R200,000. But tens of millions more must have flowed in, as the outflows continued apace.

A report on an investigation by an official agency, submitted to former public protector Thuli Madonsela and leaked this week, records that Homix purchased 16 batches totalling over R65-million in foreign currency from Mercantile Bank, to be remitted to Hong Kong as payment for imports.

But Mercantile got suspicious and reported three of the purchases, totalling R14.4-million, to the Reserve Bank’s financial surveillance department, which froze it after inquiries revealed that customs documentation for the supposed matching imports had been falsified.

The report states: ‘Homix remitted exorbitant amounts of money offshore illegally.’

The R51-million that got through to Hong Kong, according to the report, went to two companies: YKA International Trading Company and Morningstar International Trade. AmaBhungane could not trace YKA’s sole director, a Chinese resident.

Morningstar’s registered director and owner is Mahashveran Govender, a South African. But amaBhungane could not trace him either, not least as the

residential address he gave Hong Kong’s company registrar is a run-down at in central Johannesburg, where there was no sign of him.

Morningstar’s Hong Kong registered address, however, gives a possible clue about where the money may have gone. It is a small, 15th floor office in Sheung Wan, the old part of Hong Kong.

The same flat is also the registered address of three Essa companies – Tequesta Group, Regiments Asia and VR Laser Asia.”

37 Neotel’s board subsequently reported its payments to Homix to the police as possible bribery.

38 The circumstances surrounding the Neotel-Homix agreement suggest the involvement in the scheme of Transnet’s CFO, Mr Anoj Singh and CEO, Mr Brian Molefe, who approved the awards to Neotel. The background to these contracts were investigated by *AmaBhungane*, which reported:⁷³

“At the end of 2013, Transnet put the master agreement out to tender. It was provisionally awarded to a competitor, T-Systems, but the latter withdrew by agreement some months later, an insider said, when it became apparent its solutions were inappropriate.

In April 2014, during this hiatus, Neotel paid its first R30-million to Homix. The Deloitte correspondence identifies the payment as relating to routers and other equipment that Neotel sold to Transnet.

⁷³ amaBhungane , “Kickback’ scandal engulfs Transnet”, 31 July 2015.

Transnet is understood to have paid Neotel about R300-million for the equipment. Neotel’s payment to Homix equals a 10% “commission”.

In August 2014, Transnet notified Neotel that it was the new preferred bidder for the master agreement and that negotiations should be concluded before Christmas.

By early December, individuals close to the negotiations have claimed, Transnet became intransigent without clear reason. To protect sources, they cannot be identified.

A week later, they said, Neotel’s chief executive, Sunil Joshi, met Transnet’s chief financial officer, Anoj Singh, to whom the state-owned entity’s procurement structures reported. After the meeting, Joshi allegedly asked his staff to approach Homix again.

A “success fee” was agreed with Homix – 2% of the R1.8-billion value of the master agreement with Transnet, equating to R36-million, plus R25-million in respect of a related agreement to sell assets to Transnet. Within hours, Transnet was ready to resume negotiations.

The next day, a Saturday, representatives from both sides met and resolved remaining issues – without any overt assistance from Homix. The master agreement was signed before Christmas.”

- 39 Subsequently, it emerged that Transnet (under Mr Molefe) awarded two more large projects – for closed-circuit television (CCTV) systems worth R835-million – to Neotel without any tender and while Neotel was interacting with Homix.⁷⁴

⁷⁴ AmaBhungane, ‘Transnet ‘kickback’ scandal widens’, 7 August 2015.

Evidence of Gupta ties to Transnet’s Executive Directors

40 There is clear evidence of improper relationships between the Guptas and Messrs Sharma, Singh and Molefe during their tenure at Transnet.

40.1 Mr Sharma was chair of Transnet’s Acquisitions and Disposals committee from June 2010 to December 2014. Leaked email records over this period reveal that Sharma shared confidential Transnet Board documents with the Gupta family. These included documents pertaining to Japan’s Mitsui & Co’s proposed urgent sale of electric locomotives to Transnet; and the agenda of a crucial meeting of Transnet’s Acquisitions and Disposals committee in May 2014. The committee then agreed to escalate the costs of the 1,064 locomotives tender from R39-billion to R52-billion (from which Essa’s Tequesta stood to make billions in professional fees from bidders). About a week before this meeting, Sharma sent the agenda to Tony Gupta at his wdrsa1@gmail.com email address.⁷⁵

40.2 Brian Molefe was Transnet’s CEO from February 2011 to March 2015.

40.2.1 The Public Protector recorded in the *State of Capture* report that:⁷⁶

“Mr Brian Molefe (“Mr Molefe”) is friends with members of the Gupta family. Mr A. Gupta admitted during my interview with him on 4 October 2016 that Mr Molefe is his ‘very good friend’ and often visits his home in Saxonwold.”

⁷⁵ The email and the document are attached as Annexures **SOE 38 & SOE 39**

⁷⁶ Public Protector, ‘*State of Capture report*’, Report 6 of 2016 at para 5.95, p 122.

40.2.2 In conducting the *State of Capture* investigation, the Public Protector obtained and analysed the cell phone records of certain individuals, including that of Mr Molefe, to establish their relationships with the Gupta family and their business associates. As is detailed further below (in respect of Molefe’s tenure as CEO of Eskom), the Public Protector found that (during the period August 2015 to April 2016) Mr Molefe regularly made and received calls to and from Ajay Gupta, and made frequent visits to the Saxonwold area (where the Gupta home is situated).⁷⁷

40.3 Anoj Singh worked as Transnet’s CFO from July 2012 to August 2015. During this period, he was treated to four suspiciously timed Gupta-funded trips to Dubai. Booking confirmations reveal that:

40.3.1 From 6 to 9 June 2014, Singh stayed at the Oberoi Hotel in Dubai with Tony Gupta. This was three months after Transnet’s award of the locomotives tender. It was also the time during which bidding for the Neotel deal was open.⁷⁸

40.3.2 From 7 to 12 August 2014, Singh again stayed at the Oberoi Hotel. Chawla forwarded Singh’s reservation to an associate in Dubai, saying “[p]lease swipe the card for all charges”. It was during that

⁷⁷ Public Protector, ‘*State of Capture report*,’ Report 6 of 2016 paras 5.96-5.101, pp 122-124.

⁷⁸ See Annexure **SOE 40**

month, Transnet notified Neotel that it was the new preferred bidder.⁷⁹

40.3.3 From 7 to 9 November 2014, Singh was allegedly accommodated in the Oberoi Hotel in Dubai at the Gupta’s expense. Weeks later, Neotel was awarded the contract concerned, worth R 1.8 billion. It paid Homix, a letterbox company allegedly connected to the Guptas, R41m.⁸⁰

40.3.4 Singh was again hosted in the Oberoi from 24 to 26 February 2015. The Guptas paid all expenses.⁸¹

40.3.5 AmaBhungane has identified further evidence that Singh has business ties to the Guptas. It reported that:⁸²

“Company documents submitted to the Ras al-Khaimah Investment Authority indicate that on May 1, 2014, Indian national Vivek Sharma transferred ownership in a company, Venus Ltd, to Singh. We could not establish its purpose. Ras al-Khaimah is one of seven emirates making up the United Arab Emirates. The investment authority provides a highly secretive offshore company jurisdiction. Vivek Sharma and his father were Gupta associates, numerous e-mail exchanges show. This includes an invitation for Tony Gupta to attend Vivek’s wedding in March 2014.”

⁷⁹ See Annexure **SOE 41**

⁸⁰ See Annexure **SOE 42**

⁸¹ See Annexure **SOE 43**

⁸² AmaBhungane, “#GuptaLeaks: Guptas and associates score R5.3 billion in locomotives kickbacks”, 1 June 2017.

Eskom: June 2011 – December 2014

41 Minister Gigaba appointed Colin Matjila to Eskom’s Board in June 2011 and as Acting CEO on 1 April 2014. This was after Mr Essa sent Mr Matjila’s CV to Tony Gupta on 22 March 2014 and Tony Gupta forwarded the CV to Duduzane Zuma on 23 March 2014.⁸³

42 Mr Matjila has shared directorships with Mr Essa, in Inca Energy (Pty) Ltd - 2009/022231/07 and Nu Age Energy (Pty) Ltd - 2010/024567/07. Through his company Matlapeng Resources, Mr Matjila is a 59.4% shareholder in Newshelf 960 (Pty) Ltd where he is a co-director with the CEO of Oakbay Resources, Ms Ronica Ragavan.

On 30 April 2014, within a month of being appointed as CEO, Mr Matjila was responsible for irregularly approving Eskom’s R43 million contract to sponsor the Gupta’s New Age newspaper’s *“business breakfasts”*.

MINISTER BROWN’S APPOINTMENTS

43 President Zuma appointed Lynne Brown as Minister of Public Enterprises on 25 May 2014, and renewed her appointment on 30 March 2017.

Eskom: December 2014 to date

44 Shortly after her appointment as Minister in May 2014, Minister Brown recommended the appointment of a new Eskom Board to Cabinet. Cabinet confirmed the appointments in line with Brown’s recommendation on 11

⁸³ The emails and CV are attached as Annexures **SOE 44 & SOE 45**

December 2014. These appointments included numerous individuals who had personal or business relationships with the Gupta family and their close business associates:⁸⁴

44.1 Dr Ben Ngubane, who Brown also appointed as chair of the Eskom Board in September 2015. Dr Ngubane served as a co-director (with Mr Essa) of the natural resources exploration company, Gade Oil and Gas (Pty) Ltd from May 2013 to November 2014.⁸⁵

44.2 Mr Mark Pamensky, who sat on the Board of the Gupta’s Oakbay company (Oakbay Resources and Energy (Pty) Ltd) until May 2017.⁸⁶ Mr Pamensky also served as a director on the boards of numerous other companies in which the Guptas hold a stake, including Shiva Uranium (Pty) Ltd, Yellow Star Trading 1099 (Pty) Ltd, and BIT Information Technology (Pty) Ltd. Mr Pamensky also has direct business interests in Oakbay and Shiva Uranium and is a known friend of Mr Essa;

44.3 Ms Viroshni Naidoo who is the wife of Mr Kuben Moodley and a friend and business associate of the Guptas and Mr Essa. Mr Moodley is a director of Albatime (Pty) Ltd, which contributed to Tegeta’s purchase of Optimum Coal Mine. Mr Moodley also served as a co-director with Mr Pamensky of BIT Information Technology;

⁸⁴ Public Protector, ‘*State of Capture*’, Report 6 of 2016/2017 at pp 119-120 paras 5.74 – 5.80. Also see *amaBhungane*, *The ‘Gupta owned’ state enterprises*, 24 March 2016.

⁸⁵ Ben Ngubane resigned from the Eskom Board in June 2017.

⁸⁶ Pamensky resigned as Eskom director in November 2016, after the release of the Public Protector’s *State of Capture* report.

- 44.4 Mr Romeo Khumalo, who was a co-director with Mr Essa at Ujiri Mining Technologies (Pty) Ltd (until Mr Essa resigned in August 2015);
- 44.5 Ms Nazia Carrim, who is married to a first cousin of Mr Essa, Mr Muhammad Noor Hussains and;
- 44.6 Ms Mariam Cassim, a former employee of the Gupta’s Sahara Computers company.
- 45 Minister Brown transferred both Brian Molefe and Anoj Singh from Transnet to Eskom.
- 45.1 In April 2015, Minister Brown appointed Mr Molefe as acting CEO of Eskom;
- 45.2 In August 2015, Minister Brown appointed Mr Singh as acting CFO at Eskom; and
- 45.3 Both appointments were made permanent in October 2015.
- 46 Under their management, Eskom abused its position to force Glencore’s sale of Optimum Coal Mine (“OCM”) to Tegeta and then allow Tegeta to profit from lucrative coal supply contracts with Eskom. It did so by, amongst others:⁸⁷
- 46.1 Cancelling the Cooperation Agreement that Eskom’s procurement officers and Tender Board Committee had negotiated with Glencore in respect of its coal supply to Hendrina power. The Board referred the matter to then

⁸⁷ Public Protector, ‘*State of Capture*’, Report 6 of 2016/2017 at pp 337-341, para 6.5.

Acting CEO, Molefe, who refused to approve the negotiated terms and cancelled the Agreement;

46.2 Levying a fine on Glencore of over R2 billion, referring the matter to arbitration and issuing a summons for the same penalty amount on the same day. As the Public Protector noted *“It is unclear as to why Eskom proceeded to refer a matter to arbitration and issue a summons on the same day. It can only be inferred that Eskom wished to exert pressure on OCH/OCM”*⁸⁸;

46.3 Refusing to re-negotiate terms with OCM and seeking to enforce the penalty levied against OCM, with the result OCM/OCH’s Business Rescue Practitioners had no option but to look for possible entities to purchase OCM. To date, Mr Singh remains the CFO of Eskom;

46.4 Refusing to consent to the sale of OCM to another purchaser (Pembani), so that Tegeta emerged as the only remaining entity that wished to make the purchase;

46.5 Forcing the sale of all shares held by Optimum CH, as Eskom refused to consent to a standalone transaction with OCM being the only entity sold;

46.6 Concluding lucrative contracts to supply coal to Arnot Power Station with coal from OCM. This essentially increased the financial stability of OCM

⁸⁸ Public Protector, ‘*State of Capture*’, Report 6 of 2016/2017 at pp 339, para 6.9. (l).

and decreased Tegeta’s obligations of post-commencement finance to OCM; and

- 46.7 Authorising an extraordinary pre-payment to Tegeta in the amount of R586 million, for the purchase of coal from Tegeta and delivery by OCM to Arnot Power Station. The Pre-Payment was approved by a committee of Eskom representatives at a meeting held at 21h00 on 11 April 2016. This was the very same day on which Tegeta’s request for approximately R600 million of bridging finance for the purchase of all shares in OCH was made to, and rejected by, the Loan Consortium of Banks and the day before payment fell due.
- 47 To date, Eskom has concluded coal supply-contracts with Tegeta, at inflated prices, to the estimated value of R11,7 billion.⁸⁹
- 48 Eskom’s role in unlawfully assisting Tegeta to force the sale of OCM and all the shares in OCH, and its subsequent award of coal supply contracts to Tegeta for OCH’s coal mines, is detailed in the Public Protector’s “*State of Capture*” report.
- 49 In examining the role of the Board, the Public Protector disclosed evidence in the form of cell phone records of Mr Molefe’s regular interactions with Ajay Gupta and his close business associates in Tegeta. The Public Protector found that:⁹⁰
- 49.1 Between the period of 2 August 2015 and 22 March 2016 – being the period when Tegeta’s forced purchase of OCM and OCH was being

⁸⁹ amaBhungane and Scorpio, ‘#GuptaLeaks: How Eskom was captured’, 10 June 2017.

⁹⁰ Public Protector “*State of Capture*” Report 6 of 2016/2017 at p 300-303, para 6.1.

facilitated by Eskom – Mr Molefe had called Mr Ajay Gupta a total of 44 times and Mr Ajay Gupta had called Mr Molefe a total of 14 times;

49.2 Between 23 March 2016 and 30 April 2016, Ms Ronica Ragavan (a director of Tegeta) made 11 calls to Mr Molefe and sent 4 text messages to him. Of the calls made, 7 were made between 9 April 2016 and 12 April 2016. This includes one call made on 11 April 2016, when the prepayment was granted to Tegeta by Eskom; and

49.3 Mr Molefe was in the Saxonwold area, where the Gupta family resides, on 19 occasions between 5 August 2015 and 17 November 2015.

50 The Public Protector concluded that the evidence reveals *“a distinct line of communication between Mr Molefe of Eskom, the Gupta family and directors of their companies in the form of Ms Ragavan and Mr Howa. These links cannot be ignored as Mr Molefe did not declare his relationship with the Gupta family.”*⁹¹

51 In addition to its unlawful facilitation of business to Tegeta, Eskom has paid Trillian Capital Partners (Pty) Ltd over R400 million for management consulting and advisory services.⁹² Trillian Capital is 60% owned by Trillian Holdings (Pty) Ltd (a company in which Salim Essa has a majority stake and is the sole director) and 25% owned by Zara W (Pty) Ltd (a company owned and directed by Eric Wood); Eric Wood is one of the three directors of Trillian Capital; and Trillian

⁹¹ Public Protector “*State of Capture*” Report 6 of 2016/2017 at p 303, para 6.1(ee).

⁹² amaBhungane and Scorpio, *#GuptaLeaks: How Eskom was captured*, 10 June 2017.

Capital is one of the companies that contributed to Tegeta’s price of Optimum Coal Mine.⁹³

52 The leaked records provide further evidence of corrupt ties that have facilitated these deals. After he became Eskom CFO, Anoj Singh stayed in the Oberoi Hotel in Dubai from December 17 to 24, 2015. The bill was sent to the Gupta's Sahara Computers. This trip started two days after Tegeta obtained Optimum Coal Holdings.⁹⁴

53 In the wake of Molefe’s resignation (following the release of the Public Protector’s *State of Capture* report), in November 2016, Minister Brown approved the Board’s recommendation to appoint Mr Koko as acting CEO of Eskom.

53.1 As Group Executive of Generation (i.e., as the Eskom executive responsible for securing coal for power stations), Koko had approved Eskom’s controversial pre-payment of R586 million to Tegeta, which facilitated Tegeta’s purchase of Optimum Mine.

53.2 As has been pointed out above, Mr Koko repeatedly leaked confidential and privileged information from Eskom to the Guptas through Mr Seleke and referred to Tony Gupta as “the Boss”.

53.3 In January 2016, Mr Koko and Mr Mantsha, the CEO of Denel were flown to Dubai and accommodated at the Oberoi hotel at the Gupta’s expense. In advance of their stay, Mr Chawla wrote to the hotel stating: “*Sahara will*

⁹³ Public Protector “*State of Capture*” Report 6 of 2016/2017 at p 269 paras 5.304 – 5.306.

⁹⁴ See Annexure **SOE 46**

pay the entire bill, please do not ask any credit card guarantee from the guest at the time of check-in.”⁹⁵

Transnet: December 2014 to date

54 Minister Brown also oversaw the appointment of Gupta associates to the Transnet Board in December 2014. Which include:

54.1 Ms Linda Mabaso, who was appointed chairperson of Transnet.

54.1.1 In July 2014, the Guptas assisted Ms Mabaso to obtain a business visa to India for her son Sphilile Malcolm Mabaso. They also arranged his flights to India.⁹⁶

54.1.2 Sphilile Malcolm Mabaso was also a business associate and co-director with Mr Essa in Premium Security and Cleaning Services (Pty) Ltd – 2013/127549/07. Malcolm Mabaso was appointed as a special adviser to Minister Zwane in October 2015.⁹⁷

54.2 Minister Brown was also responsible for the appointment of Mr Seleke to the Board of Transnet.

Denel: July 2015 to date

55 On 24 July 2015, Minister Brown overhauled the Denel Board, leaving only one board member in place: the Gupta-beneficiary, Mr Nkopane “Sparks” Motseki.

⁹⁵ See Annexures **SOE 47 & SOE 48**

⁹⁶ See Annexures **SOE 49, SOE 50 & SOE 51**

⁹⁷ amaBhungane ‘*The Gupta-owned’ state enterprises*’, 24 March 2016.

- 55.1 A company in which Mr Motseki is the sole director was allocated 1,3% in the Gupta-led consortium that bought Shiva Uranium in 2010.⁹⁸
- 55.2 The Guptas had sponsored a trip by Mr Motseki to Mumbai and Delhi in 2010.⁹⁹
- 55.3 In his capacity as Treasurer of the MK Military Veterans Association, Mr Motseki had assisted to procure a donation of R850 000 from the Guptas to fund the conference of the association in 2010.¹⁰⁰
- 56 The list of new Denel Board members that Minister Brown recommended to Cabinet reportedly bore no resemblance to the one prepared by her department. As the State Capacity Research Project notes, the new Denel Board *“also lacked skills and experience: there was, for example, not a single engineer (Denel being a highly technical state-owned company) and most had never served on a corporate board before.”*¹⁰¹
- 57 Minister Brown again appointed known Gupta and Zuma associates to the Board. A key appointment was former advisor to Minister Faith Muthambi, Mr Lungisani Daniel Mantsha as chair of the new Denel Board.
- 58 Shortly after his appointment on 24 July 2015, Mr Mantsha suspended Denel’s CEO, Mr Riaz Salojee, its CFO, Mr Fikile Mhlontlo and company secretary, Ms Elizabeth Africa. No formal reasons were given at the time. The suspensions were subsequently alleged to be for their roles in Denel’s acquisition of Land

⁹⁸ *Betrayal of the Promise report* p 34.

⁹⁹ See Annexure **SOE 52**

¹⁰⁰ See Annexures **SOE 53, SOE 54, SOE 55, SOE 56.**

¹⁰¹ *Betrayal of the Promise report* p 34.

Systems South Africa from BAE Systems, but questions were raised about the strength of the charges.¹⁰² There were strong suspicions that the three company managers were suspended to make way for the Denel – VR Laser Asia deal.¹⁰³

59 As the chair of the Denel Board, Mr Mantsha oversaw the conclusion of the Denel Asia joint venture between Denel and VR Laser Asia, a Gupta-aligned company.¹⁰⁴

59.1 VR Laser Asia is wholly owned by Gupta business partner, Salim Essa, and is an associate company of VR Laser Services, a South African steel-cutting business in which the Guptas and Duduzane Zuma have an interest (through Westdawn Investments).¹⁰⁵

59.2 Westdawn Investments (also known as JIC Minister Services) has a 25% stake in VR Laser Services, and Salim Essa has a 75% stake. Duduzane Zuma and Tony Gupta control Westdawn Investments.

59.3 VR Laser Services is registered to the same Sandton office park where other Gupta businesses are based.

59.4 VR Laser Services has only three directors: Salim Essa, Pushpaveni Govender (a director of other Gupta companies) and Kamal Singhala (a

¹⁰² Mail & Guardian, ‘VR Laser and the Guptas’, 5 February 2016.

¹⁰³ Mail & Guardian, ‘Guptas conquer state arms firm Denel’, 5 February 2016.

¹⁰⁴ amaBhungane, ‘How Denel was highjacked’, 30 May 2016.

¹⁰⁵ amaBhungane, ‘Guptas conquer state arms firm Denel’, 5 February 2016.

nephew of the Guptas in his mid-20s, who gives as his address the Gupta’s Saxonwold compound).¹⁰⁶

60 On 10 December 2015, the day after President Zuma appointed Des Van Rooyen as Minister of Finance, Mr Mantsha submitted Denel’s application to National Treasury for approval of the Denel Asia joint venture.¹⁰⁷

61 The Denel Asia joint venture was formally announced in January 2016. The joint venture was concluded by Denel without approval from the Minister of Finance or the Minister of Public Enterprises, as prescribed by the Public Finance Management Act.

62 The incentive for the deal was apparently a US \$4 billion tender to deliver long-range artillery to the Indian army. However, the terms of the deal were weighted heavily in favour of the Guptas:

62.1 Drafts of the joint venture agreement forwarded to the Guptas and Mr Seleke show that Denel gave up its intellectual property to Denel Asia in return for little more than a promise of a R100 million marketing contribution from VR Laser Asia that was to be treated as an interest-bearing shareholder’s loan to the Company by VR Laser Asia.¹⁰⁸

62.2 Moreover, in relation to its Indian operations, Denel Asia proposed to enter into a joint venture with an Indian investment company controlled by Anil

¹⁰⁶ Mail & Guardian, ‘VR Laser and the Guptas’, 5 February 2016. The joint venture was dissolved and deregistered in May 2017.

¹⁰⁷ amaBhungane, ‘GuptaLeaks: How the Guptas screwed Denel’, 10 June 2017.

¹⁰⁸ See the drafts of the Investment Company Agreement and the JV Agreement forwarded to the Guptas and Mr Seleke on 18 October 2015 which are attached as Annexures **SOE 21**, **SOE 22**, **SOE 23**, **SOE 24** and the files called Attachment.docx attached to both emails)

Gupta and Adani Enterprises in terms of which the Indian investment company would have a right of first refusal to manufacture any products that Denel SOC Ltd. had licenced Denel Asia to manufacture or sell.¹⁰⁹

63 The email records on the Sahara company server evidence direct and improper ties between Mr Mantsha and the Guptas. The emails evidence that –

63.1 Mr Mantsha was flown to and accommodated in India and Dubai at the expense of the Guptas on several occasions.

63.1.1 In August 2015, Mr Mantsha was flown to India, in the Gupta’s jet (ZS-OAK) and in the company of Mrs Angoori Gupta, Mr Rajesh Gupta, Mrs Arti Gupta, Mr Sashank Singhala, Mr Amankant Singhala, Mr Salim Essa and Mr Gysbert van den Berg. He was accommodated for a few nights with the Guptas at the ICT Maratha Hotel in Mumbai, in a room near the Guptas’ presidential suite, at the Guptas’ cost.¹¹⁰

63.1.2 In October 2015, Mr Mantsha travelled to and from Dubai, accompanied by Duduzane Zuma and his wife (Shanice Zuma). Flights were booked for all three by the Gupta’s travel agents and were invoiced to the Gupta’s Sahara company. A visa was arranged by Sahara (Mr Chawlu and Tony Gupta) for Mr Mantsha.

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¹⁰⁹ See Annexures **SOE 57** & **SOE 58**

¹¹⁰ See Annexures **SOE 59** & **SOE 60**

¹¹¹ See Annexures **SOE 61** & **SOE 62**

63.1.3 On 3 January 2016, Sahara’s CEO, Mr Chawla confirmed travel arrangements for Mr Mantsha. Mr Mantsha was booked into the Oberoi Hotel in Dubai and Chawla arranged a concierge service for Mantsha to an exclusive housing estate in Dubai, at the expense of the Gupta’s Sahara company.¹¹²

63.2 Mr Mantsha sent the Guptas confidential information he received in his capacity as Chairperson of Denel, including information Minister of Public Enterprises.

63.2.1 On 23 November 2015, Mr Mantsha received an email from Keromamang Mhlongo, of the Department of Public Enterprises, whose Minister, Lynne Brown, has political oversight of Denel. The email was titled “*PFMA Section 54(2) Pre-Notification on the Proposed Formation of Denel Asia,*” the e-mail was Minister Brown's response to Denel's notification to her of the proposed tie up. The e-mail was marked “confidential” and was meant to advise both Denel executives and the government in their dealings with the Guptas.¹¹³

63.2.2 Five days later, on 28 November 2015, Mr Mantsha forwarded Minister Brown's e-mail, using his law firm's address, to Ashu Chawla, CEO of Sahara.¹¹⁴

¹¹² See Annexures SOE 63 & SOE 64

¹¹³ See Annexure SOE 65

¹¹⁴ See Annexure SOE 66

63.3 Mr Mantsha also sent the Guptas his personal bills. On 3 August 2015, Mantsha sent his municipal rates bill of R14 238 for his Randburg home, dated 11 June 2015, to Sahara's CEO, Ashu Chawla, saying: *“Please find the attached document for your urgent attention.”*¹¹⁵

¹¹⁵ See Annexure **SOE 67**

CHAPTER 4: THE APPOINTMENT AND RETENTION OF MINISTER

MOSEBENZI ZWANE

Overview: The key facts

- 1 President Zuma appointed Mosebenzi Joseph Zwane to Cabinet as Minister of Mineral Resources on 22 September 2015. In the Cabinet reshuffle on 30 March 2017, President Zuma retained Mr Zwane as Minister of Mineral Resources.
- 2 President Zuma’s appointment and retention of Mr Zwane as Minister of Mineral Resources evidences his use of presidential powers to promote and protect the interests of the Guptas and their business associates, including the President’s son, Duduzane Zuma. It evidences the unlawful use of the President’s appointment powers for improper purposes, and is a strong indication that an improper relationship exists between President Zuma and the Gupta family.
- 3 The facts disclosed in official investigations, media investigations and the documents from Sahara’s computer server indicate that:
 - 3.1 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.
 - 3.2 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 has cost the province at least R184 million. The Guptas were intimately involved in the project and were beneficiaries of it.

- 3.3 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.
- 3.4 In March 2013, as MEC for Agriculture and Rural Development in the Free State, Minister 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.
- 3.5 Prior to his appointment to Cabinet, Mr Zwane attended numerous meetings with Tony Gupta. Minister Zwane was also flown to, and accommodated at, the luxury Oberoi Hotel in Dubai, in the company and at the expense of the Guptas on at least two further occasions in 2013. Zwane has attended Gupta family weddings in South Africa and India, at the Guptas’ invitation and expense.
- 3.6 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, their close business associate, Mr Salim Essa and Duduzane Zuma. In December 2015, Zwane flew to Switzerland to meet with Glencore’s CEO, in the company of Atul Gupta, Ajay Gupta and Mr 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, the contracts appeared only to benefit the shareholders of Tegeta.

- 3.7 While the dispute over Optimum Coal was taking place, and Eskom was supposed to be at arms length with the Gupta’s and Tegeta, Mr Richard Seleke, who had been Mr Zwane’s Director General in the Free State Department of Economic Development prior to Mr Zwane’s appointment as Minister of Mineral Resources (and who had no legitimate role whatsoever in relation to the Optimum Coal dispute) was used as a conduit to leak confidential Eskom documents to Tony Gupta¹¹⁶;
- 3.8 Minister Zwane’s Department of Mineral Resources also authorised the release of Koorfontein Mine’s R280 million rehabilitation trust fund and 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. The fate of these funds is unknown.
- 3.9 As Minister of Mineral Resources, Zwane has appointed known Gupta associates as his special and personal advisors, namely Kuben Moodley and Malcolm Mabaso.
- 3.10 As Minister of Mineral Resources, Zwane has been instructed in his public and media statements by Gupta family members and known Gupta

¹¹⁶ The facts in this regard are set out in Chapter 3.

associates, including Tony Gupta, former Oakbay CEO, Mr Nazeem Howa, Duduzane Zuma and the Gupta-hired PR firm, Bell Pottinger.

- 3.11 On 13 April 2016, President Zuma appointed Mr Zwane to chair an inter-ministerial committee to investigate the closure of the Guptas’ South African bank accounts. Nedbank accused Mr Zwane of abusing this position by trying to influence them to keep their Gupta-held accounts open.
 - 3.12 On 1 September 2016, Minister Zwane issued a public statement announcing that Cabinet had agreed on a recommendation of the Inter-Ministerial Committee that a judicial inquiry investigate why South Africa’s banks had blacklisted Gupta-owned businesses. In fact, Cabinet had done nothing of the sort.
 - 3.13 Despite the fact that Minister Zwane had publicly misrepresented what Cabinet had decided, he has been retained in the Cabinet by President Zuma and remains responsible for the Mineral Resources Portfolio that is of obvious importance to the Gupta family.
- 4 In the light of these facts, the following conclusions can be drawn with confidence:
 - 4.1 Zwane has an improper relationship with the Gupta family, and has abused his public office to enrich the Gupta family and their business associates, including President Zuma’s son, Duduzane Zuma.

4.2 President Zuma has abused his powers of appointment in appointing and retaining Zwane as Minister of Mineral Resources, to promote and protect the interests of the Gupta family and their business associates, including the President’s son, Duduzane Zuma.

4.3 An improper relationship exists between President Zuma and the Gupta family.

5 The remainder of this chapter details the key facts and the supporting evidence.

The appointment of Mr Zwane as Minister of Mineral Resources

6 On Tuesday, 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.

7 Mr Zwane was appointed Minister less than a month after being sworn in as a member of the National Assembly (on 2 September 2015).¹¹⁷ 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

¹¹⁷ Staff, P. (2017). *New minister of mines tainted by Gupta family link*. [online] The M&G Online. Available at: <https://mg.co.za/article/2015-09-23-new-minister-of-mines-tainted-by-gupta-family-link>.

Pretoria and a certificate in Executive Leadership Municipal Development Programme from the University of Pretoria.¹¹⁸

8 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.¹¹⁹

9 Minister Zwane’s appointment appears to have been vetted, if not orchestrated, by the Guptas, using Duduzane Zuma as a conduit to President Zuma.

9.1 On 1 August 2015, less than two months before President Zuma appointed Mr 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.¹²⁰

9.2 On the Sunday evening prior to President Zuma’s announcement, on 20 September 2015, a presidential-level motorcade was reported to have paid a visit to the Gupta family compound in Saxonwold.¹²¹

10 As is discussed in Chapter 3, a similar process of Gupta vetting or orchestration was followed in President Zuma’s appointment of Mr Seleke, Minister Zwane’s

¹¹⁸ Mosebenzi Zwane’s profile on the Department of Mineral Resources website: <http://www.dmr.gov.za/about-us/the-ministry/minister.html>.

¹¹⁹ ANC, ‘Statement of the ANC following the NEC Meeting, 18-20 September 2015’, at <http://www.polity.org.za/article/anc-statement-of-the-anc-following-the-nec-meeting---18---20-september-2015-2015-09-21>.

¹²⁰ These emails are attached marked **MJZ 1** and **MJZ 2**.

¹²¹ AmaBhungane Reporters, M. (2017). *Gupta past haunts new mines minister*. [online] The M&G Online. Available at: <https://mg.co.za/article/2015-09-23-gupta-past-haunts-new-mines-minister/>.

former Director General in the Free State Department of Economic Development, Tourism and Environmental Affairs, to the position of Director General of Public Enterprises, another office of crucial importance for the Gupta family.

- 11 In May 2017, former Mineral Resources Minister 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.¹²² As is pointed out in more detail in chapter 3 below, Mr Ngubane has an improper relationship with the Gupta family and has abused his position on the Transnet and Eskom boards to further their interests.¹²³ At the time that he 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:¹²⁴

¹²² AmaBhungane, ‘How Brian Molefe ‘helped’ Gupta Optimum heist’, 16 May 2017.

¹²³ Reference to chapter on SOE’s

¹²⁴ Public Protector ‘State of Capture’ report p 313 para z.

- 12 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 2017¹²⁵, 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

¹²⁵ See Annexure MJZ 3.

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.”

Mr Zwane’s involvement in the Estina dairy project

- 13 In and about mid-2011 to mid-2012, Mr Zwane (as MEC for Agriculture and Rural Development in the Free State Province) and Free State Premier, Ace Magashule, drove the conclusion of a mega-contract between the Department and Estina (Pty) Ltd for the “Vrede dairy project”.
- 14 Despite repeated denials from the Gupta family and those involved in the project, as is shown below, it is now evident that the Gupta family and their associates were intimately involved in, and benefited from, the project.
- 15 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 4400-hectare Krynaauwslust farm near Vrede (Zwane’s home district). The Department also undertook to commit R114m-a-year for three years (R342

million in total) to set up the farming operation and dairy on the property. No tender processes were followed and no due diligence of Estina was conducted before the Department contracted with Estina.¹²⁶

- 16 The project was mired in controversy. Investigative journalists, amaBhungane, reported that the company that was awarded the contract, Estina, had no apparent 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.¹²⁷
- 17 During or about October 2013, National Treasury investigated the Department’s contracts with Estina. The results of this investigation were not published by Treasury, but some of the findings were disclosed by AmaBhungane after it obtained a transcript of an interview that the investigators had conducted with the Department’s Chief Financial Officer, Mr Seipati Dlamini. (Notably, as Minister of Mineral Resources, Minister Zwane appointed Mr Dlamini as national Deputy Director-General: Mineral Regulation in November 2016, without following due process and without Cabinet approval).¹²⁸

¹²⁶ AmaBhungane, ‘Guptas’ farm cash cows in Free State’, 31 May 2013; AmaBhungane ‘Gupta dairy project milks Free State coffers’, 7 June 2013; AmaBhungane ‘Gupta dairy flouts treasury rules’, 14 June 2013.

¹²⁷ AmaBhungane, ‘Guptas’ farm cash cows in Free State’, 31 May 2013; AmaBhungane ‘Gupta dairy project milks Free State coffers’, 7 June 2013; AmaBhungane ‘Gupta dairy flouts treasury rules’, 14 June 2013.

¹²⁸ Mineweb, ‘Zwane appoints loyalist to key position at DMR, ignores due process’, 2 November 2016; AmaBhungane, ‘Zwane and his new appointment go way back’, 3 November 2016; City Press, ‘Mosebenzi Zwane in controversial DG appointment’, 13 November 2016.

18 AmaBhungane reported in February 2014 that:

“[A] document obtained by amaBhungane shows that in October last year a forensic team was dispatched by the treasury to Bloemfontein to question officials about the bizarre contract to develop a large dairy and milk processing plant in the northeastern Free State town of Vrede.

Investigators were shocked by what they heard, including:

- The Free State agriculture department did not follow any supply-chain procedures when agreeing to fund the project through Estina, a private company;*
- The department did no due diligence on Estina or its claimed partnership with Paras, a major dairy company in India. Paras subsequently denied any involvement;*
- 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;*
- A “feasibility study” was done only 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”;*
- Small-scale farmers, who were supposed to be beneficiaries of a 51% share in the scheme, were only identified recently and the official could not explain how they were chosen; and*

- *Approval for the project was rushed through despite the fact there was no budget, no feasibility study and no urgency.*

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.”

The disclosures are made in a confidential transcript, which records an extraordinary interview (<http://cdn.mq.co.za/content/documents/2014/02/06/ensinterviewdlamini.pdf>) with the Free State department of agriculture chief financial officer, Dipatle Dlamini.”¹²⁹

- 19 This article, titled “Free State dairy project damned in treasury investigation is attached.”¹³⁰
- 20 On 13 August 2014, following the National Treasury’s investigation, the Department cancelled its contract with Estina (Pty) Ltd.¹³¹ 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 was viable at all. The FDC also reportedly admitted (in a meeting of the Portfolio Committee for Economic Development in the Free State Legislature)

¹²⁹ As at 14 June 2017, the transcript is still available online at the published address.

¹³⁰ See Annexure **MJZ 4**.

¹³¹ Among the recommendations of National Treasury’s investigation was that the Head of the Department and Chief Finance Officer face disciplinary hearings. The MEC for Agriculture and Rural Development has however indicated in the reply that no disciplinary action will be instituted. National Treasury’s investigation was carried out at a cost of R868 447.33 and has subsequently been ignored. See: Politicsweb, ‘Vrede Dairy Project controversy deepens - MEC’s reply creates more questions than answers’, 3 August 2015.

that none of the 80 beneficiaries purportedly identified for the project are currently involved in it.¹³²

21 As disclosed in the MEC’s replies to parliamentary questions¹³³, by 28 April 2015, the Free State Department of Agriculture had invested R183,950,000.00 (R183 million) in the Vrede Dairy Project.

22 The provincial government, Estina, the Gupta family and Vasram all denied any Gupta-involvement in the project, save for the conclusion of a consulting subcontract of R138,000 between Estina and a Gupta-owned company, Linkway Trading.¹³⁴ However, emails from the Sahara computer server evidence that the Guptas were intimately involved in the project. They evidence further that the Guptas have been the beneficiaries of tens of millions of rands that the provincial Government paid to Estina, through payments made by Estina to an offshore Gupta-front company called Gateway Ltd (registered in the United Arab Emirates).

23 The evidence of the Gupta family and associates’ involvement in the scheme, and how they extracted public funds from it, is detailed in an amaBhungane/Scorpio exposé of 5 June 2017.¹³⁵ The report explains:

“By the time Estina was kicked off the project in 2014 following a national Treasury probe and amaBhungane’s exposure of dead cows being

¹³² Politicsweb, ‘Vrede Dairy Project controversy deepens - MEC’s reply creates more questions than answers’, 3 August 2015.

¹³³ See Annexure marked **MJZ 5**.

¹³⁴ AmaBhungane, ‘Guptas’ farm cash cows in Free State’, 31 May 2013; AmaBhungane ‘Gupta dairy project milks Free State coffers’, 7 June 2013; AmaBhungane ‘Gupta dairy flouts treasury rules’, 14 June 2013.

¹³⁵ See Annexure **MJZ 6**.

dumped in a ditch, the provincial government had paid Estina about R184-million in taxpayers' money.

The #GuptaLeaks open a window on what happened to a large chunk of that money, supporting the impression that the Guptas not only controlled Estina, but were the primary beneficiaries.

Zwane's successor as agriculture MEC, Mamiki Qabathe, answered questions in the provincial legislature in November 2013, saying that by then a total of R114-million – tranche R30-million and R84-million – had been transferred to Estina.

Spreadsheets in the #GuptaLeaks show a total of \$8.35-million – equal to the R84-million second tranche at the exchange rate then – hitting the account of a company called Gateway Ltd in August and September 2013.

Gateway is registered in Ras al-Khaima, one of seven emirates making up the UAE and a highly secretive offshore company jurisdiction. Gateway appears to be little more than a Gupta front; it is among a number of UAE companies administered by a man who, the #GuptaLeaks show, is a Gupta subordinate.

Part of the R84-million appears to have gone to an engineering firm in Saharanpur, the Guptas' home town in India. It went like this: Star Engineering, based in Saharanpur, sent a letter to Ajay Gupta in 2012, thanking him for meeting and “taking interest in our line of production of super quality dairy equipment”.

In September 2013, Gateway, the Gupta UAE company, invoiced Estina for a milk pasteurising plant at US\$3.45-million (about R34-million then). A little over a week later a similar amount from Estina hit Gateway’s account.

Further correspondence shows that Gateway ordered the plant from Star Engineering in Saharanpur. A representative from the firm asked for questions to be emailed, but had not replied by the time of publication.

And so, it appears that of the R84-million remitted to the UAE, R34-million was for actual dairy equipment – although how much was paid to Star Engineering and how much Gateway kept as a mark-up remains to be seen.

What happened to the remaining R50-million Estina remitted to Gateway is not clear.

Although there was some construction at the farm and some cows were bought, the full use of the remaining R100-million from the total R184-million that the province paid Estina also remains unclear. On visits to Vrede at the time, amaBhungane did not encounter development suggested by that level of expenditure.”

- 24 There is compelling evidence to support these allegations, which have not been meaningfully disputed. The repeated denials by the Guptas, Vasram and the Department over the Gupta’s association with the project have also never been explained.

25 The evidence obtained from the Sahara computer server includes the following documents:¹³⁶

25.1 Emails exchanged between the Gupta brothers and senior Gupta employees on the recruitment of Estina staff from India; obtaining work permits for Estina employees; and approving their contract salaries.

25.2 Emails exchanged between Ravindra Nath and B. Rajendra CEO of The Bank of India: Johannesburg that indicate that Gupta group and personnel applied for a bank loan for Estina;

25.3 Spreadsheets on the Sahara computer indicate that Sahara hosted Estina’s accounting software, and oversaw the flow of monies in and out of its account.

25.4 Invoices from Gateway to Estina dated 15 September 2013.

26 Quite apart from the contents of these documents, the mere fact that they were found on the Sahara Computer is clear evidence of involvement of the Guptas in Estina.

27 The AmaBhungane/Scorpio report cites further evidence of the Guptas’ involvement in the scheme, through their companies’ association with Vasram (the sole director of Estina). The report notes that:

“During the Estina saga, there were ongoing large orders from the Guptas’ Sahara Computers for IT equipment from Toshiba, represented by

¹³⁶ Annexures attached include **MJZ 7, MJZ 8A, MJZ 8B, MJZ 8C, MJZ 9, MJZ 10, MJZ 11, MJZ 12, MJZ 13, MJZ 14, MJZ 15 and MJZ 16.**

Vasram. E-mails also listed apparent transfers totaling millions of rand from Gupta companies to Vasram.

Separately Vasram, using his Estina e-mail address, invoiced Gupta company Linkway Trading monthly for “services rendered”. Linkway is the company the Guptas acknowledge had done “consulting” on the dairy project in its early stages.

Vasram’s invoices, initially at R11,000 a month, started in May 2011, when Estina was negotiating the project with Zwane’s Free State agriculture department, and continued until least August 2012.

In early 2013 there were two more invoices from Vasram to Linkway, for amounts of around R50,000 each.

These invoices suggest that the Gupta consulting company paid Vasram fees for the Estina work – again upending his and the Guptas’ insistence that Estina was his business a theirs.”

28 The invoices from Vasram to Gupta companies (dated May 2011 to August 2012 and early 2013).¹³⁷

29 Of particular concern is the evidence of a “kickback” from the Guptas to Mr Zwane and other officials in the Department, for facilitating the Estina scheme. In October 2012, shortly after the launch of the Estina project, Mr Zwane, officials from his department and a local gospel choir (the Umsingizane gospel choir) that

¹³⁷ Refer to attachments MJZ 17A, MJZ 17B, MJZ 17C, MJZ 17D, MJZ 17E, MJZ 17F, MJZ 17G, MJZ 17H and MJZ 17I.

Zwane promotes were hosted on an all-expenses paid tour of India by the Guptas.

30 Details of this trip are evidenced in emails and records from the Sahara computer server. These include:

30.1 The flight and accommodation bookings for 24 or more travellers, including Mr Zwane, at Oberoi hotels in different parts of India;

30.2 An email from Mr Zwane (“M Zwane <zwanemail@gmail.com>”), in which he personally sends a list detailing which members of the party should share rooms and who should get their own.

30.3 The tour programme which included visits to the Taj Mahal and the “Kingdom of Dreams”, as well as “Mr Gupta house for dinner”.

31 These emails and records are attached.¹³⁸

Mr Zwane’s close association with the Guptas

32 Following his trip to India in October 2012, Mr Zwane enjoyed subsequent trips to India and Dubai, which were arranged and paid for by the Gupta family. These include:

32.1 A trip to India in December 2013, to attend a wedding with Ashok Narayan (an executive of the Gupta company, Sahara Systems), members of the

¹³⁸ Refer to attachments **MJZ 18**, **MJZ 19** and **MJZ 20**.

Gupta family and Chandrama Prasad (“CP”) Yadav, the farm-manager of the Vrede dairy project.¹³⁹

32.2 A trip to Dubai and Delhi in September 2014, which Gupta employees (at Sahara) arranged, and which the Gupta family paid for. The flight tickets evidence that Mr Zwane flew to Dubai, and then Delhi, in the company of Rajesh (Tony) Gupta and Salim Essa and Suraya Singhala. The purpose of this trip is unknown.

33 The emails records from the Sahara computer server, which evidence these trips and the Gupta family’s payment of Mr Zwane’s expenses (upfront or by refund), are attached¹⁴⁰

34 The Sahara computer server indicates that numerous meetings were scheduled between Mr Zwane, Tony Gupta and a certain Peter at Sahara and a place designated as “No. 5”. Electronic meeting invitations and acceptances¹⁴¹ record that the following meetings were held between Zwane and Tony Gupta:

- on 31 January 2013, at 11 am between Mr Zwane and Tony Gupta at No. 5;
- on 1 February 2013, at 4pm, between Mr Zwane, DG and Tony Gupta at No. 5;
- on 15 March 2013, at 4pm between Mr Zwane and Tony Gupta at No. 5;

¹³⁹ amaBhungane ‘Gupta past haunts new mines minister’, 4 September 2015.

¹⁴⁰ Refer to attachments **MJZ 21** and **MJZ 22**.

¹⁴¹ Refer to attachments **MJZ 23**, **MJZ 24**, **MJZ 25**, **MJZ 26** and **MJZ 27**.

– on 6 April 2013, at 5pm between Mr Zwane and Tony Gupta at No. 5;

and

– on 27 August 2013, at 1pm, between Mr Zwane, Tony Gupta and Peter at Sahara;

35 On 30 April to 2 May 2013, Mr Zwane attended the Gupta family wedding (of Vega Gupta and Aakash Jahajgarhia) at Sun City, where he stayed for three nights. The confirmation of Mr Zwane’s attendance and stay is attached.¹⁴²

36 Further, on 22 July 2013, Mr Ashok Narayan requested Sahara’s CEO, Ashu Chawla, to use the Gupta’s helicopter to fly from Grand Central to Harrismith, with Mr Zwane and Duduzane Zuma named as two of the passengers.¹⁴³

37 This history evidences that Minister Zwane has a close association to the Gupta family and their associates – in particular, Tony Gupta and Ashok Narayan. Minister Zwane met with Tony Gupta regularly throughout 2013 (when the Estina project was underway) and they continued to meet in 2014. Minister Zwane travelled with the Guptas – using their aircraft and at their expense. Between October 2012 and September 2014, Minister Zwane travelled to Dubai and India on at least three occasions, at the Gupta’s expense. Zwane also attended Gupta family weddings in South Africa and India, at their invitation and expense.

¹⁴² Refer to attachment **MJZ 28**.

¹⁴³ Refer to attachment **MJZ 29**.

Mr Zwane used his position as MEC to facilitate the landing of the Guptas’ wedding guests at the Waterkloof Air Force Base

38 Minister Zwane is implicated in the Gupta’s use of the Waterkloof Airforce Base for landing wedding guests from India on 30 April 2013. In March 2013, an official letter signed and sent on behalf of Minister 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 province. The letter of invitation was copied to the Indian High Commissioner to South Africa, Virendra Gupta. This invitation helped secure the aircraft of wedding guests landing access at the Waterkloof Air Force Base. Yadav was one of about 200 guests from India who attended the wedding after arriving in the Jetways Airbus at the Waterkloof Air Force Base.¹⁴⁴

39 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.

40 The timing of Minister 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

¹⁴⁴ Mail & Guardian ‘Free State government gave Gupta guests an ‘alibi’, 10 May 2013.

the strength of the open letter of invitation to an official “delegation” from Minister 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 Minister Zwane as MEC.¹⁴⁵

41 What is more, a chain of emails from the Sahara computer server evidences that the letter of invitation was, in fact, prepared by Ashok Narayan and forwarded to Ashu Chawla. Chawla then forwarded the letter to Minister Zwane to be copied on an official letterhead.¹⁴⁶

42 Mr Koloane, was suspended as chief of state protocol by the Department of International Relations and Cooperation, in the wake of the Waterkloof affair and it emerged that he had persuaded other government officials to make the Waterkloof airbase available for the Gupta landing by saying that he “was under pressure from Number 1 [i.e. President Zuma]” to do so.¹⁴⁷

43 The Gupta’s and President Zuma have never acknowledged that any improper pressure was put on Mr Koloane (or any other person) to make the Waterkloof airbase available for the Gupta wedding. If that were the case, one would have expected them both to have viewed the conduct of Mr Koloane in a dim light, and to have had no further contact with him. However, they have both continued to

¹⁴⁵ Mail & Guardian ‘Zuma fury over the Gupta’s wedding scandal’, 3 May 2013; Mail & Guardian ‘Free State government gave Gupta guests an ‘alibi’, 10 May 2013; Mail & Guardian, ‘Gupta wedding: What is the plane truth?’ 10 June 2013.

¹⁴⁶ Refer to attachment **MJZ 30**, **MJZ 31** and **MJZ 32**.

¹⁴⁷JCPS Cluster Report -Landing of a chartered commercial aircraft at air force base Waterkloof: <http://www.justice.gov.za/reportfiles/other/20130517-jcps-waterkloof-report.pdf>

extend patronage to Mr Koloane in a manner inconsistent with their version that they had nothing to do with his unlawful acts in relation to the Waterkloof fiasco:

43.1 President Zuma appointed Mr Koloane as Ambassador to the Netherlands in August 2014.

43.2 Mr Koloane has retained strong ties to the Guptas, including facilitating new business relations in the Netherlands. These continued ties are detailed in an *amaBhungane/ Scorpio* exposé published on 11 June 2017.¹⁴⁸

Further emails evidence how Mr Koloane approached the Guptas in 2016 to sponsor a golf tournament he was hosting in Pietermaritzburg in December 2016 to mark his 20th wedding anniversary. Mr Koloane made the request in an email addressed to Sahara’s CEO, Ashu Chawla, who forwarded the request to Tony Gupta. The response from Tony Gupta is revealing: “*Support whatever he wants.*”¹⁴⁹

Mr Zwane has used his position as Minister to benefit the Guptas and Duduzane Zuma

44 As Minister of Mineral Resources, Mr Zwane used his public office to facilitate the sale of Optimum Coal Mine from Glencore (Pty) Ltd to Tegeta (Pty) Ltd, a subsidiary of the Gupta-family holding company, Oakbay Investments (Pty) Ltd

¹⁴⁸ Refer to attachment **MJZ 33**.

¹⁴⁹ Refer to attachment **MJZ 34**.

(with a 29.05% shareholding) and in which Duduzane Zuma’s Mabengela Investments (Pty) Ltd held a 28.53% shareholding.¹⁵⁰

- 45 Following its purchase of Optimum Coal Mine, Tegeta secured 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). As the City Press reported in June 2016:

“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.”¹⁵¹

- 46 Tegeta also inherited an estimated R1.5 billion rehabilitation trust fund, set aside under the Mineral and Petroleum Resources Development Act and the National Environmental Management Act to finance the rehabilitation of the mine upon its closure.

- 47 Investigative journalists at *AmaBhungane* and *Scorpio* calculate that, altogether:

¹⁵⁰ On the shareholdings and directorships of these companies, see Public Protector’s *State of Capture Report* at pp 111-112.

¹⁵¹ City Press, “How Eskom bailed out the Guptas”, 12 June 2016.

“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.”¹⁵²

48 The *City Press* and *AmaBhungane/ Scorpio* articles are attached. ¹⁵³

49 In the “*State of Capture*” report,¹⁵⁴ 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. 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*”.¹⁵⁵

50 The Public Protector was unable to explain how Minister 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,

¹⁵² AmaBhungane and Scorpio, ‘#GuptaLeaks: How Eskom was captured’, 10 June 2017.

¹⁵³ Refer to attachment **MJZ 35**.

¹⁵⁴ Public Protector, ‘*State of Capture*’: *Report on an investigation into alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Minister and Directors of State-Owned Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family’s businesses* (Report 6 of 2016/17), 14 October 2016 (“*State of Capture Report*”).

¹⁵⁵ Public Protector, ‘*State of Capture*’, Report 6 of 2016/2017 at p 126, paras 5.110.

Minister Zwane did catch his official flight booked from Dubai to Johannesburg on 7 December 2015.¹⁵⁶

51 The flight and accommodation bookings extracted from the Sahara computer server 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. 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.¹⁵⁷ 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.¹⁵⁸

52 In the context of the Optimum Coal dispute, 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, it would plainly have been improper for Minister Zwane to travel with, and at the expense of the Tegeta delegation that was hoping to obtain the Eskom contract after forcing Glencore to sell the Optimum mine. Minister Zwane, the Guptas and former Tegeta CEO, Nazeem Howa, have thus persistently lied to the public by denying that this took place.¹⁵⁹ These denials include repeated lies by Minister Zwane to Parliament:

¹⁵⁶ Public Protector, ‘State of Capture’, Report 6 of 2016/2017 at p 125, para 5.105-5.108.

¹⁵⁷ AmaBhungane and Scorpio, ‘#Guptaleaks: How Eskom was captured’, 9 June 2017.

¹⁵⁸ Refert to attachment **MJZ 36**.

¹⁵⁹ Cape Times ‘Zwane denies Swiss trip with Guptas to facilitate Optimum mine sale’, 8 June 2017; Herald Live ‘Ajay Gupta denies Tegeta travelled with Zwane to Switzerland in a February interview’, 22 November 2016; City

- 52.1 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 Saxonworld Estate in Johannesburg.”*
- 52.2 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
- 52.3 In a written reply to parliamentary questions from Freedom Front Plus MP, Mr Anton Alberts on 8 June 2017, Minister 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”*. Minister Zwane also denied that he had any direct or indirect interests in Oakbay or Optimum mine.
- 52.4 The parliamentary questions and Minister Zwane’s replies are attached.¹⁶⁰

Press ‘Guptas: Avoid them, IDC’s urged; Zwane denies Switzerland trip’, 25 May 2016; Business Day, ‘Mining: Minister’s Gupta trip’, 25 January 2016.

¹⁶⁰ Is attached marked **MJZ 37A**, **MJZ 37B** and **MJZ 38**.

53 The travel and accommodation records for Minister Zwane between 2 and 7 December 2015 indicate that these denials are false.

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

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

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

55 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.”¹⁶¹

56 In an affidavit filed by former Finance Minister Pravin Gordhan in litigation between the Minister of Finance and Oakbay Investments,¹⁶² Minister Gordhan

¹⁶¹ Public Protector, ‘*State of Capture*’, Report 6 of 2016/2017 at pp 280-291, paras 5.348 and 5.355. See also at pp 333-337, para 6.4(oo) – (ccc)

¹⁶² In *Minister of Finance v Oakbay Investments (Pty) Ltd and Others*, High Court Gauteng Division, Pretoria, case no. 80978/ 2016.

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.¹⁶³

57 The fate of the mine rehabilitation funds is unknown.

Mr Zwane appoints Gupta associates as his advisors, despite conflicts of interest

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

59 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.¹⁶⁴

59.1 Mr Moodley is a known friend of the Gupta family and Mr 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,

¹⁶³ Refer to attachment **MJZ 39** and **MJZ 40**.

¹⁶⁴ Public Protector, ‘*State of Capture*’, Report 6 of 2016/2017 at p 124 para 5.102

a company in which the Gupta family’s investment vehicle and Duduzane Zuma holds shares.¹⁶⁵

59.2 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.¹⁶⁶

59.3 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.¹⁶⁷

59.4 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”*.¹⁶⁸

59.5 Mr Moodley also has business ties to Mr Mark Vivian Pamensky, another close business associate of the Gupta family. Mr Pamensky has served

¹⁶⁵ Public Protector, ‘*State of Capture*’, Report 6 of 2016/2017 at p 112 para 5.42.

¹⁶⁶ Public Protector, ‘*State of Capture*’, Report 6 of 2016/2017 at p 124 paras 5.102 – 5.103 and p 275 para 5.332 – 5.333..

¹⁶⁷ Public Protector, ‘*State of Capture*’, Report 6 of 2016/2017 at p 118 para 5.71.

¹⁶⁸ Public Protector, ‘*State of Capture*’, Report 6 of 2016/2017 at p 124 para 5.102.

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 is also a director of Shiva Uranium, in which Oakbay Resources has a 74% stake and Tegeta a 19.6% stake;¹⁶⁹ Yellow Star Trading 1099, of which Mr Essa is a director; and ORE, which is 64% owned by Atul Gupta.¹⁷⁰ 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.¹⁷¹

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

60.1 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.

60.2 Mr Mabaso was reportedly brought to National Treasury by Minister Des van Rooyen, on the first day of his fleeting spell in office as Minister of Finance in December 2016. 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

¹⁶⁹ The Herald ‘Joining the dots between Eskom and the Guptas’, 3 November 2016.

¹⁷⁰ Business Day, ‘Links in the Gupta chain’, 9 March 2017.

¹⁷¹ AmaBhungane, The ‘Gupta-owned’ State enterprises, 24 March 2016; Sunday Times, ‘How to hijack a coal mine 1, 2, 3’, 6 November 2016.

given a desk, despite Mr Mabaso not being a Treasury or Department employee.¹⁷²

Minster Zwane takes instruction from Gupta associates on official public statement

61 Emails recovered from the Sahara computer server evidence 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.

62 In an email from Mr Howa to Duduzane Zuma and Tony Gupta on 2 February 2016¹⁷³, Mr Howa listed fourteen questions he anticipated Minister Zwane could expect from the journalists at a forthcoming Mining Indaba. Mr Howa drafted comprehensive answers for Minister Zwane on matters sensitive to the Guptas (including Minister Zwane’s alleged 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.”

¹⁷² F Haffajee, City Press, ‘4 days in December’, 8 December 2016.

¹⁷³ Refer to attachments **MJZ 41** and **MJZ 42**.

63 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 Minister Zwane’s engagement with the Guptas, particularly during Minister Zwane’s trip to Switzerland. These emails evidence the Gupta’s sustained efforts to direct public statements from and concerning Minister Zwane, as Minister of Mineral Resources, and their concern to conceal their relationship with the Minister.¹⁷⁴

64 That Minister Zwane was discussing Cabinet business with the Guptas, and taking instructions from them, 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.¹⁷⁵ 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 2016.¹⁷⁶ The *Fin24* report on the incident is attached.¹⁷⁷

65 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 investigate why South Africa’s banks had blacklisted Gupta-

¹⁷⁴ Refer to attachments **MJZ 43** and **MJZ 44**.

¹⁷⁵ *Fin24*, ‘Exclusive: Gupta PR firm knew about bank probe weeks before Zwane dropped the bomb’, 22 September 2016.

¹⁷⁶ *Business Day*, ‘Gupta PR firm knew about Zwane’s banks inquiry before it was announced’, 22 September 2016.

¹⁷⁷ Refer to attachment **MJZ 45**.

owned businesses. 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.¹⁷⁸

66 Minister Zwane was severely 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.¹⁷⁹ Media reports of the statements issued by the ANC and the Presidency are attached.¹⁸⁰ 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.¹⁸¹

Minister Zwane abused his position on the Inter-Ministerial Committee

67 In addition to misrepresenting Cabinet’s response to the recommendations of the Inter-Ministerial Committee, Minister Zwane is also alleged to have abused his

¹⁷⁸ Refer to attachments **MJZ 46**.

¹⁷⁹ SABC News, ‘Presidency distances itself from Zwane’s inquiry into banks’, 2 September 2016; News24 ‘Zwane statement reckless – ANC’, 3 September 2016; City Press, ‘Gordhan contradicts Zwane on call for banking inquiry’, 8 September 2016.

¹⁸⁰ Refer to attachment **MJZ 47 and MJZ 48**.

¹⁸¹ Cape Times, ‘Zwane unfazed amid banks backlash’, 7 September 2016; City Press, ‘Zwane stands by his controversial statement on banks’, 28 September 2016.

powers as chair of the committee by improperly trying to influence banks to keep their Gupta-held accounts open.¹⁸²

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. 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. Mark Brown states that, at this meeting, Zwane attempted to persuade Nedbank to keep Gupta companies as clients and to become their primary banker. The relevant portion of the affidavit is attached.¹⁸³

¹⁸² Fin24, ‘Nedbank says mines minister urged them to keep Guptas as clients’, 13 December 2016.

¹⁸³ Attached marked **MJZ 49** and **MJZ 50**.

CHAPTER 5: THE APPOINTMENT AND RETENTION OF MINISTER

FAITH MUTHAMBI

Overview: The key facts

- 1 The Ministry of Communications has been of particular importance for the Gupta family by virtue of their broadcasting interests in Infinity Media (Pty) Ltd which owns the television station, ANN7 and which has attempted to procure a free-to-air television broadcasting licence for ANN7.
- 2 President Zuma appointed Faith Muthambi to Cabinet as Minister of Communications on 25 May 2014. In the Cabinet reshuffle of 30 March 2017, President Zuma retained Muthambi as a member of Cabinet, appointing her as Minister of the Public Service and Administration.
- 3 On 24 February 2017, the National Assembly’s ad hoc Committee on the SABC Board Inquiry (headed by the Hon. Mr Vincent Smith MP) found that Minister Muthambi “*displayed incompetence in carrying out her responsibilities as Shareholder Representative [of the SABC]*”. The Committee noted that the evidence suggested “*major shortcomings*” in Minister Muthambi’s conduct, particularly in relation to the amendment of the SABC’s Memorandum of Incorporation (MOI) and her role in Hlaudi Motsoeneng’s permanent appointment as Chief Operating Officer (COO). It concluded that “*the Minister interfered in some of the Board’s decision-making and processes and had irregularly amended the MOI to further centralise power in the minister,*” and condemned all political interference in the SABC Board’s operations.

- 4 The Committee recommended that: *“The President should seriously reconsider the desirability of this particular Minister retaining the Communications portfolio”*.¹⁸⁴
- 5 In November 2015, the High Court found that Minister Muthambi acted irrationally and unlawfully in appointing Hlaudi Motsoeneng as Chief Operations Officer of the SABC in the face of the Public Protector’s damning findings against him of abuses of power, fraud and maladministration. The court held that *“the [Minister’s] decision to appoint Mr Motsoeneng, when there was a manifest need for a transparent and accountable public institution such as the SABC to exhaustively examine all of the disputes raised about his integrity and qualifications, cannot be considered as a rational decision”*.¹⁸⁵
- 6 The Supreme Court of Appeal made the same (albeit *prima facie*) findings against the Minister.¹⁸⁶ It also criticised Minister Muthambi for “treat[ing] with disdain” the allegation that Mr Motsoeneng’s appointment was irrational and unlawful, and for raising technical objections rather than furnishing the court with an explanation of her actions. The Court advised both the Minister and the SABC that *“the overriding public interest obliged them to make full and frank disclosure rather than shield themselves from scrutiny by resorting to technical points in opposition.”*¹⁸⁷

¹⁸⁴ *Final Report of the Ad Hoc Committee on the SABC Board Inquiry into the Fitness of the SABC Board*, 24 February 2017, paras 39.1.1 and 39.1.2.

¹⁸⁵ *Democratic Alliance v South African Broadcasting Corporation Soc Ltd and Others* (12497/2014) [2015] ZAWCHC 182; [2016] 1 All SA 504 (WCC); 2016 (3) SA 468 (WCC) para 49.

¹⁸⁶ *South African Broadcasting Corporation Soc Ltd and Others v Democratic Alliance and Others* [2015] ZASCA 156; [2015] 4 All SA 719 (SCA); 2016 (2) SA 522 (SCA) at para 48.

¹⁸⁷ Above at para 51.

7 Despite this admonition, Minister Muthambi continued to exercise her powers behind a veil of secrecy, and with evident disdain for public accountability.

8 In June 2017, in ruling on eTV’s challenge to the Minister’s set-top box policy, the Constitutional Court expressed its concern at Minister Muthambi’s “*evasive and ‘suspicious’ responses or lack thereof to pertinent questions raised by e.tv,*” as regards consultations that she had with undisclosed parties. Chief Justice Mogoeng stated:

“We live in a constitutional democracy, whose foundational values include openness and accountability. It is thus inappropriate for the Minister to not have volunteered the identities of those she consulted with and what the consultation was about, as if she was not entitled to solicit enlightenment or did so in pursuit of an illegitimate agenda. This conduct must be frowned upon and discouraged...”¹⁸⁸

9 In his most recent cabinet reshuffle President Zuma has retained Minister Muthambi in Cabinet regardless of the most serious criticism of her conduct as Minister of Communications – from Parliament and the courts alike.

10 What is more, President Zuma has appointed Minister Muthambi to lead the very portfolio that most urgently requires leadership that is committed to the principles of good governance, accountability, responsiveness and transparency, namely the Ministry of Public Service and Administration. The appointment of Minister Muthambi as Minister of this national portfolio makes a mockery of the

¹⁸⁸ Above at para 61. See also para 157 (of the minority judgment).

Constitutional principles of public administration that are enshrined in section 195 of the Constitution.

11 President Zuma’s retention of Minister Muthambi in Cabinet is another strong indication that an improper relationship exists between President Zuma and the Gupta family.

12 Media reports and the records leaked from the Gupta’s Sahara Company’s computer server reveal the following –

12.1 During the course of July and August 2014 (shortly following her appointment as Minister of Communications), Minister Muthambi personally sent emails to Tony Gupta on confidential matters of national government policy and on the powers she would assume as Minister.

12.2 On 8 July 2014, Minister Muthambi appointed Hlaudi Motsoeneng as permanent COO of the SABC, in defiance of the Public Protector’s findings against him of abuses of power, fraud and maladministration at the SABC. Mr Motsoeneng facilitated the SABC’s effective sponsorship of the Gupta’s media outlet, The New Age.

12.3 In December 2015, Minister Muthambi reportedly offered to appoint Ms Vuyo Batyi as the Chairperson of the ICASA on condition that she grant the Gupta’s ANN7 media company, Infinity Media (Pty) Ltd a free-to-air television licence. President Zuma’s son, Duduzane Zuma also has a stake in Infinity Media. When Batyi refused to comply with this condition for appointment, Muthambi declined to gazette her appointment.

- 12.4 In May 2016, Minister Muthambi attended meetings that the interministerial committee held with banks on the closure of Guptas' bank accounts, despite her not having been appointed by Cabinet to this committee.
- 12.5 Minister Muthambi appointed Lugisani Daniel Mantsha and Mzwanele Manyi as her legal and special advisors. Both have close ties to the Guptas, and have done the Guptas' bidding in government circles.
- 13 In the light of these facts, it is indisputable that Minister Muthambi has an improper relationship with the Gupta family, and has abused her public office to benefit the Gupta family and their business associates, including Duduzane Zuma.
- 14 President Zuma appointed Minister Muthambi to a Cabinet portfolio that was of particular importance to the Gupta family and then retained her in the Cabinet in the face of clear maladministration of her portfolio and notwithstanding repeated criticisms of her conduct from Parliament and the Courts. In the context of President Zuma's broader relationship with the Gupta family, the most likely conclusions to be drawn are that:
- 14.1 his initial appointment of Minister Muthambi as Minister of Communications was designed improperly to promote the interests of the Gupta family and their business associates, including the President's son, Duduzane Zuma, and

14.2 his retention of Minister Muthambi in the Cabinet has been to protect her for her promotion of the interests of the Gupta family and their business associates.

15 The remainder of this chapter details the key facts in relation to these processes, and substantiates the preceding allegations as set out above.

Minister Muthambi’s emails to Tony Gupta

16 The email records obtained from the Sahara computer server show that, between July and August 2014 – shortly after President Zuma appointed her to Cabinet as Minister of Communications – Minister Muthambi sent a series of emails to Tony Gupta on confidential matters of executive policy and on the scope of her ministerial powers. The correspondence suggests either -

16.1 that the transfer of powers to her national portfolio in 2014 was influenced and vetted by the Guptas, or

16.2 that Minister Muthambi used her relationship with the Guptas to influence the manner in which the President transferred powers into her portfolio.

17 These emails were either sent directly from Minister Muthambi to Tony Gupta or indirectly, from Minister Muthambi to the Sahara company’s CEO, Mr Ashu Chawla. Mr Chawla, in turn, forwarded Minister Muthambi’s correspondence to Tony Gupta and Duduzane Zuma. The latter appears to have acted as a conduit between the Guptas and President Zuma.

17.1 On 18 July 2014, Minister Muthambi emailed a copy of the President’s Proclamation on the transfer of administration and powers to certain

Cabinet members (published as Proclamation 47 of 2014 in Government Gazette No. 37839 of 15 July 2014) to Ashu Chawla who, in turn, forwarded the email to Tony Gupta.¹⁸⁹

17.2 Proclamation 47 of 2014 defined the legislation henceforth to be administered by the Minister of Communication and the Minister of Telecommunications and Postal Services respectively. It provided *inter alia* that all powers under the Electronic Communications Act 36 of 2005 and the Sentech Act 63 of 1996 were to be assigned from the Minister of Communications to the Minister of Telecommunication and Postal Services, Minister Cwele.

17.3 A few minutes after emailing Proclamation 47 of 2014 to Mr Chawla, Minister Muthambi sent him a second email attaching a document describing the effect of the proclamation. The document contained the following statement:

“The ability to make broadcasting policy and issue broadcasting policy directions are set out in section 3 of this Act. These powers have been transferred from the Minister of Communications to the Minister of Telecommunications and Postal Services. It is therefore the Minister of Telecommunications and Postal Service

¹⁸⁹ Copies of the email of Mr Chawla forwarding the email of Minister Muthambi to Tony Gupta and the attached proclamation are Annexed as **COM 1; COM 2 & COM 3**.

who will make policy and issue policy directives to ICASA for broadcasting, including public service broadcasting.”¹⁹⁰

17.4 On 25 July 2014, Minister Muthambi sent two emails to Mr Chawla:

17.4.1 In the first e-mail, with the subject line “*Proclamation New July 18*”, she wrote: “*These sections must be transferred to the Minister of Communications.*” A document describing the statutory provisions to which she referred was attached to the e-mail under the file name “proclamtion (sic) new 18 July 2014 (clean).docx”.¹⁹¹

17.4.2 The document named “proclamtion (sic) new 18 July 2014 (clean).docx” proposed the retransfer of certain powers under the Electronic Communications Act 36 of 2005 from the Minister of Telecommunications and Postal Services to the Minister of Communications.

17.4.3 In a second e-mail sent minutes later, with the subject line “*Responsibility for InfraCo and Sentech*”, Muthambi wrote: “*Sentech's signal distribution must rest with the Ministry of Communications*”. The attached document motivates for the transfer of powers and functions over Sentech (which is responsible for broadcasting signal distribution to the SABC and commercial broadcasters) from the Minister of

¹⁹⁰ Copies of the email of Minister Muthambi and the attached document are Annexed marked **COM 4 & COM 5**.

¹⁹¹ Copies of this email and the attached document are Annexed marked **COM 6 & COM 7**.

Telecommunications and Postal Services to the Minister of Communications (under the Sentech Act No. 63 of 1996).¹⁹²

17.4.4 Both e-mails of 25 July 2014 were subsequently forwarded by Ashu Chawla to Tony Gupta and Duduzane Zuma, in separate emails.¹⁹³

17.4.5 The use by Minister Muthambi of the word “must” in both of her emails is particularly disturbing. It suggests one of two possibilities:

(a) Either she was conveying to Tony Gupta that these changes had to take place if the interests of the Gupta family were to be protected, or

(b) She was instructing Tony Gupta to use his influence with President Zuma (the only person who could reassign the functions in question) to ensure that the proposed changes did take place.

17.5 Included in the powers which “*proclamation new 18 July 2014 (clean).docx*” proposed to have retransferred to Minister Muthambi was the power under section 3 of the Electronic Communications Act to make national policy for the information, communications and technology sector “*to the extent that it deals in any way with a broadcasting service*”

¹⁹² Copies of the emails and the attached document are attached as **COM 8 & COM 9**.

¹⁹³ Copies of the emails of Ashu Chawla to Tony Gupta and Duduzane Zuma are attached as **COM 10A; COM 10B; COM 11A ; COM 11B; COM 12A; COM 12B; COM 13A & COM 13B**.

or an electronic communications network service used for or in the provision of broadcasting service.”

17.6 On 6 December 2013, Minister Muthambi’s predecessor as Minister of Communications, Minister Carrim had started the process of exercising his power under section 3 of the Electronic Communications Act 36 of 2005, by issuing for public comment draft amendments to the broadcast digital migration technology under Government Notice 954 of 2013.¹⁹⁴ For present purposes, we emphasize two features of the amendments proposed by Minister Carrim:

17.6.1 The first is that it proposed fixed dates for certain stages in the digital migration process;

17.6.2 The second is that it proposed that the Government would subsidise set top boxes capable of receiving encrypted signals. This proposal was in accordance with ANC policy on the issue.

17.7 As pointed out in the document that Minister Muthambi had forwarded to Mr Chawla on 18 July 2014, in terms of the assignment of functions in Proclamation 47 of 2014, responsibility for broadcast digital migration policy now lay not with Minister Muthambi, but with Minister Cwele. On 29 July 2014, Minister Muthambi sent an e-mail to Chawla, with the following message: *“Despite my request, the cde is determined to table the matter in cabinet tomorrow ... He called me that he was coming to*

¹⁹⁴ The draft policy amendments was gazetted by Minister Carrim .

Cape Town this morning ... I hope he still on his way.” Minister Muthambi attached a memorandum that she had sent, as Minister of Communications, to the Minister of Telecommunications and Postal Services, Mr Cwele. In the memorandum, Minister Muthambi noted that Minister Cwele proposed to table final amendments to the Broadcasting Digital Migration Policy in Cabinet and expressed concerns about the proposed amendments. The forwarding of this document to Mr Chawla was a gross violation of Cabinet confidentiality. Mr Chawla forwarded the e-mail and the document to Tony Gupta later that day.¹⁹⁵

17.8 Minister Cwele did not obtain Cabinet approval for his proposed final amendments to the Broadcasting Digital Migration Policy, either at the cabinet meeting of 30 July 2014 or at any time thereafter.

17.9 On 1 August 2014, Muthambi sent an email to Mr Chawla, to which she attached a draft of a proclamation in the name of the President for the transfer of administration, powers and functions under the Electronic Communications Act from the Minister of Telecommunications and Postal Services to the Minister of Communications. The emailed message was: *“See attached Proclamation that President must sign”*.¹⁹⁶ Again, the use of the word “must” in the email from Minister Muthambi relating to the proposed exercise of a presidential power is disturbing.

¹⁹⁵ Copies of the emails of Minister Muthambi and Mr Chawla, and the letter of Minister Muthambi to Minister Cwele are attached as Annexure **COM 14 & COM 15**.

¹⁹⁶ Copies of the email and the proposed proclamation are attached as **COM 16; COM 17 & COM 18**.

17.10 On 8 August 2014, “*Ellen*” of Fortune Holdings emailed Muthambi in reply, thanking her for the proposed proclamation that the President “*must*” sign. The email was signed by “*Zandile*”, presumably Zandile Ellen Tshabalala, the Chairperson of the SABC at the time. “*Zandile*” copied Mr Chawla and a certain Khumalo at the SABC on this correspondence.¹⁹⁷

17.11 The draft Presidential proclamation was never promulgated in the self-contained form attached to the emails between Minister Muthambi, Mr Chawla and Tony Gupta. However, on 2 December 2014 the President Promulgated Proclamation 79 of 2014 which transferred to the Minister of Communications a range of powers including the power to make national policy on information, communications and technology under section 3 of the Electronic Communications Act insofar as it relates to broadcasting.

17.12 With policy on Broadcast Digital Migration safely now under her control, Minister Muthambi published her amendments to the policy on 18 March 2015 under Government Notice 232 of 2015.¹⁹⁸ The final policy included neither of the two features mentioned above in relation to Minister Carrim’s published draft of December 2013.

17.12.1 The policy no longer tied the Government to any dates for the digital migration process, and

¹⁹⁷ The email of “Ellen” is attached as **COM 19**.

¹⁹⁸ A copy of the promulgated amendments to the policy is attached as **COM 20A**.

17.12.2 The policy provided that Government subsidised set top boxes would not be capable of receiving encrypted signals. It thus reversed Minister Carrim’s proposal which had been in accordance with ANC policy, and replaced it with a decision that was contrary to ANC policy. In changing the policy in this manner, Minister Muthambi provoked criticism in a public statement issued by the Tri-Partite Alliance in February 2015.¹⁹⁹

17.13 As pointed out above, when Minister Muthambi was taken to Court by e-TV in relation to her failure to consult publicly in relation to the changed provisions relating to encryption, the Constitutional Court commented on her “*evasive and suspicious*” responses relating to the identity of the persons with whom she had consulted in relation to the changes that she made. In the light of the emails described above, the reasons for this evasiveness are obvious.

17.14 We are unaware of what particular interests the Gupta family may or may not have had in delaying the digital migration process or in resisting the subsidisation of set top boxes that were capable of being used for encrypted signals. The communications described above between Minister Muthambi, Mr Chawla and Tony Gupta amount to an abuse of her office. There is no reasonable explanation for communications of this nature between the Minister of Communications and members of the

¹⁹⁹ See the *Business Day* Article of 18 February 2015 ‘Muthambi defies ANC on digital TV boxes’ Annexure **COM 20B**.

Gupta group who control a television station subject to her regulatory jurisdiction.

The Minister’s appointment of Hlaudi Motsoeneng as COO of the SABC

- 18 On 8 July 2014, Minister Muthambi appointed Hlaudi Motsoeneng as permanent COO of the SABC, in spite of the Public Protector’s findings and remedial action. The High Court and Supreme Court of Appeal found that the Minister’s decision was, on the face of it, irrational and unlawful.
- 19 The explanation for Minister Muthambi’s protection and promotion of Mr Motsoeneng – notwithstanding his abuses of power at the SABC – appears to lie, at least in part, in the Minister and Mr Motsoeneng’s shared improper relationship with the Guptas.
- 20 As Group Chief Executive of Stakeholder Relations at the SABC (April 2011-November 2011), and later as acting COO (November 2011-July 2014) and permanent COO (July 2014 – November 2015) of the SABC, Mr Motsoeneng promoted the SABC’s so-called “*business relationship*” with the Gupta’s media company, TNA Media Group (Pty) Ltd.
- 21 Under Mr Motsoeneng, the SABC concluded agreements with TNA Media in terms of which the SABC would broadcast the New Age “*Business Breakfasts*” at a loss to the SABC, while TNA Media amassed considerable profits and media exposure from the broadcasts.
- 22 Parliament’s ad hoc Committee on the SABC noted in its report that –

22.1 SABC producer, Mr Vuyo Mvoko gave evidence that SABC resources were diverted to fund ANN7, the Gupta-owned news channel. He indicated that the SABC’s *Morning Live* resources were diverted to pay for the production costs associated with the TNA Business Breakfasts. The SABC did not generate any revenue from the briefings.²⁰⁰

22.2 The former acting Group CEO of the SABC (between July 2011 to January 2012), Mr Phil Molefe *“corroborated evidence that the SABC bore costs associated with the Business Breakfasts. In his submission he indicates that the shows came at a huge cost to the SABC. Technical equipment for one production could cost R1 million or more. In addition, the SABC had to cover the flights, accommodation and subsistence of its production staff when the briefings took place outside of Johannesburg. Mr Molefe confirms that while the SABC carried the production costs, the TNA Media Group earned the revenue exclusively.”*²⁰¹

23 In addition, the SABC paid huge subscriptions to the Gupta-owned New Age newspaper. This escalated from R238,356 in 2011 to close to a R1 million in 2015/2016.²⁰²

24 During Parliament’s inquiry into the SABC, Mr Molefe made a serious allegation that, in November 2011, he was pressured by Mr Motsoeneng and then

²⁰⁰ Ad hoc Committee report para 17.1.3. See also para 8.2.4.

²⁰¹ Ad hoc Committee report para 17.1.3. See also para 18.1.1 on the corroborating evidence of Mr Mvoko and Ms Gqubule-Mbeki.

²⁰² Polity, ‘DA: Phumzile van Damme says Muthambi refuses to disclose Gupta meetings’, 30 November 2016. See also Ad hoc Committee report para 8.2.2.

chairperson of the SABC, Dr Ben Ngubane to increase Mr Motsoeneng’s salary by R500,000. When he refused, Mr Motsoeneng allegedly said to Ngubane: *“Chair, I told you that this is not our man. So I’m going to Pretoria tonight”*.²⁰³

This reported conversation suggests that Mr Motsoeneng was protected not only by Minister Muthambi, but also by President Zuma.

- 25 Mr Motsoeneng’s gross abuses of power at the SABC – which included diverting public resources vested in the SABC to benefit the Gupta’s rival media company – appear to have been sanctioned by both Minister Muthambi and President Zuma.

Muthambi proposed to appoint an ICASA chair to favour the Gupta-Zuma media company, Infinity Media

- 26 In December 2015, Minister Muthambi reportedly offered to appoint Ms Vuyo Batyi as the chairperson of the Independent Communications Authority of South Africa (ICASA) on condition that she grant the Gupta’s media company, Infinity Media (Pty) Ltd a free-to-air television licence for its ANN7 channel. President Zuma’s son, Duduzane Zuma also has a stake in Infinity Media, through Mabengela Investments which reportedly has a shareholding of 21%.²⁰⁴ When Ms Batyi refused to comply with this condition for appointment, Minister Muthambi declined to gazette her appointment.

²⁰³ News24, ‘Hludi’s R500k demand, ‘Pretoria’, Guptas take centre stage in SABC inquiry’, 9 December 2016.

²⁰⁴ News24, ‘Gupta bid cost Icasa chair her job – report’. 31 July 2016.

27 The incident was reported by the *Sunday Times* in July 2016, after Ms Batyi resolved to take legal action against the Minister.²⁰⁵ It was reported that:

“The Sunday Times has established that on December 4 last year Muthambi sent Batyi a letter appointing her as chairwoman for one year, even though the Icasa Act stipulates a five-year term.

Two independent sources, one with direct knowledge of the offer, said that on December 6 Batyi was summoned to a meeting with Muthambi and told her appointment was conditional on her approving Infinity Media's application for a licence.

Muthambi told Batyi her job came ‘with conditions’ and she had been appointed only for a year to “prove herself”, sources said.

Batyi refused to approve the application, the sources said. The next day Batyi received a second letter from Muthambi saying she could only commence her duties as chairwoman once her appointment had been gazetted. But in April, when Muthambi gazetted a list of four new councillors, Batyi's name was not included.”²⁰⁶

Muthambi interfered in the Inter-Ministerial Committee’s investigation into the closure of the Guptas’ bank accounts

28 In May 2016, Minister Muthambi and her advisor, Mr Mzwanele Manyi, attended meetings that the Inter-Ministerial Committee held with banks, when it

²⁰⁵ Sunday Times, ‘Minister attached Gupta strings to Icasa’s top job’, 31 July 2016.

²⁰⁶ This article is attached marked **COM 21**.

investigated the closure of the Guptas bank accounts. Extraordinarily, Minister Muthambi intervened despite not having been appointed by Cabinet to this committee.

- 29 Minister Muthambi attended a meeting that Mr Zwane held with Nedbank, in which Nedbank accused Mr Zwane of improperly seeking to influence it to reopen its Gupta-held accounts. Minister Muthambi failed to give any explanation for why she saw fit to attend this meeting.²⁰⁷

Muthambi’s advisors are known Gupta promoters

- 30 Minister Muthambi had appointed Lungisani Daniel Mantsha and Mr Manyi as her legal and special advisors. Both are reported to have close ties to the Guptas, and to have done the Guptas’ bidding.
- 31 Mr Mantsha acted as Minister Muthambi’s legal advisor during the course of 2015 and 2016, despite having been struck from the roll of attorneys in 2007 after the High Court found that he was guilty of a range of counts of serious misconduct and had been untruthful to his clients, the Law Society and the Court.²⁰⁸
- 32 Shortly after being appointed by Minister Brown as Chair of Denel (on 24 July 2015), Mr Mantsha oversaw the conclusion of the Denel Asia joint venture between Denel and VR Laser Asia, a Gupta-aligned company.²⁰⁹ VR Laser Asia is wholly owned by Gupta business partner, Salim Essa and is an associate company of VR Laser Services, a South African steel-cutting business in which

²⁰⁷ Business Day, ‘Nedbank CEO reveals details of Gupta intervention’, 13 December 2016.

²⁰⁸ Law Society of the Northern Provinces v Mantsha [2007] ZAGPHC 132 (25 July 2007)

²⁰⁹ AmaBhungane, ‘How Denel was hijacked’. 30 May 2016.

the Guptas and Duduzane Zuma have an interest (through Westdown Investments).²¹⁰

33 The email records on the Sahara company server evidence direct and improper ties between Mr Mantsha and the Guptas. The emails evidence that –

33.1 Mr Mantsha was flown to India and Dubai at the expense of the Guptas on several occasions.

33.1.1 During August 2015, Mr Mantsha was flown to India, in the Gupta’s jet (ZS-OAK) and in the company of Mrs Angoori Gupta, Mr Rajesh Gupta, Mrs Arti Gupta, Mr Sashank Singhala, Mr Amankant Singhala, Mr Salim Essa and Mr Gysbert van den Berg. He was accommodated for a few nights with the Guptas at the ICT Maratha Hotel in Mumbai, in a room near the Guptas’ presidential suite, at the Guptas’ cost.²¹¹

33.1.2 In October 2015, Mr Mantsha travelled to and from Dubai, in the company of Duduzane Zuma and Duduzane’s wife (Ms Shanice Zuma). Flights were booked for all three by the Gupta’s travel agents and were invoiced to the Gupta’s Sahara company. Visas were arranged by Sahara (Mr Chawlu and Tony Gupta) for Mr Mantsha and Ms Shanice Zuma.²¹²

²¹⁰ AmaBhungane, ‘*Guptas conquer state arms firm Denel*’, 5 February 2016.

²¹¹ The emails evidencing these facts are attached marked **COM 22 & 23**.

²¹² The emails evidencing these facts and attached records are attached marked **COM 24; COM 25; COM 26; COM 27; COM 28; COM 29 & COM 30**

33.1.3 On 3 January 2016, Sahara’s CEO, Mr Chawla confirmed travel arrangements for Mr Mantsha. Mr Mantsha was booked into the Oberoi Hotel in Dubai and Mr Chawla arranged a concierge service for Mr Mantsha to an exclusive housing estate in Dubai, at the expense of the Gupta’s Sahara company.²¹³

33.2 Mr Mantsha sent the Guptas confidential information he received in his capacity as Chairperson of Denel, including from the Minister of Public Enterprises.

33.2.1 On 23 November 2015, Mr Mantsha received an email from Keromamang Mhlongo, of the Department of Public Enterprises, whose minister, Lynne Brown, has political oversight of Denel. Titled “*PFMA Section 54(2) Pre-Notification on the Proposed Formation of Denel Asia,*” the e-mail was Minister Brown’s response to Denel’s notification to her of the proposed tie-up. The e-mail was marked “confidential” and was meant to advise both Denel executives and the government in their dealings with the Guptas.²¹⁴

33.2.2 Five days later, on 28 November 2015, Mr Mantsha forwarded Brown’s e-mail to Mr Chawla, CEO of Sahara.²¹⁵

²¹³ The emails evidencing these facts are attached marked **COM 31; COM 32 & COM 33**.

²¹⁴ The email is attached marked **COM 34 & COM 35**.

²¹⁵ See **COM 34**.

- 33.3 Mr Mantsha also sent the Guptas his personal bills. On 3 August 2015, Mr Mantsha sent his municipal rates bill of R14 238 for his Randburg home, dated 11 June 2015, to Sahara's CEO, Mr Chawla, saying: *“Please find the attached document for your urgent attention.”*²¹⁶
- 34 Minister Muthambi appointed Mr Manyi as her special advisor in 2016. He resigned later in the same year.
- 35 Mr Manyi is widely known to be a promoter of Gupta-interests. Email records from the Sahara computer server evidence Mr Manyi's close association to the Guptas. In particular, they reveal that Mr Manyi scouted for Guptas, sending them the CVs of high profile persons, including his own, for vetted appointments to the boards of state-owned enterprises.
- 35.1 In May 2014, Mr Manyi sent two emails to Sahara CEO Ashu Chawla. He attached his own CV and that of Attorney Xoliswa Mpongoshe under cover of the note: *“as discussed with Tony”*.²¹⁷
- 35.2 In 2013, Mr Manyi was reportedly head-hunted by the Guptas to present a weekly talk-show on the Gupta-owned television channel, ANN7, *“Straight Talk”*.²¹⁸
- 35.3 As President of the Progressive Professionals Forum (PPF), Mr Manyi has led the PPF in vociferously opposing the promulgation into law of the

²¹⁶ This email is attached as **COM 36 & COM 37**.

²¹⁷ These emails are attached marked **COM 38; COM 39; COM 40 & COM 41**. Mpongoshe's response was published in *Sunday Times*, 'Manyi implicated in parastatal jobs bid, leaked "Gupta email" shows', 28 May 2017.

²¹⁸ Mail & Guardian, 'Jimmy Manyi: Gupta TV's oprah', 23 August 2013.

Financial Intelligence Centre (FIC) Amendment Act – a law that would strengthen the FIC’s powers to stamp out money-laundering and the illicit flow of funds. Notably, the FIC identified 72 “suspicious” transactions in the Gupta family’s various personal and business accounts, valued at R6.8 billion. The FIC’s list of red-flagged transactions in the Gupta accounts was disclosed in the former Minister of Finance, Pravin Gordhan’s court application against Oakbay Investments.²¹⁹

35.4 In December 2016, the *Sunday Times* reported how the Black Business Council rebutted executive member Mr Manyi’s alleged attempt to have Gupta company Oakbay become a corporate member (after the closure of their bank accounts in April 2016).²²⁰

The appointment of Minister Ayanda Dlodlo in March 2017

36 In the Cabinet reshuffle of 30 March 2017, President Zuma appointed Ms Ayanda Dlodlo as the new Minister of Communications. This appointment evidences Zuma’s continued concern to appoint to this national portfolio persons who are friendly with the Guptas and their associates, including Duduzane Zuma.

37 The records from the Sahara company server evidence that from 16 to 19 December 2015, Ms Dlodlo stayed at the luxury Oberoi Hotel in Dubai. While Ms Dlodlo’s account was settled by Mr Fana Hlongwane, the Oberoi liaised with Mr Chawla (who in turn liaised with Duduzane Zuma) in respect of Ms Dlodlo’s

²¹⁹ *Minister of Finance v Oakbay Investments (Pty) Ltd and Others*, High Court (North Gauteng, Pretoria) case no. 80978/2016. See also News24: ‘Here it is: The full list of 72 ‘dodgy’ Gupta transactions’, 15 October 2016.

²²⁰ *Sunday Times*, ‘Black Business Council snubs Guptas’, 30 December 2016.

reservation. Further, the Oberoi sent Mr Chawla the invoice that had been paid by Mr Hlongwane, which invoice Mr Chawla forwarded to Tony Gupta.²²¹

38 At the time, Ms Dlodlo was serving as Deputy Minister of Public Service and Administration. Mr Hlongwane is known to be a close associate of Mr Duduzane Zuma and is (at least) a known “*acquaintance*” of the Guptas.²²²

39 Minister Dlodlo has admitted to having a scheduled trip to Jordan diverted for her stay in Dubai. It has since been established by the Democratic Alliance that Minister Dlodlo failed to declare her sponsored stay in Dubai in the National Assembly’s Register of Members’ Interests.²²³

40 Given their investment in news media and television broadcasting in South Africa, the Guptas and their associates in Infinity Media (Pty) Ltd – which include Duduzane Zuma – clearly have a vested interest in the appointment of the Minister of Communications. President Zuma appears intent on promoting and supporting these vested interests through his appointment of the Minister of Communications.

²²¹ These records are attached marked **COM 42; COM 43; COM 44 & COM 45**.

²²² Mr Hlongwane is mentioned in the Public Protector’s report, *State of Capture*, Report 6 of 2016/2017, 14 October 2016. The report records in para 5.27, p 107 that Mr Hlongwane considers himself to be an “uncle” to Duduzane Zuma, and is “a casual acquaintance” of members of the Gupta family.

²²³ Sunday Times ‘ Communications Minister Ayanda Dlodlo failed to declare her trip to Dubai’, 7 June 2017.

CHAPTER 6: THE PRESIDENT’S REMOVAL OF FINANCE

MINISTERS

Overview: The key facts

- 1 The Ministry of Finance exercises ultimate control over government finances, including those of State Owned Enterprises. It is also responsible for regulating the banking industry and enforcing money laundering legislation. As we have seen above, the Guptas have received billions of rands in contracts linked to State Owned Enterprises. They have also been denied banking facilities by South African banks as a result of suspicions that their bank accounts are being used for money laundering. The Guptas accordingly have an obvious interest in influencing the Minister of Finance and in removing from that position anyone who is not willing to exercise power for their benefit.
- 2 President Zuma has changed Finance Ministers four times during his terms in office. This is the most number of changes to the post under one President since 1994. The last three changes to the post require scrutiny.
- 3 During October 2015 the Deputy Finance Minister, Mcebisi Jonas was invited to a meeting by Duduzane Zuma and Fana Hlongwane. The meeting was ultimately held on 23 October 2015 at the Rosebank Hyatt. An hour into the meeting, Duduzane Zuma requested the meeting to be moved to a quieter venue. Duduzane Zuma drove Mr Jonas to the Gupta household in Saxonwold,

where Jonas met with one of the Gupta brothers, whose name he does not recall.²²⁴

- 4 At this meeting, the Gupta brother offered Mr Jonas the position of Minister of Finance in exchange for R600 000.00 immediately and the promise of more money later. Mr Jonas declined the offer and left the meeting. After this meeting, he warned the incumbent Finance Minister, Mr Nhlanhla Nene, that his position was in danger.
- 5 On 9 December 2015, the President removed Mr Nene from the office of Minister of Finance and replaced him with David van Rooyen. Mr Van Rooyen had no experience in finance, and had served as a parliamentary backbencher. Mr Van Rooyen was, however, closely connected to the Gupta Family. The true extent of his connection was revealed in the Public Protector’s report entitled “*State of Capture*”. The Public Protector’s investigation included records of Mr Van Rooyen’s mobile phone activity. This investigation revealed that –
 - 5.1 in the period preceding Mr Nene’s dismissal, Mr Van Rooyen frequented the Gupta Household in Saxonwold. This in circumstances when he should have been in Cape Town as Parliament was in session; and
 - 5.2 the night before Nene’s dismissal, Mr Van Rooyen made several telephone calls from the Gupta Household.

²²⁴ Jonas Answering Affidavit in Minister of Finance v Oakbay and Others, Case no. 80978/2016, pp6-8, paras 12-16 - Annexure **NAT 1**

- 6 On Mr Van Rooyen’s first day he arrived with two advisors, Mr Mohamad Bobat and Mr Ian Whitley. Both of these men were closely connected to Gupta family businesses. A few hours into his appointment, Mr Whitley sent an email attaching strategic Treasury documents to a series of close Gupta business associates. Mr Whitley’s covering email, comprised only two words: “*Gents, finally*”.
- 7 Mr Van Rooyen’s appointment was an economic disaster. The President was forced to replace Mr Van Rooyen with Mr Gordhan on 13 December 2015.
- 8 Mr Gordhan was an effective Finance Minister. However, his second tenure as Finance Minister was characterised by conflict with President Zuma. On 27 March 2017, President Zuma dismissed Mr Gordhan and Mr Jonas. This occurred in circumstances where Mr Gordhan acted against Gupta interests.
- 9 Mr Gordhan was replaced as Minister of Finance by Mr Malusi Gigaba, someone perceived to be close to the Guptas.
- 10 The sequence of events relating to the President’s repeated replacement of the Minister of Finance leads unavoidably to the conclusion that his decisions in this regard have been influenced by the interests of the Gupta family and his son whose fortune is inextricably linked to theirs.
- 11 In this section we describe, in chronological order, President Zuma’s actions regarding the position of Minister of Finance.

The removal of Nhlanhla Nene

12 The President’s removal of Nene as Minister of Finance is a matter of public record. This episode presents the starkest example of the abuse of the President’s relationship with the Gupta family.

13 The starting point is the Guptas’ offer of the post to Mr Jonas. Mr Jonas has described these events on three separate occasions and his version of events has remained consistent.²²⁵ It can be summarised as follows:

13.1 During 2015, Mr Jonas was approached by Mr Fana Hlongwane, who proposed a meeting with Duduzane Zuma. Although he had never met Duduzane Zuma, Mr Jonas was already aware of his close ties with the Gupta family. In any event, Mr Jonas agreed to meet Duduzane Zuma. In the build-up to this meeting, Duduzane Zuma and Mr Jonas exchanged text messages, which were recorded in the *State of Capture* report.²²⁶

13.2 On 23 October 2015, Mr Jonas met Duduzane Zuma at the Hyatt Regency Hotel in Rosebank, as they had agreed. After a short while, Duduzane Zuma asked to move the meeting to a more private location for a discussion with a third party. Mr Jonas agreed. Mr Jonas and Duduzane Zuma left Rosebank in Duduzane Zuma’s vehicle. Using Duduzane

²²⁵ Jonas first released a public statement, a copy of which can be found on the following website: http://www.treasury.gov.za/comm_media/press/2016/2016031601%20-%20Statement%20by%20Deputy%20Minister%20Jonas.pdf. Jonas also gave evidence to the Public Protector in her State of Capture Report, which version is recorded in that report at pp 91-94, para 5.17. Finally, Jonas defended his version in an affidavit filed in the North Gauteng High Court in *Minister of Finance v Oakbay and Others*, Case no: 80978/16.

²²⁶ State of Capture report, pp100-103, para 5.23

Zuma’s vehicle, the pair drove to the Gupta family residence in Saxonwold.

Mr Jonas had never been there before.

13.3 When they arrived, they were met by Ajay Gupta along with Mr Hlongwane. There was no exchange of pleasantries. Ajay Gupta informed Mr Jonas that they had conducted several investigations into Mr Jonas and his associates. Pursuant to those investigations they had discovered that Mr Jonas was part of a faction that sought to undermine President Zuma.

13.4 Despite this, Ajay Gupta advised Jonas that they were going to make him Minister of Finance.

13.5 Mr Jonas reacted with shock and irritation. He declined the offer, informing Ajay Gupta that only the President of the Republic was empowered to make such decisions. Mr Jonas stood up and left the meeting. As he was leaving, Ajay Gupta offered him payment of R600 million rand in an account of his choosing and whatever amount of cash he could carry with him.

13.6 Ajay Gupta also mentioned the names of persons with whom they were working. He informed Mr Jonas that they (the Gupta family) made lots of money from the State. They wanted to make more money, but Treasury was an impediment to their efforts.

13.7 Duduzane Zuma and Mr Hlongwane remained silent during this meeting.

- 13.8 Shortly after this incident, Mr Jonas informed both Minister Nene and Mr Gordhan about the meeting. Both Minister Nene and Mr Gordhan confirmed this fact.
- 14 On 9 December 2015, the President removed Mr Nene as Minister of Finance. According to Mr Nene, the President verbally informed him of his dismissal. When informing Mr Nene of the decision to remove him as Minister of Finance, the President stated that he would be deployed to the African Regional Centre of the BRICS Bank as Director General.²²⁷
- 15 Later that evening, the President announced his decision in a media statement. The primary reason the President cited for Mr Nene’s dismissal, was that Nene was due for “...*deployment to another strategic position*”.²²⁸
- 16 This reason appears not to have been genuine.
- 16.1 Mr Nene never was appointed to the post of Director General of the BRICS Bank Africa Centre.
- 16.2 There is no evidence to suggest that any decision by BRICS partners had been taken to offer the post of Director General of the BRICS Bank Africa Centre.

²²⁷ State of Capture Report, p95, para 5.18(e)

²²⁸ <http://www.thepresidency.gov.za/content/statement-president-jacob-zuma-appointment-new-finance-minister>
Annexure **NAT 2**.

- 16.3 The suggested appointment had not been canvassed with Mr Nene. So there was no basis upon which to assume that he would take the appointment, even if it was available.
- 16.4 On the President’s own version, Minister Nene had “*...done well since his appointment as Minister of Finance during a difficult economic climate.*” In those circumstances, it would have been strange to remove him from office with a view to deploying him at the BRICS Bank without first establishing that he was amenable to taking up the position at the BRICS Bank.
- 16.5 The sudden removal of Mr Nene was calculated to be controversial and to be damaging to the economy. In the circumstances, if the purpose of the decision was to free up Mr Nene to take a position at the BRICS Bank, it is most unlikely that this would not have been canvassed fully with Mr Nene in advance.
- 17 It is much more likely that Minister Nene was removed because he had taken decisions against the Guptas and other friends of the President.
- 17.1 Minister Nene opposed the Nuclear Build Programme on the basis that it was fiscally irresponsible. During the cabinet meeting that preceded his dismissal, on 9 December 2015, Minister Nene

“...delivered a presentation laying out the unaffordability of Nuclear; and the Energy Dept., at the same meeting, submits a

memo to cabinet recommending that nuclear procurement go ahead. Cabinet approves this and hours later Nene is fired.”²²⁹

Given their interests in Shiva Uranium, the Guptas had an obvious interest in the Nuclear Build Programme. Gupta companies hold the entire issued shareholding of Shiva Uranium and the three Gupta brothers are all directors of the company.²³⁰

17.2 Minister Nene had also clashed with Ms Dudu Myeni, the Chairperson of SAA’s board, when he declined to give SAA a guarantee or to approve its aircraft leasing deal. Ms Myeni is the Chairperson of the Jacob Zuma Foundation and is the President’s close *confidante*.

18 The decision to remove Minister Nene was ill-considered. The impact on South Africa’s economy was devastating. The JSE All-Share index lost R169 Billion in the wake of the President’s announcement. The currency fell to an all-time low of R16.054 to the US dollar.²³¹

Mr Van Rooyen’s brief stint as Minister of Finance

19 Mr Van Rooyen’s cellular phone records place him in the vicinity of the Gupta’s home in Saxonwold before and after his appointment as Minister of Finance on 9 December 2015.²³² On 8 December 2015, Minister Van Rooyen’s cellular

²²⁹ Betrayal of Promise Report, p18

²³⁰ These facts are recorded on a spreadsheet of Gupta family companies that is one of the Sahara documents. It is attached as Annexure **NAT 3**

²³¹ https://www.newsclip.co.za/Uploads/Files/The_Finance_Minister_Shuffle.pdf

²³² State of Capture Report, p105

phone records place him in Saxonwold.²³³ In the absence of any contrary explanation from Minister van Rooyen, it has to be assumed that he was meeting with the Guptas.

20 Mr Van Rooyen seems to have shared news of his impending appointment to Minister of Finance more than a month before it was announced. This is so because his friend, Mr Gaddafi Rabotapi, claimed to have known about this decision. So too did Van Rooyen’s brother, as was pointed out by Mr Trevor Manuel in an open letter to Minister Lindiwe Zulu.²³⁴ Despite this, the President remained silent about his plans to Cabinet. Cabinet’s lack of knowledge is apparent from the Cabinet Statement from that same day, which did not mention this development.²³⁵

21 On 9 December 2015, Van Rooyen arrived at Treasury to occupy his position. On the first day, he arrived with two advisors, Messrs Ian Whitley and Mohamed Bobat.

22 The Guptas business associate Mr Eric Wood knew as early as 26 October 2015 that Mr Nene was going to be fired and that Mr Bobat would be appointed advisor to his successor. This fact is confirmed in an affidavit given to the Public Protector by a whistle-blower, who indicated that on 26 October 2015, she was informed by Mr Wood, to whom she then reported at Regiments Capital, that the

²³³ State of Capture Report, p104, para 5.24(d)

²³⁴ Obtainable from: https://www.scribd.com/doc/293763515/Trevor-Manuel-s-letter-to-Lindiwe-Zulu#fullscreen&from_embed.

²³⁵ Refer to : http://www.gov.za/speeches/statement-cabinet-meeting-9-december-2015-11-dec-2015-0000_Also
See attached as annexure **NAT 4**

President would replace Minister Nene and that Mr Bobat would be appointed as an advisor to the new Minister. Mr Bobat was then expected to channel tenders from National Treasury to a team of experts, including persons employed by Trillian Capital.²³⁶

23 Mr Whitley is Jessie Duarte’s son in law. Shortly after he arrived, Mr Whitley obtained a Treasury document addressing the Economic Outlook for South Africa in the wake of the dismissal of Minister Nene.²³⁷ As appears from the email chain under which it was forwarded,²³⁸ the document was produced in response to a request for all Directors General to address six topics in advance of a Ministerial meeting to address ways of turning around the economy. Points 2 and 3 were issues of particular significance to the Guptas: the state of SoEs and corruption and perceptions. Points 4 and 6 would also be of special interest to the Guptas: beneficiation and mining and 9 point plan and each department’s contribution.

24 Immediately upon receiving this document Mr Whitley shared it with Mr Bobat and Mr Malcolm Mabaso, Minister Zwane’s advisor who, as we point out in Chapter 4 above, had inexplicably taken up residence at the Treasury when Minister Van Rooyen was appointed. Mr Whitley’s covering email comprised only two words, the now notorious “Gents, finally...”

25 Within three minutes of receiving the document from Mr Whitley, Mr Bobat had forwarded it to two close associates of the Guptas, Mr Wood and Mr Seleke. Mr

²³⁶ <http://www.fin24.com/Economy/gupta-linked-firm-knew-of-nenegate-months-in-advance-report-20161023>

²³⁷ Annexure **NAT 5** (The presentation)

²³⁸ Annexure **NAT 6** (The email chain)

Bobat’s email to Mr Seleke was sent to his anonymous infoportal1@zoho.com address. As we point out in Chapter 3, this address has repeatedly been used by Mr Seleke for forwarding confidential government documents to the Guptas.

26 Minister Van Rooyen remained in the post for approximately four days. On 13 December 2015, the President replaced Minister Van Rooyen with Gordhan as Minister of Finance. In a media statement announcing the decision, the President said he had taken representations, which led him to change his mind.²³⁹

27 Following Minister Van Rooyen’s removal from the Ministry of Finance, the Gupta family appear to have treated him to a consolation trip to Dubai. Emails obtained from the Sahara company server show that, on 20 December 2015, the Guptas booked and paid for Minister van Rooyen’s stay at the luxury Oberoi Hotel and for a chauffeur for him while he was in Dubai.²⁴⁰

The dismissal of Minister Gordhan

28 President Zuma appointed Minister Gordhan to take the place of Minister van Rooyen, when the response to Minister van Rooyen’s appointment made clear that it was necessary to replace him with someone who could be trusted to stabilise the economy.

29 Minister Gordhan’s attempts to stabilise the economy brought him into regular conflict with the Guptas as government officials under the authority of Minister

²³⁹ <http://www.thepresidency.gov.za/content/announcement-new-ministers-finance-and-cogta>

²⁴⁰ See annexure **NAT 7**.

Gordhan took responsible decisions which conflicted with the interests of the Guptas. By way of illustration we refer to the following:

29.1 His refusal to sanction the Denel / VR Laser joint venture which is discussed in Chapter 3 above;²⁴¹

29.2 The Treasury’s robust investigation of the Eskom / Tegeta coal contracts discussed in Chapter 3 above, in the face of apparent obstruction from Eskom.²⁴²

29.3 Treasury’s refusal to authorise excess payments by Eskom to Tegeta worth almost R4billion.²⁴³ For example:

29.3.1 During August 2015, Treasury declined Eskom’s request to increase the value of Eskom’s Agreement with Tegeta’s Brakfontein Colliery by another R2.94 billion.

29.3.2 Later that month, Treasury declined Eskom’s request to extend Optimum Colliery’s supply agreement with Arnot Colliery by a further six months without going on open tender.

29.3.3 Treasury had noted that Tegeta constantly overcharged Eskom for its coal supply and underperforms in the quality of coal it delivers to Eskom.

²⁴¹ See for example Annexure **NAT 8** (IOL article of 13 April 2016 attached “Gordhan lashes Denel over Gupta linked firm”)

²⁴² See Annexure **NAT 9** (Treasury statement attached “2016082901 - Statement on Eskom Contracts”)

²⁴³ <http://www.news24.com/SouthAfrica/News/treasury-blocks-r4bn-gupta-deals-20170423-3>

29.4 The failure of the Minister and the Registrar of Banks to fast-track the application by the Gupta-linked company Vardospan Limited to purchase the shares in Habib Overseas Bank Limited and thus to enable the Guptas to obtain a South African Bank. One of the primary concerns in relation to this application was the failure of Vardospan Limited to prove that it had the financial resources necessary to underwrite a Bank. In its application, it relied on no liquid capital and based its claim to financial resources on the interests of its ultimate controlling shareholder, Mr Salim Essa, in three companies that we discuss in Chapter 3 above, Tegeta Exploration and Resources (Pty) Ltd, Trillian Capital Partners (Pty) Ltd and VR Laser Services (Pty) Ltd. The Minister was understandably reticent to give Vardospan control over a banking licence on the basis of these assets;²⁴⁴

29.5 The Financial Intelligence Centre Investigation into suspicious transactions concluded by the Guptas:

29.5.1 On 4 August 2016, the Minister received a letter along with a certificate from the Director of the Financial Intelligence Centre (FIC). It made for disturbing reading:

29.5.2 The FIC certificate identified 72 suspicious transactions from various members of the Gupta family and entities within their stable of companies. The total value of these transactions was R6.8 billion rand.

²⁴⁴ The facts in this regard were set out in the Answering Affidavit of the Minister in the urgent application that Vardospan Limited unsuccessfully brought against the Registrar Minister Gordhan and others in the North Gauteng High Court under case number 21622/2017. A copy of that affidavit is Annexure **NAT 10**.

29.5.3 The largest suspicious transaction was a transaction of R1.3 billion in respect of the Optimum Mine Rehabilitation Trust. The Department of Mineral Resources under Minister Zwane had approved this transaction. The amount was to be transferred from a closed Standard Bank account to an account held with the Bank of Baroda.²⁴⁵

29.5.4 This transaction presented the real risk that the R1.3 billion, which was meant to be used to rehabilitate the mine, was transferred out of the country and used for other purposes.

30 The issue of sharpest conflict between Minister Gordhan and the Gupta family concerned the closure of Gupta linked accounts by various South African banks. This episode also illustrates the extent to which the Gupta family was able to enlist the support of President Zuma, Minister Zwane and Minister Muthambi to pursue its interests.

31 During April 2016, Oakbay announced that its bank accounts had been closed by the South African banks with which it held bank accounts and which were concerned about the possibility of money laundering transactions passing through their accounts.²⁴⁶

32 On 8 April 2016, Oakbay approached Minister Gordhan demanding his intervention to reverse this decision. In this letter, Oakbay’s CEO stated that the banks’ decision to close their accounts was “...*the result of an anti-competitive*

²⁴⁵ Gordhan FA in *Minister of Finance v Oakbay and Others*, Case no.: 80978/2016, paras 27-28.

²⁴⁶ Para 7, Gordhan FA, *Minister of Finance v Oakbay and Others*

and politically-motivated campaign designed to marginalise our businesses. We have received no justification whatsoever to explain why ABSA, FNB, Sasfin, Standard Bank ... decided to close our business accounts. ... As the CEO I now hope to draw a line under the corporate bullying and anti-competitive practices we have faced from the banks.”²⁴⁷

- 33 On 13 April 2016, at a meeting convened and chaired by President Zuma, Cabinet decided to intervene in the dispute between the banks and the Guptas. It announced its decision in the following media statement:

“Cabinet noted the actions by the four banks that gave notice to close the bank account of a company. Whilst Cabinet appreciate the terms and conditions of the banks, the acts may deter future potential investors who may want to do business in South Africa. Cabinet has endorsed that the Ministers of Finance, Labour and Mineral Resources should open a constructive engagement with the banks to find a lasting solution to this matter.”²⁴⁸

- 34 Instead of Constructive engagement, Cabinet established an inter-ministerial committee (“IMC”) to investigate allegations that the closure of the Gupta family accounts was done “*unilaterally and in collusion.*” This IMC was led by Minister Zwane, whose improper relationship with the Guptas is addressed in Chapter 4 above.

²⁴⁷ Gordhan FA in Minister of Finance v Oakbay and Others, Case no.: 80978/2016, para 9

²⁴⁸ Statement on Cabinet Meeting on 13 April 2016, para 5.2. Obtainable from <http://www.gcis.gov.za/newsroom/media-releases/statement-cabinet-meeting-13-april-2016>

35 Over the coming months, the IMC conducted meetings with the heads of the major banks. Some banks declined to take part in the IMC, as it was not properly constituted. The CEO of Nedbank, Mr Brown, engaged the IMC. He reported that he left the meeting with the distinct impression that the purpose of cabinet’s intervention was (i) to determine whether there was collusion; and (ii) to ask Nedbank to be Oakbay’s primary banking partner.²⁴⁹

36 As has been pointed out in chapters 4 and 5 above

36.1 For no apparent reason, Minister Muthambi, a close ally of the Guptas, took part in interviews conducted by the IMC, and

36.2 On 1 September 2016, Minister Zwane issued a public statement falsely stating that Cabinet had agreed on the recommendation of the Inter-Ministerial Committee that a judicial inquiry investigate why South Africa’s banks had blacklisted Gupta-owned businesses.

37 While the IMC had been pursuing its business, the Guptas continued to deal directly with Minister Gordhan.

38 On 17 April 2016, Oakbay wrote a further letter to Minister Gordhan requesting his assistance.²⁵⁰

38.1 On 25 April 2016, Minister Gordhan sought a legal opinion on whether he could intervene. Minister Gordhan was advised that neither he, nor any

²⁴⁹ See the affidavit of Mr Brown which is attached as Annexure **NAT 11**.

²⁵⁰ Gordhan FA in *Minister of Finance v Oakbay and Others*, Case no.: 80978/2016, para 11

member of the National Executive could intervene. Minister Gordhan summarized the basis of the opinion as follows:²⁵¹

“The National Executive (comprising Cabinet and such individual Ministers as may be appointed by the President) are governed by the Constitution and national legislation. They are accordingly entirely ‘creatures of statute’ with only such powers as the law itself confers on them.

Nothing in law, the opinion advised, authorised governmental intervention with the banker-client relationship arising by contract. The opinion also emphasised the obligations imposed by the Basel Committee on Banking Supervision at the Bank of International Settlements on South African banks. The Committee had imposed an international duty regarding know-your-customer (KYC) standards. I was further advised that required KYC policies and practices “not only contribute to a bank’s overall safety and soundness”, but also “protect the integrity of the banking system by reducing the likelihood of banks becoming vehicles for money-laundering, terrorist financing and other unlawful activities.

These principles, I was further advised, are given effect to in domestic law by the FICA. In addition, the Banks Act imposes reporting duties, requires the Registrar of Banks under certain circumstances to disclose information reported to him to third parties, and contemplates

²⁵¹ Gordhan FA in *Minister of Finance v Oakbay and Others*, Case no.: 80978/2016, para 13

that any concerns regarding the banking sector be communicated by the Registrar to inter alios the Minister of Finance.”

- 39 On 24 May 2016, Minister Gordhan and other members of Treasury held a meeting with Mr Howa and other representatives of Oakbay. They communicated the contents of the opinion with them. Minister Gordhan went so far as to share a copy of the opinion with Oakbay’s representatives.
- 40 On the same day, Oakbay sent a letter to Minister Gordhan indicating that its own legal advice was that any legal approach by it to challenge the closure of its accounts “...*may indeed be still-born.*”²⁵²
- 41 Despite this, Oakbay and Sahara continued to insist both publicly and to the Minister, that the Minister was indeed endowed with the power to intervene in such matters. In this context, Minister Gordhan applied to the North Gauteng High Court in November 2016 seeking a declaration, that he could not intervene in the dispute.
- 42 Minister Gordhan’s application was heard in the week of 27 March 2017. In the same week, the application of Vardospan Limited to compel the Minister to allow it to take over Habib Overseas Bank Limited was heard in the High Court. While both applications were being argued in court, Minister Gordhan was recalled from investor roadshow in the United Kingdom by President Zuma.

²⁵² Gordhan FA in Minister of Finance v Oakbay and Others, Case no.: 80978/2016, para 16

President Zuma’s appointment of Minister Gigaba

43 President Zuma replaced Minister Gordhan with Minister Gigaba on the night of 31 March / 1 April 2017. In order to inform him of his removal, President Zuma recalled Minister Gordhan from an international roadshow where Minister Gordhan was attempting to reassure investors that the South African economy was an appropriate destination for their money. Within days of the recall of Minister Gordhan, the sovereign credit rating of South Africa had predictably been reduced to junk status.

44 Minister Gigaba is not in the same category as Ministers Zwane and Muthambi when it comes to the Guptas. Nevertheless, he has a track record of exercising his powers in a manner that is advantageous to the Guptas.

44.1 As we have shown in Chapter 3 above, Mr Gigaba appointed Gupta family allies to the Board of Transnet where they presided over transactions that diverted billions of rands in public funds to Gupta companies.

44.2 He also fast tracked the naturalisation process of Gupta family members.²⁵³

45 President Zuma claims to have removed Minister Gordhan as Finance Minister because of a breakdown in trust between himself and Minister Gordhan. However, having regard to:

²⁵³ See Annexure **NAT 12**. Statement of Treasury 13 June 2017.

45.1 the clear influence that the Gupta family exercised in relation to the previous appointments of Mr van Rooyen as Finance Minister,

45.2 the sustained conflict between Minister Gordhan and the Gupta family,

45.3 the timing of the removal of Minister Gordhan,

45.4 the inevitable damage that the removal of Minister Gordhan would do to the South African economy, and

45.5 the appearance that his successor Minister Gigaba is a more Gupta friendly Minister,

the inference is inescapable that the interests of the Gupta family influenced the decision of President Zuma to replace Minister Gordhan.

CHAPTER 7: CONCLUSION

1 As the Head of State and the Head of the national Executive, the President occupies “a position indispensable for the effective governance of our democratic country”.²⁵⁴ The Constitutional Court has explained that -

“Only upon him has the Constitutional obligation to uphold, defend and respect the Constitution as the supreme law of the Republic been expressly imposed. The promotion of national unity and reconciliation falls squarely on his shoulders. As does the maintenance of orderliness, peace, stability and devotion to the well-being of the Republic and all of its people. Whoever and whatever poses a threat to our sovereignty, peace and prosperity he must fight. To him is the executive authority of the entire Republic primarily entrusted. He initiates and gives the final stamp of approval to all national legislation. And almost all the key role players in the realisation of our Constitutional vision and the aspirations of all our people are appointed and may ultimately be removed by him. Unsurprisingly, the nation pins its hopes on him to steer the country in the right direction and accelerate our journey towards a peaceful, just and prosperous destination, that all other progress-driven nations strive towards on a daily basis. He is a Constitutional being by design, a national pathfinder, the quintessential commander-in-chief of State affairs and the personification of this nation’s Constitutional project.”²⁵⁵

²⁵⁴ *Nkandla* judgment at para 20.

²⁵⁵ *Nkandla* judgment para 20, citing sections 83(b) and (c) of the Constitution, read with the affirmation or oath of office in Schedule 2 of the Constitution, and sections 84-85 of the Constitution.

- 2 Special obligations are attendant on being entrusted with the highest office in the country and with the public power and resources associated with the President’s Office. With public power comes commensurate responsibilities.
- 3 Thus, on assuming Office, the President is required to solemnly and sincerely promise to be faithful to the Republic of South Africa, to obey, observe, uphold and maintain the Constitution and all other law of the Republic; to promote all that will advance the Republic, and oppose all that may harm it; to protect and promote the rights of all South Africans; to do justice to all and to devote himself to the well-being of the Republic and all of its people. This he is required to do with all his strength, all his talents and to the best of his knowledge and abilities and true to the dictates of his conscience.²⁵⁶
- 4 The President and his Cabinet and Deputy Ministers are responsible for the proper exercise of the powers and carrying out of the functions that Parliament assigns to the Executive and must act in line with the Constitution.²⁵⁷ They must perform their Constitutional obligations “*diligently and without delay*”.²⁵⁸ They are required to act in accordance with a code of ethics prescribed by national legislation. They are expressly enjoined under section 96 of the Constitution not to –

“(a) *undertake any other paid work;*

²⁵⁶ Section 87 of the Constitution, read with the oath or affirmation of office in Schedule 2 of the Constitution.

²⁵⁷ Sections 92(2), 92(3) and 93(2) of the Constitution.

²⁵⁸ Section 237 of the Constitution.

- (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.”²⁵⁹*

5 South Africans, through their elected representatives in the National Assembly, are entitled to hold the President to his oath of office and the obligations imposed on him and his Cabinet by the Constitution. In its recent “*Secret Ballot*” judgement, the Constitutional Court considered the role of Parliament in holding the Executive accountable. Section 42(3) of the Constitution places a duty on Parliament “*to represent the people and to ensure government by the people under the Constitution*”.²⁶⁰ This means:

“It thus falls on Parliament to oversee the performance of the President and the rest of Cabinet and hold them accountable for the use of State power and the resources entrusted to them. And sight must never be lost that ‘all constitutional obligations must be performed diligently and without delay’. When all the regular checks and balances seem to be ineffective or a serious accountability breach is thought to have occurred, then the citizens’ best interests could at times demand a resort to the ultimate accountability-ensuring mechanisms. Those measures range from being voted out of office by the electorate to removal by

²⁵⁹ Section 96 of the Constitution.

²⁶⁰ Section 42(3) of the Constitution.

*Parliament through a motion of no confidence or impeachment. These are crucial accountability-enhancing instruments that forever remind the President and Cabinet of the worst repercussions that could be visited upon them, for a perceived or actual mismanagement of the people’s best interests.”*²⁶¹

6 The motion of no confidence is a crucial mechanism of accountability and good-governance. It is a check against the abuse of the public power and resources that are vested in the highest office-holder in the land, the President. It is, as the Constitutional Court has said: *“about ensuring that our Constitutional project is well managed; is not imperilled; the best interests of the nation enjoy priority in whatever important step is taken; and our nation is governed only by those deserving of governance responsibilities”*. It is also, fundamentally, about ensuring that the needs of the people of South Africa are not neglected by the President and his Cabinet with impunity.²⁶²

7 It falls to the National Assembly to restore public trust and confidence in the government of the Republic of South Africa and its Constitution. It falls to each member of the National Assembly to vote according to his or her conscience, and to enforce accountability effectively and properly, as the members are Constitutionally obliged to do.²⁶³

²⁶¹ *United Democratic Movement v The Speaker of the National Assembly and Others* (CCT89/17) [2017] ZACC 21 (22 June 2017) (“*UDM v The Speaker*”) at para 10, with reference to sections 89, 102 and 237 of the Constitution.

²⁶² *UDM v The Speaker* at para 47.

²⁶³ Section 48 of the Constitution, read with the oath or affirmation of office in Schedule 2 of the Constitution. See also *UDM v The Speaker* at para 79.

- 8 In voting with their conscience, the members must reaffirm the principles that drove the struggle of the oppressed majority of South Africans for so long: “*Amandla awethu, mannda ndiashu, maatla ke a rona or matimba ya hina*” (power belongs to us) and “*mayibuye iAfrika*” (restore Africa and its wealth).²⁶⁴
- 9 The facts detailed in this report evidence the serious and flagrant breach by the President of his Constitutional obligations and his oath of office.
- 9.1 The President has paralysed the Criminal Justice System to protect himself from prosecution;
- 9.2 In relation to Nkandla, he has enriched himself at the expense of the public and violated the Constitution by defying the Findings of the Public Protector to remedy this situation;
- 9.3 He has repeatedly lied to Parliament about his conduct that has been investigated by the Public Protector;
- 9.4 He has turned a blind eye to the gross violation of the fundamental rights of millions of poverty stricken South Africans to social assistance;
- 9.5 After being involved in a generally corrupt relationship with Schabir Shaik, he has moved to conducting a similar relationship with the Gupta family over the entire period of his Presidency; and
- 9.6 Now it emerges that he has colluded in the plundering of the South African

²⁶⁴ *UDM v The Speaker* at para 7.

State for the benefit of the Gupta family and their business associates, including the President’s son, Duduzane Zuma.

- 10 As the President’s political position becomes less secure he reverts to unconstitutional fight or flight instincts. While his son and the Guptas explore the possibility of flight to Dubai, at home he is giving signals that he will fight unconstitutionally to hold onto power by using MK Veterans to conduct security functions which the Constitution reserves for the SAPS and the SANDF.²⁶⁵
- 11 The forthcoming vote of no confidence affords the National Assembly and its members the opportunity to reassert the supremacy of the Constitution in the face of a President who has repeatedly violated the Constitution. Prior to the “Gupta emails”, the case for removing President Zuma was overwhelming. Since the emergence of the “Gupta emails”, it is unanswerable. The National Assembly and its members would be failing in their Constitutional obligation if they did not vote to remove President Zuma from Office in the vote of no confidence.

²⁶⁵ Section 199 and section 205 of the Constitution of the Republic of South Africa, 1996.